

Prepared by H Dolph Berry, Esquire

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STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CREEK'S EDGE TOWNHOMES
REGISTER OF DEEDS
CUMBERLAND COUNTY NC

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this the 20th day of January, 1986, between THOMAS BUILDER'S, INC., a North Carolina Partnership, (hereinafter called Declarant) and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of Lot 15, (A, B, C, & D), as shown on a Plat known as Creek's Edge Townhomes; Revised Book of Plats 58, Page 127; Cumberland County Registry.

AND WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, liens and restrictions governing and regulating the use and occupancy of the property be established;

AND WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property known as Lot 15, Creek's Edge Townhomes, Revised; and for the continued maintenance and operation of such recreational and common areas designated with said lot.

NOW THEREFORE, in consideration of the premised, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens, relating to the use and occupancy thereof; which shall be construed as covenants running with the land which shall be binding on all parties acquiring any

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right, title or interest in any of the properties and which shall insure to the benefit of each owner thereof.

ARTICLE I.

PROPERTIES SUBJECT TO THIS DECLARATION

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is Lot 15, Creek's Edge Townhomes, Revised, as shown on a Plat of the same duly recorded in Book of Plats 58, Page 127, Cumberland County Registry and incorporated herein by reference.

ARTICLE II

DEFINITIONS

Section One. "Association" shall mean and refer to Lot 15, Creek's Edge Townhomes Association, Inc., its successors and assigns.

Section Two. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot (A, B, C, or D.), which is a part of the Properties, including contract sellers, but not excluding those having any interest merely as security for the performance of an obligation.

Section Three. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of members or designated classes of members of the Association. It shall also include all streets dedicated for public use upon the recorded plat of the subject property until such streets are accepted by the proper governmental authority for maintenance and repair.

Section Four. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties on which such plot appears (provided said map has been approved by

Declarant), with the exception of the Common Area and Limited Common Area.

Section Five. "Lot in Use" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and made ready for the occupancy as a dwelling unit, including, without limitation, completion of the installation of final floor covering, interior paint and wallpaper, and all appliances. In addition to the foregoing, a Lot may become a Lot in use by contractual agreement between the Declarant and the Owner of such Lot.

Section Six. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section Seven. "Declarant" shall mean and refer to Thomas Builders, a North Carolina Partnership, and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section Eight. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section Nine. "Building" shall mean and refer to a multi-unit structure containing Townhomes, constructed or erected on the property.

Section Ten. "Board of Directors" or "Board" shall mean and refer to those persons elected or appointed and acting collectively as the Directors of the Association.

Section Eleven. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the Townhomes as provided in this Declaration;
- (c) Expenses of administration, of the Association, maintenance and repair of the Common Areas, including repair and replacement or improvements thereon; maintenance, repair and

replacement of streets so long as they remain private streets;
exterior maintenance upon the Lots as set out in Article VII;

(d) Expenses declared to be common expenses by the provisions of this Declaration or the by-laws;

(e) Hazard, liability, or such other insurance premiums as the Declaration or the by-laws may require the Association to purchase;

(f) Ad valorem taxes and public assessment charges lawfully levied against common areas;

(g) Expenses agreed by the members to be common expenses of the Association.

Section Twelve. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon Lot 15 within the property and constituting a part of a building.

Section Thirteen. "Amenities" shall mean the facilities constructed, erected or installed on the Common Areas for the use, benefit and enjoyment of Members.

ARTICLE III.

PROPERTY RIGHTS

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

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right of 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 right of the Association to dedicate or transfer all or any part of the Common Area to any public agency,

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authority, or utility for such purposes and subject to such conditions as may be agreed by the Members. No such dedication or transfer shall be effective unless an instrument signed by three-fourths (3/4) of each class of Members agreeing to such dedication or transfer has been recorded;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, in accordance with its Articles and by-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(f) The right of the Association to adopt, publish and enforce rules and regulations.

(g) The right of the Association to enter any Lot in order to perform any maintenance, alteration or repair required herein to be performed by the Association and the Owner of such Lot shall permit the Association or its representative to enter for such purposes at reasonable times and with reasonable advance notice.

(h) The right of the Association or its representative to enter any Lot in the case of an emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

Section Two. Delegation of Use. Any Owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section Three. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements.

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Section Four. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking space, 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 areas.

Section Five. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply Cablevision and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas of individual Lots.

ARTICLE IV.

MEMBERSHIP AND VOTING RIGHTS

Section One. 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 Two. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) 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.

Class B. Class B Members 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:

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(a) when the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership; or

(b) on December 31, 1987.

Section Three. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

ARTICLE V.

INSURANCE

Section One. Owners. Every Owner shall maintain in full force and effect at all times, fire insurance in an amount equal to the full insurable value of his Townhome, except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, issued by a company authorized to do business in the State of North Carolina, the Board may purchase such insurance from a qualified insurer, selected by the Board. The cost of such insurance, so purchased, shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid.

(RECOMMENDATION TO OWNERS - If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent attached unit, there may be prolonged disputes between their insurance carriers of the adjacent damaged units, which may, in turn, delay the settlement of claims, unless the insurance protection on both units is provided by the same carrier. It is therefore recommended that the Owners of all Townhomes located within each building purchase their fire and casualty insurance from the same insurance carrier).

Section Two. Association.

(a) Fire and Hazard Insurance. All buildings and improvements upon the Common Areas and all personal property

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included shall be insured in an amount equal to One Hundred Percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (1) Loss of damage by fire and other hazards covered by a standard extended coverage endorsement, and,
- (2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land.

(b) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence for liability incurred by the use of the Common Areas. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(c) Proceeds. Proceeds on account of damage to Common Areas and facilities shall be held for the Association.

ARTICLE VI.

COVENANT FOR ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation of Assessments. The Declarant covenants, and every Owner of a Lot purchased by acceptance of a deed from Declarant also covenants, whether or not so expressed in the deed or conveyance, that the shall pay to the Association:

- (a) Annual assessments of charges which are common expenses;
- (b) Special assessments for capital improvements;
- (c) Special assessments for purchase and reconstruction of Townhomes hereinafter provided.

Notwithstanding any provisions herein to the contrary, the assessment of any Lot owned by Declarant, so long as it is a Class B Member, shall be twenty-five percent (25%) of the assessments of the Class A Member.

Such assessments shall be fixed, established and collected, from time to time, as hereinafter provided.

The annual and special assessments, together with such interest thereon, and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with such interest and cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title, unless expressly assumed by them. All assessments shall be shared equally by the Owners of each Lot, except as otherwise provided in this section.

Section Two.

(a) Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property, and in particular, for the acquisition, improvement, and maintenance of Common Areas, including the maintenance, repair, and reconstruction of private streets, driveways, walks, and parking areas situated on the Common Area, such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance and for the exterior maintenance of the residences situated upon the Properties as hereinafter provided, or for the use and enjoyment of the Common Area, including, but not limited to the cost of repairs, replacements and additions, the cost of labor, equipment, material, management and supervision, the payment of taxes and public assessments assessed against the Common Areas, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving and any

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other major expense for which the Association is responsible, and such other needs as may arise.

(b) Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section Three.

(a) Amount of Assessment. To and including December 31, 1986, the initial annual assessment shall not be in excess of Two Hundred Forty Dollars (\$240.00) per Lot in use, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section Three.

(b) Increase by Association. From and after December 31, 1986, the annual assessment effective for any year may be increased from and after January 1, of the year succeeding by the Board of Directors, without a vote of the membership, by up to ten percent (10%) of the previous year's assessment.

(c) Increase by Members. From and after December 31, 1986, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative 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 such purpose, written notice of which, setting forth the purpose of the meeting shall be sent to all members not less than thirty (30) days no more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase of assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessments. In establishing the annual assessments for any assessment year, the Board of Directors shall consider all current costs and expenses

of the Association, any accrued debts, and reserves for future needs.

(e) Decrease in Assessments. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

(f) Liability Insurance and Repairs to Buildings. The Homeowners' Association shall be responsible for the provision of liability insurance, any taxes, maintenance or recreation and other facilities located on the Common Areas, payment of assessments for public and private capital improvements made to or for the benefit of the Common Areas located within the development, and performance of the exterior maintenance to buildings upon the Lots as provided in Article VII.

Section Four. 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 part, the cost of construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary 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, written notice of which setting forth the purpose of the meeting shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section Five. Special Assessments for the Purchase and Reconstruction of Townhomes. In the event that any Townhome located on the property is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association within thirty (30) days following such destruction of whether he intends to repair or reconstruct the Townhome; and if the Owner fails to give such notice to the Association it shall

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be conclusively considered, for the purpose of this Section, as notice that he does not intend to repair or reconstruct the Townhome. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the right and option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the Owner's election not to repair or reconstruct.

(a) Exercise of Option. The Board of Directors shall appoint a committee or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining property. The committee may employ such persons, including, but not limited to real estate appraisers, realtors, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions with supporting data in writing, to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of the pecuniary injury and diminution in value, along with an estimate of the cost of purchase and reconstruction of the Townhome.

If the Board of Directors determines that it would be advantageous to the Association, and/or to the remaining property, to purchase and reconstruct the Townhome, it shall call a special meeting by giving notice within seven (7) days following submission of the committee report. The special meeting shall be held not less than seven (7) days nor more than fifteen (15) days following notice to members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of each class of members present and voting, the Board will be authorized to purchase and reconstruct the Townhome and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the Townhome. The Board may require that the assessment be paid in one lump

sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine appropriate.

Such assessment shall be in addition to, and not in lieu of the annual assessments provided for in Section Four of this Article.

(b) Determination of Value. The Owner of the Townhome shall convey marketable title thereto, to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value, or method of determining the fair market value, each shall appoint an appraiser and those two appraiser shall appoint a third appraiser. The fair market value, as determined by any two of these three appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the Owner agree upon a single appraiser, each party shall pay one-half (1/2) of the cost of the appraisal.

(c) Application of Insurance Proceeds. The Owner of the Townhome, prior to conveyance to the Association, shall apply or cause to be applied, so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome, as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances and obligations upon the Lot, the purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon said terms

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and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family Townhome unit. The reconstructed or repaired Townhome unit shall be substantially identical to the destroyed Townhome unit, unless a change shall be approved by the Board and shall be constructed in conformity with plans submitted to and approved by the Board, prior to construction.

(e) Retention by Owner. If a Townhome is not habitable by reason of damage, and the Owner gives notice of his election to repair or reconstruct the Townhome, the obligation of the Owner to pay annual assessment installments shall not be suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he shall remove or cause to be removed at his expense, all debris from the Lot, so that it shall be placed in a neat, clean and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the Owner, unless the Lot is thereafter acquired by the Association.

(f) Reconstruction by Association. Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; provided however, that only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of the Townhome, and no other portion of the property, including the limited Common Area and facilities, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no other member shall be required to become personally obligated therefore.

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The Association shall hold title to the Lot and improvements for the benefit of all members. The Board may lease or sell the Lot and improvements upon such terms and conditions as in its discretion, deems most advantageous to the members. The lease rental shall be applied in the following order of priority:

- (1) to the payment of taxes, assessments, liens, encumbrances, and obligations, on or secured by the Lot;
- (2) to the maintenance, upkeep, and repair of the Townhome;
- (3) to payment or repayment to the members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Townhome; and
- (4) to the general expenses of the Association.

In the event the Lot is sold, the purchase price shall be applied in the following order of priority:

- (1) to the payment of taxes, assessments, liens, encumbrances and obligations, on or secured by the Lot;
- (2) to payment or repayment to the members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Townhome;
- (3) to the general expenses of the Association.

Any payment or repayment to the members of the special assessment may be in cash or may be applied to the annual assessment due or to become due.

Section Six. Uniform Rate of Assessment. Both annual and special assessments must be fixed at uniform rates for all Lots and Lots in Use, on a per Lot and per Lot in Use basis, and may be collected on a monthly basis.

Section Seven. Quorum for any Authorized Under Sections Three, Four, and Five of this Article. At the first meeting called, as provided in Sections Three, Four, and Five, of this Article, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in Sections Three, Four, and Five, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required

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quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section Eight. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the payment of such shall commence as to each Lot on the first day of the month following the conveyance of the Common Area to the Association.

All Lots in subsequently annexed sections, shall be subject to assessments commencing the first day of the first month following annexation. 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 a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section Nine. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessments or portions thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Association may bring an action against the Owner personally obligated to pay the same, and interest, costs, late payment charges and reasonable attorney's fees of any such action shall be added to the amount of such assessment. If any law permits the filing of a lien and the foreclosure of such lien, or other similar action, as a method of enforcement of the Association's right to collect assessments, the Association may use such

remedy. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section Ten. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage on such Lot. The sale of a Lot to a bona fied purchaser for value and 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 the payments which became due prior to such sales or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section Eleven. Exempt Property. Any portion of the Property dedicated to, and accepted by a local public authority, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein, except no land or improvement, devoted to dwelling use, shall be exempt from said assessment.

ARTICLE VII.

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provided exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint and/or stain the exterior of the Townhomes; repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such maintenance shall not include glass surfaces.

Further, the Owner of any Lot may, at his election, plant trees, shrubs, flowers, and grass, in his rear yard and may also

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maintain portions or all of his rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association.

If, in the opinion of the Association, any Owner fails to maintain his rear yard in a neat and orderly manner, the Association may undertake any required maintenance and add the cost thereof to the assessment against such Owner's Lot.

The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future Members of the Association, the developers wish to make it known that due to differing amounts of exposure to the elements and other factors, some dwellings may require more maintenance than others, and that it is in the best interest of the entire Association that all units be properly maintained, and that the Association shall be required to provide such maintenance provided for herein and make a uniform rate of charge without regard to the actual cost of maintenance of each dwelling).

In the event that the need for maintenance or repair is caused through the wilful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Associations hereunder.

ARTICLE VIII.

PARTY WALLS

Section One. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between

the Lots and all reconstruction or extensions of such wall shall constitute party walls, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or wilful actions or omissions, shall apply thereto.

Section Two. 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 Three. Destruction by Fire or Other Casualty. If a party wall is destroyed 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 wilful acts or omissions.

Section Four. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner, who by his negligent or wilful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section Five. Right to Contribution Runs with Land. The right to any Owner to contribution from an Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section Six. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that adjoining property Owner has a right of contribution as provided in this Article VIII., request of the adjoining property Owner, or property Owners, a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, without

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charge, provided however, that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section Seven. Arbitration. In the event of any dispute arising concerning party wall or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX.

ARCHITECTURAL CONTROL

A. No building, fence, signs, wall or other structure shall be first erected on the subject properties until plans and specification with the proposed site therefore have been submitted to and approved by the Declarant as to outward appearances and design and a written approval of the same or said plans issued by Declarant.

Provided however, if the Declarant fails to approve or disapprove such plans within fifteen (15) days after the same has been submitted, such approval shall not be required.

B. Upon completion of dwelling units upon all Lots within said subdivision, architectural control shall cease to be in Declarant and shall pass to the Board of Directors of the Association or to an architectural committee composed of three (3) or more representatives appointed by the Board.

Thereafter, no building, fence, sign, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration thereon be made until the plans and specifications showing the nature, kind, shape, height, materials, color, 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

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Directors of the Association ~~and~~ the architectural committee as the case may be.

In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after 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 X.

USE RESTRICTIONS

Section One. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common Areas. Such rules and regulations may provided for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section Two. Land Use. No Lot shall be used except for residential purposes. No structure more than two and one-half (2-1/2) stories shall be constructed on any Lot.

All construction shall be of new materials and no exterior wall finish of concrete, cinder block, or asbestos siding shingles shall be allowed. No mobile home nor modular home shall be allowed or constructed as new construction, regardless of make or design.

Section Three. Set Back Requirements.

(a) Front, rear and side yards shall be determined according to the minimum requirements of the applicable zoning district as provided in the Cumberland County Zoning Ordinance.

(b) No building shall be located nearer than twenty (20) feet from the perimeter lot lines of the Common Area of Lot 15.

Section Four. Temporary Structures. No structure of a temporary character, nor trailer, basement, tent, shack, garage,

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barn, or other outbuilding shall be placed, erected or allowed to remain on any Lot without the written consent of Developer, its successors or assigns.

Section Five. Motor Vehicles, Bicycles, Garbage Containers,

Etc. No automobile or motor vehicle may be dismantled or repaired on said property; no currently unlicensed automobile or mechanically defective automobile, motor vehicle, mechanical device, machine, machinery, or junk car, shall be placed or allowed to remain on said property for more than ten (10) days. No bicycle, tricycle, garbage cans, or toys of any type, shall be allowed to remain in the yard nearer to the street than the front corner of the structure.

Section Six. Pets. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of the premises.

Section Seven. Fences. No fence shall be erected on the Common Area except by permission of the Homeowners' Association.

Section Eight. Improvements. No improvements, wall, walk, edgings or other construction of any sort, using brick, block, or similar material, used separately or in combination, may be placed or allowed to remain on any numbered Lot, unless laid with mortar joints, by a professional brick-layer engaged in the business of laying brick or doing masonry construction work, except by prior, written approval of Declarant, its successors or assigns.

Section Nine. Nuisances. No obnoxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

ARTICLE XI.

EASEMENTS

Section One. Easements for Utilities and Drainage.

Easements for utilities and drainage are shown upon the recorded

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plat. Such easements as are shown on said plat are hereby reserved for the purpose designated thereon.

Section Two. Easement for Repairs and Maintenance. The Owners of adjoining Lots which share party walls, shall have a right to go on the other such Owner's property for the purpose of repairs and maintenance of their respective homes where such repairs and maintenance cannot be accomplished otherwise. Such entry shall be at reasonable times, and with prior advance notice.

Section Three. Unit Owners not to Jeopardize Safety of Property or Impair Easements. No unit Owner shall do any work which would jeopardize the soundness or safety of the property or impair any easement or hereditament, without in every such case, the unanimous consent of all the other Lot Owners affected being first obtained.

Section Four. Streets. All areas indicated as streets and easement on the recorded plat are hereby dedicated to public use, for such uses forever.

ARTICLE XII.

UNDERGROUND CABLES

The Declarant reserves the right to subject the real property in this entire project to a contract with the Public Works Commission of the City of Fayetteville, North Carolina, for the installation of underground electric cables and/or the installation of street lighting, either or both, or which may require an initial payment, and/or a continuing monthly payment to the Public Works Commission of the City of Fayetteville, by the Owner of each building.

ARTICLE XIII.

RIGHTS OF INSTITUTIONAL LENDERS

Section One. Rights Reserved to Institutional Lenders.

"Institution Lender" or "Institutional Lenders" as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, or other reputable mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by a Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15, of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and by-laws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institution Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association during normal business hours.

(e) To be given notice by the Association of any substantial damage to any part of the Common Areas.

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(f) To be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires the benefits of the provisions of this Section, such lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail, addressed to the Association, and sent to its address stated herein, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage, or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XIV.

GENERAL PROVISIONS

Section One. Enforcement. So long as Declarant is an Owner of a Lot shown on the Plat, Declarant, 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 these Restrictive Covenants. Failure by the Declarant or by any 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 Two. Severability. Invalidation of any of these covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

Section Three. Amendment. It is understood and agreed and the present Owners and all subsequent Grantees of the present Owners expressly agree by the acceptance of land within the above restricted area, that any or all of the above Restrictive

covenants may be released, changed, modified, or amended, with respect to all Lots, or with respect to one or more specific Lots as follows:

(a) By an instrument executed by Declarant its successors or assigns, so long as Declarant, its successors or assigns, is the Owner of one-half (1/2) of the Lots in said subdivision;

(b) When Declarant, its successor or assigns, is the Owner of one or more Lots, but is not the Owner of one-half (1/2) of the total Lots, by an instrument executed by the Declarant, its successors or assigns, and by sufficient other Lot Owners, to constitute one-half (1/2) of the total Lots; and

(c) When Declarant, its successors or assigns, is no longer the Owner of any Lot or Lots within said subdivision, by an instrument signed by the Owners of not less than one-half (1/2) of the total Lots within said subdivision.

Section Four. Covenants Run with the Land. These Restrictive Covenants shall run with and bind the land, and shall insure to the benefit of and be enforceable by the Owner of any Lot subject to these Restrictive Covenants, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date these Restrictive Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years.

TO THE TRUE AND FAITHFUL PERFORMANCE OF THESE COVENANTS AND AGREEMENTS, ALEXANDER H. THOMAS, RAYMOND CARROLL THOMAS, and JAMES M. KIZER, partners, doing business as THOMAS BUILDERS, a North Carolina Partnership, have hereunto set their hand and seal, this the 20th day of January, 1986.

THOMAS BUILDERS, Partnership
BY: Alexander H. Thomas
ALEXANDER H. THOMAS
Raymond Carroll Thomas
RAYMOND CARROLL THOMAS
James M. Kizer
JAMES M. KIZER

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Melody A. Staley, a Notary Public of said County and State, certify that ALEXANDER H. THOMAS, personally appeared before me and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal, this the 20th day of January, 1986.

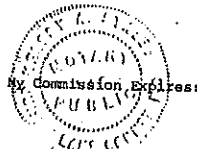


Melody A. Staley
NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Melody A. Staley, a Notary Public of said County and State, certify that RAYMOND CARROLL THOMAS, personally appeared before me and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal, this the 20th day of January, 1986.

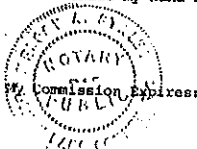


Melody A. Staley
NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Melody A. Staley, a Notary Public of said County and State, certify that JAMES M. KIZER, personally appeared before me and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal, this the 27th day of January, 1986.



Melody A. Staley
NOTARY PUBLIC

NORTH CAROLINA, CUMBERLAND COUNTY

The foregoing or annexed certificate of Melody A. Staley

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

This instrument was presented for registration and recorded in this Office at Book 3132, Page 798
This 27th day of January, 1986 at 11:46 O'clock A. M.
George E. Tatum
Register of Deeds
By Peggy D. McLean
Deputy Register of Deeds