

2800

BOOK PAGE
1272 0695

REBECCA P. DUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

Nov 26 4 40 PM '84

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR CANEEL COVE
A TOWNHOUSE DEVELOPMENT

THIS DECLARATION made this the 26th day of November, 1984, by Courtland Development, Inc., a North Carolina corporation, with its principal place of business located in Wilmington, North Carolina, hereinafter referred to as "Developer".

90

WITNESSETH:

WHEREAS, Developer is the owner of certain property located in Wilmington, County of New Hanover, State of North Carolina, in fee simple, said property being more particularly described herein, and desires to develop upon said property a Townhouse Development together with common lands and facilities for the sole use and benefit of the owners of the townhouses to be located thereon; and

WHEREAS, Developer is desirous of maintaining design criteria, location, construction specifications, and other controls to assure the integrity of the planned development; and

WHEREAS, each purchaser of a lot or townhouse in Caneel Cove will be required to maintain and construct said townhouses in accordance with the design criteria herein contained; and

WHEREAS, the Developer desires to provide for the preservation of the value and amenities in such development and for the maintenance of such common lands and facilities, and to this end, desires to subject the real property described in Schedule "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Developer deems it desirable and advisable, for the efficient preservation of the values and amenities in such community, to create an association to which will be delegated and assigned the powers of maintaining and administering the townhouse project, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, known as "Caneel Cove Homeowners Association, Inc." for the benefit of the owners of the lots or townhouses in Caneel Cove and for the purpose of exercising the functions previously set forth.

NOW, THEREFORE, the Developer hereby declares that all the properties described in Schedule "A" shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the describe properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

025935

RETURNED TO

Jay C. Simpson

Section 1. "Assessments" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Lot Owner by the Association.

Section 2. "Association" shall mean and refer to Caneel Cove Homeowner's Association, Inc., its successors and assigns.

Section 3. "Board of Directors" or "Board" means the Board of Directors of the Association and "Director" means a member of said Board of Directors.

Section 4. "By-Laws" means the By-Laws for the government of the Association as they exist from time to time.

Section 5. "Common Areas and Facilities" shall mean all real property, including improvements located thereon, owned by the Association for the common use and enjoyment of the owners.

Section 6. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement, (including a capital reserve for repair, maintenance and replacement) of the common areas and facilities, and other expenses declared by the Association to be common expenses.

Section 7. "Common Surplus" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses. Any such common surplus shall be used to reduce the assessments for members for the following fiscal year of the Association, based upon the proposed budget for the Association for the following fiscal year.

Section 8. "Documents" means this Declaration, the By-Laws, the rules and regulations promulgated by the Board of Directors of the Association, and all other exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein, and as such documents shall be amended or supplemented from time to time.

Section 9. "Declaration" means this instrument as it may be from time to time amended or supplemented.

Section 10. "Developer" and "Declarant" shall mean and refer to Courtland Development, Inc., a North Carolina corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Developer for the purpose of development.

Section 11. "Development", "Project", and "Community" shall all mean and refer to Caneel Cove, to be developed and constructed by the Developer.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, such as a mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or mortgage holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

Section 13. "Property" shall mean and refer to that certain real property hereinafter described, together with any buildings and improvements located thereon, as are subject to this Declaration, and more particularly described in the attached Schedule "A".

Section 14. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the common area, as hereinbefore defined. The designation of each lot, the townhouse to be located thereon, its approximate location and area, and immediate common areas and facilities to which it has access are set forth in Exhibit D attached hereto and made a part hereof.

Section 15. "Townhouse" as that term is used herein, or in any other document pertaining to the sale of property in the subject area, shall be synonymous with the term "lot" and/or "lots".

Section 16. "Plans", "Specifications", "Elevations", "Exterior Designs" and such like terms shall refer to and encompass the Plans, Specifications, Elevations and Designs as well as setbacks, locations, etc., contained in this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Caneel Cove, a Townhouse Development.

ARTICLE II

Description of Property

All that certain lot, parcel, piece or plot of land with the buildings and improvements thereon erected or to be erected situated, lying and being in Masonboro Township, County of New Hanover, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE III

Expansion of the Property Subject to this Declaration

Section 1. Preservation of right to expand. By this Declaration, the Declarant submits only the land described in Exhibit "A", together with the improvements thereon, and the same shall be known as Phase One of CANEEL COVE. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "B" attached hereto and made a part hereof.

Section 2. Method of expansion. Such expansion shall occur, if at all, by the recordation of one or more amendments to this Declaration, which amendment(s) shall be executed by the Declarant or its successors and assigns. The recordation of any such amendment, and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any lot owner.

Section 3. Termination of right to expand. The right and option described in Sections 1 and 2 above shall terminate on December 31, 1989, and shall be subject to the conditions, restrictions and limitations set forth in Section 4 of this Article III.

Section 4. Limitation on additions. If this Declarant adds all of the land described in Exhibit "B" hereof, the Declarant covenants and agrees that no more than 160 townhouses will be located on the property subject to this Declaration by such expansion. If the Declarant adds any portion or portions of the aforesaid land, the Declarant covenants and agrees that with respect to any such portion the density of townhouses shall not exceed an average of 6 such townhouses per acre.

ARTICLE IVProperty Rights

Section 1. Owner's easements of enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility, public or private, for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Dedication of use. Any owner may dedicate, 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.

ARTICLE VUses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, or other improvements shall be placed or altered except in accordance with the provisions of this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for CANEEL COVE.

Section 2. Subdivision of lots. No lot shall be subdivided except as hereinafter provided and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established except as herein provided.

Section 3. Alteration of building lines in the best interest of development. Where because of size, natural terrain, or any other reason in the opinion of the Developer, it should be to the best interest of the development of this subdivision that the building lines of any lot should be altered or changed, then Developer reserves unto itself, its successors or assigns and no other, the right to change said lines to meet such conditions. The Developer specifically reserves the right to transfer and assign this right of approval to the Architectural Control Committee hereinafter established.

Section 4. Completion of improvements. The exterior of all townhouses and other structures must be completed within one (1) year after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed.

Section 5. Residential use of lots. All lots shall be used for residential purposes only. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than those indicated in the plans and specifications herein defined in Article V.

Section 6. Maintenance of lots. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds which shall tend to substantially decrease the beauty of the neighborhood as a whole. The Association shall have authority to enforce the provisions of this Section according to the terms of Article VI, Section 21, hereinafter set forth.

Section 7. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No trash, leaves or rubbish may be burned within the development nor shall there be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof. Without limiting the foregoing, exterior lighting may not be so installed as to illuminate any portion of a neighboring lot or to shine directly into any window or otherwise enter a dwelling unit located of an adjoining lot.

Section 8. Exclusion of above ground utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the premises, except with the express written permission of the Board of Directors of the Association. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 9. Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be approved by the Association on request of the lot owner, shall be permitted. It shall also be permissible to have a sign, the design and size of which shall be approved by the Association, on request of the lot owner, advertising a townhouse or lot for sale. No other sign of any kind or design shall be allowed.

Section 10. Prohibition against business activity. No business activity, including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop of the like or any trade of any kind whatsoever shall be carried on upon a lot or lots. Provided, however, that nothing contained herein shall be construed so as to prohibit the construction of townhouses to be sold on said lot or the showing of said townhouses for the purpose of selling townhouses in the development. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as may be necessary for its operation and sales in the development.

Section 11. Garbage disposal. Each lot owner shall provide garbage receptacles in accordance with reasonable standards established by the Developer, or a roll-out garbage rack of the type approved by the Developer, which shall be visible from the streets on garbage pickup days only. Provided, that the owner shall be permitted to modify the requirements of this Section

where necessary to comply with orders of governing bodies.

Section 12. Easement for utilities. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of egress and ingress, over, upon, across and under each lot and common area for the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including easements for privately owned television and other communications cable and equipment, and the Developer may further cut drainways for surface water when such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designed for use on the applicable plat of the residential subdivision, or to locate same upon an adjacent lot with permission of the owner of such adjacent lot. Such rights may be exercised by the licensee of the Developer but this reservation shall not be considered an obligation of the Developer to provide or maintain any utility service. No structures, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph. Provided, however, that such easements and rights, shall be restricted to the roads, streets, alleys and easements as shown and designated on the applicable plat or plans of the Development.

Section 13. Temporary structures. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used as a residence or permitted to remain on the lot after completion of construction.

Section 14. Trailers, etc. No trailer, mobile home, tent, barn, camper, tree house or other similar out-building or structure shall be placed on any lot at any time either temporarily or permanently.

Section 15. Storage receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house or buried underground. Any exterior air conditioning or heating units shall be screened from view from all common areas and adjacent lots.

Section 16. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any common area or from any adjoining units.

Section 17. Water systems. No individual water supply system shall be permitted upon the premises with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing in all respects, by the utility company serving the project, including the pump and the covering or screen thereof, by the Developer, its successors and assigns, prior to installation.

Section 18. Sewer system. No surface toilets are permitted on the premises. Developer assumes responsibility for attaching to public sewer systems including all fees associated therewith.

Section 19. Underbrush, etc. In the event an owner of any lot permits any underbrush, weeds, etc, to grow upon any lot to heights of two (2) feet (except as part of a landscaping plan approved by the Developer or the Association) and on request fails to have the premises cut within thirty (30) days, agents of the Developer or the Association, or its assigns, may enter upon said land and remove same pursuant to the provisions of Article XIV, Section 1, and may likewise enter upon said land to remove any trash which has collected on said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot. This provision shall not be construed as an obligation on the part of the Developer or the Association or its assigns to provide garbage or trash removal service.

Section 20. Window coverings. All window coverings, including draperies and blinds, visible from the exterior of a townhouse shall be white or neutral in color, although the interior portions of such coverings may be of a different color, in order to maintain consistency in the visual attractiveness of the exterior of each townhouse and the development in general.

Section 21. Miscellaneous.

A. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

B. In the event of a violation or breach of any of these restrictions by any owner, or agent, or agent of such owner, the owners of lots in the subdivision, the Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer or the Association, its successors and assigns, shall have the right, whenever there shall have been built in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Developer of the Association employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Developer's or the Association's counsel shall be paid by the owner of such lot or lots in breach thereof.

C. The Developer of the Association herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

ARTICLE VI

Common Areas and Facilities

The common areas and facilities consist of the following:

A. All yards, roads, driveways, parking areas, walkways and paths.

B. All central and appurtenant installations, apparatus and equipment for utility services, including, but not limited to, power, light, gas, water, telephone, sewer, mail, irrigation, and trash disposal, if any, supplied for the use and convenience of the lot owners.

C. All other parts of the property and all apparatus and installations existing in the building or upon the property for common use or necessary or convenient to the enjoyment, existence, maintenance, or safety of the property, including, but not limited to the concrete walkways and irrigation systems, if any.

ARTICLE VII

Property Rights in the Common Area

Section 1. Member's easements of enjoyment. Subject to the provisions of Section 3 of this Article VIII, every member shall have a right and easement of enjoyment in and to the common areas, and such easement shall be appurtenant to and shall pass with the title to every unit.

Section 2. Title to common areas. The Developer hereby covenants for itself, its successors and assigns, that on or before conveyance of the first unit, it will convey to the Association, by general warranty deed, with covenant against Grantor's acts, fee simple title to the common areas, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration, subject, however, to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns, to wit:

In order to preserve and enhance the property values and amenities of the community, the common areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the common areas shall include, but not be limited to, the repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, if any, recreational equipment, if any, fences, storm drains, and sewer and water lines, connections and appurtenances.

This Section shall not be amended, as provided for in Article XVII, Section 5, to eliminate or substantially impair the obligation for the maintenance and repair of the common areas.

Section 3. Extent of member's easements. The rights and easements created hereby shall be subject to the following:

A. The right of the Developer, and of the Association, to dedicate, transfer or convey all or any part of the common areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, either public or private, provided that no such dedication, transfer or conveyance shall adversely affect the use of the common areas by the members of the Association.

B. The right of the Developer, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the common areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over and upon and across the common areas for the completion of the Development, and for the operation and maintenance of the common areas.

C. The right of visitors, invitees, etc., to ingress and egress in and over those portions of the common areas that lie within the private roadways, parking lots and/or driveways (and

over any other necessary portion of the common areas in the case of landlocked adjacent owners) to the nearest public highway.

D. The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights to use any recreational facilities of any member for any period during which any assessment remains unpaid, for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that the right of a member to ingress and egress over the roads and/or parking areas shall not be suspended.

E. The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the common areas and in pursuance thereof, to mortgage the same.

Section 4. Parking rights. Any owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the common areas and facilities to his employees, tenants, invitees or licensees.

Section 5. Additional structures. Neither the Association nor any owner or any group of owners shall, without the prior written approval of Developer, erect, construct or otherwise locate any structure or other improvements in the common areas.

ARTICLE VIII

Completion, Maintenance and Operation of Common Areas and Covenant for Assessment Therefor

Section 1. Completion of common areas by Developer.

A. The Developer will complete the construction of the streets, roadways, walkways, parking facilities and outdoor lighting serving such lot or lots in the Development.

B. The Developer will fulfill all its obligations to complete the construction of all common areas which development will be done at Developer's sole cost and expense.

Section 2. Creation of the Lien and personal obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants and each owner of any lot 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:

(1) Annual assessments or charges, and
(2) Special assessments for capital improvements, such assessment to be established and collected as hereinafter provided. The annual and special assessments together with interest, cost, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost, 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 assessment shall not pass his successors in title unless expressly assumed by them.

Section 3. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and the properties and for the improvement and maintenance of the common area and repair and maintenance of the exterior of any structures located upon the property, including the townhouse units.

Section 4. Maximum annual assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be ONE THOUSAND DOLLARS (\$1,000.00) per lot.

A. 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 percent (5%) above the maximum assessment for the previous year without a vote of the membership.

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 above five (5%) percent by a 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.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Date of commencement of annual assessment.
Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall affix the amount of the annual assessments against each lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessments shall be established by the Board of Directors. 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 lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of the issuance.

Section 6. Special assessments for capital improvements.
In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment (which may be fixed at a uniform rate for all units) applicable to that year only, in an amount no higher than the maximum annual assessment then permitted to be levied hereunder, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common areas, including the necessary fixtures and personal property related thereto, provided that any such assessments 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, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The due date of any specified assessment shall be fixed in the Resolution authorizing such assessment.

Section 7. 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.** All insurance policies upon the properties (Except personal property within a unit) 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, as from time to time shall be customarily required by private institutional mortgage investors for projects similar in constructions, location and use as the properties and the improvements thereon all under such terms and conditions as the responsible authority shall determine. 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 areas and legal liability arising out of lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage the responsible authority shall consider the reasonable requirements of holders of first liens on individual lots.

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 cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the named insured and all mortgagees.

(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 or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

(5) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual lot owners.

(6) The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct 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, any lot or any mortgagee.

C. Premiums. All insurance policy premiums on the property 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 4 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 thereof shall be payable to the Board 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 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. Duplication shall also be obtained and issued by the Association to each mortgage, if any, upon request of such mortgage at any time.

Section 8. 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 paid first or provision 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.

Section 8. Notice and quorum for any action authorized under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 of this Article X 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 of proxies entitled to cast sixty percent (60%) of all 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 requirements, 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 9. Uniform rate of assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 10. Effect of non-payment of assessment. The personal obligation of the owner: the lien, remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the lot or lots together with the building located thereon, which shall bind such lot or lots in the hands of the then owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%), per annum, and the Association may bring legal action against the then owner personally obligated to pay the same or may enforce or foreclose the lien against the lot or lots; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas.

Section 11. Subordination of the lien to mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the properties subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. This Section shall not be amended as provided in Article XVII, Section 5, of this Declaration.

ARTICLE IX

Architectural Control

No building, fence, wall or other structure, and no change in topography, landscaping or any other items constructed by the Developer shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change be made in any townhouse until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Developer. When the Class B membership ceases and is converted to Class A membership, as provided in Article XV below, this right of approval shall be transferred to an Architectural Control Board appointed by the Association. Such Architectural Control Board shall be comprised of not less than three (3) representatives to be appointed by the Board of Directors of the Association. Provided, further, that the Developer may transfer its rights of approval under this Declaration prior to its selling all of the lots in the development if it so chooses. In the event the Developer or the Architectural Control Board fails to approve or disapprove any request within sixty (60) days after complete plans and specifications have been submitted to it, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer or the Architectural Control Board may seem sufficient. Any change in exterior appearance of any townhouse, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

ARTICLE X

Party Walls

Section 1. General rules of law to apply. Each wall which is built as a part of the original construction of the townhouses upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of repair and maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by fire or other casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, as owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

Section 5. Right to contribution runs with land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of the arbitrators.

ARTICLE XI

Exterior Maintenance, Reasonable Access and Maintenance of Common Areas

Section 1. Exterior Maintenance. The Association shall be responsible for maintaining the exterior of any structure, including the individual townhouse units, in good repair and appearance, in accordance with the provisions of Article VIII above. However, the owner shall maintain his lot and unit at all times in a neat and attractive manner. Upon the owner's failure to maintain his lot and unit in good repair and appearance, the Association may, at its option, after giving the owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the owner's failure to do so shall be immediately due and owing from the owner of the lot and shall constitute an assessment against the lot and/or structure on which the work was performed, collectible in a lump sum and secured by a lien against the lot and structure as herein provided.

Section 2. Access to reasonable hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Developer during the period of Development, shall have the right to enter any lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of common areas. The Developer, or the Association, depending upon the responsibility as assessed under this Declaration, shall maintain the common areas. However, should the Developer or the Association decide to transfer any portion or all of the common areas to governmental authority, as it has the right to do so, such duty to maintain same shall cease as to that portion so transferred.

ARTICLE XII

Membership and Voting Rights in the Association

Section 1. Membership. Every owner of a lot 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 unit which is subject to assessments.

Section 2. Voting rights. The Association shall have two (2) classes of voting membership.

A. Class A. Class A members shall be all owners, with the exception of the Developer, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any lot.

B. Class B. The Class B member shall be the Developer and shall be entitled to three (3) votes for each lot owned. The membership on the happening of either of the following events, whichever shall first occur:

(1) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(2) On the 1st day of July, 1989.

When a purchaser of an individual lot or lots takes title thereto from the Developer, he becomes a Class A member.

ARTICLE XIII

Rights of Mortgagees

Should a mortgage or third party acquire the rights of Developer, or Association, or a plot owner, by way of foreclosure or otherwise in adjoining or neighboring property contained with the tract described in Exhibit "B" attached hereto, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within the properties for the purpose of serving such adjoining or neighboring areas.

ARTICLE XIV

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association, or the owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns.

Section 2. Notice. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, post-paid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violations or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Developer, any Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board.