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State of North Carolina  
County of Cumberland

## Declaration of Covenants: Conditions and Restrictions

This Declaration made as of this 31st day of March 1984, by 700 HAYMOUNT ASSOCIATES ("Declarant"), a joint venture of FAYETTEVILLE PROGRESS DEVELOPMENT CORPORATION, a North Carolina nonprofit corporation, a NCNB COMMUNITY DEVELOPMENT CORPORATION, a North Carolina nonprofit corporation.

### **Background Statement**

Declarant is the owner of the real property (hereinafter referred to as the "Properties") located in the City of Fayetteville, County of Cumberland, State of North Carolina, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof. Declarant is constructing on the Properties a residential townhouse development consisting of single-family attached townhouses. The Townhouse development shall be known as 700 Haymount (the "Project").

In creating the Project, Declarant desires to develop a residential community with certain common areas

and facilities to be used for the benefit of the owners of townhouses within the Project. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the common areas and facilities in said Project, and therefore desires to subject the Properties to the covenants, restrictions, easements, charges and liens described in this Declaration of Covenants, Conditions and Restrictions (the "Declaration") all for the benefit of the Properties and each owner of any part of any such properties.

Declarant has deemed it desirable to create a nonprofit, incorporated association, which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Project, of performing, at the election of the Association, certain exterior maintenance on the townhouse units, of administering and enforcing the covenants and restrictions created in this Declaration and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to promote the recreation, health, safety and welfare of the owners of the townhouses within the Project.

#### Statement of Declaration

NOW, therefore, Declarant hereby declares that all of the Properties (all that property described in Exhibit A attached hereto) shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restrictions, covenants and conditions, which shall run with the Properties and be binding on, and inure to the benefit of all parties having any right, title or interest in the Properties or any part hereof, their heirs, successors and assigns.

#### **Article I. Definitions**

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

Section 1. "Association" shall mean and refer to 700 Haymount Townhouse Association, Inc., its successors and assigns.

Section 2. "Board of Directors" or "the Directors", shall mean and refer to the Board of Directors of the Association.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Properties, but excluding those who have such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to the property described in Exhibit A attached hereto and made a part hereof.

Section 5. "Lot" shall mean and refer to one of the parcels of land, together with the improvements thereon described by metes and bounds and shown as Lots numbered 701 through 720 on a plat by Rose & Purcell, Inc, entitled "Phase One. 700 Haymount" which appears at record in Map Book 56, at page 14 in the Office of the Register of Deeds of Cumberland County, North Carolina.

Section 6. "Common Area" shall mean and refer to all real property opened by the Association<sup>1</sup> and the easements granted to the Association, for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at or within one hundred eighty (180) days after the time of the conveyance of the first Lot by Declarant to an owner shall be all the Properties with the exception of the Lots designated by number on the plat described in Section 5 hereof, together with any easements or rights-of-way in favor of the Association, and subject to the easements and other rights described herein.

Section 7. "Declarant" shall mean and refer to 700 Haymount Associates, its successors and assigns.

Section 9. "Institutional Mortgage," sometimes referred to as "first mortgage" herein, shall mean and refer to a first mortgage or deed of trust executed and delivered to or held through assignment or assignments by an Institutional Lender.

Section 10. "Institutional Lender" shall mean and refer to the City of Fayetteville, State of North Carolina or United States of America, or any agency or instrumentality of any of the foregoing, or a bank, savings and loan association, insurance company, title insurance company, pension trust, real estate investment trust, or any private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary at arty of the foregoing or a designee of any of the foregoing.

## **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, in accordance with its Articles of Incorporation and Bylaws, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided, however, that such right of the Association and the rights of any such mortgagee shall be subordinate to the rights of the Owners set out herein and provided further that the Association may not so mortgage, pledge, deed in trust or hypothecate any of its property unless it shall have obtained the prior written consent of the holders of at least seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots;
- (b) The right of the Association to take such steps as is reasonably necessary to protect the above-described properties against foreclosure;
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any member and the enjoyment rights of any member in the Common Area for any period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (d) The right of the Association to charge reasonable admission fees, guest fees or other fees for use of its facilities or for special uses that might be made of certain parts of the Common Area by members of the Association or by others;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as it may determine; provided, however, except for the easements expressly provided for in Article X and elsewhere in this Declaration, no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of the members, agreeing to such dedication or transfer, has been recorded. Such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument;
- (f) The right of Declarant, prior to the conveyance of the Common Area to the Association and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities;
- (g) The right of the Association to limit the members or guests of its members as to the use of any facilities Situated upon the Common Area or any other Property of said Association;

(h) The right of the Association to establish reasonable rules and regulations for the use of any of the facilities situated upon its property by members or their guests;

(i) The right of the Association to regulate, locate and direct access routes on its property and the location of parking areas therein, all to be done in a reasonable manner.

Section 2. Title to Common Area. Declarant covenants for itself, *its* successor and assigns, that it shall convey the Common Area to the Association within one hundred eighty (180) days after the date of recordation of the deed conveying the first Lot to an Owner other than Declarant.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Properties or to such other persons as may be permitted by the Association.

Section 4. Automatic Membership. All Owners shall automatically be members of the Association and shall enjoy the privileges and be bound by the obligations contained in the Articles of Incorporation, Bylaws and Rules and Regulations of said Association.

### **Article III Covenants for Assessments of Association**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to Covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments as provided in Section 4 of this Article III, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the land) 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 Owners and other residents of the Properties and in particular for the acquisition, improvements, maintenance and operation of the Common Area and the easements appurtenant thereto; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; payment of taxes, insurance and governmental assessments, on or to the Common Area; payment of water fees for water supplied to the individual townhouse units through any metering device serving the Project; and, if undertaken by the Association, exterior maintenance of and insurance on the improvements which are part of the Lots, including but not limited to the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision; the provision of a reserve fund for replacement; the employment of attorneys and accountants to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all streets and roadways in the Properties.

Section 3. Maximum Annual Assessment. Until December 31, 1985, the maximum annual assessment for each Lot shall be Four Hundred Twenty Dollars (\$420.00).

(a) From and after December 31, 1985, the maximum annual assessment may be increased by the Board of Directors of the Association each year, without a vote of the membership; not more than 15% above the maximum assessment for the previous year; provided, however, that any part of such permitted 15% increase which is not assessed for any year may be carried over to

succeeding years so long as the increased assessment does not exceed a figure 20% above the actual assessment for the immediately preceding year.

(b) From and after December 31, 1985, the maximum annual assessment may be increased above the increase allowed in Subsection (a) of this Section 3 by a vote of two-thirds (2/3) of each class of members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair or replacement of public and private capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (ii) the cost of any exterior maintenance on improvements within the Lots; (iii) the cost of paying special governmental assessments; or (iv) any other cost or expense, payment of which through special assessment is approved by two-thirds (2/3) of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. In addition, the Association may levy special assessments against the Owners of improvements damaged or destroyed by casualty, in accordance with the provisions of Article VI.

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 Sections 3 or 4 of this Article III shall be sent to all members not less than seven (7) days nor more than sixty (60) days in advance at the meeting. The quorum required for any action authorized by Sections 3 and 4 of this Article III shall be as follows: At the first meeting called, as provided in Sections 3 and 4 of this Article III, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth herein, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment Both annual and special assessments of the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each townhouse (in the case of utility charges), the replacement value (in the case of insurance premiums) or assessed value of each townhouse, or some other reasonable criteria; provided, however, that so long as any Lot owned by Declarant is unoccupied as a residence, the rate of assessment for such Lots owned by Declarant shall be fifty percent (50%) of the rate for other Lots. The annual assessment shall be collected on a monthly basis, one-twelfth (1/12) of said assessment to be collected on the first day of each month.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the date of recordation of the deed conveying the Common Area to the Association in the Office of the Register of Deeds of Cumberland County, North Carolina. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. 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, unless otherwise determined by the Board. Annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the president or by the treasurer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid as to any purchaser or mortgagee of a Lot who relies thereon.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board of Directors of the Association may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the prime rate of interest charged by the largest bank in Fayetteville, North Carolina, plus one percent, not to exceed, however, the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his property to collect said assessment, and interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in any Lot and to acquire and hold, lease, mortgage and convey the same.

#### ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

Notwithstanding anything hereinbefore stated in this section 8, during any period in which an Owner shall be in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights and the right to the use of the Common Area or any other services or facilities which the Association provides may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board of Directors after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board of Directors after giving such Owner ten (10) day's prior written notice specifying each alleged violation and setting the time, place and date of the hearing; determination of the violation and the time of suspension shall be made by a majority vote of the Board of Directors of the Association.

Section 9. Subordination of the Lien to Institutional Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Institutional Mortgage on any Lot or similar security interest owned or held by an Institutional Lender, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Institutional Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including such acquiring mortgagee, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following parts of the Properties shall be exempt from assessments of the Association: (i) the Common Area; and (ii) any part of the Properties, in any, dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Properties to any public authority).

Section 11. Declarant's Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own.

Section 12. Reserve Funds. From and after the recording of this Declaration, the Association shall establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Properties by allocation and payment monthly to such reserve fund

or funds in such amounts and in such manner as may be established from time to time by the Board of Directors. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any and all facilities owned by the Association, for exterior maintenance or replacement of improvements within the Lots, and for such other purposes as may be determined by the Board of Directors.

#### **Article IV. Membership and Voting Rights in the Association**

Section 1. Every Owner of a Lot who 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 only one class of voting membership.

#### **Article V. Party Walls**

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article V, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. In the event that any portion of any structure as originally constructed by Declarant, including any party wall or fence, shall protrude over an adjoining Lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining Lot, and the Owners shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event that there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements in conformance with the original structure, party wall or fence constructed by Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

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 own such party wall in proportion to their ownership.

Section 3. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article V, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party.

#### **Article VI. Insurance and Reconstruction.**

Section 1. Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

- a. Casualty Insurance. The association shall procure and maintain one or more insurance policies insuring improvements constructed on the Common Area and, at its election, may procure and maintain one or more insurance policies insuring the townhouses and other improvements constructed on the Lots, for the full replacement cost thereof, exclusive of excavation and foundation costs, against at least the following risks:
  - (i) Loss or damage from all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning; and

- (ii) Such other risks as from time to time shall customarily be covered with respect to buildings similar in construction, location and use to the improvements situated on the Properties, specifically including without limitation, vandalism, malicious mischief, windstorm and water or flood (if available) damage

Such policy or policies shall include an annual review clause, and shall be without deduction or allowance for depreciation, and shall be subject to such deductible amounts, not in excess of One Thousand Dollars (\$1,000.00), as the Board of Directors shall determine. Such policy or policies shall be procured and maintained by the Association, Declarant, Owners and their respective mortgagees, all as their interests may appear, and shall provide for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Lots, if any.

Such policy or policies shall provide that all proceeds payable as the result of casualty losses shall be paid to the Association, as Trustee for the Owners and their mortgagees, as follows:

- (i) In the case of proceeds payable as the result of casualty loss to the Common Area or any improvement thereon, an undivided equal share for each Lot subject, however, to the Association's rights and obligations to rebuild, repair and restore the same; and
  - (ii) In the case of proceeds payable as the result of casualty loss to any Lot or improvement thereon, for the Owners of such damaged Lots, or for their mortgagees as the applicable mortgage instrument shall provide, in proportion to the reasonable cost of repairing the damage to each such Lot or improvements thereon, as determined by the Board of Directors.
- (b) Liability Insurance. The Association shall procure and maintain, or cause to be maintained, one or more policies of public liability insurance insuring the Association, Declarant, and the Owners and their immediate families and any occupant of any Lot, to the extent of not less than One Million Dollars (\$1,000,000.00) per person and not less than One Million Dollars (\$1,000,000.00) per occurrence against liability for bodily injury, including death resulting therefrom, and to the extent of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence against liability for damage to property, including loss of use thereof, incurring upon, in or about, arising from or relating to, the Properties or any portion thereof. Such policy or policies shall contain cross-liability endorsements to cover liabilities of the Owners as a group to any Owner.
- (c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Such fidelity insurance coverage shall, at least:
- (i) name the Association as an obligee thereunder;
  - (ii) be written in an amount equal to at least fifty percent (50%) of the estimated annual operating expenses of the Association, specifically including reserves; and
  - (iii) contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of employee or similar expression.
- (d) Other Insurance. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain such other insurance coverage as the Board of Directors shall determine from time to time to be desirable, specifically including without limitation directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds.
- (e) Provisions of All Policies. The following terms shall govern all policies and insurance coverage of the Association:
- (i) Premiums upon all insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies, and



shall be deemed expenses of the Association for all purposes.

- (ii) All insurance policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in Best's Insurance Guide, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in Best's Insurance Guide.
- (iii) The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed Agent for each Owner and any holder of a mortgage on any Lot or any lien upon a Lot to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims.
- (iv) In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by Owners or their mortgagees as permitted in Section 2 of this Article VI, and any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements hereof shall exclude such Owner's or mortgagee's policy from consideration.
- (v) All policies shall provide that such policies may not be cancelled nor substantially modified without at least thirty (30) day's prior written notice to any and all insureds named thereon, specifically including without limitation any and all mortgagees of the Lots.
- (vi) All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Association, its Board of Directors, the Owners and their respective agents, employees, invitees or mortgagees, and of any defenses based upon invalidity arising from the acts of the insured.
- (vii) In the event a mortgagee endorsement to any policy or policies has been issued as to any Lot, such mortgagee shall have no right to determine or participate in the determination as to whether or not any damaged property which is part of the Properties shall be reconstructed or repaired such determination to be made solely in accordance with the provisions of Section 3 of this Article VI, notwithstanding any provision or requirement contained in any mortgage instrument or deed of trust.
- (viii) Duplicate originals of all such policies shall be furnished to all Owners and their respective mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and their respective mortgagees attesting the fact that such policies and such insurance are in force and effect. Furthermore, the Association shall furnish to the Owners and their respective mortgagee's evidence that premiums for such insurance have been paid on an annual basis.

Section 2. Owner's Insurance. Any Owner and any holder of a mortgage with respect to any Lot may obtain such additional insurance with respect to a Lot, totally at the expense of such Owner or mortgagee, as is desired. Any such insurance shall either:

- (i) Be written by the same insurer which carries the casualty insurance purchased by the Association pursuant to the provisions of Section 1(a) hereof; or
- (ii) Shall provide that such policy or policies shall be without contribution with respect to the policy or policies of casualty insurance maintained by the Association. Any such Owner's or mortgagee's policy also shall contain waiver of subrogation provisions identical to those contained in Section 1(e) (vi) hereof.

If the Association has not elected to procure and maintain policies of casualty insurance upon the townhouses and other improvements constructed on the Lots, then each Owner shall procure and maintain, at his expense, one or more insurance policies for the full replacement cost thereof, exclusive of excavation and foundation costs, against the risks, in the amounts, and with companies conforming to the standards and requirements prescribed in Section 1(a) and (e) hereof, naming the Owner and any mortgagee as insurers.

Declarant recommends that each Owner obtain a Homeowner's Policy or its equivalent to insure against loss or damage to personal property used in or incidental to occupancy of the Lot and improvements thereon, additional leasing (motel) expenses, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include the equivalent of a condominium unit Owner's endorsement covering losses to improvements and betterments to the Lot made or acquired at the expense of Owner.

Duplicate copies of any such policy or policies under this Section 2 procured by an Owner or his mortgagee shall be furnished to the Association within ten (10) days of the effective coverage date of such insurance.

Section 3. Responsibility for Reconstruction or Repair. If any portion of the Properties shall be damaged by perils covered by the casualty insurance maintained in accordance with Section 1(a) hereof, the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and such reconstruction or repair shall be substantially in accordance with the plans and specifications for the development of the Properties. If, however, such damage renders untenable two-thirds (2/3) or more of the attached townhouses comprising a single building (on several Lots) the Association may, upon the affirmative vote of seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots, elect not to reconstruct or repair the damaged townhouses. A meeting shall be called within ninety (90) days after the occurrence of such casualty rendering more than two-thirds (2/3) of such townhouses untenable, or, if by such date the casualty insurance loss has been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Lots were damaged, or to their mortgagees as the individual mortgage instruments may provide, in proportion to the reasonable cost of repairing damage to such Lots; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released, or discharged.

In the event that the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Properties by fire or other casualty or in the event such damage or destruction is caused by any casualty not insured against, or in the event that insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements or parts of the Common Area shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within the Lot shall be accomplished promptly by the Association at the expense of the Owner of the affected Lot. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for it shall have all the priorities provided for in this Declaration.

Section 4. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Properties, the following provisions shall govern and apply:

- (i) Immediately after a casualty which causes damage to any portion of the Properties, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds, as the Board deems necessary.
- (ii) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association or the affected Owners (including the aforesaid fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Lots in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of the members of the Association voting at a meeting duly called for such purpose.

- (iii) The proceeds of the casualty insurance referred to in Section 1(a) hereof and the sums deposited with the Association from collections of special assessments against Owners on account of such casualty or proceeds of authorized loans shall constitute a construction fund which shall be disbursed to the Board of Directors and be applied by the Board of Directors to the payment of the cost of reconstruction and repair of the Properties from time to time as the work progresses, but not more frequently than once in any calendar month. The Board shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work who shall be selected by the Association, setting forth: (1) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work; and (3) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Board of Directors after the payment of the sum so required. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board of Directors.

#### **Article VII. Exterior Maintenance**

The Owners of each Lot in the Project shall provide necessary and reasonable exterior maintenance upon each Lot in the Project as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, garden walls and fences, trees, shrubs, grass, walks, glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware, and floor surfaces of decks, balconies or patios, painting of decks, balconies and patios, lawn care and landscaping services and other exterior improvements. Each Lot shall be maintained in good condition and repair at all times. Notwithstanding the foregoing, the Association shall, at its election, have the right from time to time to perform, or cause to be performed, all or any portion of such exterior maintenance so long as it does so in a reasonable and good and workmanlike manner.

#### **Article VIII. Maintenance of Property**

Each Owner of a Lot shall keep the Lot owned by him and all improvements thereon, in a clean and sanitary condition and in good order and repair. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board of Directors, the Board of Directors shall give written notice to such Owner and, if said notice is not complied with within twenty (20) days, then the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents, contractors, and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable as under the provisions of Article III, Section 8, hereof.

#### **Article IX. Architectural Control**

No building, fence, wall or other structure shall be commenced, erected or maintained on, or removed from, the Properties, nor shall any exterior addition to, change or alteration therein, or reconstruction thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by an Architectural Committee composed of three (3) persons or more. The right to appoint all three members of such Architectural Committee shall be in and belong to the following persons:

- (a) So long as Declarant owns at least one Lot, Declarant shall have the right to appoint all three members of such Architectural Committee; and
- (b) At and after such time as Declarant owns no Lots, the Board of Directors shall have the right to appoint all three members of such Architectural Committee.

In the event the Architectural Committee shall fail to approve, approve as noted, or as qualified, or disapprove such plans and specification submitted to in accordance herewith within sixty (60) days, the approval required in this Article XI shall be deemed granted and no further approvals or consent shall be required before the commencement of construction on such improvements.

## **Article X. Easements**

Section 1. Construction, Settling, and Overhangs. Each Lot and the Common Areas shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed. A valid easement for said encroachments and for the maintenance of it, so long as it stands, shall and does exist. In the event a multi-family structure covering parts of two or more Lots is partially or totally destroyed, and then rebuilt, Owners of the Lots so affected agree that minor encroachment of parts of the adjacent Lots or Common Areas resulting from construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. The foregoing shall be in addition to the easements for encroachments granted under Article V hereof.

Section 2. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under all of the Properties for installing, replacing, repairing, operating, and maintaining all utilities, including but not limited to water, storm and sanitary sewers, gas, telephones, and electricity, and a master television antenna system to service the Properties. By virtue of this blanket easement, it shall be expressly permissible for the providing electrical or telephone company to erect and maintain and necessary poles and other necessary equipment on the Properties and to affix and maintain electrical or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of improvements within the Lots. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets, driveways and other parts of the Common Areas in the performance of their duties. Further, an easement is hereby reserved to Declarant and granted to the Association and their officers, agents, employees, and to any management company selected by the Association to enter into or to cross over the Common Area. Anything to the contrary contained in this section notwithstanding, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Properties except as initially approved by Declarant or thereafter approved by Declarant or the Board of Directors. Should any utility furnishing a service covered by the blanket easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article X shall in no way affect any other recorded easement on the Properties at the date hereof.

Section 3. Underground Electrical Services. Underground single-phase electrical service shall be available to all Lots and, where appropriate, to improvement to be constructed on the Common Areas. Metering equipment shall be located on the exterior surface of the walls of any improvement at a point to be designate by the providing utility company. The providing utility company shall have a ten (10) foot easement along and centered on the underground electrical power service conductors installed from the utility company's easement to the designated point of service of the Lots. For so long as such

underground service is maintained, the electric service to each Lot and the Common Area shall be uniform and exclusively of the type known as single-phase 120/240 volt, 60-cycle alternating current. Driveways, walkways, patios and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service, may cross easements for underground service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other paving, other than crossing driveways, walkways, patios, or parking areas.

Section 4. Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Properties during such period of time as Declarant is engaged in any construction or improvement work on or within the Properties and shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No owner, his guests or invitees shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 5. Easement for Access. Without limiting the easement of enjoyment created under Article II, Section 1, every Owner shall have, and is hereby granted, a non-exclusive easement in and to all streets, driveways, walkways and parking areas, provided and designated for common use from time to time, in the Common Area, subject, however, to such reasonable rules and regulations as may be established for their use by the Association. Such easement shall continue for the term of this Declaration, shall be deemed appurtenant to each Owner's Lot, and shall be for the benefit of the Owner and his family, tenants, guests, invitees, agents and employees.

In addition to and without limiting the foregoing, the Owner of every Lot that does not abut a public street shall have, and is hereby granted, a non-exclusive perpetual easement for reasonable access, ingress and egress over the Common Area to and from his Lot and to and from a public street. This general easement shall survive the expiration or early termination of this Declaration, shall be deemed appurtenant to each such Lot, shall inure to the benefit of each such Owner and his tenants, family, guests, invitees and agents, and shall continue as a burden running with the Common Areas unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easement in one or more strips of land adequate for that purpose.

## **Article XI. Use Restrictions**

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes or, incidentally and secondarily, for office purposes to the extent permitted by current zoning ordinances and regulations (presently R-5) and provided that no office sign be displayed. No building or structure other than single-family townhouses joined together by a common exterior roof shall be constructed on any Lot. No structures of a temporary character, trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of the Properties at any time. It is expressly understood and agreed, however, that Declarant's use of any Lot or any other part of the Properties as a Sales Office, Construction Office, Storage Area, Business Office, Model Unit or such other facility as in the sole opinion of Declarant is reasonably necessary, convenient or incidental to the construction or sale of the Lots during the time Declarant owns any Lot in the Properties shall not be considered a violation of this restriction.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to neighboring Owners or to residents of any part of the 700 Haymount area or which may endanger the health or safety of any Owner or any resident of the Properties.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except small household pets, which pets may not be kept or bred for any commercial purpose and shall have such care and restraint that they will not be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than one household pet may be kept on any Lot without written permission of the Board of Directors of the Association. No pets

may be permitted to run loose upon the Common Area, and any Owner who causes any pet to be brought or kept on his Lot shall indemnify and hold harmless the Association for any loss, damage or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission therefor.

Section 4. Alterations and Attachments by Owner. No Owner shall make structural alterations or modifications to the improvements on his Lot or to any of the Common Areas, including the erection of awnings, the placement of any reflective or other material in the windows of his dwelling (other than draperies), the installation of aluminum (or similar material) storm doors in any dwelling or other exterior attachment without the written approval of the Architectural Committee described in Article IX hereof. The Architectural Committee shall not approve any alterations, decorations or modifications which, as determined by such Committee in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Properties.

Section 5. Use of Common Areas. The Common Area shall not be used for storage of supplies, personal property or trash or refuse of any kind except in Common Area trash receptacles placed at the discretion of the Board of Directors nor shall the Common Area be used in any way for the drying, shaking or airing of clothing or other fabric. Entrances, sidewalks, yards, driveways, parking areas and other facilities in the Common Area shall not be obstructed in any way nor shall they be used for other than their intended purposes. Only operable automobiles shall be allowed to remain in any parking lot, which may be provided for residents of the Properties. Unless otherwise provided by the Association no other vehicles (including boats, campers and trailers) may be parked in the Common Area. No vehicles of any type may be parked on the Properties unless parked in an area designated by the Association for such parking. In general, no activity shall be carried on nor condition maintained by any Owner either on his Lot or upon the Common Area which despoils the appearance of the Properties. The restrictions contained in this Section 5 shall be deemed to apply also to the streets abutting the Properties.

Section 6. Signs. Except with the express permission of the Architectural Committee of the Association, no signs of any kind (except one sign per Lot of not more than five square feet containing the words "for rent" or "for sale") shall be displayed to the public view on any Lot or on the Common Area except signs used by Declarant or its agent to advertise the Properties during the construction and sales period.

Section 7. Clotheslines, Trash Can, etc. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash and garbage shall be regularly removed from each Lot, and shall not be allowed to accumulate therein.

Section 8. Gardening and Fencing in Common Area. No planting or gardening shall be done (except within individual Lots), and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon as approved by the Architectural Committee or its designated representatives. Except for the right of the ingress and egress, Owners are hereby prohibited and restricted from using any of the Properties outside of exterior building lines, fenced-in or patio areas, except as may be allowed by the Architectural Committee. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the benefit of all members of the Association, and is necessary for the protection of all Owners.

Section 9. Decks, Screen Doors, Windows. Maintenance, upkeep and repair of any floor surfaces of decks or patios, screens and screen doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the individual Owner and not in any manner the responsibility of the Association. Any action necessary or appropriate to the proper maintenance and upkeep of the Common Areas and facilities, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 10. Pipes Wires, Etc. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, shall be

maintained and kept in repair by the Owner thereof. An Owner shall do no act or work that will impair the structural soundness or integrity of other improvements or impair any easement, nor do any act or allow any condition to exist which will adversely affect any other Lot or its Owners.

Section 11. Antennas. Without prior written approval of the Architectural Committee, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Properties nor upon any structure situated upon the Properties other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 12. Rules and Regulations. Reasonable rules and regulations governing the use of the Properties may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such rules and regulations and amendments thereto shall be approved at a regular or special meeting of the membership (of the Board of Directors) before such shall become effective. Copies of all such regulations and amendments thereto shall be furnished by the Association to all members upon request.

Section 13. Wells and Septic Tanks. No well or septic tank shall be drilled or installed on any Lot.

Section 14. Excavation. No Owner of a Lot shall excavate or extract earth from any Lot for any reason other than repair or maintenance reasons. No elevation changes in any Lot shall be allowed which materially affect the surface grade of surrounding Lots.

#### **Article XII. Rental of Townhouses by Owners**

Dwellings constructed on Lots shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as any rental in which the occupants of the townhouse occupy the same on a rental basis for periods of less than thirty (30) days or are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing, the Owners, including Declarant, shall have the absolute right to lease or rent the same subject to the covenants and restrictions contained in this Declaration, applicable zoning ordinances and regulations and the Bylaws and Rules and Regulations of the Association.

#### **Article XIII. Voluntary Conveyance of Lot**

The lien for assessments of the Association created in Article III, Section 1, shall not be affected by any voluntary conveyance of a Lot, and shall remain a continuing charge on the land and a continuing lien which may be foreclosed as provided in Article III, Section 8 hereof. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board of Directors of the Association, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

#### **Article XIV. Amendment of Declaration**

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds of Cumberland County, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless an amendment approving the termination of said covenants and restrictions, executed and recorded in accordance with the procedures set out in this Article XIV, has been recorded in the Office of the Register of Deeds of Cumberland County, North Carolina, at least three years prior to the end of such initial twenty-year period or any such successive ten (10) year period. This Declaration may be amended upon the filing for record in the Office of the Register of Deeds of Cumberland County, North Carolina, of an instrument in writing which sets forth specifically the item or items to be amended and any new matter to be added which instrument shall have been duly executed by: (I) during the period ending twenty (20) years from the date this Declaration is recorded, Owners

holding not less than ninety percent (90%) of the votes of the Members of the Association, and holders of not less than ninety percent (90%) of the Institutional Mortgages then in force with respect to the Lots; and (ii) thereafter Owners holding not less than seventy-five (75%) of the votes of the Members of the Association and holders of not less than seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots. Any amendment hereto must be executed with the same formalities as this instrument and must refer to the volume and page n which this instrument and its attached schedules and exhibits are recorded and must contain an affidavit by the President of the Association or an officer of Declarant as the case may be, that a copy of the amendment has been mailed by certified mail to all Owners and all mortgagees having a bona fide lien of record against any Lot. Any such amendment shall be recorded and indexed in the name of the Association and each and every Owner.

#### **Article XV. Miscellaneous Provisions**

Section 1. Directors Appointed by Declarant. The initial Board of Directors of the Association shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of members, they shall constitute the Board of Directors of the Association and exercise all powers and duties granted to the Board of Directors in the Bylaws. Said Directors are further specifically authorized to fix the annual assessments for periods through December 31, 1985 and enter into a Management Agreement for the Association upon the terms, provisions, conditions and limitations as are herein and in the Bylaws provided for and upon such other terms and conditions as the Directors may deem to be in the best interests of the Association.

In addition thereto, and notwithstanding any provision contained in this Declaration, the Articles of Incorporation of the Bylaws to the contrary, for so long as Declarant is the owner of three (3) or more Lots, Declarant shall and does have and retain the right, privilege, and option to designate as nearly as may be, one-third (1/3) of the members of the Board of Directors of the Association. These appointees may or may not be employees of Declarant, and need not own or occupy a Lot.

Section 2. Notices of Mortgages. Any Owner who mortgages his or her Lot or his interest therein shall notify the Association, in such manner as the Association may direct of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgages. The Association shall maintain such information in a book entitled "Mortgagees of Units."

Section 3. Copies of Notices to Mortgage Lenders. Upon written request to the Board of Directors of the Association, the holder of any duly recorded mortgage on any Lot or interest therein shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner or Owners whose Lot or interest therein is subject to such mortgage.

Section 4. Covenants Running with the Land. Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as through the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 5. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential townhouse community of the highest quality. Any Owner, the Association, Declarant or any Institutional Lender may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.



Whenever there shall have been built within the Properties any structure which is in violation of this Declaration, the Association, or its designated agents, may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Properties) enter upon the property where such violation exists, and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a special assessment levied by the Association against such violating Owner and such Owner's Lot, shall become a personal obligation of such Owner and shall become a lien upon such Lot enforceable as under the provisions of Article III, Section 8, hereof.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

Section 6. Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 8. Time Limits. If any of the privileges, covenant, restriction or rights created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of Margaret Mebane Rash and James Dennis Rash, Jr., the now living children of J. Dennis Rash, an officer of one of the joint ventures of the Declarant.

Section 9. Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or in accordance with any authority granted or delegated to them or any of them by or pursuant to this Declaration.

Section 10. First Mortgagees: Right to Examine Association Books. The holders of first mortgages or first Deeds of Trust on Lots shall have the right to examine the books and records of the Association.

Section 11. Loans to Association. Declarant may, at its discretion, loan funds to the Association from time to time as required, which loans shall be repayable with interest at 9.3% per annum as funds are available, but in no event more than one (1) year from the date of advancement of funds.

Section 12. Failure of Association to Pay Taxes and Special Assessments on Common Areas. In the event that the Association shall, contrary to its obligation to do so, fail to pay the ad valorem taxes or any special governmental assessments on the Common Area on or before expiration of one hundred eighty (180) days from and after the date on which the same shall become delinquent, then and in such event, said taxes or assessments, together with any interest and penalties thereon shall be and become a lien, on a pro rata basis, upon the Lots covered hereby. The governmental authority may foreclose such liens in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments and public

improvements.

Section 13. Conveyance of Property to Association. It is understood and agreed that Declarant, its successors and assigns, shall convey the Common Area to the Association free and clear of financial liens and encumbrances within one hundred eighty (180) days after the time the first Lot is conveyed to a purchaser other than Declarant. To the extent that any work or construction remains to be done with respect to the Common Area, then and in such event Declarant shall have theretofore delivered its contract and undertaking to complete such work or construction, lien-free, to the Association as the case may be.

Section 14. Declarant's Reservation of Rights. Declarant shall have, and may reserve in any conveyance of the Common Area, a non-exclusive easement in and to all streets, driveways, walkways and parking areas, provided and designated for common use from time to time, in the Common Area, subject, however, to such reasonable rules and regulations as may be established for their use by the Association. Declarant shall also have the right and easement to enter upon the Properties for all reasonable purposes relating to the construction, protection, sale, repair, inspection and renovation of any improvements constructed thereon. The foregoing rights and easements shall continue for the term of this Declaration and shall be for the benefit of Declarant, its successors and assigns, and their agents and employees.

Declarant easements shall not be affected by any amendments of this Declaration, unless expressly approved in a written and recorded document by Declarant, its successors or assigns.

Section 15. Management Agreements. The Association shall have the right to enter into management agreements for the Properties. A copy of all such agreements shall be made available to every Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled, with or without cause prior to the expiration of said agreement, by an affirmative vote of sixty percent (60%) of the votes of each class of member of the Association.

Section 16. Emergencies. In the event of any emergency originating in or threatening any Lot, the managing agent or his representative or any other person designated by the Board may enter the Lot or improvements therein immediately, whether the Owner is present or not, and in such event, the Association reserves the right to enter such Lot or improvements by force without any liability to the Owner for any damage caused by such forcible entry.

Section 17. Headings. The heading to each Article and Section hereof is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

#### **Exhibit A. 700 Haymount Townhouses: Legal Description of the Properties**

Located in the City of Fayetteville, Cumberland County, North Carolina, and described as follows:

Beginning at an iron pipe set at the intersection of the southern right of way of Athens Avenue (being 1.5 feet south of the back of the southern curb line) and in the western right of way of Hillside Avenue (being the western margin of the existing concrete sidewalk) and running thence with said western right of way of Hillside Avenue South 19 degrees 41 minutes 00 seconds West 220.94 feet to an iron pipe set on the northern right of way of Hay Street; thence with said northern right of way of Hay Street North 89 degrees 29 minutes 55 seconds West 278.5 feet to an iron pipe set; thence continuing with the northern right of way of Hay Street North 84 degrees 08 minutes 24 seconds West 25.24 feet to an iron pipe set; thence North 20 degrees 32 minutes 02 seconds East 111.02 feet to an iron pipe set on the southern right of way of Athens Avenue; thence with the southern right of way of Athens Avenue South 68 degrees 29 minutes 00 seconds East 249.84 feet to the point or place of beginning, and containing 1.67 acres according to a survey and plat by Rose and Purcell, Inc., in June of 1984.

