

FEB 4 2 39 PM '80

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVERLOIS C LERAY
REGISTRAR
NEW HANOVER CO., N.C.
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOREST BY THE SEA TOWNHOUSES

THIS DECLARATION, made the 31st day of January, 1980, by FOREST BY THE SEA, INC., a North Carolina corporation, hereinafter referred to as "DECLARANT";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the Town of Carolina Beach, County of New Hanover, State of North Carolina, which is more particularly described as follows:

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BEING all of Forest By The Sea Townhouses as the same is shown on a map thereof recorded in Map Book 19 at Page 69 in the office of the Register of Deeds of New Hanover County, to which said map reference is hereby made for a more particular description.

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 thereof, 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 Forest By The Sea Homeowners Assn., Inc., its successors and assigns.

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 a 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.

Section 4. COMMON AREA shall mean all real property 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 described as follows:

The Common Area of Forest By The Sea Townhouses is all of that area shown on the map of Forest By The Sea which is recorded in Map Book 19 at Page 69 in the office of the Register of Deeds of New Hanover County, with the exception of Lots 1 through 54, as shown on said map and with the further exception of the area designated thereon as being reserved by Forest By The Sea, Inc.

Section 5. LOT shall mean and refer to any of the numbered lots shown on the map of Forest By The Sea recorded in Map Book 19 at Page 69 in the office of the Register of Deeds of New Hanover County.

Section 6. DECLARANT shall mean and refer to Forest By The Sea, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II.

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OR 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, 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 limit the number of guests of members;
- C. 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 an infraction of its published rules and regulations;
- D. The right of the Association to dedicate or transfer all or 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 signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;
- E. 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.

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 separated from ownership of any Lot 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 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 among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- B. CLASS "B". Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot 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 January 1, 1985

ARTICLE IV.

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT: 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;

3. And to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all 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 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, and of the townhouses situated upon the Properties.

Section 3. 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 FOUR HUNDRED EIGHTY DOLLARS (\$480.00) 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 per cent (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 per cent (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; provided that the Board of Directors may increase the amount of the annual assessment to a maximum of FIVE HUNDRED FORTY DOLLARS (\$540.00) per Lot notwithstanding the provisions of subparagraphs (a) and (b) above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

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 that 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. INSURANCE: The Board of Directors, or its designee, on behalf of the Association, at its common expense, shall at all times keep the property (except personal property within a unit) insured against loss or damage by fire or other hazards normally insured against at 100% of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the property and as shall be required to protect not only the Lot Owners but any lending institution holding first liens on individual units which insurance shall be payable in case of loss to the Board (or its designee) as Trustee for all Lot Owners and mortgagees according to the loss or damage to their respective units and appurtenant common interest as their interests may appear. The Trustee so named shall have the authority on behalf of the Association and Lot Owners to deal with the insurer in the settlement of claims.

Such insurance shall be obtained without prejudice to the right of each individual Lot Owner to insure his personal property for his own benefit and any Lot Owner or occupant may obtain additional insurance at his own expense; provided, however, that no Owner or occupant shall be entitled to exercise his 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 obtained by the Board of Directors (or its designee) be brought into contribution with insurance purchased by individual Owners or their mortgagees.

As an additional annual assessment, the Association shall levy against the Owners equally an amount sufficient to pay the annual cost of all such insurance premiums.

Section 6. 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 and 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 of proxies entitled to cast sixty per cent (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 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.

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Section 7. 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 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS, 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, except that annual assessments shall not commence for any Lot until a certificate of occupancy has been issued for such Lot. 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 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 Lot have been paid.

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 rate of ten per cent (10%) 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 10. EFFECT OF DEFAULT BY ASSOCIATION IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS: Upon default by the Homeowner's Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing government authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

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. 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 payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any 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 in relation 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 specifications 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 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 provision 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 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 decision shall be by a majority of all the arbitrators.

ARTICLE VII.

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, decks, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance, repair or replacement is caused through the willful, or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VIII.

USE RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE: No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family townhouse dwelling not to exceed two and one-half stories in height. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. NUISANCES: No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. RECREATIONAL VEHICLES: No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any Lot at any time, unless by consent of the Association.

Section 5. ANIMALS: No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed.

Section 6. OUTSIDE ANTENNAS: No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 7. WINDOW COVERINGS: All drapes, curtains or other similar materials hung at windows, or in any manner so as to be visible from the outside, of any building erected upon any Lot shall be of a white or neutral background or material.

Section 8. EXTERIOR LIGHTS: All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white, or non-frost lights or bulbs.

ARTICLE IX.

EASEMENTS

Section 1. Easements are reserved 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 VII of this Declaration.

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

ARTICLE X.

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Except as provided in Section 2, below, annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, 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.

Section 2. If the Declarant, its successors or assigns, shall acquire and develop the tract of land containing three (3) acres, more or less, adjoins to the North the lands described in the preambles herein, such additional tract may be annexed to said Properties without the assent of the Class A members, provided however, the development of the additional tract described in this section shall be in accordance with the same general scheme of development as Forest By the Sea Townhouses.

ARTICLE XI.

GENERAL PROVISIONS

Section 1. ENFORCEMENT: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. LOTS SUBJECT TO DECLARATION: All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. AMENDMENT OF DECLARATION: The covenants and restrictions of this Declaration may be amended by an instrument duly recorded in the Office of the Register of Deeds of New Hanover County signed by not less than sixty per cent (60%) of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

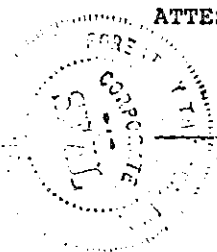
IN WITNESS WHEREOF, FOREST BY THE SEA, INC., the Declarant herein, has caused this Declaration to be signed in its corporate name by its President and attested by its Secretary and sealed with its corporate seal, all on the day and year first above written.

FOREST BY THE SEA, INC.

ATTEST:

By: [Signature]
President

[Signature]
Asst. Secretary

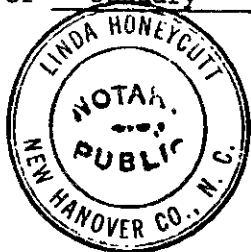


STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Linda Honeycutt, a Notary Public in and for the aforesaid County and State do hereby certify that A. V. Saffo personally appeared before me this day and acknowledged that ~~she~~/he is the Asst. Secretary of Forest By The Sea, Inc., a corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him self as its Asst. Secretary.

WITNESS my hand and notarial seal, this the 31st day of January, 1980.



[Signature]
Notary Public

My commission expires: August 26, 1981

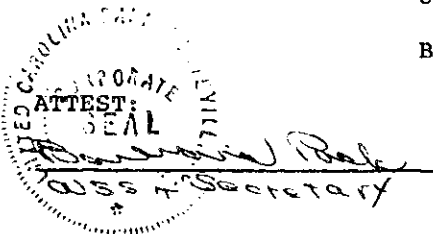
JOINER AND CONSENT OF MORTGAGEE

UNITED CAROLINA BANK, WHITEVILLE, and JAMES C. STEADMAN, TRUSTEE, join in the execution of this Declaration for the sole purpose of subjecting and submitting, and they and each of them, do hereby submit and subject, the property described therein and any and all interests that they or either of them has, and may have, by virtue of those certain deeds of trust recorded in Book 1154 at Page 1394, Book 1154 at Page 1399, and Book 1163 at Page 877, respectively, of the New Hanover County Registry, to this Declaration of Covenants, Conditions and Restrictions, and to the By-Laws, Rules and Regulations, and other documents and regulations promulgated herein as the same may be amended or supplemented from time to time.

IN WITNESS WHEREOF, James C. Steadman, Trustee, has hereunto set his hand and seal, and United Carolina Bank, Whiteville, successor in interest to Waccamaw Bank and Trust Company, has caused this Joinder and Consent of Mortgagee to be executed by its duly authorized officers and its corporate seal affixed hereunto, this 4th day of February, 1980.

UNITED CAROLINA BANK, WHITEVILLE

BY: James C. Steadman
Vice President



James C. Steadman
James C. Steadman, Trustee

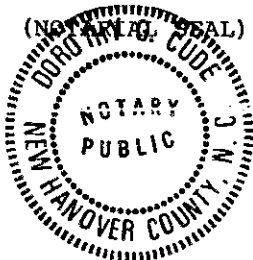
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Dorothy G. Cude, a Notary Public in and for the state and county aforesaid, do hereby certify that JAMES C. STEADMAN, TRUSTEE personally appeared before me this day and acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed; and BARBARA PACK personally appeared before me this day and acknowledged that he is the Asst Secretary of UNITED CAROLINA BANK, WHITEVILLE, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her self as its Asst Secretary.

WITNESS my hand and seal, this the 4th day of February, 1980.

Dorothy G. Cude
Notary Public

My commission expires: 3-30-83



STATE OF NORTH CAROLINA
New Hanover County
The Foregoing Certificate of Linda
Honeycutt and Dorothy G.
Cude, Notaries Public

are ~~is~~ certified to be correct.
This the 4 day of Feb. 19 80
Drawn By BBB&B

Lois C. LeRay, Register of Deeds

By Mary Sue Oates
Deputy

Received and Recorded
2-4-80 at 2:39 PM

Lois C. LeRay
Register of Deeds