

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF HEWLETT'S RUN

THIS DECLARATION, made this the 9 day of October 1997, by SOUND DEVELOPMENT, a North Carolina General Partnership with certificate filed pursuant to N.C. General Statutes 66-68 in Book 1976, Page 0830 of the New Hanover County Registry, hereinafter referred to as "Declarant" or "Developer";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Wilmington, North Carolina, which is more particularly described as follows:

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Being all of HEWLETT'S RUN, as the same is shown on a map thereof recorded in Map Book 37 at Page 183 in the Office of the Register of Deeds of New Hanover County, North Carolina, to which 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 and HOA shall be used interchangeably to mean and refer to Hewlett's Run Homeowners Association, Inc., a private non-profit corporation formed or to be formed by the Developer primarily as a Homeowners Association for the lot owners in Hewlett's Run, all of whom shall be members of the Association.

Section 2. Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 3. Declarant or Developer shall mean and refer to Sound Development, its successors and assigns. The address of Sound Development is c/o Mark L. Maynard, P. O. Box 5601, Wilmington, N.C. 28403.

Section 4. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

**RETURNED TO**

Section 5. Eligible Mortgage Holder or Eligible Holders is

Hogue + Hill

defined as a holder of a first mortgage or lien on a lot who has requested notice of certain matters from the Association.

Section 6. Lot shall mean and refer to any of the numbered lots located on the Properties (defined below), together with the structure or dwelling situated thereon which structure may be separately referred to as a "Townhome" or "Townhouse".

Section 7. Mortgages shall mean a beneficiary under a mortgage or Deed of Trust.

Section 8. 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 9. Properties shall mean and refer to that certain real property hereinbefore described as all of HEWLETT'S RUN.

## ARTICLE II

### Property Rights

Section 1. Owners' Easements. Every Owner shall have a right and easement 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 limit the number of guests of members;
- b. The right of the Association to suspend the voting rights of 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 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 of the Association. No such dedication or transfer shall be effective unless approved by two-thirds (2/3) of the Class A & B memberships of the Association, voting in person or by proxy, at a meeting of the members at which a quorum is present and acting throughout.
- 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. An owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common

Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

Declarant's Rights

Section 1. The Declarant hereby reserves the right pursuant to the provision of Article XII hereinafter set forth to annex and subject to this Declaration other real property contiguous to HEWLETT'S RUN, in order to extend the scheme of this Declaration to other property to be developed and thereby bring such additional properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, or to be placed thereon, which is subjected to this Declaration shall be designated consecutively as "Section 2", "Section 3", and such other similar designations for any additional phases added.

Section 2. The rights reserved by Declarant in HEWLETT'S RUN, and all annexed Sections, include the right to change, alter or redesignate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the Declarant, be necessary or desirable, except that the Declarant shall have no right to change, alter or redesignate the character of the use of the lots within the development.

ARTICLE IV

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 X of this Declaration.

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

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

Section 5. Each lot, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhomes is partially or totally destroyed and then rebuilt, the owners of the townhomes so affected agree that minor encroachments of parts of the adjacent townhome units onto common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 6. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Areas and facilities; and, for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all lot owners in HEWLETT'S RUN, their guests, families, invitees and lessees, the Association, and the Declarant, its successors and assigns. Declarant hereby reserves alienable easements over all streets and Common Areas as necessary to provide access for future development of adjoining Properties by Declarant or its successors and assigns.

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

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

Section 9. An easement is hereby granted to the City of Wilmington, the County of New Hanover, the State of North Carolina and their agencies to enter upon the common areas for access to all portions of the common areas designated as wetlands and/or natural areas or preserves for access to and study and preservation of said areas.

Section 10. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation.

ARTICLE V

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 the ownership of any Lot which is subject to assessment.

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

- a. Class "A". Class A member(s) 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 a Class A membership on the happening of either of the following events, whichever occurs earlier:
  - (1) When the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, or
  - (2) On December 31, 2000.

ARTICLE VI

Covenants For Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Townhome sold or leased within the Properties, hereby covenants, and each Owner of any Townhome by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges, and
- b. 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 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 improvement and maintenance of the Common Area, and of the townhouses situated upon the Properties, and to pay the taxes and other municipal charges or fees of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Townhome to an Owner, the maximum annual assessment shall be Twelve Hundred Dollars (\$1,200.00) per Lot.

- a. From and after January 1 of the year immediately following the conveyance of the first Townhome 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 Townhome to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members, voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present and acting throughout.
- c. The Board of Directors may fix the annual assessment to 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 One Thousand Eight Hundred Dollars (\$1,800.00) per Lot notwithstanding the provisions of subparagraphs a and b above, and thereafter the limitations set forth in said subparagraph 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 maintenance of sewer lines and other elements of the sewer system as required by government permits or as needed, 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, voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present and acting throughout.

Section 5. 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 Townhome) shall be secured by the Board of Directors, or its designee on behalf of the Association 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 construction, location and use as the Properties and the improvements thereon 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 insured 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. In obtaining such coverage the Board of Directors 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 insure 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 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.
- 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"), a charge which shall be in addition to the amounts provided for under Section 3 above.
- 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 duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any, upon request of such mortgagee.
- f. Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the entire project, for the lot Owners to purchase insurance policies covering each lot and lot owner individually, then upon the assent of two-thirds of the members (which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for the entire project may be turned over to the members to purchase individual policies under

such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the project is turned over to the individual lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each lot shall be insured for its full replacement value and the provisions of this Section 5 and the following Section 6 shall be modified accordingly.

**Section 6. Distribution of Insurance Proceeds.** Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. **Expenses of Trust.** All reasonable expenses of the insurance trustee shall be first paid or 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 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 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 percent (60%) of all the votes of such class of membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any 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 8. 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 or quarterly basis.

**Section 9. Date of Commencement of Annual Assessments and 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 to the Homeowner's Association, except that annual assessments shall commence for any lot when a certificate of occupancy has been issued for the Townhouse constructed thereon, and conveyance there of to an owner. 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 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 10. 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 twelve percent (12%) 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 Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or investor. 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, by an institutional lender or investor shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer and the unpaid assessment shall be and become after that date a common charge allocated among all of the lots including the foreclosed lot. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 12. Working Capital Assessment. At the time title is conveyed to an owner, each owner shall contribute to the association as a working capital reserve the amount of Two Hundred Dollars (\$200.00). Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the Common Areas and facilities, furnishings, and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

Section 13. Rights of Eligible Mortgage Holders. To the extent permitted by law, an eligible mortgage holder upon written request to the Association, identifying the name and address of the holder, will be entitled to timely written notice of:

- a. Any condemnation, loss or casualty loss which affects a material portion of the project or any lots on which there is a mortgage held by such Eligible Mortgage Holder.

- b. Any delinquency in payment of assessments or charges owned by an owner of the lot subject to a first mortgage held, by such Eligible Mortgage Holder, which remains uncured for a period of sixty days.
- c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE VII

Fidelity Bonds

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

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

Section 3. Other Requirements. Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall contain waivers by the issuers of the bonds of all defenses upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
- c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.
- d. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each Eligible Mortgage Holder.

Architectural Control

Section 1. 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, heights, 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.

Section 2. All duties and responsibilities conferred upon the Board or the Architectural Control Committee by this Declaration or the By-Laws of the Association may be exercised and performed by the Declarant or its Designee at its discretion, so long as Declarant shall own any lot in the properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

ARTICLE IX

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes 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 caused 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 all the arbitrators.

#### ARTICLE X

##### Exterior Maintenance

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhouse 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, privacy fences located with a lot or yards behind privacy fences.

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, aircraft, 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 XI

##### Use Restrictions

Section 1. Land Use and Building Type. All lots shall be used for residential purposes except that so long as the Declarant or its designee shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or renting Townhomes within said project including the right to place "For Sale" or "For Rent" signs on such Townhomes and/or lots. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its designee, its successors and assigns shall immediately cease. Co-ownership of lots shall not be prohibited but "timesharing" of a Townhome is expressly prohibited. No building shall be erected,

altered, placed or permitted to remain on any lot other than one single family townhome dwelling not to exceed three stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VIII 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 development.

Section 3. Junk Vehicles. No inoperable vehicle or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 4. Outside Furniture. No furniture shall be permitted on the front porch except porch furniture and plants. Porch furniture shall be permitted on the rear deck or patio of each Townhome. All grills and accessories must be kept in storage areas when not in use.

Section 5. For Sale Signs Prohibited. Except as provided in Section 1 above, no "For Sale" signs or any other signs shall be permitted on any lot, Townhome or in the common areas and facilities unless approved by the Board of Directors.

Section 6. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

Section 7. Recreational Vehicles. No boat, motorboat, camper, trailer, motor home, or similar type vehicle shall be permitted to remain permanently ungaraged on any lot, without the written consent of the Association.

Section 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any Townhome except that a dog, cat, 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 do not constitute a nuisance to adjoining owners and are at all times properly leashed and personally escorted.

Section 9. Outside Antennas. No outside radio or television antennas or satellite dish shall be erected on any lot or Townhome unless and until written permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 10. Window Coverings. Each Townhome may be equipped with mini-blinds in the windows which if so provided shall be

permanent fixtures and shall remain with each Townhome when sold and may not be removed. Any additional window treatments must be located inside the mini-blind.

Section 11. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any Townhome or any lot shall be clear, white, or non-frost lights or bulbs.

#### ARTICLE XII

##### Annexation of Additional Properties

Section 1. Except as provided in Sections 2 and 3, 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 at which a quorum is present, 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. The rights of Declarant reserved in Article III, Section 1 and Section 2 above shall expire automatically on December 31, 2000, if not exercised prior thereto.

#### ARTICLE XIII

##### General Provision

Section 1. Municipal Water, Sewer Service and Utilities. Municipal sewer service shall be provided by The City of Wilmington or other municipal agency or department. Water service for the development shall be provided by The City of Wilmington or other licensed utility company and no private well shall be permitted on any lot except for irrigation purposes, and then only with the written consent of such utility company, its successors or assigns.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by a 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 3. Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 4. Lots, Persons and Entities Subject to the Declaration. All present and future Owners, tenants, and occupants of Lots and/or Townhomes and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, as it may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or occupancy of any Townhome shall constitute an agreement that the