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BOOK PAGE

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

0663 DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
VILLAGE SQUARE TOWNHOMES

THIS DECLARATION, made this the 15<sup>TH</sup> day of December, 1994,  
by MELROSE DEVELOPMENT COMPANY, L.L.C., a North Carolina Limited  
Liability Company, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property located  
within the City of Wilmington, County of New Hanover, State of  
North Carolina known as VILLAGE SQUARE TOWNHOMES more particularly  
described in the plat recorded in Map Book 34 at Page 21-23 in the  
office of the Register of Deeds of New Hanover County, North  
Carolina; and

WHEREAS, the DECLARANT desires to establish certain re-  
strictions, covenants and conditions with respect to the use,  
enjoyment and ownership of said property for the purpose of  
protecting the value and desirability of said property as a  
residential community, and which shall run with the said property,  
and which shall be binding on all parties having any right, title  
or interest in said property, or any parcel thereof, their heirs,  
devisees, personal representatives, successors and assigns, and  
which shall inure to the benefit of each owner thereof;

NOW, THEREFORE, with respect to all of the property described  
hereinabove, and for the purposes stated hereinabove, the DECLARANT  
does hereby declare that all of the property known as VILLAGE  
SQUARE TOWNHOMES as more particularly described hereinabove shall  
henceforth be held, sold, and conveyed subject to the following  
Articles of Covenants, Conditions and Restrictions.

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ARTICLE I.

DEFINITIONS

Section 1. Association and HOA shall be used interchangeably  
to mean and refer to VILLAGE SQUARE HOMEOWNERS ASSOCIATION, INC. a  
private non-profit corporation formed or to be formed by the  
Declarant primarily as a Homeowners Association for the lot owners  
in VILLAGE SQUARE TOWNHOMES, all of whom shall be members of the  
Association.

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, 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  
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  
(including the improvements thereto) owned by the Association for  
the common use and enjoyment of the Owners. The Common Area to be  
owned by the Association at the time of the conveyance of the first  
lot is set forth in the plat of VILLAGE SQUARE TOWNHOMES as  
recorded in Map Book 34 at Page 21-23 of the New Hanover County  
Registry.

Section 5. Lot shall mean and refer to any of the lots  
numbered 1 thru 46, inclusive, as shown on the plat of VILLAGE  
SQUARE TOWNHOMES recorded in Map Book 34 at Page 21-23 of the New  
Hanover County Registry and any lot located on lands annexed  
pursuant to Article XI of this Declaration, together with the  
structure or dwelling thereon which structure may be separately

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referred to as a "Townhome", "Townhouse", "Townhouse Unit", or "Unit".

Section 6. Declarant shall mean and refer to MELROSE DEVELOPMENT COMPANY, L.L.C., a North Carolina Limited Liability Company, its successors and assigns.

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 lot who has requested notice of certain matters from the Association.

Section 9. Limited Common Areas and facilities shall mean and include those common areas and facilities which are reserved for the use of a certain lot to the exclusion of other lots, as might be more specifically defined herein and as shown on the plat of VILLAGE SQUARE TOWNHOMES as recorded in Map Book 34 at Page 11-13 of the New Hanover County Registry or on maps of annexed properties pursuant to Article XI of this Declaration.

Section 10. 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 limit the number of guests of members.
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c. The rights of the Declarant (as set forth in Article XI).
- 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.
- e. The right of the Association to mortgage or convey all or part of the common area subject to such conditions as may be agreed to by the Association.
- f. The right of individual owners to the exclusive use of parking spaces as provided in this article.
- g. Declarant's right to revise by recorded maps or other instrument the location of any lot or common area. The Association hereby agrees to sign and acknowledge any documents necessary for the fulfillment of said revisions in a prompt manner at Declarant's request. This right shall continue even if the property so affected has been conveyed to the Association.

Section 2. Delegation of Use. 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.

Section 3. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area.

### ARTICLE III.

#### EASEMENTS

Section 1. Easements are reserved and may be granted by Declarant or the Association 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. Easements are reserved over those portions of the Common Areas, Limited 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 Limited Common Areas or the air and light space above such Common Areas.

Section 4. Each lot and all common areas and facilities and limited 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 facilities, whether or not the cause of any or all of those activities originates on the lot or unit 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 or its assigns. 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 townhome is partially or totally destroyed and then rebuilt, the owners of the townhomes so affected and other adjacent lot owners agree that minor encroachments of or on parts of the adjacent lot or 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 driveways and streets as from time to time may be constructed and intended for such purposes, for all lot owners in VILLAGE SQUARE TOWNHOMES, their guests, families, invitees, and lessees, the Association, the Declarant, their successors and assigns. 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 Project.

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 or units and common area in the performance of their duties.

Section 8. In case of an emergency originating in or threatening any unit or lot or the common areas and facilities, regardless of whether the unit 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 unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

Section 9. 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 Declarant 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, 2004.

#### ARTICLE V.

##### COVENANTS FOR 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;

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, including the prompt and full payment of all ad valorem property taxes and insurance for said common area(s).

Section 3. ANNUAL ASSESSMENTS. A Lot shall not be subject to annual assessments until the Lot is sold by the Developer to an Owner. A Lot shall become subject to annual assessments from the first day of the first month following conveyance by the Developer to the Owner. The annual assessments shall be determined as follows:

- a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessments shall be in an amount determined to be fair and reasonable by the Directors of the Association to carry out the responsibilities of the Association.
- 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 each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.
- c. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by 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.
- d. The Board of Directors may fix annual assessments in an amount not in excess of the maximum.

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. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 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 proxies entitled to cast sixty percent (60%) of all of 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.

Section 6. 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 7. 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 lot 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 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 8. 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 the maximum legal rate. 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 9. 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 10. 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 owner and 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 lots 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 lots whether existing whole or in part, and which have at least 51% of the votes of such remaining lots subject to Eligible Holders of mortgages.

Section 11. 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: The Association shall obtain insurance on the Properties including but not limited to the the common areas, the limited common areas, and the lots (including the buildings thereon with the exception of personal property, furnishings, appliances whether built in or not, decorations, window treatments, floor coverings, wall coverings, light fixtures, plumbing fixtures, and ceiling fans. In addition, all wiring is excepted from coverage other than basic electrical, and wiring for two phone and two television cable jacks). All insurance policies 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, for projects similar in construction. 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 and limited common areas and legal liability arising out of lawsuits relating to employment contracts of the Association.
- (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.

- (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.
- (5) The policy on the common area cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual lot owners.
- (6) The policy on the common area cannot be cancelled, invalidated or suspended on account 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.
- (c) Premiums. All insurance premiums on the common area 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 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.

Section 12. 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 provisions 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.

## 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 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 lots 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.

## ARTICLE VII.

## ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure or landscaping shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including color of paint or finish) 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 Bylaws of the Association shall be exercised and performed by the Declarant or her designee, 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 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 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 character, and the decisions shall be by a majority of all the arbitrators.

ARTICLE IX.  
EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot and 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.

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, 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. All lots shall be used for residential purposes except that so long as the Declarant or the Developer shall retain ownership of any lots, it may utilize any such lot for sales or rentals, offices, models or other usage for the purpose of selling or renting lots within said project including the right to place "For Sale" or "For Rent" signs on such lot or common area. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose. Co-ownership of lots shall not be prohibited. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family townhouse 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 neighborhood.

Section 3. JUNK VEHICLES. No inoperable vehicle or vehicle without current registration and state inspection sticker, and insurance will be permitted on the premises. The Association shall have the right to have any other vehicles towed away at the owner's expense.

Section 4. OUTSIDE FURNITURE. No furniture, grills or other items shall be permitted on the front or side porch of each unit except porch furniture and plants. Porch furniture and grills shall be permitted on the rear deck of each unit.

Section 5. SIGNS. Except as provided in Section 1 above, no signs shall be permitted on any lot or unit or in the common areas and facilities, except a "For Sale" sign and/or a "For Rent" sign may be placed inside one window of the unit.

Section 6. 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 7. RECREATIONAL VEHICLES. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot, or in parking spaces, at any time, unless by 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 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 and personally escorted. Except as provided herein above, all pets must remain indoors at all times and no pet shall be kept or allowed on patios or any place outside without a personal escort.

Section 9. OUTSIDE ANTENNAS. No outside radio or television antennas shall be erected on any lot or 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 10. WINDOW COVERINGS. Each unit shall be equipped with mini-blinds in the windows which shall be permanent fixtures and shall remain with each unit when sold and may not be removed.

Any additional window treatments must be located inside the mini-blinds.

Section 11. 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 XI.

##### DECLARANT'S RIGHTS

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. The Declarant hereby reserves the right to annex additional land without the consent of the Class A members within fifteen (15) years of the date of this instrument. Any property annexed for such purpose will be subject to and under the jurisdiction of the Association and shall be designated as consecutively numbered phases or such other similar designations for any additional phase added.

Section 3. The rights reserved by Declarant also include the power to amend the Declarations of Covenants and Restrictions to subject any property annexed pursuant to this article to the jurisdiction of the Association and to the rights and obligations of this Declaration of Covenants Conditions and Restrictions without the consent of Class A members.

#### ARTICLE XII.

##### STORMWATER SYSTEM

Section 1. RESPONSIBILITY. It shall be the responsibility of the Association to provide the following inspections and maintenance of the stormwater system:

a. PERIODIC INSPECTIONS: Periodic inspections shall be provided as follows:

(1) Declarant shall provide the services of a person competent to inspect the stormwater system on a periodic basis for catch basin and pipe blockages and detention pond operation.

(2) This inspector shall remove any trash or debris which has collected in the catch basins, pipes or detention ponds, and report any more serious defects to the Declarant.

(3) Periodically, the ponds shall be inspected to see that the pond level is at or below the permanent pond level.

b. SEMIANNUAL INSPECTIONS: Semiannual inspections shall be provided as follows:

(1) At least once every six months, an inspection shall be made of the detention ponds to determine if excessive sedimentation or plant growth has occurred.

(2) If sedimentation has occurred to the point that the general elevation of the bottom of the pond is more than one foot above the original pond bottom elevation, the

sedimentation shall be removed at least to the original pond bottom elevation.

(3) If plant growth has progressed to the point that it interferes with the effectiveness of the ponds, it shall be removed. This can be accomplished by hand or mechanical means.

(4) This inspection shall also include an inspection of the orifice which controls the pond level after a rain.

(5) When construction has been completed, certification by a Registered Professional Engineer will be required stating that construction was completed in accordance with the approved plans.

Section 2. The net effect of the above inspections, and repairs where necessary, shall be to keep the stormwater system in good repair and to see that the pollutant control effectiveness is not diminished.

Section 3. Any sloughing, erosion, or vegetation washout of the stormwater system shall be immediately repaired to obtain the design depth, slopes and specifications.

#### ARTICLE XIII.

##### GENERAL PROVISIONS

Section 1. MUNICIPAL WATER, SEWER SERVICE AND UTILITIES. Municipal water and sewer service shall be provided by the City of Wilmington. No private well shall be permitted on any lot except for irrigation purposes, and then only with the consent of the Homeowners Association.

Section 2. 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 3. 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 4. LOTS OR UNITS SUBJECT TO DECLARATION. All present and future owners, tenants and occupants of lots and units 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 or unit, 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 5. AMENDMENT OF DECLARATION. The covenants and restrictions of this Declaration may be amended by an instrument signed by two-thirds (2/3) of each class of members (which votes may be cast in person or by proxy) duly recorded in the New Hanover County Register of Deeds. Declarant's power to amend this

Declaration as provided in Article XI of these Restrictions shall not require the consent of the Class A members and shall be valid when signed by the Declarant and recorded in the New Hanover County Register of Deeds.

IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal as of the day and year first above written.

DECLARANT:

MELROSE DEVELOPMENT COMPANY, L.L.C.

Frank D. Carter (SEAL)  
Frank D. Carter, Member

Burrows G. Smith (SEAL)  
Burrows G. Smith, Member

Charles L. Sneed, Jr. (SEAL)  
Charles L. Sneed, Jr., Member

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Rita J. Henry, a Notary Public of the County of Brunswick and State aforesaid, do hereby certify that FRANK D. CARTER personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

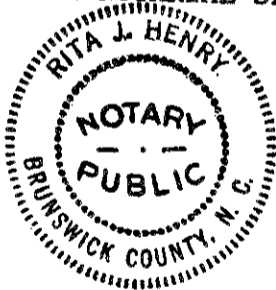
WITNESS my hand and official stamp or seal, this the 15<sup>th</sup> day of December, 1994.

Rita J. Henry  
Notary Public

My Commission Expires:

7/8/96

(AFFIX NOTARIAL SEAL)



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Rita J. Henry, a Notary Public of the County of Brunswick and State aforesaid, do hereby certify that BURROWS G. SMITH personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

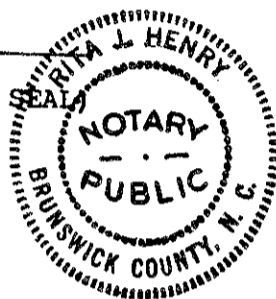
WITNESS my hand and official stamp or seal, this the 15<sup>th</sup> day of December, 1994.

Rita J. Henry  
Notary Public

My Commission Expires:

7/8/96

(AFFIX NOTARIAL SEAL)



RECORDED AND VERIFIED  
MARY SUE OOTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

'94 DEC 16 AM 9 53

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Rita J. Henry, a Notary Public of the County of Brunswick and State aforesaid, do hereby certify that CHARLES L. SNEEDEN, JR. personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

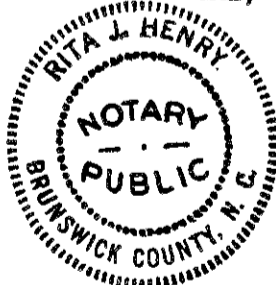
WITNESS my hand and official stamp or seal, this the 15<sup>th</sup> day of December, 1994.

Rita J. Henry  
Notary Public

My Commission Expires:

7/8/96

(AFFIX NOTARIAL SEAL)



STATE OF NORTH CAROLINA  
New Hanover County

The Foregoing/ Annexed Certificate(s) of  
RITA J. HENRY, a

Notary (Notaries) Public is/ are certified to be correct.

This the 16<sup>th</sup> day of December 19 94

Mary Sue Oots, Register of deeds

by Phyllis [Signature]  
Deputy Assistant TD

/VILLSQ  
T:\JMC