

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

RPC Coffey 1/7/86

FILED
BOOK 1121 PAGE 142

THIS DECLARATION, made this 14th day of November, 1983, by MAISONET DEVELOPERS, INC., a North Carolina corporation, hereinafter referred to as the "Declarant".

NOV 14 1983
KATH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

WITNESSETH:

WHEREAS, Declarant is the owner of a parcel of land located in Triangle Parkwood West Fire District Township, Durham County, North Carolina, which is more particularly described as follows:

BEGINNING at a stake located in the eastern property line of Five Oaks Drive, which stake is located 275.59 feet from the northeast intersection of Five Oaks Drive and Pine Cone Drive, if extended, being the southwest corner of Lot 3, as shown on the plat hereinafter referred to; and running thence along and with Five Oaks Drive North 12° 06' 12" East 72.85 feet to a stake; thence continuing in a northerly direction along a curve having a radius of 687.09 feet a distance of 61.54 feet to a stake; thence South 72° 38' 50" East 123.70 feet to a stake; thence South 17° 21' 10" West 134 feet to a stake; thence North 72° 38' 50" West 114.16 feet to a stake in the eastern property line of Five Oaks Drive, the point and place of BEGINNING, and being shown on that plat and survey entitled Phase One, Building One, Farrington Townhomes at Five Oaks, dated October 1983, by John C. Atkins, ELS, and recorded in Plat Book 104, at page 44, Durham County Registry.

NOW, THEREFORE, Declarant hereby declares that all of the property above-referred to shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Farrington Townhomes Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple

title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) now or hereafter shown on any recorded subdivision plat of the Properties, excepting always the numbered lots shown thereon, or such real property hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the owners of the Properties.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Maisonet Developers, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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 as well as an easement over the Common Area for access, ingress and egress from and to public streets and walkways which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable fees for the use of any recreational facility situated upon the Common Area, if any;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities situated upon the Common Area by an owner for any period during which any assessment against his Lot, as provided herein, remains unpaid; and for a

period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, 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 agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Association to limit the number of guests of members as to use of any recreational facilities situated upon the Common Area;

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage and grant liens and encumbrances upon said Common Area and facilities, the right of any such mortgagee of the Common Area and facilities shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the Association, through its Board of Directors, to determine the time and manner of use of any recreational facilities situated upon the Common Area;

(g) the right of the Association to reasonably regulate, locate and direct access routes as to the easement for access, ingress and egress, and to designate parking locations.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Properties.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership

shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three votes for each Lot owned, specifically including additional Lots annexed by Declarant as provided in Article XI. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

*u Declarant
= Masoner
Developers*

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 1987.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS ←

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot 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 attorney's fees for the collection thereof, shall also be the personal 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 unless expressly assumed by them; provided, however, the same shall be and remain a charge and lien upon any such Lot and improvements until paid or otherwise satisfied except as may herein otherwise be provided.

The Declarant shall not pay any assessments, annual or special, on any Lot prior to construction of a townhouse located thereon or during construction of the townhouse until a certificate of occupancy has been issued.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, of the townhouses situated upon the property and exterior building and ground maintenance as provided in Article VI.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Twenty and No/100 Dollars (\$420.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 20% above the maximum assessment for the previous year without a vote of the membership, as hereinbelow provided.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 20% by a vote of two-thirds of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

#35.-/yr

⇒ $\frac{35 \times 20}{100}$
⇒ 7.5
⇒ #42.5
w/in 20% increase

420 | 112
36 | 35
60

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

*

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

2/3 VOTE
A MUST

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not 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. Special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due

← i.e.
must give
30 days
notice
(written)

dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

← probably to clear any lien against the property (if applic.)

8%
(730 days past due)

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid thirty (30) days after the due date shall bear interest from the due date at the rate of 8% per annum. In the event an Owner becomes delinquent in the payment of any assessment, the Association shall notify the holder of any first mortgage, deed of trust or similar security interest upon said Lot. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot and interests, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for under this Article IV and Article X hereafter shall be subordinate to the lien of any first mortgage, deed of trust or similar security interest owned or held by an institutional lender, and subordinate to tax liens and special assessments 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 pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Insurance Assessments. The Board of Directors or its duly authorized agent shall have the authority

to and shall obtain insurance for all buildings owned by the Association against loss or damage by fire or other hazards in the amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all Common Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance shall include coverage against vandalism.

* Premiums for all such insurance shall be common expenses. All such insurance coverage shall be written in the name of the Association as Trustee for each of the Lot Owners in equal proportions. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by said Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractor or they may negotiate with any contractor. The contractor performing the repair or reconstruction shall be required to provide full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors may levy a special assessment against all members of the Association, as established by Article IV, Section 4, above, or upon concurrence of two-thirds (2/3) of each class of members, and the respective mortgagees, may borrow sufficient funds to make up any deficiency for repair or rebuilding of the Common Areas and facilities.

It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, hazard insurance, homeowner's liability insurance, theft and other insurance covering property damage and loss; provided, however, that each Owner shall be and is required at a minimum to carry fire and extended coverage insurance on his townhouse for the full insurance value thereof, said insurance to name the Association as a loss payee, as its interest may appear, and to provide for a thirty (30) day notice prior to any cancellation thereof to the Association. Each Owner shall cause the Association to be provided with satisfactory evidence that such insurance is in force and as to payment of the premium therefor on an annual basis. In the event the Owner shall fail to maintain fire and extended coverage on his townhouse, the Association shall procure insurance thereon and the cost shall be assessed against said Owner's Lot and shall be added to and become part of the annual maintenance assessment or charge to which such Lot is subject under this Article IV and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided under this Article. In the event of damage or destruction by fire or other casualty to any townhouse located upon a Lot, the Owner shall, with concurrence of the mortgagee, if any, and the Association, upon receipt of the insurance proceeds, rebuild or repair such damaged or destroyed portions of his townhouse to as good condition as formerly.

See amendment

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or

more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. No planting, object or landscaping change or addition on a Lot, other than within the patio (fenced) area, shall be made until approved in writing by the architectural committee. The Association shall have the right to bring action to enjoin any activity taken in violation of this Article.

ARTICLE VI

EXTERIOR BUILDING AND GROUND MAINTENANCE

Section 1. Building Maintenance. The Association shall provide exterior building maintenance upon each townhouse located on a Lot which is subject to assessments under Article IV hereof, as follows: paint, repair, replacement and care for roofs, gutters, party fences, downspouts and exterior building surfaces (other than windows, screens and glass doors). Such building maintenance shall not include exterior door and window fixtures and other hardware and decks or patios.

Section 2. Grounds Maintenance. The Association shall provide care, maintenance and replacement of the driveways, walks, grass, trees, shrubs and plantings on each Lot; provided, however, within the patio (fenced) area of each townhouse located on a Lot, such maintenance shall only include the cutting of grass, the application of necessary fertilizer and general maintenance of the lawn located within the patio (fenced) area of each townhouse located within the subdivisions subject to this Declaration. The Association shall not be responsible for the trimming, replacement and maintenance of any plants, trees or shrubbery located within the patio (fenced) area of any Lot subject to the terms of these covenants.

Section 3. Assessment of Cost. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, or is caused by fire, smoke, lightning or other casualty as defined

and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

In the event an Owner of any Lot in the Property shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day, specifically including the right to repair or maintain any water or sewer line which may cross any Lot.

ARTICLE VII

PARTY WALLS AND FENCES

Section 1. General Rules of Law to Apply. Each wall and fence which is built as a part of the original construction of the townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Notwithstanding anything herein to the contrary, each fence which is placed on the dividing line between the Lots may be removed with the consent of both contiguous Owners.

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

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

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

USE RESTRICTIONS

Section 1. The Properties are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon said Properties shall be of new construction and no buildings or structures other than townhouse buildings, being single family townhouses joined together by a common exterior roof, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of said Properties at any time as a residence, either temporarily or permanently.

Section 2. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provision hereof.

Section 3. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for Declarant or the builder of said townhouses to maintain during the period of construction and sale of said townhouses, upon such portion of the Properties as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably necessary, convenient or incidental to the construction and sale of said townhouses, including, but without limitation, a business office, storage area, construction yards, signs, model townhouses and sales office.

Section 4. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

Section 5. No advertising signs (except "for rent" or "for sale" signs), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Properties, nor shall said Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any townhouse or any resident thereof. No business activities of any kind whatsoever shall be conducted in any townhouse or in any portion of said Properties; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 6. 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 townhouses and streets. All rubbish, trash or garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate therein.

Section 7. No trailer, camper, boat or mobile home shall be placed on the Properties at any time, either temporarily or permanently.

Section 8. Except within the individual patio (fenced) areas appurtenant to a townhouse, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said Properties except such as are installed in accordance with the initial construction of the townhouses located thereon or as approved by the Association's Board of Directors or their designated committee. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Properties outside the exterior Lot lines, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the benefit of all Members in the Association, and is necessary for the protection of Lot Owners.

Section 9. Rental of Townhouse by Owners. The respective townhouses shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than six (6) months; or (b) any rental if the occupants of the Unit 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 obligations, the owners of the respective townhouses, including the Declarant, shall have absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the Articles of Incorporation and Bylaws of the Association.

Section 10. Maintenance, upkeep and repair of any patio or deck, screens and screen doors, windows, glass doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the individual Owner of the Lot appurtenant thereto and not in any manner the responsibility of the Association. Any action necessary or appropriate to the

proper maintenance and upkeep of the Common Area and facilities and all exteriors and roofs of the townhouses, 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 11. All fixtures and equipment installed within a townhouse commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a townhouse (except that with respect to (i) the water lines, beginning at the meter for each respective Lot, and (ii) the sewer lines, beginning at the property line for each respective Lot), shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another townhouse or impair any easement nor do any act nor allow any condition to exist which will adversely affect the other townhouses or their Owners.

Section 12. Without prior written approval and the authorization of the Board of Directors, 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 13. Uniform reasonable rules and regulations concerning the use of the Properties may be adopted, amended and rescinded from time to time by the Board of Directors of the Association. The rules and regulations shall not conflict with the Declaration.

Section 14. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of another Owner.

ARTICLE IX

EASEMENTS

Section 1. Each townhouse and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant, and subject to an easement for maintenance of said encroachments and an easement for maintenance of an adjacent townhouse. In the event the multi-family structure containing two or more townhouses is partially or totally destroyed, and then rebuilt, the owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. There is hereby created a blanket easement upon, across, over and under all of said Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system to service the property subjected to this Declaration and any additions thereto. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the Properties; to maintain electrical and/or telephone wires and conduits underground on the Properties; and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said townhouses. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewer lines, electrical lines, water lines or other

utilities may be installed or relocated on said Properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Board of Directors. Further, provided, however, that any use of easements herein granted shall not be detrimental to any improvements located on the Properties. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article IX shall in no way affect any other recorded easement on the Properties.

ARTICLE X

THE FIVE OAKS RECREATIONAL ASSOCIATION, INC.

The property described on page 1 upon which the buildings and improvements are, or are to be, located has been subjected, by instrument recorded in Book 1137, pages 5 et seq., Durham County Registry, to that portion of the Declaration of Covenants, Conditions and Restrictions for the Five Oaks Project ("Five Oaks Declaration"), dated December 9, 1975, recorded in Deed Book 432, pages 306 et seq. that extends to owners and occupants of the townhouses herein membership, together with all rights, privileges and obligations appertaining thereto, in The Five Oaks Recreational Association, Inc. Each Owner of any townhouse subject to this Declaration, 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 Five Oaks Recreational Association, Inc.: (1) annual assessments or charges, and (2) special assessments for capital improvements, such annual and special assessments to be established, collected and enforced as provided under Article X of the Five Oaks Declaration recorded in Deed Book 432, pages 306 et seq., Durham County Registry, the provisions of which Article are incorporated herein by reference. All such annual and special assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and lien upon the Lot

of the respective Owners thereof, and the same 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 for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Owner, or Owners, of such Lot at the time when the assessment became due. The personal financial obligation for delinquent assessments shall not pass to successors in title to any such Lot unless expressly assumed by such purchasers; provided, however, the same shall be and remain a charge and lien upon any such Lot until paid or otherwise satisfied, except as otherwise provided under the Five Oaks Declaration. Owners of the Lots subjected to this Declaration, other than the Declarant, shall be deemed to be Class A members of The Five Oaks Recreational Association, Inc., as provided under Article X of the Five Oaks Declaration recorded in Deed Book 432, pages 306 et seq., Durham County Registry. No Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the recreational facilities of The Five Oaks Recreational Association, Inc., or abandonment of his Lot.

ARTICLE XI

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. The Declarant is the owner of additional lands within the immediate vicinity of the Properties being made subject to this Declaration. If, within seven (7) years from the date of filing this Declaration, the Declarant (including successors and assigns) shall develop additional lands, such additional lands may be annexed to the Properties without the assent of the Class A members of the Association or their mortgagees; provided, however, the development of the additional lands shall be in accordance with a plan for development for the property approved by applicable governmental authorities.

Section 2. Any annexation of property under this Section shall be effected with an appropriate instrument which extends the Covenants, Conditions and Restrictions hereof to any

property being annexed, said property to be described in such instrument.

Section 3. Nothing herein shall be deemed to require the Declarant to annex additional property and said additional property, before being added, is not subject to this Declaration nor to any charge or encumbrance by reason of this Declaration (there being no such charge or encumbrance, express or implied), and may be (instead of being added) conveyed, pledged and transferred by the Declarant (or by any owner of said additional property) totally free of this Declaration.

Section 4. Annexation of additional property by persons, firms or corporations other than the Declarant shall require the consent of two-thirds (2/3) of each class of members.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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. 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, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

*needed for
amendment*

Section 4. Declarant's Right to Amend Declaration With Approval of Veterans Administration or Department of Housing and Urban Development. In the event that the Declarant shall seek to obtain approval of this Declaration and the plan of development of the Properties in order that the Lots and improvements constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD"), or other governmental agency, such agency or agencies may require changes in this Declaration in order to make the Lots and improvements thereon eligible for such loans. In such event, the Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment.

Section 5. Easement for Construction Purposes. The Declarant shall have full rights of ingress and egress to and through, over and about the Common Areas during such period of time as the Declarant is engaged in any construction or improvement work on or within the property described or additional property and shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc., which are being utilized in such development or construction. No Owner, his guests or invitees shall in any way interfere or hamper Declarant, his employees, successors or assigns in connection with such construction.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its appropriate officers, all by authority of its Board of Directors, duly given, the day and year first above written.

MAISONET DEVELOPERS, INC.

BY Richard M. Heston
Vice President

ATTEST:

Jervis P. Wade
Secretary

NORTH CAROLINA

DURHAM COUNTY

I, Janis Chorman, a Notary Public, do hereby certify that Janis P. Wade personally appeared before me this day and acknowledged that she is Secretary of MAISONET DEVELOPERS, INC., a North Carolina corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and notarial seal, this 14th day of November, 1983.

My commission expires:
March 4, 1987

Janis Chorman
Notary Public

FILED
BOOK 1137 PAGE 107
NOV 14 1 44 PM '83
RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

State of North Carolina - Durham County
The foregoing certificate(s) of Janis Chorman
A Notary (Notaries) Public of the Designated Governments
units is (are) certified to be correct.
This the 14 day of Nov. A.D. 1983
Ruth C. Garrett Monica P. Kiri
Register of Deeds By: Assistant, Deputy
Register of Deeds

NORTH CAROLINA JUL 29 2 10 PM '85

DURHAM COUNTY RUTH C. GARNETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

AMENDMENT TO
DECLARATION OF COVENANTS,
RECORDED BOOK 1137, PAGES 147
ET SEQ., DURHAM COUNTY REGISTRY

THIS AMENDMENT, made this 8th day of December, 1985, by the undersigned, hereinafter referred to as the "Lot Owners", to the Declaration of Covenants, Conditions and Restrictions dated November 14, 1983, and recorded November 14, 1983, in Book 1137, pages 147 et seq., Durham County Registry, hereinafter referred to as the "Declaration".

W I T N E S S E T H:

WHEREAS, the Declaration contains easements, restrictions, covenants and conditions upon certain real property located in Triangle Parkwood West Fire District Township, Durham North Carolina; and

WHEREAS, the Declaration provides, pursuant to Article XII, Section 3, that the Declaration may be amended by an instrument signed by not less than ninety per cent (90%) of the Lot Owners; and

WHEREAS, the undersigned constitute not less than ninety per cent (90%) of the Lot Owners of the real property subjected to the Declaration, as amended; and

WHEREAS, the undersigned Lot Owners desire to amend Article IV, Section 10, as hereinafter set forth:

NOW, THEREFORE, pursuant to Article XII, Section 3, of the Declaration, Article IV, Section 10, entitled Insurance Assessments, shall be amended by deleting the second paragraph thereof and inserting the following:

The Board of Directors, or its duly authorized agent, shall assure that each townhouse is insured against loss or damage by fire, lightning, or other hazards, and extended coverage in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, so that the architectural integrity of the project may be maintained and no townhouse left in damaged or destroyed condition because the owner has not obtained insurance. To perform this responsibility, the Board of Directors shall obtain a blanket insurance policy covering all the townhouses with the loss payable to the Association, in which event the premium paid for the blanket policy shall be paid by the Association and included within the annual assessment as a common expense. In the event of damage or destruction by fire or other casualty to any townhouse located upon the lot, the Association shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds rebuild or repair such damage or destroyed portions of the townhouse to as good condition as formerly.

AMENDMENT

IN WITNESS WHEREOF, the undersigned Lot Owners have hereunto set their hands and seals, all as of the day and year first above written.

Unit Numbers Lot Owners

Sally G. Linnell 4201 Clifford Shore (SEAL)
Witness