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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

Nov 17 4 23 PM '83

COLONY WOODS TOWNHOUSES

(A Planned Unit Development)

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, is made on the date hereinafter set forth by COLONY WOODS LIMITED PARTNERSHIP, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property located North of Market Street, in Wilmington, County of New Hanover, State of North Carolina, which is more particularly described as follows:

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Beginning at a point in the northern right of way line of Market Street that is located N 23 32 W - 20.65' and N 80 53 E - 100.0' from the southeastern corner of the old Poezolt Subdivision according to the map recorded in Map Book 2 at Page 132 of the New Hanover County Registry. Running thence from said point of beginning N 23 32 W - 300.0' to an iron pipe; thence S 80 53 W - 100.0' to an iron pipe; thence N 23 32 W - 450.0' to an iron pipe; N 66 28 E - 257.41' to an iron pipe; thence S 23 32 E - 516.17' to an iron pipe; thence S 80 53 W - 103.78' to an iron pipe; thence S 23 32 E - 300.0' to an iron pipe in the northern line of Market Street; thence with the northern line of Market Street S 80 53 W - 62.0' to the point of beginning and containing 3.26 acres more or less; this being the real property designated as Section One on the plat of Colony Woods Townhouses, dated August , 1983, recorded in Unit Ownership Book 4 at Page 69 of the New Hanover County Registry.

DECLARANT further declares that certain additional property located northwest of the above-described property owned by the Declarant and designated as Colony Woods Townhouses Phases II through X, that are contained within Sections Two and Three on the plat of Colony Woods Townhouses, dated March 14, 1983, and more particularly described in Exhibit "A" attached hereto, shall be reserved for residential use only, either as townhouses similar to those in Phase I of the above-described property or apartments comparable in size, spacing, and architectural appearance to the townhouses in Phase I. It is Declarant's intention that this Declaration apply to all property now or subsequently developed as Colony Woods Townhouses, a Planned Unit Development.

AND DECLARANT further declares that a portion of the above-described real property will be dedicated to the City of Wilmington for public street purposes, and to provide ingress and egress from the property, said streets to be built to the technical standards of the City of Wilmington and dedicated on the plat of Colony Woods Townhouses Section One that is recorded in the Office of the Register of Deeds of New Hanover County prior to or at the time of recordation of this Declaration, and on the recorded plats of subsequent phases or sections of Colony Woods Townhouses if any there be.

NOW THEREFORE, Declarant hereby declares that all of the properties described above 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 described properties or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Colony Woods Homeowners Association, Inc., its successors and assigns, and a copy of the Articles of Incorporation and proposed By-Laws of said Association is annexed hereto and fully incorporated herein by reference.

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 which is part of the Properties, including contract sellers, 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 real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, pursuant to an Amendment to this Declaration.

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 containing a Townhouse unit is described as follows:

ALL OF THE PROPERTY DESCRIBED in this Declaration on Page 1 hereof and contained within Section One of the plat of Colony Woods dated March 14, 1983, except any portion of that property that is dedicated to the City of Wilmington as a public street and which shall provide ingress and egress from the property, AND EXCEPTING those designated Lots shown as Phase I Lots 1 through 8 on the Plat of Colony Woods Townhouses, dated March 14, 1983, and being more particularly described as follows:

PHASE I (to be divided into eight (8) individual Lots by plat to be recorded): BEGINNING at a point located as follows: BEGINNING at the point of BEGINNING of the above described 3.26 acre tract; thence North 23 degrees 32 minutes West 300.0 feet; thence South 80 degrees 53 minutes West 100.0 feet; thence North 23 degrees 32 minutes West 370.0 feet; thence North 66 degrees 28 minutes East 80.0 feet, SAID POINT BEING THE POINT OF BEGINNING OF PHASE I, thence North 23 degrees 32 minutes West 70.0 feet; thence North 66 degrees 28 minutes East 160.0 feet; thence South 66 degrees 28 minutes West 160.0 feet to the point of BEGINNING, containing .257 acres, more or less, herein designated PHASE I.

TOGETHER with any and all property within the declared 3.26 acre tract described above, but not within any of the individual Lots in Phase I after an actual field survey designates said Lots.

RESERVING, HOWEVER, UNTO DECLARANT an easement for ingress, egress and regress over the 60 foot wide street right of way along the western edge of the above described 3.26 acre tract, as well as a 60 foot right of way running east to the Dunlea line, as shown on the plat of Colony Woods Townhouses, dated March 14, 1983. Colony Woods Limited Partnership, the Declarant, also reserves the right to dedicate said street rights of way to the City of Wilmington as noted hereinbefore on Page Two of this Declaration.

Section 5. "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.

Section 6. "Declarant" shall mean and refer to COLONY WOODS LIMITED PARTNERSHIP, its successors and assigns if such successors and assigns should assign more than one undeveloped Lot from the Declarant for the purposes of development.

Section 7. "Board of Directors" shall mean and refer to the duly elected Board of Directors of Colony Woods Homeowners Association, Inc., who shall be elected and serve in a manner prescribed in the By-Laws of said Corporation.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's 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 of every Lot, 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, if installed at some later date.

(b) The right of the Association to suspend the voting rights and right to use 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 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 for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(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.

Section 2. Delegation of Use. Any 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. However, any lot and unit that is rented, and the Homeowner - Landlord of such lot and unit, is subject to these provisions:

- (a) That the units will be rented and operated in concurrence with all terms and conditions of the Articles of Incorporation and the By-Laws, as from time to time amended, of Colony Woods Homeowners Association, Inc., a non-profit North Carolina corporation that is formed to handle the affairs of common interest to the homeowners, landlords and tenants of Colony Woods Townhouses.
- (b) That a Homeowner - Landlord, as a holder of Class A stock in the Homeowners Association, by virtue of his ownership of lots and units in Colony Woods, will assume all the responsibilities of such ownership.
- (c) That any tenant rental agreement or lease shall acknowledge the conditions and requirements of the Homeowners Association, and may be terminated for any violations hereunder. The Homeowner - Landlord shall provide such notice of rental agreements or leases in effect for his lots and units as may be required by the By-Laws.
- (d) That upon notice from the Homeowners Association of continued tenant violations of any regulations, the Homeowner - Landlord will take necessary action to remove the violating tenant.
- (e) That the Homeowner - Landlord will be responsible for all regular and special assessments as provided for in this Declaration, the Articles of Incorporation and the By-Laws, and that same will be paid on a timely basis.

Section 3. Parking Rights. Ownership of each Lot in Colony Woods Townhouses shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near as and convenient to said Lot as reasonably possible, together with the right to ingress and egress in and upon said parking area. The Association shall permanently assign one (1) vehicle parking space for each dwelling.

Section 4. Rights Reserved to the Declarant. Until the Declarant as Developer has completed and sold all the townhouses that may be subject to this Declaration, as it may be supplemented from time to time, or the cessation of Class B membership in the Association, whichever first occurs, neither the owners of lots and townhouse units erected thereon nor the Association nor the use of the individual lots shall interfere with the completion of the improvements contemplated by this Declaration or the sale of the townhouse units on individual lots. The Declarant may make such use of the common area and the unsold units as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, the maintenance of a "model unit", the showing of the property, and the display of signs. Further, the Declarant reserves unto itself a perpetual easement, that is alienable and releasable, over, through, and under the lands that are submitted, or may be submitted to this Declaration to erect, maintain and use electric and telephone poles, wires, cables and conduits, to construct and maintain water mains and sanitary sewers, and other suitable equipment for the delivery and use of electricity, communications and to provide water and sanitary waste disposal. The Declarant reserves the right to subject the real property in this project to a contract with Carolina Power & Light Company for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to Carolina Power & Light Company by the owners of each building, or by the Homeowners Association. Further, the Declarant may use any of the property that is, or may become, subject to this Declaration, except individual lots on which townhouse units have been completed and sold, to facilitate its construction of additional townhouse units, including transport and storage of construction materials and workers on the premises who are employed by the Declarant or its designee(s) shall not be interfered with in the performance of their duties.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. 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 separate from ownership of any Lot which is subject to assessment.

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

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 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 determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, whether declared now or declared in the future when this Declaration may be amended from time to time to add Phases II through X of Colony Woods Townhouses. 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:

- (a) When the total outstanding in the Class A membership equals the total vote outstanding in the Class B membership, or
- (b) On March 31, 1988.

Section 4. The Association affairs shall be governed by its Board of Directors, who shall be elected by majority vote in the manner specified in the By-Laws.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS AND WORKING CAPITAL FUND

Section 1. 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 therefor, 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 assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon property against which each such 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 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. Working Capital Fund. In addition to the regular assessments required hereby, the Association shall establish and maintain a working capital fund for the initial months of the Project's operation. This fund shall be created by the payment to the Association by the purchaser, at closing of the initial sale of each lot and unit in the project, of a sum equivalent to two month's assessment fees as may be in effect on the date of closing. The amounts hereby collected shall not be considered as advance payment of regular assessments.

Section 3. 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 homes situated on the Properties, particularly for the exterior maintenance of the homes, and for the improvements and maintenance of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the costs of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the payment of charges for common television antenna service or cable television service to the Lots, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

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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 Two Hundred Forty Dollars (\$240.00) per Lot. Two months assessment, separate and apart from the working capital fund described in Section 2 hereof, shall be collected at closing of the initial sale of each lot and unit in the project.

(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 5% above the maximum annual assessment for the previous year without a vote of 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 5% 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. 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 that year for the purpose of defraying, in whole or in part, the costs of construction, reconstruction, repair or replacement of 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 6. Special Assessments for Insurance; Damage to or Destruction of Individual Units. Each Owner of an individual lot and unit in Colony Woods Townhouses shall at all times keep the unit constructed upon his or her lot (except personal property within a unit) insured against loss or damage by fire or other hazards normally insured against at 100% of the replacement cost and such other risks, including public liability insurance, upon

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such terms and in such amounts as may be reasonably necessary to protect the property, the individual lot and unit owners, and any lending institution or institutions holding liens on individual townhouse units. This insurance shall be payable in case of a loss to the individual townhouse units. This insurance shall be payable in case of a loss to the individual lot owner and his or her mortgagee, if any, and the Board of Directors of the association (or its designee) on behalf of the association, as Trustee for all owners of townhouse units and their mortgagees to insure compliance with this Declaration with respect to replacement or repair on behalf of townhouse structure. The Trustee so named shall have the authority on behalf of the association to deal with the insured lot owner and the insurer or insurers in the settlement of claims. Each owner, upon acquiring a unit in Colony Woods, shall immediately procure insurance as specified above, that is payable to the Board of Directors or its designee as Trustee and to the individual lot owner. Each owner shall keep evidence of this insurance coverage, including the payment of the annual premiums on file with the Board of Directors of the association. If a lot owner fails to acquire appropriate insurance as above specified, the Board shall have the authority and is hereby directed to obtain insurance for the owner and to assess the owner's townhouse unit and lot with the complete cost of the insurance and any out of pocket expenses incurred by the Board in obtaining same. The amount so assessed shall be due and payable in full when the next monthly assessment against the lot is due to the Homeowners Association. It is the policy and intent of this section that the individual owner shall use discretion in choosing his or her own insurance company; provided, however, the Board is authorized to procure insurance in the event the individual lot owner fails to do so.

Insurance as required hereby shall be obtained without prejudice to the rights of each individual lot owner to insure his or her personal property for his or her own benefit, and any lot owner or occupant may obtain additional insurance at his or her own expense; provided, however, that no owner or occupant shall

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be entitled to exercise this right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors or its designee as Trustee for all the owners may realize under any insurance policy in force on the project at any particular time. In no event shall the insurance coverage required by the Board of Directors or its designee be brought into contribution with insurance acquired by any individual owner or his mortgagee(s).

As an additional annual assessment, the association shall levy against the owners equally in amounts sufficient to pay the annual costs of all public liability and common area insurance premiums for the association itself and its members, officers, directors and employees. This levy shall also apply for monies needed to insure any individual townhouse unit until the special assessment is collected from any defaulting lot owner.

The Homeowners Association shall at all times keep the common area property insured against loss or damage by fire or other hazards normally insured against at 100% of replacement cost and such other risks as public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the association. The association shall also obtain and pay for bonds for the directors and officers of the association, as a part of the annual assessments.

Because each individual townhouse unit is vested in each owner in fee simple, this Declaration has provided for the maintenance of mandatory insurance for protection of each unit for the common good and welfare of the total development, especially for each block or phase of townhouse units. This Declaration imposes a mandatory obligation on each individual lot owner to obtain insurance on his or her townhouse unit. In case of any damage to or any destruction of any townhouse unit or any part thereof, the individual owner shall notify the association as well as the insurer in writing within thirty (30) days of the date of the occurrence causing such damage or destruction. It is the policy of this Declaration, to promote the general welfare of

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the lot owners and the desirability of this development, that individual townhouse units damaged or destroyed by fire or other casualties should be restored, replaced or rebuilt to the extent possible to the condition existing prior to the fire or other casualty. The individual lot owner affected by the fire or other casualty, in cooperation with the Board shall contract immediately for restoration for repair of the damaged unit or units. The individual unit owner shall be responsible for contracting the reconstruction or repair of the structure, subject, however, to the approval of the Board of Directors of the association or its architectural committee, which approval shall not be unreasonably withheld. Upon completion of the reconstruction, or periodically as necessary, the Board of Directors of the Association as Trustee (or its designee), and the individual lot owner, through a special joint bank account, shall pay for the reconstruction or repair of the townhouse unit from the insurance proceeds. In the event there is a deficit between the amount of insurance proceeds available and the cost of reconstruction or repair of the townhouse unit on a given lot, the lot owner shall be solely responsible for paying this deficit within a reasonable time. If the lot owner fails to pay this deficit within a reasonable time, the Board shall have the right to assess, by special assessment, against said lot any amount necessary to complete the repair of the damaged dwelling unit. If there is any surplus in the insurance funds after the repair or reconstruction of the dwelling then this shall be disbursed to the individual lot owner and his mortgagee, if any, as a respected interest may appear. In the event of a dispute between the Board, or its designee, as Trustee, and any lot owner with a respect to the payment of insurance proceeds, then the parties shall submit the dispute to arbitration pursuant to the applicable statutes of North Carolina. The lot owner shall choose one arbitrator and the Board of Directors or its designee, as Trustee, shall choose one arbitrator. Each arbitrator shall then choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, and their decision shall be binding on all the parties.

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Section 7. 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 30 days nor more than 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 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 60 days following the preceding meeting.

Section 8. Rate of Annual Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis; provided however, each Lot owned by the Declarant shall be assessed for both annual and/or special assessments at one-half (1/2) or fifty percent (50%) assessment ratio. This assessment ratio for a particular Lot owned by the Declarant shall terminate immediately upon the transfer of said Lot from the Declarant to a Class A member; and thereafter, the full one hundred percent (100%) assessment for such Lot shall apply.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided 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 fix the amount of the annual assessment against each Lot 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 date 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

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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 its issuance.

Section 10. Effect of Nonpayment of Assessments: 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 rate of 8 percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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 Lot.

Section 11. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage, and sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifica-

tions have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between 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 liability for property damage due to negligence, or wilful 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 the 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 other under the rules of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an 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 elements.

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 or controversy concerning a party wall, or under the provisions of this Article, such party who shall own a unit and lot adjacent to the wall that is the subject of the dispute agrees, by accepting