

BOOK 2989 PAGE 282

All those areas defined as "Common Area" on the map of Creek's Edge Townhomes, according to said map thereof recorded in Map Book _____ page _____ in the Office of the Register of Deeds of Cumberland County, North Carolina.

Section 7. "Declarant" shall mean and refer to THOMAS FAMILY BUSINESS, INC., its successors and assigns, if such successor or assign acquire more than one undeveloped lot from Declarant for the purpose of development.

Section 8. "Member" shall mean the member(s) of and holder(s) of a certificate in the Association.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Owners' Easements of Enjoyment. The title to the Common Area shall be preserved to the perpetual benefit of the Association and its Owners. Every Owner and other member of the Association shall have a non-exclusive 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 or unit, subject to the following provisions:

(a) 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 may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

(b) The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Each Owner and other Member of the Association shall have a non-exclusive easement over the Common Area for access, ingress and egress from and to public streets and walkways in addition to the easement for enjoyment of the Common Area hereinabove granted to each Owner of a Building Site.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Every Owner of a lot or unit which is subject to assessment as hereinafter provided shall become a member of the Association upon acquiring fee simple title to a lot, unit or building site.

Membership shall be appurtenant to and may not be separated from ownership of any lot or unit which is subject to assessment.

Section 2. The Association shall have one class of voting stock. The members shall be entitled to one certificate in the Association and to one vote for each Lot or Unit owned. When more than one person holds an interest in any Lot or Unit, all such persons shall be members, but the ownership of such Lot or Unit shall be evidenced by one certificate in the Association and the vote for such Lot or Unit 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 or Unit. Provided however, that a single owner of a Lot upon which more than one dwelling unit exists, such Owner shall have one vote for each existing unit.

Section 3. All voting rights in the Association shall remain in and belong to the Declarant until the conveyance of a Lot or Unit by fee simple deed to another owner.

Upon the sale of a Lot or Unit, Declarant shall transfer and convey without charge to the Owner(s) of each Lot or Unit one share of stock in the Association and all voting rights evidenced thereby. Declarant shall thereafter continue to own and be entitled to vote one share of stock in the Association for each lot or unit which it shall still own and be subject to its pro-rata share of the assessments thereon provided in Article IV below.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessment.

Each Owner of any Lot or Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association, commencing on the date Declarant shall transfer and convey to such Owner a certificate in the Association as provided in Section 7 of this Article IV below:

- (1) annual assessments or charges for the provision of liability insurance, any taxes, maintenance of the streets and parking areas, fencing, recreation and other facilities located on the Common Area, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- (3) to the appropriate governmental taxing authority, a pro-rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefore for a period of six (6) months, all as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Building Site against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Building Site at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, protection and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area in and of the homes situated within Creek's Edge Townhomes.

Section 3. Maximum Annual assessment.

(a) Upon the transfer and conveyance by Declarant of the first certificate in the Association to an Owner, Declarant and such Owner shall set the maximum annual assessment per lot or unit. Such maximum annual assessment shall remain in force until the following January 1st.

(b) From and after January 1 of the year immediately following the transfer and conveyance by Declarant of the Certificate in the Association to the Owner, the maximum annual assessment may be increased above five (5%) percent per annum by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a public or private capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members in the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of owners or of proxies entitled to cast sixty percent (60%) of all the votes the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at the uniform rate for all Lots or Units and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments for each Lot or Unit provided for herein shall commence on the date Declarant shall transfer and convey to the Owner(s) of such Lot or Unit a certificate in the Association.

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 or Unit at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Unit have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine (9%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Unit.

Section 9. Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association. Upon default of the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for insurance for or public improvements to the Common Area, which default shall continue for a period of six (6) months, each owner of a Lot or Unit in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of certificates in the Association. If such sum is not paid by the Owner within thirty (30) days following the receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot or Unit of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot or Unit of the Owner.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot or unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

PERMITTED TYPES OF CONSTRUCTION

Section 1. Zero Lot Line Development. It is the intent of the Declarant herein that the properties described herein may be developed as a Zero Lot Line Development. The applicable provisions of the Cumberland County Code, entitled "Subdivision Regulations", Section 3.24 are incorporated herein by reference.

Section 2. Residential Construction.

(a) Single Family. Lot 12 of said subdivision shall be used for a single family dwelling only. Any of the remaining lots may be used for a single family residence, but may so be used as hereinafter set out.

(b) Duplexes. Lots 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, may be used for construction of Duplex Residences, containing no more than two (2) family residences.

(c) Quadruplexes. The lots in the subdivision remaining (excluding those enumerated in (a) and (b) above), may be used for construction of Quadruplex Residences, containing no more than four (4) family residences.

ARTICLE VI

USE RESTRICTIONS

Section 1. Land Use. No lot shall be used except for residential purposes. No structure more than two and one-half (2½) 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 2. Set Back Requirements.

(a) Front set back requirements shall be determined according to the minimum requirements of the applicable Zoning District as provided in the Cumberland County Zoning Ordinance.

(b) Rear Yard Requirements.

1. All lots on the periphery of the development as shown on the recorded plat of Creek's Edge Townhomes, shall be subject to the set back requirements of the applicable Zoning District.

2. All lots in the interior of said development shall have a rear yard depth of not less than 20 feet.

(c) Side Yard Requirements. Side Yard width shall be measured from exterior walls, not party walls, to the adjoining lot line.

Single story structures shall have a minimum side yard of not less than 10 feet in width on each side of the structure; and two story structures shall have a minimum side yard of not less than 12 feet in width on each side of the structure.

Nothing in this section shall prohibit the construction of adjoining units using a party wall along the lot line dividing two lots, provided, the side yard requirements are met on each side of the exterior walls.

Section 3. Temporary Structures. No structure of a temporary character, nor trailer, basement, tent, shack, garage, 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 4. 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 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 5. Pets. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of the premises.

Section 6. Fences. No fence of any type shall be erected on any lot in said subdivision nearer to the street than the front corner of the structure, except privacy fences erected by Declarant.

Section 7. 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 8. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party wall as that term is defined in Article II, Section 4, and of liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right to any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or wilful acts or omissions.

Section 4. 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 by furnishing the necessary protection against such elements.

ARTICLE VIII

EASEMENTS

Section 1. Easements for Utilities and Drainage. Except as wherein occupied by a party wall, a five (5) foot drainage easement is hereby reserved along all interior lot lines. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water.

Section 2. Easements 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.

Section 3. 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 unit owners affected being first obtained.

Section 4. Streets. All areas indicated as streets and easements on the recorded plat are hereby dedicated to public use for such uses forever.

ARTICLE IX

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

BOOK 2989 PAGE 288

cables and/or the installation of street lighting, either or both, of 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 X

ARCHITECTURAL CONTROL

No structure shall be erected on the subject properties until plans and specifications with the proposed site therefor having been submitted to and approved by the Declarant as to outward appearances and design, and a written permit therefor or notification of approval on said plans having been issued; PROVIDED, HOWEVER, that if Declarant fails to approve or disapprove such plans within 15 days after the same have been submitted, such approval shall not be required.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. So long as Declarant is an owner of a lot or unit 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. 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 of the lots in said subdivision.
- B. When Declarant its successors or assigns, is the owner of one or more lots, but is not the owner of one-half of the total lots, by an instrument executed by Declarant its successors and assigns, and by sufficient other lot owners to constitute one-half 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 of the total lots within said subdivision.

Section 4. Covenants Run With the Land. These Restrictive Covenants shall run with and bind the land, and shall inure 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 re-

BOOK 2989 PAGE 289

corded, 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, THOMAS FAMILY BUSINESS, INC., has caused this instrument to be signed in its name by its President, attested by its Secretary and its Corporate Seal to be hereto affixed, all by proper authority duly granted by its Board of Directors, this the 19th day of April 1984.

THOMAS FAMILY BUSINESS, INC.

ATTEST:

Alexander H. Thomas
ALEXANDER H. THOMAS, Secretary

BY: Raymond Carroll Thomas
RAYMOND CARROLL THOMAS, President
(CORPORATE SEAL)



STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Elizabeth P. Hager, a Notary Public of said County and State certify that Alexander H. Thomas personally came before me this day and acknowledged that he is Secretary of Thomas Family Business, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by Alexander H. Thomas as its Secretary.

WITNESS my hand and Notarial Seal, this the 19th day of April 1984.

Elizabeth P. Hager
NOTARY PUBLIC

My commission expires:
September 3, 1984

NORTH CAROLINA, CUMBERLAND COUNTY
The foregoing or annexed certificate of Elizabeth P. Hager

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

This instrument was presented for registration and recorded in this Office at Book 2989, Page 289
This 20 day of April, 1984 at 11:30 O'clock A M.

Marion Clark
Register of Deeds

By William G. Fisher
Deputy Register of Deeds