

54
2

'99 AUG 16 PM 1 46

BOOK

PAGE

RECORDED & VERIFIED

2626

0354

MARY SUE OOTS

STATE OF NORTH CAROLINA REGISTER OF DEEDS DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
COUNTY OF NEW HANOVER
OF
BEASLEY PLACE TOWNHOUSES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF BEASLEY PLACE TOWNHOUSES made and entered into this 16th day of August, 1999, by B & I Builders, Inc., a North Carolina Corporation, to and with and on behalf of all persons hereafter owning or acquiring any of the lots shown upon that map of BEASLEY PLACE TOWNHOUSES recorded in Map Book 39 at Page 91, of the New Hanover County Registry.

000213

W I T N E S S E T H :

WHEREAS, the undersigned Corporation is the owner and developer of all of the lots in BEASLEY PLACE TOWNHOUSES as shown on that map recorded in Map Book 39, at Page 91, of the New Hanover County Registry; and

WHEREAS, the undersigned Corporation desires to provide a uniform plan of development of said property for residential purposes, for the benefit of itself and all future owners of any of the lots shown upon the said map;

NOW THEREFORE, the undersigned Corporation does declare that each of the lots described above shall be owned, held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall run with, the real property herein described, and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" and "HOA" shall be used interchangeably to mean and refer to BEASLEY PLACE HOMEOWNERS'

RETURNED TO & PREPARED
BY DANIEL D. MAHN

ASSOCIATION, INC., a private non-profit corporation formed or to be formed by the Declarant primarily as a Homeowners Association for the lot owners in BEASLEY PLACE TOWNHOUSES, all of whom shall be members of the Association.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot or unit which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is set forth in the plat of BEASLEY PLACE TOWNHOUSES, as recorded in Map Book 39 at Page 91 of the New Hanover County Registry.

Section 5. "Lot" or "Unit" shall mean and refer to any of the lots or units as shown on the plat of BEASLEY PLACE TOWNHOUSES recorded in Map Book 39 at Page 91 of the New Hanover County Registry, and any lot or unit located on lands annexed pursuant to Article XI of this Declaration, together with the structure or dwelling thereon which structure may be separately referred to as a "Townhouse", "Townhouse Unit", "Townhome", or "Unit".

Section 6. "Declarant" shall mean and refer to B & I Builders, Inc., or its successor in interest if such successor should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean this instrument as it may be from time to time amended or supplemented.

Section 8. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a lot or unit who has requested notice of certain matters from the Association.

Section 9. "Limited Common Areas" and "facilities" shall mean and include those common areas and facilities which are reserved for the use of a certain unit or units to the exclusion of other units, as might be more specifically defined herein and as shown on the plat of BEASLEY PLACE TOWNHOUSES, as recorded in Map Book 39 at Page 91 of the New Hanover County Registry.

Section 10. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

Section 11. "Developer" shall mean the buyer of a lot who builds a townhouse unit thereon for sale to an Owner but which Developer does not occupy the unit.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot or unit, subject to the following provisions:

- a. The right of the Association to limit the number of guests of members.
- b. The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessment against his lot or unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c. The rights of the Declarant (as set forth in Article XI).
- d. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.
- e. The right of the Association to mortgage or convey all or part of the common area subject to such conditions as

may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument creating such a dedication or transfer is signed by two-thirds (2/3) of each class of members (which votes may be cast in person or by proxy) and properly recorded. No such conveyance or encumbrance shall be valid unless it is made subject to each member's right of ingress and egress over said common area and, so long as there is a Class B membership, HUD, FHA, or VA approval is required. Nothing in this section shall limit Declarant's rights under Article XI herein.

- f. The right of individual owners to the exclusive use of parking spaces as provided in this article.

Section 2. Delegation of Use. An Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) assigned automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. Use of parking spaces other than those assigned spaces shall subject the user to fines which shall be assessed against and collected from the lot owner by the Association in the same manner as assessments hereinafter described.

ARTICLE III.

EASEMENTS

Section 1. Easements are reserved and may be granted by Declarant or the Association as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as

may be reasonably necessary to perform the exterior maintenance called for in Article IX of this Declaration.

Section 3. Easements are reserved over those portions of the Common Areas, Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Areas or Limited Common Areas or the air and light space above such Common Areas.

Section 4. Each lot or unit and all common areas and facilities and limited common areas and facilities are hereby subjected to an easement for landscape maintenance and for the installation, repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage, or other common areas and facilities, whether or not the cause of any or all of those activities originates on the lot or unit in which the work must be performed.

Section 5. Each lot or unit, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant, including walls, foundations, sidewalks, walks, paths, patios, decks, fences, and other such similar appurtenances. A valid easement for said encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhouses is partially or totally destroyed and then rebuilt, the owners of the townhouses so affected and other adjacent units agree that minor encroachments of or on parts of the adjacent townhouse units or Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 6. Ingress and egress is reserved for pedestrian traffic over, through, and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across all driveways and streets as from time to time may be constructed and intended for such purposes, for all lot or unit owners in all sections and phases of BEASLEY PLACE TOWNHOUSES, their guests, families, invitees, and lessees, the Association, the Declarant,

their successors and assigns. Declarant hereby reserves alienable easements over all streets and common areas as necessary to provide access for future development by Declarant or its successors and assigns of any properties adjoining the Project.

Section 7. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots or units and common area in the performance of their duties.

Section 8. In case of an emergency originating in or threatening any unit or lot or the common areas and facilities, regardless of whether the unit or lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

Section 9. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE IV.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a lot or unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot or unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

- a. CLASS "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot or unit owned. When more than one person holds an interest in any lot or unit, all such persons shall be members. The vote for such lot or unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot or unit.
- b. CLASS "B". Class B member(s) shall be the Declarant or Developer and Declarant or Developer shall be entitled to three (3) votes for each lot or unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - (1) when the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, or
 - (2) on December 31, 2005.

ARTICLE V.

COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each lot or unit owned within the Properties, hereby covenants, and each Owner of any lot or unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges;
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- c. Fines as may be established and assessed by the Board of Directors of the Association.

The annual and special assessments and fines, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, specifically including, but not limited to, the maintenance, repair, and replacement of all streets, driveways, parking areas, access easements, and any other area intended for vehicular access and parking as shown on the recorded plats of all sections and phases of BEASLEY PLACE TOWNHOUSES, maintenance and repair of all stormwater retention and drainage facilities as herein provided, maintenance and repair of sewer pipelines, maintenance and repair of all water supply lines and pipes from the water meters into the units, maintenance and repair of all other utility facilities and utility equipment not otherwise maintained and repaired by municipal, public, or private utility authorities, landscape maintenance, maintenance and operation of all lighting, fencing, and refuse collection facilities, and of the townhouses situated upon the Properties, including the prompt and full payment of all ad valorem property taxes and insurance for said common area(s).

Section 3. ANNUAL ASSESSMENTS. Lots or units shall not be subject to annual assessments until a unit is sold by the Declarant or Developer to an Owner. A unit shall become subject to annual assessments from the day following the day of conveyance by the Developer to the Owner. The annual assessments shall be determined as follows:

- a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessments shall be in an amount determined to be fair and reasonable by the Directors of the Association to carry out the responsibilities of the Association.

- b. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.
- c. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- d. The Board of Directors may fix annual assessments in an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all lots or units and may be collected on a monthly or quarterly basis.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES. The annual assessments provided for herein shall commence as to all lots or units on the first day following the day of conveyance of the unit to an Owner, except that annual assessments shall not commence for any unit until a certificate of occupancy has been issued for such unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified unit have been paid.

Section 8. WORKING CAPITAL CONTRIBUTION. At the time title is conveyed to an Owner, each Owner shall contribute to the Association a working capital reserve contribution in an amount at least equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the common areas and facilities furnishings and equipment, etc. Amounts paid into the working capital fund are not refundable and are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

Section 9. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate, together with all costs and reasonable attorney's fees associated with their collection, and all such sums shall become a lien upon the Owner's lot. The Association may bring

an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his unit.

Section 10. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS. To the extent permitted by law, an eligible mortgage holder, upon written request to the Association, identifying the name and address of the owner and the holder, will be entitled to timely written notice of:

- a. Any condemnation, loss or casualty loss which affects a material portion of the project or any units on which there is a mortgage held by such eligible mortgage holder.
- b. Any delinquency in payment of assessments or charges owed by an owner of the unit subject to a first mortgage held by such Eligible Holder which remains uncured for a period of sixty days.
- c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.
- e. In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as may be amended from time to time.

(1) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to Eligible Mortgage Holders.

(2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the common areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Holders holding mortgages on all remaining unit estates whether existing whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to Eligible Holders of mortgages.

Section 12. INSURANCE. It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

- a. Amount and Scope of Insurance: The Association shall obtain insurance on the Properties including but not limited to the common areas and improvements thereon, the limited common areas, and the lots (including the buildings thereon with the exception of personal property, furnishings, appliances whether built in or not, decorations, window treatments, floor coverings, wall coverings, and ceiling fans. In addition, all wiring is excepted from coverage other than basic electrical, and wiring for three phone and three television cable jacks). All insurance policies shall be secured by the Board of Directors or its designee on behalf of the Association with full authority, which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, for projects similar in construction. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation,

or maintenance or use of the common and limited common areas and legal liability arising out of lawsuits relating to employment contracts of the Association.

b. Insurance Provisions. The Board of Directors shall make diligent efforts to ensure that said insurance policies provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the lot owners and their employees, agents, tenants and invitees.

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.

(3) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the named insured.

(4) Coverage will not be prejudiced by act or neglect of the lot owners when said act or neglect is not within the control of the Association.

(5) The policy on the common area cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual lot owners.

(6) The policy on the common area cannot be canceled, invalidated or suspended on account of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association.

c. Premiums. All insurance premiums on the common area for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the

amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

- d. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds shall be payable to the Board of Directors as insurance trustee or to such attorney at law or institution with trust powers as may be approved by the Board of Directors.
- e. Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the lot owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies.

Section 13. DISTRIBUTION OF INSURANCE PROCEEDS. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. Expenses of Trust. All reasonable expenses of the insurance trustee shall be first paid or provisions made therefor.
- b. Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

ARTICLE VI.

FIDELITY BONDS

Section 1. GENERAL. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. AMOUNT OF COVERAGE. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

Section 3. OTHER REQUIREMENTS. Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
- c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.
- d. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at