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NORTH CAROLINA

WAKE COUNTY

REC. NO. 305
WAKE COUNTY, N.C.

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR TWIN OAK VILLAS
TOWNHOMES, BLOCK A OF PHASE I, KILDAIRE
FARMS SUBDIVISION RECORDED IN BOOK OF
MAPS 1980, PAGE 382, WAKE COUNTY
REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by
WILLIAMS ELDRIDGE COMPANIES, INC., a North Carolina Corporation,
hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in
Cary Township, Wake County, North Carolina, which is more particularly
described as:

Twin Oak Villas Townhomes, Block A of Phase I, Kildaire
Farms Subdivision, as shown on map recorded in Book of
Maps 1980, Page 382, Wake County Registry

WHEREAS, the Declarant desires that the said property become a
part of Kildaire Farms Subdivision; and

WHEREAS, Declarant will convey the said property, subject to
certain protective covenants, conditions, restrictions, liens and
charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that all of the
property described above shall be held, sold, and conveyed subject
to the provisions of that Declaration of Covenants, Conditions and
Restrictions of Kildaire Farms Subdivision recorded in Book 2491,
Page 388, Wake County Registry, as the same now is or is hereafter
amended, which provisions are herein incorporated by reference, and
subject to the following easements, restrictions, covenants, and
conditions, all of which are for the purpose of enhancing and
protecting the value, desirability and attractiveness of the real
property. These easements, restrictions, covenants, and conditions
shall run with the real property and shall be binding on all parties
having or acquiring any right, title or interest in the described
property 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 Twin Oak Villas Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3. "Building" shall mean and refer to a multi-unit structure containing townhomes constructed or erected on the Property.

Section 4. "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 5. "Common area" shall mean and refer to all real property within Kildaire Farms Subdivision owned by the Kildaire Farms Homeowners Association, along with facilities and improvements erected thereon, for the common use and enjoyment of all members of the Kildaire Farms Homeowners Association.

Section 6. "Common expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the townhomes as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the limited common areas;
- (d) Expenses declared to be common expenses by the provisions of this Declaration of the Bylaws;
- (e) Hazard, liability or such other insurance premiums as the Declaration or Bylaws may require the Association to purchase;
- (f) Expenses agreed by the members to be common expenses of the Association.

Section 7. "Common profits" shall mean and refer to the balance of all income, rents, profits, and revenues of the

Association remaining after the deduction of the common expenses or reserves therefor. Common profits shall not mean or include any sums lawfully assessed against members by the Association.

Section 8. "Declarant" shall mean and refer to Williams Eldridge Companies, Inc. a North Carolina corporation, its successors and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or one otherwise denominated a "Declarant" hereby.

Section 9. "Limited common area" shall mean and refer to all land within the Property owned by the Kildaire Farms Homeowners Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the members of the Twin Oaks Place Association as shown on the aforementioned recorded map and the maps of additional properties hereafter annexed as hereinafter provided. Said limited common area shall be maintained by the Association.

Section 10. "Lot" shall mean and refer to any plot of land, other than the common area, shown on a recorded subdivision map of the Property and upon which a townhouse has been or may be constructed.

Section 11. "Member" shall mean and refer to every person who is a member of the Association.

Section 12. "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 Property, including contract sellers, but excluding those who have such interests merely as security for the performance of an obligation."

Section 13. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 14. "Property" 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

by annexation.

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

ARTICLE II

ANNEXATION TO KILDAIRE FARMS SUBDIVISION

Upon the filing of this Declaration in the Registry of Wake County, North Carolina, the Property herein described, and any properties hereafter annexed in conformity with the provisions of this Declaration, shall be a part of the Kildaire Farms Subdivision, a planned unit development, as described in the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, recorded in Book 2491, Page 388, Wake County Registry, as the same now is or hereafter amended, and as shown upon plans for Kildaire Farms Subdivision heretofore filed with the Town of Cary, North Carolina.

Every owner of a lot within the Property shall be a member of the Kildaire Farms Homeowners Association and shall be subject to the provisions of said Declaration for Kildaire Farms and to the Bylaws, rules, and regulations of said Homeowners Association.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional properties and improvements, including limited common area, may be annexed in the manner provided in this Article to the Property herein described. Additional properties so annexed shall be merged with the Property herein described and any other previously annexed property, and shall be subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, hereinabove referred to, and to the provisions of this Declaration and to the Articles of Incorporation and Bylaws of the Association.

Section 2. At any time within ten (10) years following the date of incorporation of the Association, the Declarant may annex

additional townhome properties to the Property herein described. The total number of lots within the Property herein described and that subsequently annexed shall not exceed fifty-six (56). All properties annexed shall be contiguous to the Property herein described or to property previously annexed.

Section 3. In addition to annexations as provided in Section 2 of this Article, other contiguous townhome property may be annexed at any time with the express consent of two-thirds (2/3) of each class of members.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the limited common area which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

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

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the limited common area and facilities.

(c) The right of the Association to suspend the voting rights (and right to use of any recreational facilities located upon the limited common area) by a member, or any person to whom he has delegated his voting right, for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of owners to the exclusive use of parking spaces as provided in this Article.

(e) The right of the Association to formulate, publish, and enforce rules and regulations as provided in Article XI.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or

contract purchasers, provided, every such delegee shall reside on the Property.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common areas located in Phase I as shown upon the recorded map referred to in the premises of this Declaration, to the Kildaire Farms Homeowners Association, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first lot in each respective Parcel, except utility and drainage easements and easements to governmental authorities, upon condition that such area as shall be designated "limited common area" shall be for the sole and exclusive use and benefit of members, so long as such area is maintained in conformity with the requirements of this Declaration, the Bylaws, and the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, at the sole expense of the owners. Similarly, the Declarant will convey to the Kildaire Farms Homeowners Association, upon the same conditions and for the same uses and purposes, common areas which are parts of any additional properties that are annexed by it in the future.

Section 4. Parking Rights. The owner or owners of each lot shall be entitled to one automobile parking space and to the use of at least one additional parking space (provided, the Association, in its discretion, may permit the use of more than one additional space), and the parking space shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking spaces. No boats, trailers, campers or recreational vehicles shall be parked within the limited common area, greenways or rights of way of any public or private street in or adjacent to the Property. All boats, trailers, campers or recreational vehicles shall be parked only in such areas designated for parking such vehicles and upon such terms and conditions as shall be established by Kildaire Farms Development Corporation, its successors or assigns.

ARTICLE V
MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of both the Kildaire Farms Homeowners Association and the Twin Oak Villas Association. Ownership of such interest shall be the sole qualification for such membership; no owner shall have more than one membership in each Association and there shall be only one vote per unit in such Association. Membership shall be appurtenant to and may be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE VI
VOTING RIGHTS

Section 1. Classes. The Association shall have the following two classes of voting membership:

(a) Class A. Class A members shall be all owners, with the exception of the Declarant. Class A members 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 the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot 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:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided in Article III of this Declaration, or

(2) On January 1, 1999.

ARTICLE VII

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Property upon which a townhome has been constructed and a certificate of occupancy may be issued thereon, hereby covenants, and every other owner of any lot 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; and
- (c) Special assessments for purchase and reconstruction of townhomes as hereinafter provided.

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

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless

expressly assumed by them and then only with the consent of the Association. All assessments shall be shared equally by the owners of each lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; improving and maintaining the Property and the townhomes situated thereon; and providing the services and facilities for purposes of and related to the use and enjoyment of the common area and facilities.

Section 3. Amount of Assessment.

(a) Initial Assessment. To and including December 31, 1980, the initial annual assessment shall not be in excess of Four Hundred Eighty and 00/100 (\$480.00) Dollars per lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1980, the annual assessment effective from any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed twice the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1.

(Explanatory Note - It is the objective of this paragraph (b) to enable the Board of Directors to increase dues sufficient to assure the maintenance to which every homeowner is entitled. On the other hand, the Board of Directors should not have unlimited authority to raise dues without the consent of at least two-thirds of the homeowners. The Consumer Price Index, which is published

by the Federal Government, reflect rises and falls in the cost of living. However, it is formulated by tabulating the price of many factors, such as wages, food, clothing, housing, etc. The items included in the Consumer Price Index, which would directly affect the need to lower or raise the dues of homeowners in order to properly maintain homes, landscaping, parking areas, and other common facilities, would be such items as costs of labor, roofing, and landscape maintenance. Conceivably, during some years the cost of these items may rise more than the average increase in the Consumer Price Index.

To allow for such a possibility, the Declarant has provided that the Board of Directors may raise dues from year to year in order to assure proper maintenance and thereby protect property values of the homeowners. On the other hand, the Declarant feels that the homeowners must be protected against any excessive increases in dues by the Board of Directors without the consent of the homeowners. To accomplish such objectives it is essential to use some formula. The Consumer Price Index is used by many associations because it provides a generally accepted measurement of the rise in cost of living.

If the Consumer Price Index formula should ever prove inadequate to provide for the maintenance which the Board of Directors feels is necessary, the Board must then obtain the consent of two-thirds of the homeowners as provided in paragraph (c) of this Section 3 in order to increase dues to an amount greater than is permitted under the Consumer Price Index formula).

(c) Increase by Members. From and after December 31, 1980, the annual assessment may be increased by a percentage greater than that established by the Consumer Price Index formula by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments

...to a merger or consolidation in which
the Association is authorized to participate under its Articles of
Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

(e) Lots Owned by Declarant. Notwithstanding anything in this Article VII to the contrary, all lots owned by Declarant and held for sale shall be assessed at an amount equal to the pro rata monthly maintenance expense less reserve payments but in no event less than 25% of the actual monthly assessments paid by owners.

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

Section 5. Special Assessments for the Purchase and Reconstruction of Townhomes. In the event that any townhome located on the property is substantially destroyed by fire or other hazard, the owner shall give written notice to the Association within thirty (30) days following such destruction of whether he intends to repair or reconstruct the townhome; and if the owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the

townhome. If the owner elects not to repair or reconstruct the townhome, the Association shall have the first right and option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the owner's election not to repair or reconstruct.

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

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all members within seven (7) days following submission of the committee report. The special meeting of members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to members. Upon an affirmative vote of at least sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of each class of membership present and voting, the Board will be authorized to purchase and reconstruct the townhome and to assess all lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the townhome. The Board may require that the assessment be paid in a lump sum; in installments during an assessment year; or over a period of two (2) or more assessment years, as the Board, in its discretion, shall

determine to be appropriate.

Such assessment shall be in addition to, and not in lieu of, the annual assessments provided for in Section 3 or the special assessments provided for in Section 4 of this Article.

(b) Determination of Value. The owner of the townhome shall convey marketable title thereto to the Association upon payment to the owner by the Association of the fair market value of the lot and townhome in its damaged condition as determined by a MAI appraiser selected by the owner and approved by the Board. In the event that the Board and the owner are unable to agree upon an appraiser, each shall select a MAI appraiser and the two (2) appraisers so selected shall select a third MAI appraiser, and the three (3) appraisers shall jointly appraise and determine the fair market value of the lot and townhome in its damaged condition. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

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

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the owner may retain the lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family townhome unit.

The reconstructed or repaired townhome unit shall be substantially identical to the destroyed townhome unit, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(e) Retention by Owner. If a townhome is not habitable by reason of damage, and the owner gives notice of his election to repair or reconstruct the townhome, the obligation of the owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the townhome is restored to a habitable condition, whichever shall first occur. In the event a townhouse is damaged or destroyed, and the owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the lot, so that it shall be placed in a neat, clean, and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the townhome until paid by the owner, unless the townhome is thereafter acquired by the Association.

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

personally obligated therefor.

The Association shall hold title to the lot and improvements for the benefit of all members. The Board may lease or sell the lot and improvements upon such terms and conditions as it, in its discretion, deems most advantageous to the members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the lot; (2) to the maintenance, upkeep, and repair of the townhome; (3) to payment or repayment to the members, pro rata, of the special assessment, if any, for purchase and reconstruction of the townhome; and (4) to the general expenses of the Association. In the event the lot is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the lot; (2) to payment or repayment to the members, pro rata, of the special assessment, if any, for purchase and reconstruction of the townhome; and (3) to the general expenses of the Association. Any payment or repayment to members of the special assessment may be in cash or may be applied to the annual assessment due or to become due.

(g) Application of Declaration and Bylaws. Any townhome which has been destroyed, in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall be subject to the provisions of this Declaration and to the Bylaws of the Association.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 7. Quorum for any Action Authorized Under Sections 4, and 5. At the first meeting called, as provided in Sections 4, and 5 hereof, the presence at the meeting of members or of proxies entitled to at least sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required

quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3, 4, and 5, and the required quorum at any such 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 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the payment of such shall commence as to each lot on the first day of the second month following the conveyance of the common area of the Phase to the Homeowners Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot 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, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum or the maximum lawful rate, whichever is less. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.