

MAY 31 9 00 AM '84

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVERDECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
SECTION I SANDYBROOK TOWNHOUSES

This Declaration, made the 29th day of May, 1984, by B & D Development Corporation, a North Carolina corporation, hereinafter referred to as "Declarant";

## WITNESSETH:

Whereas, Declarant is the owner of certain property in Harnett Township, New Hanover County, North Carolina, which is more particularly described as follows:

Being all of Section I, Sandybrook Townhouses as same shown on a map thereof recorded in Map Book 23 at Page 44 in the Office of the Register of Deeds of New Hanover County, North Carolina, reference to which map 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 Sandybrook Homeowners Assn., Inc., a North Carolina, non-profit corporation, 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 all of Section I, Sandybrook, as described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as provided in Article XI hereof.

SECTION 4. Additional Properties shall mean and refer to the referred to lands referred to in Article XI owned by the Declarant adjoining the Properties, containing 18.7 acres, more or less, which lands may be annexed to and made a part of the Properties by the Declarant and subjected to this Declaration without the assent or vote of the Owners of lots. The annexation of such additional Properties shall become effective by the recording by the Declarant of a Amended Declaration for each new section annexed.

SECTION 5. Common Area shall mean and refer to 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 shall be that area shown as Sandybrook Road on the plat of Section I, Sandybrook, recorded as stated above in the Office of the Register of Deeds of New Hanover County.

SECTION 6. Lot shall mean and refer to any of the lots shown on the plat of Section I, Sandybrook, recorded as aforesaid in the New Hanover County Registry, together with the improvements located thereon. Each lot is identified by a number from 1 through 7 and 25 through 31, inclusive, followed by the letter "A" or "B". There are 14 duplex dwelling structures located in Section I, Sandybrook. Each duplex is divided into two units separated by a party wall, which straddles the dividing line between each lot "A" and "B".

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**SECTION 6.** Declarant shall mean and refer to B & D Development Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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

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

**SECTION 9.** Mortgagee shall mean a beneficiary under a mortgage or Deed of Trust.

## ARTICLE II.

### PROPERTY RIGHTS

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

A. The right of the Association to suspend the voting rights and privileges by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

B. 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. Provided, however, that Sandybrook Road shall be a public road, and the Declarant reserves the right to dedicate and transfer said road to the North Carolina Public Highway or Secondary Road System without the consent or approval of the members of the Association.

C. 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.

## ARTICLE III.

### 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 IX of this Declaration.

**SECTION 3.** Each lot shall be subject to an easement for encroachments created by the 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 duplex structure is partially or totally destroyed and then rebuilt, the owners of each portion of the duplex so affected agree that minor encroachments of parts of the adjacent structures due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

**SECTION 4.** Declarant hereby reserves alienable easements over all streets and common areas as necessary to provide access for future development by Declarant or its successors and assigns of any properties adjoining the properties which are subject to this Declaration.

**SECTION 5.** 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 6.** In case of any emergency originating in or threatening any lot or the common areas, regardless whether the 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 lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the lot owners, and such right of entry shall be immediate.

**SECTION 7.** All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### ARTICLE IV.

##### MEMBERSHIP AND VOTING RIGHTS

**SECTION 1.** Every Owner of a Lot 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 May 1, 1989.

#### ARTICLE V.

##### 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 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; and

C. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area.

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.

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**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 duplexes situated upon the Properties. The funds arising from said assessments or charges, may be used for any or all of the following purposes: collecting and disposing of garbage, ashes, rubbish, and the like; maintenance and improvement of the streets, roads, drives, and rights of way; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order and to provide for the health, welfare and safety of Owners and residents of Sandybrook.

**SECTION 3. ANNUAL ASSESSMENTS.** Annual assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary for the purposes set forth in Section 2 above. The amount of the annual assessment against each lot for any given year shall be fixed at least 30 days in advance of the annual assessment period; provided, however, that the first annual assessment shall be set prior to the conveyance of the first lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their lots. Written notice of each annual assessment thereafter shall be sent to every Owner subject thereto. The due date 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 had been paid.

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 One Thousand One Hundred Dollars (\$1,100.00) 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 the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**SECTION 5. INSURANCE.** It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

A. **Amount and Scope of Insurance.** All insurance policies upon the Properties (except personal property within a unit) shall be secured by the Board Of Directors, or its designee on behalf of the Association with full authority which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional Mortgage Investors for projects similar in construction, location and use as the Properties and the improvements thereon all under such terms and conditions as the responsible authority shall determine. However, such liability coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the common areas and legal liability arising out of lawsuits relating to employment contracts of the Association. The foregoing shall not preclude the Board from obtaining insurance coverage on all or a portion of the limited common areas and facilities. In obtaining such coverage the responsible authority shall consider the reasonable requirements of holders of first liens on individual Lots:

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

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

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

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

4. Coverage will not be prejudiced by act or neglect of the Lot owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

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

6. The master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot owner or any mortgagee.

C. **Premiums.** All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "**Insurance Assessment**") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

D. **Proceeds.** All insurance policies purchased pursuant to these provisions shall provide that all proceeds 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 licensed to do business in the State of North Carolina and holding a rating of "AAA" 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 at any time.

**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. **Expense 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 per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 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 basis.

**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 highest rate allowable by law. 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. 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.

**SECTION 11. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS.** To the extent permitted by law, an eligible mortgage holder upon written request to the Association, identifying the name and address of the 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 owed by an owner of the lot subject to a first mortgage held, by such Eligible Holder, which remains uncured for a period of sixty days.

C. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

D. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

E. In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as may be amended from time to time.

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

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

ARTICLE VI.

FIDELITY BONDS

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

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

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

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

**SECTION 4. RECOMMENDATION OF RENTAL AGENTS.** At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each owner shall have the absolute right to enter into any direct rental, lease or sales arrangement with renters, lessees and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an owner or as restricting the owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determines that any portion of this provision is unlawful or would require registration of the offering of any lot as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

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**ARTICLE VII.****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, 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.

**ARTICLE VIII.****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 decisions shall be by a majority of all the arbitrators.

**ARTICLE IX.****MAINTENANCE**

**SECTION 1. BY EACH OWNER.** The Owner of each lot will be solely responsible at his expense to properly maintain, repair and replace the living unit and all other improvements on his lot, except that maintenance to be performed by the Association as set forth in the first paragraph in Section 2 of this article. Without limiting the generality of the foregoing, each Owner, at his sole expense, shall be responsible for properly maintaining, repairing, replacing and keeping in a neat and attractive condition, the exterior and interior of the living unit on his lot, including the exterior building surfaces, roofs, windows, and other parts of such unit, and other improvements situate upon his lot, and shall maintain in a neat and attractive condition, the trees, shrubs, grass and other parts of the yard making up his lot.

**SECTION 2. MAINTENANCE BY ASSOCIATION.** The Association at its expense shall be responsible for maintaining, repairing and replacing all utility and drainage lines and pipes which are located on the properties, except those located within the units or other improvements on the lots. The Association shall have the right to go

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onto the lots at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such lots; and each Owner hereby grants permission to the Association to enter his lot for such purposes.

In the event that an Owner fails to make that maintenance, and those repairs and replacements he is obligated to make under Section 1 above, then the Association may make the same itself; and in order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each lot at all reasonable times to perform such maintenance, repairs and replacements. The cost of any such maintenance, repairs or replacements by the Association shall be added to and become a part of the assessment to which such lot is subject shall be a lien upon such lot as set forth herein in Article V above.

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 X.

### 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 duplex 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 VII 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 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 or its designee.

**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 as to be visible from the outside, of any building erected upon any lot shall be of a white or neutral background 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.

**SECTION 9. JUNK VEHICLES AND TRACTOR-TRAILERS.** No inoperable vehicle or vehicle without current registration and insurance, and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

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**SECTION 10. SIGNS.** No "For Sale" signs or any other signs shall be permitted on any lot or in the common areas without permission of the Board of Directors, except that a sign conforming to the New Hanover County Sign Ordinance may be displayed by **Declarant** on any lot used by **Declarant** as a sales/rental office for the project so long as **Declarant** owns any lot in the Properties.

**SECTION 11. WATER SERVICE.** All lot owners shall be required to use water supplied by the water company servicing the Properties for all household uses; a separate water system for the purpose of watering lawns, gardens and other outdoor uses shall not be permitted without the consent of the **Declarant**, its successors and assigns.

#### ARTICLE XI.

##### 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, 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 develop all or any portion of the remainder of the tract of land containing 18.7 acres adjoins the property to the North, said additional tract or any portion thereof 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 Section 1, Sandybrook, shall contain no more than 70 townhome lots. Annexation provided for in this section shall become effective upon the filing by the **Declarant** of a Supplemental Declaration in the Office of the Register of Deeds of New Hanover County.

**SECTION 3.** The rights of **Declarant** reserved in Sections 2 and 3 above shall expire automatically on January 1, 1990, if not exercised prior thereto.

#### ARTICLE XII.

##### 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 (60%) per cent 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**.

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IN WITNESS WHEREOF, B & D DEVELOPMENT CORPORATION, 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.

B & D DEVELOPMENT CORPORATION

BY: William K. [Signature]  
President

ATTEST:

[Signature]  
Secretary

(CORPORATE SEAL)

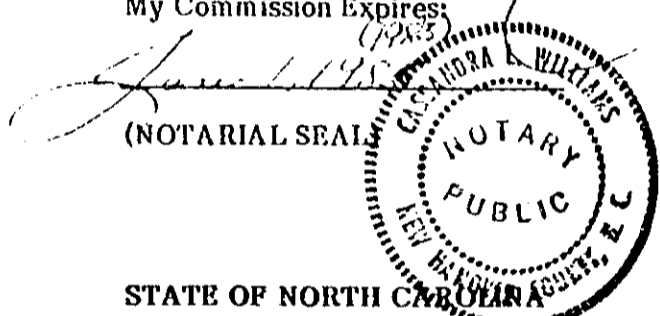
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Cassandra L. Williams, a Notary Public in and for the aforesaid County and State do hereby certify that Richard [Signature] personally appeared before me this day and acknowledged that he is the Secretary of B & D DEVELOPMENT CORPORATION, a North Carolina 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 himself as its Secretary.

WITNESS my hand and notarial seal, this the 27<sup>th</sup> day of May, 1984.

My Commission Expires:

[Signature]  
Notary Public



(NOTARIAL SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

The foregoing certificate of Cassandra L. Williams, a Notary Public is certified to be correct. This the 31 day of May, 1984.

REBECCA P. TUCKER  
Register of Deeds - New Hanover County

By: Mary Sue Oates  
Deputy Assistant