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BOOK 3157 PAGE 756

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR KIRKWALL VILLAS
AS THE SAME ARE SHOWN ON A MAP RE-
CORDED IN BOOK OF MAPS 1983
PAGE 894 WAKE COUNTY REGISTRY

THIS DECLARATION, made this 12th day of August,
1983 by Bell Properties, Inc., a North Carolina corporation
with its principal office and place of business in Wake
County, North Carolina, hereinafter referred to as the
"Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in
St. Mary's Township, County of Wake, State of North Carolina,
which is more particularly described as follows:

SEE ATTACHED EXHIBIT A

AND WHEREAS, Declarant has deemed it desirable for the
efficient preservation of the values and amenities in said
community to create an agency to which should be delegated
and assigned the powers of owning, maintaining and administering
the community properties and facilities and administering
and enforcing the covenants and restrictions and collecting
and disbursing the assessments and charges hereinafter
created, and promoting the recreation, health, safety and
welfare of the residents;

NOW, THEREFORE, Declarant hereby declares all of the
property described herein in the attached Exhibit A to be
held, sold, and conveyed subject to the following easements,
restrictions, covenants, and conditions, all of which are

PRESENTED
FOR
REGISTRATION
AUG 15 10 07 AM '83
J. B. MCKENZIE, JR.
REGISTER OF DEEDS
WAKE COUNTY, N.C.

for the purpose hereinabove set forth and for the further purpose of enhancing and protecting the value, desirability, and attractiveness of the real property, and which shall run with the real property, and shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Kirkwall Villas Homeowners 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 an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to all that certain real property described herein in attached Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association pursuant to the terms hereof.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

SEE ATTACHED EXHIBIT B

Section 5. "Lot" shall mean any plot of land regardless of size shown upon the last recorded subdivision map of the properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the common area.

Section 6. "Declarant" shall mean and refer to Bell Properties, Inc., a North Carolina corporation, its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development, and subject to such terms and conditions as the Declarant may impose.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Dwelling" shall mean and refer to the main structure constructed on each lot for inhabitation by the owner of said lot, his or its successors, assigns, heirs, tenants or guests.

ARTICLE II

PROPERTY RIGHTS

Section 1. Members' easements of enjoyment: Every member shall have a right of enjoyment in and to the common area and such right shall be appurtenant to and shall pass with the title to every lot subject to each of the following provisions:

(a) The right of the Association to limit the number of guests of members; the right of the Association to charge

reasonable admission and other fees for the use of any recreational facilities situated upon the common area;

(c) The right of the Association to lease the use of any recreational facilities for operations, lessons, or for special events, and to allow such lessee to charge admission or other fees for operations, lessons, or special events. For special events not exceeding four days and when otherwise deemed appropriate by the Association, the general right of use by the membership may be suspended;

(d) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage the common area, or any portion thereof, except private streets thereon, if any, and the rights of such mortgagee in said properties shall not be subordinate to the rights of the members hereunder; provided, however, that the execution of such mortgage shall require the same approval of the membership which is required for special assessments for capital improvements as set forth herein below in Article IV, Section 4 of this Declaration.

(e) The right of the Association to suspend the voting rights and right to the use of any recreational facilities by a Class A member or any person to whom that member has delegated his right of enjoyment for any period during which any assessment against that member's dwelling unit remains unpaid; and for a period not to exceed sixty (60)

days, for any infraction of its published rules and regulations; however, in the event of such a suspension of voting rights and use of recreational facilities and at the termination of such period of suspension all or any portion of any assessment against his dwelling continues to remain unpaid then the Association shall again have the right to suspend the voting rights and right to the use of any recreational facilities by such members or any person to whom he has delegated his right of enjoyment for an additional period, not to exceed sixty (60) days of suspension and such right shall continue in the Association so long as said assessment remains unpaid;

(f) 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 members entitled to cast two-third (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member and not less than thirty (30) days nor more than sixty (60) days in advance; provided, further, however, that the Board of Directors, without the joinder of the members, may dedicate or transfer any private street to the Town of Garner or other governmental entity that assumes responsibility for maintenance of such street.

(g) The right of the individual members to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his or its right of enjoyment to the common area and facilities to those who reside in his dwelling subject to such general regulations as may be established from time to time by the Association.

Section 3. Title to the Common Area: The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, however, Declarant will not convey utility, antenna and drainage easements and other easements previously transferred or to be transferred to governmental authorities.

Section 4. Parking Rights: Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon such parking areas. The Association shall have the right to assign one (1) vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, campers, trailers, and the placing of tents and other such items on the common area. No automobiles, trucks, tractors, boats, campers, or trailers shall be parked

within the right of way of any public or private street in or adjacent to Kirkwall Villas Subdivision.

ARTICLE III

MEMBERSHIP

Section 1. Members: The Declarant, for so long as it shall be an owner, and every person or entity who is a record owner of a fee or undivided fee interest in any dwelling and/or lot which is subject to these covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such dwelling and/or lot shall be the sole qualification for membership, and no owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any dwelling and/or lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a dwelling and/or lot within the boundaries of the property described in Exhibit A attached hereto.

ARTICLE IV

VOTING RIGHTS

Section 1. Classes: The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all those owners as defined in Article I with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each dwelling and/or lot in which they hold the interest required for membership by that Article. When more than one (1) person holds such interest in any dwelling and/or lot all such persons shall be members. The vote for such dwelling and/or lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any dwelling and/or lot and no fractional vote may be cast with respect to any dwelling and/or lot.

Class B: The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each lot and/or dwelling in which it holds a fee or undivided fee interest, provided that 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:

(a) When the total votes outstanding in Class A membership equal the total number of votes outstanding in Class B membership; provided, that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power, if, after conversion of the Class B membership to Class A membership, as provided hereunder, additional lands are annexed to the properties without the assent of the members on account of the development of such additional

lands by the Declarant all within the times and as provided in Article VII Section 2 herein; or

(b) On June 21, 1986.

Section 2. Suspension of Voting Rights: The right of any Class A member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations and according to the provisions of this Declaration.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each dwelling and/or lot owned within the properties, hereby covenants, and every owner of any dwelling and/or lot covered by this Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on dwelling unit sites together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as

provided in North Carolina General Statutes 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the owner of such dwelling and/or lot at the time when the assessment fell due. The obligation of an owner for delinquent assessments shall pass to his or its successors, heirs, or assigns in title unless expressly exempted by the Association. All assessments relating to the common area shall be shared equally by the owners of each dwelling and/or lot.

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 of the properties and in particular for the acquisition, improvements and maintenance of the common areas and maintenance of lots and storm sewer and drainage easements whether or not located on the common area or the lots, and services and facilities devoted to this purpose including but not limited to, the costs of repairs, replacements and additions, the costs of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the common area, the procurement and maintenance of insurance in accordance with the By-Laws of the Association, the employment of attorneys to represent the Association when necessary and such other needs as may arise.

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 Forty Dollars (\$40.00) 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 effective January 1 of each year without a vote of the membership by ten (10%) per cent of the previous year's assessment.

(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 that limit set in sub-section (a) immediately above by a vote of the members for the next succeeding five (5) years and at the end of such period of five (5) years, for each succeeding period of five (5) years, providing that any such charge shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under the laws of the State of North Carolina.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximums herein provided for.

(d) In the event any portion or all of any common area is damaged or destroyed by an owner or any of his or its guests, tenants, licensees, agents, or member of his family, such owner does hereby authorize the Association to repair said damaged area; the Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs, labor and material, shall become a special assessment upon the dwelling and/or lot of said owner.

Section 4. Special Assessments for Capital Improvements:

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, and related to the reconstruction, repair or replacement of any storm sewer or drainage easements whether or not located on the common area or the lots provided

that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the time, place and purpose of the meeting.

Section 5. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all dwellings and/or lots and may be collected on a monthly basis. Provided, however, that the assessments for lots owned by Declarant which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty five (25%) per cent of the regular assessments for other dwellings and/or lots.

Section 6. Quorum for Action Authorized Under Sections 3 and 4: At the first and subsequent meetings called for the purposes stated in Sections 3 and 4 hereof the presence of members or of proxies entitled to cast sixty (60%) per cent 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 sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments

Due Dates: The annual assessments provided for herein shall commence as to all lots and/or dwellings on the first day of the month following the conveyance of the common area. 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 and/or dwelling 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. 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 for a specified dwelling have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date the assessment shall bear interest from the date of delinquency at the rate of twenty (20%) per cent per annum or the maximum legal rate of interest chargeable, whichever is less and the Association

may bring an action at law against the owner or owners personally obligated to pay the same, and interest, costs and a reasonable attorney's fees, as provided for hereinabove, of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the common area or abandonment of his dwelling and/or lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes: The lien of the assessments provided for herein on any dwelling and/or lot shall be subordinate to the lien of any first mortgage or deed of trust or first purchase money deed of trust representing a first lien on said property and ad valorem taxes on such lot. Sale or transfer of any dwelling and/or lot shall not affect the assessment lien, provided, however, that the sale or transfer of any dwelling and/or lot which is subject to any mortgage, pursuant to a degree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such dwelling and/or lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property: Any portion of the properties dedicated to, and accepted by, a local public authority and all properties owned by charitable or non-profit organizations exempt from taxation by the laws of the State of North Carolina

shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Responsibility for Maintenance of Private Streets and Sidewalks within the Common Area and Storm Sewer and Drainage Easements: The maintenance and responsibility of the private streets and sidewalks within the common area, and all storm, sewer and drainage easements, whether or not located on the common area, or the lots as shown on the aforesaid recorded plat shall rest with the Association.

Section 12. Annual Budget: By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by these Declarations and any and all supplementary declarations will be met.

ARTICLE VI

RESPONSIBILITY FOR MAINTENANCE OF LOTS AND DWELLINGS

Subject to the provisions of this Declaration, each owner shall be responsible for the maintenance of his or its lot and the maintenance and repair of the dwelling located upon that lot in accordance with the following in addition to all other responsibilities for maintenance thereof:

Section 1. Roof:

(a) The costs of reasonable repair and maintenance of the roof of the dwelling located on the lot of each owner

shall be shared by each owner in proportion to the area thereof located on his or its lot.

(b) If a roof is destroyed or damaged by fire or other casualty, any owner who has use of the roof must restore it, and if any other owner makes use of the roof, he or it shall contribute to the costs of restoration thereof in proportion to the area thereof located on his or its lot without prejudice, however, to the right of any such owner to call for a larger contribution from the other or any other under any rule of law regarding liability for negligent or willful acts or omissions. General rules of law relating thereto shall apply.

(c) The right of any owner to contribution from the other owner or any other owner under this Article shall be appurtenant to the land and shall pass to such owners, successors or assigns in title.

(d) If any owner desires to sell his or its property, he or it may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article, requests of the adjoining property owner a certificate that no contribution or claim for contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided, however, if there is such a charge or a claim for a charge such certificate shall contain a recital of the amount claimed.

Section 2. Party Wall:

(a) The wall which is built as a part of the original construction of the dwelling upon the properties and placed on the dividing line between the lots and all reconstruction or extensions of such wall shall constitute a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The costs of reasonable repair and maintenance of such party walls shall be shared by the owners who make use of the wall in proportion of such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall must restore it, and if any other owner makes use of the wall, he shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(d) The owner of any lot may construct, reconstruct or extend the party wall in any direction (subject to within the limitations of architectural control and other limitations of this Declaration) with the right to go upon the adjoining lot to the extent reasonably necessary to perform such construc-

tion. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining lot and/or dwelling to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

(e) Notwithstanding any other provision of this Article, an owner who by his or its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such element.

(f) The right of any owner to contribution from the other owner under this Article shall be appurtenant to the land and shall pass to such owners' successors in title.

(g) If any owner desires to sell his or its property, he or it may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article, requests of the adjoining property owner a certificate that no contribution or claim for contribution exists, whereupon it shall be the duty of the adjoining property owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining property owner claims a right of contribution, this certification called for shall contain a recital of the amount claimed.

Section 3. Exterior Maintenance:

(a) Each owner shall be responsible for the exterior maintenance of his or its unit, including that portion of the sidewalk located on his or its lot, and any

costs incurred in connection therewith.

(b) Maintenance shall include at least that required to keep the exterior of the unit in compliance with the provisions of the code of the Town of Garner, North Carolina and shall be done in harmony with the other attached unit or units.

(c) Should any unit owner fail to maintain the exterior of his unit in compliance with the provisions hereof, any other unit owner attached thereto may perform such maintenance and shall be entitled to a contribution from the unit owner failing to provide that maintenance equal to the costs of such maintenance.

(d) 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 owners' successors in title.

(e) If any owner desires to sell his or its property, he or it may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided for in this Article requests of the adjoining property owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 4. Arbitration: In the event of any dispute arising concerning a party wall, roof, or other exterior

maintenance or under the provisions of this Article, the nature and details of such dispute shall be presented to the Architectural Committee provided for in this Declaration which committee shall have sixty (60) days in which to render to the disputing parties a resolution of such dispute. Should said committee not render a decision within that sixty (60) day time period or should either disputing party not agree with such decision, then each party shall choose one arbitrator, and the two such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of the arbitrators chosen.

Section 5. Right of Contribution - Personal Obligation - Lien: All rights of contribution arising out of the provisions of this Declaration, together with interest, costs and reasonable attorney's fees, all as herein provided, shall also be the personal obligation of the owner at the time such right arose of the property subject to such rights.

The amount of any contribution shall bear interest at the rate of twenty (20%) per cent per annum (or the maximum legal rate of interest chargeable, whichever is less) from and after the date written notice thereof is given the owner of the property subject thereto by the owner of the property entitled thereto and shall become a lien against the property subject to such contribution in the amount thereof not paid within sixty (60) days after notice is given.

The owner of the property entitled to contribution herein may bring an action at law against the owner personally obli-

gated to pay the same, and/or to foreclose the lien against the property subject thereto.

Section 6. Maintenance by the Association: The Association, by and through its Board of Directors, shall have the right, should any owner fail to do so, and upon sixty (60) days notice thereof to such owner, to perform maintenance upon any lot and/or dwelling necessary to comply with the building regulations of the Town of Garner and to assess the costs of such maintenance to such owner, which assessment shall be a lien upon the lot and/or dwelling on which the maintenance is performed from and after the date notice of the amount thereof is mailed to the owner. Any such assessment shall be repayable to the Association by that owner as prescribed in the written notice to the owner of such assessment.

ARTICLE VII

ARCHITECTURAL CONTROL AND INSPECTION

Section 1. Architectural Review Board: An Architectural Review Board consisting of three (3) persons shall be appointed at or prior to the sale and transfer of title to the first lot by the Declarant. At such time as the Class B membership expires, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Plan or Design Approval: No site preparation or initial construction, erection or installation of any improvements, including but not limited to, residences, out-buildings, fences, walls, signs, antennas, landscaping and planting, clotheslines, and other structures, change in exterior

paint colors, excavation, or changes in grade shall be undertaken upon any dwelling lot or site unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvement shall have been submitted to Declarant or its agent (the Architectural Review Board) and expressly approved in writing. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any of the dwelling lots without the review and express written approval of the Architectural Review Board.

Section 3. Effect of Failure to Approve or Disapprove:

In the event that the Declarant or the Architectural Review Board, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Architectural Review Board if they contain erroneous data or fail to present adequate information upon which the Declarant or the Architectural Review Board, as the case may be, can arrive at a decision.

Section 4. Right of Inspection: Declarant or the Architectural Review Board shall have the right, at its or their election, to enter upon any of the properties during site preparation or construction, erection, or installation of any improvements referred to hereinabove, or others, to determine that such work is being performed in conformity with the approved plans and specifications.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation: Annexation of additional property, except as provided in Section 2 of this Article VIII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or proxies entitled to cast sixty (60%) per cent of the votes of each class of 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 above and the required quorum at such subsequent meeting shall be one half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not

present in person or by proxy members not present may give their written assent to the action taken thereat.

Section 2. If within five (5) years of the date of incorporation of this Association the Declarant should develop additional land within the boundaries shown on the general plan of Kirkwall Villas heretofore submitted to the Veteran's Administration and the Federal Housing Administration, such land may be annexed by the Declarant without the consent of members provided that the Veteran's Administration and the Federal Housing Administration determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations: The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the common area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a book of resolutions, which shall be maintained in a place reasonably convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Properties: Each dwelling lot or site, the common area and facilities shall be for the following

uses and subject to the following restrictions, and, in addition, those set forth in the By-Laws:

(a) All property designated for residential use shall be used, improved and devoted exclusively to residential use except for temporary offices of Declarant and/or model town-house used by Declarant.

(b) All recreational properties and amenities shall be used, improved and voted exclusively to recreational purposes for the benefit of the owners.

(c) No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed.

(d) No person shall undertake, cause, or allow any alteration or construction and/or upon any portion of the common area and facilities except at the direction of or with the express written consent of the Declarant or the Association.

Section 3. Quiet Enjoyment: No obnoxious or offensive activities shall be carried on upon the property nor shall anything be done which may become a nuisance or annoyance to any resident within the property.

Section 4. Animals: No animals, livestock or poultry of any kind shall be kept or maintained on any lot or within any dwelling on any lot except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for any commercial purposes.

Section 5. Dwelling Specifications: No dwelling shall

be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than nine hundred sixty (960) square feet.

ARTICLE X

EASEMENTS

Section 1. Walks, Drives, Parking Areas, Utilities,

Etc.: All of the properties, including lots, dwelling sites and common area shall be subject to such easements for driveway, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antennae lines, other public utilities, maintenance, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of common area to the Association; and the Association shall have the power and authority to grant and establish upon, over, under and across the common area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of properties.

Section 2. Encroachments and Declarant's Easement to

Correct Drainage: All dwelling unit sites, and the common areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. If any encroachment

shall occur subsequent to subjecting the properties to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment for the maintenance of the same. For a period of twenty five (25) years from the date of conveyance of the first lot in a parcel, the Declarant reserves a blanket easement and right on, over and under the ground within that parcel to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. Declarant shall give reasonable notice of intent to take such action to all affected owners, unless in the opinion of Declarant an emergency exists which precludes such notice. These rights and reservations are assignable by the Declarant.

Section 3. Easement to the Town of Garner: An easement is hereby established for municipal, state or public utilities serving the area, their agents and employees over all common area hereby or hereafter established for setting, removing, and reading water meters, maintaining and replacing water, sewer and drainage facilities, fire fighting and garbage collection or any other purposes consistent with the public safety and welfare.

ARTICLE XI

RIGHTS OF LENDERS AND INSURERS OF FIRST MORTGAGES

Section 1. Notice of Default to Mortgagee and Insurers of First Mortgages: In the event that any member is in default in any obligation hereunder which default remains uncured for a period of sixty (60) days, every lender who is a mortgagee as to the lot of the defaulting member and the insurer of any such first mortgage, shall be immediately notified of such default, provided that such lender and/or insurer shall have given written certified notice to the Association that it is a mortgagee or insurer as to the lot of such member and shall have requested the Notice of Default as herein set forth.

Section 2. Right to Inspect Books of the Association: Every first mortgagee and/or insurer of a first mortgage of the lot of a member of the Association shall have the right, during regular business hours, to examine the books and records of the Association.

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 way affect any other provision which shall remain in full force and effect.

Section 3. Exchange of Common Area For Other Portions of the Properties: Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may convey to the Declarant, as well as any other member, for fair market value, any portion of the common area theretofore conveyed to the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be common area and shall cease to be subject to the provisions of these covenants relating to the common area, and in any area thus conveyed to the Association shall become common area and subject to the provisions of these covenants relating to the common area. (The following hypothetical situation is by way of illustration, but not of limitation): Due to a surveying error an undesirable drainage area is designated for the location of dwelling lots. Under this provision, the Declarant and the Association exchange deeds so that the dwelling unit may be re-located within the common area and the area designated for dwelling unit lots may be converted to common area.

Section 4. Amendment: The covenants, conditions and restrictions of this Declaration shall run with and bind the

land and shall inure to the benefit of and be enforceable by the Association, or the owner of any dwelling lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded in the Office of the Register of Deeds of Wake County, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first thirty (30) year period or thereafter by an instrument signed by the owners of not less than ninety (90%) per cent of the dwelling units and/or lots provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without action or consent of the owners, and such amendment shall be certified as an official act of the Board and recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 5. Procedure for Certification and Recordation of Amendment: Any instrument amending these covenants, conditions and restrictions, (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following execution by the owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery do the following:

(a) Reasonably assure itself that the amendment has been executed by the owners of the lots as provided for in this Declaration. For this purpose, the Board of Directors may rely on its roster of members and shall not be required to cause any title to any lot to be examined;

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS OF
KIRK WALL VILLAS".

By authority of its Board of Directors, Kirkwall Villas Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the owners of ninety (90%) per cent of the dwelling lots of Kirkwall Villas and is, there fore, a valid amendment to the existing covenants, conditions, and restrictions of Kirkwall Villas.

This ____ day of _____, 19 ____.

KIRK WALL VILLAS HOMEOWNERS ASSOCIATION

BY: _____
President

ATTEST:

Secretary

(c) Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of proper recordation in the Wake County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the owners of dwelling lots in Kirkwall Villas.

Section 6. Declarant's Right to Amend Declaration With Approval of Veteran's 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 dwelling lots and improvements constructed thereon will be eligible for loans approved or guaranteed by the Veteran's Administration (herein called "V. A.") or the Department of Housing and Urban Development (herein called "HUD") or other governmental agency including without limitation Federal National Mortgage Association and that such agency or agencies will require changes in this Declaration in order to make the dwelling unit lots and improvements thereon eligible for such loans and 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, along with attached

evidence of approval by the appropriate governmental agency, in the Wake County Registry. A letter from an official of the V. A., HUD, or other appropriate governmental agency, requiring an amendment as a condition of approval, shall be sufficient evidence of the approval of V. A., HUD and/or such other agency.

Section 7. Right of Declarant or Association to Amend to Achieve Tax-Exempt Status: The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its option, and without the consent of any owner, in order to qualify the Association or the properties, or any portion thereof, for tax exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 8. Protective Covenants for Single Family Dwelling Lots: Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of dwelling unit lots for single family dwelling units and the size and location of buildings thereon.

Section 9. Conflicts: In the event of any irreconcilable conflict between this Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation of the Association shall control.

Section 10. V. A./PHA Approval: As long as there is a Class B membership, the following actions will require the prior written approval of the Veteran's Administration and the Federal Housing Administration:

- (a) Annexation of additional properties;
- (b) Dedication of common area;
- (c) Amendment of this document.

ARTICLE XIII

ELECTRICAL SERVICE

Declarant reserves the right to subject the property described in Exhibit A attached hereto to a contract with Carolina Power & Light Company for the installation of underground electric 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 Carolina Power and Light Company by the owner of each lot within said property.

IN WITNESS WHEREOF, the undersigned Declarant has caused this instrument to be executed in its corporate name by its President, and his signature to be attested and its seal to be hereunto affixed by its Secretary all by order and authority duly granted by its Board of Directors on this 12th day of August, 1983.



ATTEST:

M. Fairley Bell
M. Fairley Bell
Assistant Secretary

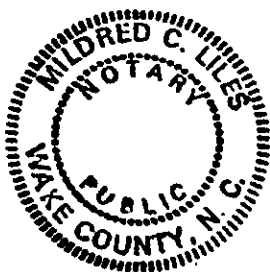
BELL PROPERTIES, INC.

BY: Victor E. Bell III
Victor E. Bell, III
Vice President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BOOK 3157 PAGE 791

This is to certify that on the 12th day of August 1983 before me personally came Victor E. Bell Jr Vice President, with whom I am personally acquainted, who being by me duly sworn, says that he is the Vice President and M. Laidley Bell is the Assistant Secretary of Bell Properties, Inc., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said Vice President and that the said Vice President and Asst. Secretary subscribed their names thereto, and said common seal was affixed all by order of the Board of Directors of said corporation and that the said instrument is the act and deed of said corporation. Witness my hand and official seal this 12th day of August, 1983.



Mildred C. Liles
Notary Public

My commission expires: 8-19-85

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of Mildred C. Liles

Notary Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

R. E. McLENNAN, JR., Register of Deeds

James B. Johnson
Deputy Register of Deeds

EXHIBIT A

BEGINNING at a point in the North right of way line of Poole Drive said point marking the Southwesternmost corner of the tract now described; runs thence from said beginning point and leaving the North right of way line of Poole Drive North 10 degrees 07 minutes 56 seconds East 444.94 feet to a point; runs thence South 88 degrees 13 minutes 31 seconds East 610.90 feet to a point; runs thence South 07 degrees 15 minutes 57 seconds West 237.72 feet to a point in the North right of way line of Poole Drive; runs thence with the North right of way line of Poole Drive South 74 degrees 27 minutes 16 seconds West 683.83 feet to the point and place of BEGINNING according to a map dated September 22, 1982 entitled "Kirkwall Villas, Garner, North Carolina" by McNeely Associates Landscape Architects & Planning Consultants, Raleigh, N. C.