

NORTH CAROLINA
CARTERET COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS
Brandywine Bay Development
Section 1, Map Two

THIS DECLARATION, made this 21st day of January, 1980, by BRANDYWINE BAY, INC., a North Carolina Corporation, with offices in Carteret County, North Carolina, hereinafter called "Declarant"; with joinder of J. C. Livingston and Brandywine Bay Development Corporation, trustee and beneficiary, respectively, under that deed of trust in Book 424, page 492, Carteret County Registry.

W I T N E S S E T H:

AT WHEREAS, Declarant is the owner of real estate described in Exhibit A hereto, which Declarant intends to develop into a residential community; and,

WHEREAS, the development will take various forms and will continue over a number of years and will consist principally of residential properties; and

WHEREAS, the Properties will be developed in phases, the first phase being that described in Exhibit B hereto; and

WHEREAS, it is desired that the various Sections, as they are developed, be made subject to certain Covenants and Restrictions for the benefit of the said Declarant, its successors and assigns, such that the subdivision will be developed in a uniform manner to the benefit of all present and future owners; and,

WHEREAS, trustee and beneficiary above have, at the request of Declarant, agreed to join in execution of this Declaration, solely for the purpose of making the above Deed of Trust subordinate hereto;

NOW, THEREFORE, the hereinafter set forth Covenants, Restrictions and Easements shall, from the time of the recordation of this instrument, govern the use of all land described in Article I below.

ARTICLE I

Section I. Description.

These Covenants shall apply to the property described in Exhibit B hereto and to any other portions of "the Properties" brought under this "Declaration" by amendment hereto.

Section II. Designation.

The property described in Exhibit B hereto is hereby designated residential, single family.

ARTICLE II

Section 1. Definitions.

- A. "Allowable Living Unit" shall mean and refer to a permissible but unconstructed living unit on a parcel as hereinafter defined. The maximum number of allowable living units per parcel shall be as designated by this Declaration or amendments hereto or by the recorded recap of a section.
- B. "Association" shall mean and refer to Brandywine owners Association, Inc.
- C. "Building" shall mean any structure built for the support, shelter or enclosure of persons, animals, chattels or property of ally kind which has enclosing walls for fifty percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or parts thereof," including porches, decks, carports, garages, sheds, roof extensions and overhangs and any other projections.
- D. "Constructed Living Unit" shall mean and refer to a living unit which has been fully constructed and is ready for occupancy. For purposes of this subparagraph a living unit shall be deemed "fully constructed" if a certificate of occupancy has been issued for said living unit by the appropriate authority.
- E. "Family" shall mean and refer to one person living alone or two or more persons, whether related to each other by birth or not, arid having common housekeeping facilities.
- F. "Living Unit" shall mean or refer to a room or combination of rooms in an apartment house, condominium, cooperative residential building, multifamily house, patio home, cluster home, single-family dwelling or any other building intended for occupancy by one family on a temporary or permanent basis. Living unit shall also refer to any rentable room or suite with sleeping facilities in a motel, hotel, guest lodge, inn, motor court, tourist home, or other building used commercially for lodging of guests.
- G. "Lot" shall mean and refer to any individual plot of subdivided land shown upon a recorded subdivision map which is restricted by these covenants, or amendments hereto, to use for detached single-family dwelling.
- H. "Multifamily Buildings" shall mean and refer to any combination of two or more constructed living units which have at least one common wall (including floor or ceiling).
- I. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding the fee simple title to any lot, living units or parcels situated in the property to which these covenants, or amendments hereto, apply.
- J. "Parcel" shall mean an area of land shown on a subdivision map and designated by these covenants or amendments hereto for unified development as multifamily.
- K. "Person" shall include any individual, partnership, corporation, trust or other entity.
- L. "Properties" shall mean and refer to all properties which are or shall become subject to this Declaration.

M. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, living unit.

N. "Section" shall mean and refer to each designated portion of the properties which shall be developed and for which subdivision map or maps shall be recorded.

Section ii. Additions to Existing Property.

Additional lands may become subject to this Declaration in the following manner;

As new sections are developed, the Declarant may, by supplemental declaration to be filed in the Office of the Register of Deeds of Carteret County, make additional portions of the properties subject to this Declaration so that owners of lots, living units or allowable living units within the added sections will automatically become members of the Association and their lands subject to restrictions and covenants herein provided, or provided in amendments hereto, it being the intent of this provision to grant to declarants the right to develop tile properties under a unified plan. Declarant reserves the right to impose different types of covenants on additional sections of the properties by amendment hereto. Provided, however, that in no respect shall any amendment. Hereto affect the validity of these covenants as they apply to Section I, Map Two.

ARTICLE III

Brandywine Owners Association, Inc.

Section i. Membership

Each and every person having any fee ownership interest in a living unit, lot, or allowable living unit in property to which this Declaration, or amendments hereto, are applicable, shall be a member *of* the Association excluding only persons holding such an interest as security for the performance *of* an obligation. Further, lessees, regardless of the length of the term of the lease; shall not be members.

Section ii. Voting Rights.

The Association shall have two classes of voting memberships. Class A members shall be all of those owners defined in Section i of this Article except Declarant. Class B members shall be the Declarant. Class A members shall be entitled to one vote for each lot or allowable living unit which such member(s) may own, and two votes for each constructed living unit such member(s) owns. When one or more persons owns such interest or interests in any lot, constructed living unit, or allowable living unit, all such persons shall be members and the vote for such lot, constructed living unit or allowable living unit shall be exercised as they themselves determine, but in no event shall more than one vote be cast for any lot or allowable living unit owned and two votes for each constructed living unit. Class B members shall be entitled to one vote for each lot or allowable living unit owned and two votes for each constructed living unit owned, until the first occurring of the following:

- (a) The expiration of the period of three years from the first sale of a lot be Declarant, or

(b) The date when the number of lots owned by Class A members equals thirty (30) percent of the total number of Lots (seventy-four being tire total number of Lots). Thereafter Class B membership shall not exceed forty-nine (49) percent of the total voting power in any meeting of Association membership. Further, there shall be, within sixty (60) days of the date as determined in subparagraphs (a) or (b) above, a meeting of the Association for purposes of electing a new Board of Directors.

Section iii. Common Properties.

Declarant covenants that it shall convey to the Association on or before July 1, 1994, certain common property which shall include, but not be limited to those streets and roadways within each section which are not designated as being dedicated to the general public and those areas set aside as "buffers" and designated "reserved" on the appropriate recorded subdivision map.

Section iv. Use of Common Property.

All common property owned by Declarant or the Association, as the case may be, shall be available equally for the use and benefit of each member of the Association. However, nothing contained herein shall prevent the Association from adopting reasonable rules and regulations governing the use of such facilities, including methods of selection for utilizing facilities such as a marina which may not be able to accommodate all owners.

Section v. Allowable Assessments.

The owner of every lot, allowable living unit and constructed living unit is obligated and bound, whether or riot expressly stated in any instrument of conveyance, to pay to tile Association, FOR EACH LOT, ALLOWABLE LIVING UNIT or CONSTRUCTED LIVING UNIT OWNED:

(a) Annual charges or dues; (b) special assessments; and (c) charges for the services or facilities provided by the Association.

All such assessments, charges and dues, together with any interest thereon, shall be a debt of the owner and charge on the land and shall be a continuing lien upon the property against which such assessments are made. The time for perfecting said liens shall be affixed by tile General Statutes of North Carolina.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the property, and in particular, for the improvement and maintenance of common properties. Included, but not limited, is the payment of taxes and insurance on common properties, repairs and replacements and additions thereto, the cost of labor, equipment, materials and management and supervision thereof, and particularly, the cost of maintenance of streets, drainage, or other community facilities, such as security, as decided upon by tile Association.

Section vi. Amount of Assessments.

- (a) Annual. Through tile end of the fiscal year commencing January 1, 1980, the amount of the annual assessment shall be \$21.50 per lot, constructed living unit or allowable living unit. Beginning with the fiscal year starting January 1, 1981, the annual assessment shall remain at \$21.50 unless changed by a majority of votes cast at a duly constituted meeting of the membership of the Association.
- (b) Special. A special assessment may, from time to time, be levied by the members present at any regular or special meeting, if two-thirds (2/3) of tile total votes cast are in favor of such assessment, and upon approval thereof by the Board of Directors, likewise upon a two-thirds (2/3) vote.
- (c) Services. Charges for services or facilities shall be assessed by the Board of Directors of tile Association on a nonprofit basis.

Section vii. Organization.

The organization of the Association and the functioning of it shall be as established in the Articles of Incorporation and the Bylaws of the Association.

ARTICLE IV

Residential, single-family use restrictions. These restrictions shall apply to all sections or portions of sections to which this Declaration, or amendments hereto, apply and which are designated "Residential, singlefamily" by this Declaration or amendments hereto.

Section i. Residential.

All lots designated "Residential, single-family" shall be restricted as to use for residential, single-family dwellings. No buildings shall be erected or permitted to remain on any lot other than one (1), detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two (2) automobiles, or a carport for not more than two (2) automobiles. The minimum space requirements for residences on the property shall be as follows:

- (a) all lots which border on any golf course, which may be constructed on the property, fifteen hundred (1,500) square feet, exclusive of carports, garages and porches;
- (b) all other lots, one thousand two hundred (1,200) square feet, exclusive of carports, garages and porches.

Section ii. Setbacks.

No building shall be erected or allowed to remain on any of the lots in the subdivision which is located nearer the boundary line than the minimum setback line shown on the recorded plat. Further, no building shall be erected or allowed to remain which is less than ten (10) feet from any side lot line or thirty (30) feet from any rear lot line, corner, as to corner lots, there shall be a side setback line of fifteen (15) feet on the side street.

Section iii. Fences.

No fence or wall shall be erected or allowed to remain on any lot which is higher than five (5) feet above the general ground level; further, no fence, barricade or obstruction may be erected in extensions of the property lines abutting the golf course which would prevent ingress or egress along the fairway side of said lots to pedestrians or others lawfully thereon.

Section iv. Signs.

No sign or billboard of any kind shall be erected or allowed on any lot other than a "for sale" or "for rent" sign not larger than two (2) feet by two (2) feet. This provision shall not be deemed to exclude use by Declarant, or its assigns, of advertising signs which shall advertise the entire project.

Section v. Redivision of Lots.

No lots or lots shall be divided or resubdivided unless such division or resubdivision yields a total number of lots which is less than the total number of lots prior to division or resubdivision as shown on the recorded plat. In no event shall any building be erected, placed or allowed to remain on any building site which has an area of less than nine thousand (9,000) square feet.

Section vi. Easements.

Declarant hereby reserves an easement or right-of-way for purposes of installation of water lines, sewer lines, telephone lines, electric lines, poles, wires, cables and all other equipment necessary for the installation, use and maintenance of utilities, including water, sewage, electricity, telephone, or drainage. This easement shall, further, be for the use of the Declarant, or the Association, where applicable, to dedicate additional road right-of-way such that all road right-of-way will be sixty feet in width. The said easement or right-of-way across and upon said subdivision lots shall be five (5) feet in width along every and all property lines which abut a street as shown on the platted map of the subdivision. No additional right-of-way shall be dedicated for purposes of road right-of-way unless it is determined that it is in the best interest of members of the Association that the streets and roads be dedicated to the general public and maintained by the State of North Carolina, or subdivision thereof.

Section vii. Temporary Structures.

No trailer, basement (unless basement is a part of the single-family dwelling erected at the same time), tent, shack, barn or other out-building shall be erected or placed on any lot to which this Declaration or amendments hereto, apply, except that a trailer for construction office or outbuilding used in conjunction with construction may be used during construction on a limited, temporary basis.

Section viii. Animals.

No animals or poultry of any kind, other than house pets, shall be kept or maintained on any part of said property. All dogs shall be on a leash when off the premises of the owner.

Section ix. Waste.

The disposal of all waste matter, including garbage, rubbish, etc. shall be in compliance with the regulations of the State Board of Health of North Carolina, the Board of Health of Carteret County, and all other governing authorities which have jurisdiction there over. It is expressly prohibited that any rubbish, garbage, etc. shall be placed or permitted to drain into any of the drainage areas. All living units shall be equipped to contain an accepted garbage disposal system.

Section x. Tanks.

Fuel oil tanks shall be buried, placed in the basement of the dwelling house, or enclosed in such a manner that they will not be visible and such that a harmonious blending of the structure with the dwelling house shall be effectuated.

ARTICLE V Architectural Control Committee

Section i. General.

There is hereby created an Architectural Control Committee consisting of five members of the Association to be appointed by the Board of Directors. A quorum is hereby deemed to be three (3) members present at any meeting and decisions of this committee shall be by simple majority vote. No building, fence or wall, sign or other structure shall be commenced, or erected or maintained upon a portion of the properties to which this Declaration, or amendments hereto, apply, nor shall any addition, change or alteration to any exterior be made until the plans and specifications showing the nature, kind, height, materials, color and locations of the same shall have been submitted to and approved in writing by the committee.

Section ii. Plans.

All plans and specifications must be submitted to the Architectural Control Committee at least ten (19) days prior to application for a building permit. The submissions shall show by plot plans, elevations, and perspective sketches all proposed improvements including locations, architectural features and landscaping. In the event said committee fails to act on, a submission within thirty (30) days after sufficient plans have been submitted to it, this Article will be deemed to have been fully complied with.

Section iii. Approval.

The committee will review and shall approve the plans and specifications if the proposed improvements meet all of the requirements of these covenants and, if in its opinion, the exterior appearance of the property will be visibly compatible with other development in the subdivision or, at a minimum, will be detrimental to future property sales or surrounding property values. No architectural "style" or materials will be excluded; however, all materials, features, and styles must be, in the opinion of the committee, professionally and esthetically acceptable. By acceptance of a Deed, purchasers agree that the actions of the committee are in the best interests of all owners within the subdivision and that they will abide by the decisions of the committee. Declarant, the committee, or other owners may seek injunctions to compel compliance with committee decisions, or damages resulting from failure to act in accordance with directions of the committee.

Section iv. Site Standards.

Tract owners, parcel owners, lot owners, and all subsequent owners agree to leave all vegetation, trees, brooks, creeks, hillsides, springs, water courses, and ravines in as near their natural state as is compatible with good building and land use practices, to the end that an attractive exterior lot appearance will be evident at each building site, and in keeping with surrounding properties. The locations of buildings and parking areas shall be preserved and land left undisturbed. All site plans must show existing elevations and tree covers so that the Architectural Control Committee may determine if this provision has been adequately considered.

Section v. Architect.

Site plans and building plans for buildings shall be prepared by a registered architect.

ARTICLE VI

Section i. Utilities.

Declarant covenants that either public or private water and sewer services will be available to purchasers. or property in sections to which these covenants, or amendments hereto, apply and that such services will be sufficient to serve all lots and tracts. All users of such services agree to pay rates established by the proper authorities for the use of the service. Individual wells are prohibited except as used for swimming pools, landscape maintenance or air temperature control. No individual sanitary waste treatment facilities are permitted. Further, waste water from cooling and/or heating systems shall not be discharged into the sanitary waste treatment system.

ARTICLE VII

Buffers.

All those common areas set aside as buffers and/or designated as reserved on recorded maps of sections shall be left in their natural state.

ARTICLE VIII

Duration.

These covenants, restrictions, and easements shall run with the land and shall bind and inure to the benefit of Declarant, purchasers and their respective heirs, personal, representatives, successors and assigns, until January 1, 2000, after which time said covenants, restrictions and easements shall be automatically extended for periods of ten (10) years unless a majority of the then owners of property to which these covenants, and amendments hereto, apply shall sign and record an agreement to change said covenants, restrictions and easements in whole or in part.

ARTICLE IX

Enforcement.

Enforcement of these covenants and restrictions shall be by any proceeding in law and equity against any person violating or attempting to violate any covenant or restriction whether to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, and failure by the Association or 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. Invalidation of any one of these covenants, and failure by the Association or 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. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no wise affect any other provision and the same shall remain in full force and effect. The right of enforcement of these covenants is hereby decreed to be vested in any owner of lot, improved lot, constructed living unit or allowable living unit, or the Declarant, or the Association, acting either singularly or in concert.

ARTICLE X

Interpretation.

These covenants and declarations shall be interpreted in the spirit of reasonableness and, in the absence of authoritative court decisions, the interpretations placed thereon by the Declarant shall prevail.