

NORTH CAROLINA

CARTERET COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS

BRANDYWINE BAY DEVELOPMENT, SECTION 11, MAP ONE -A

THIS DECLARATION, made and entered into this 30th day of March, 1983, by BRANDYWINE BAY, INC., a North Carolina Corporation with offices in Carteret County, North Carolina (hereinafter "Declarant"), with joinder of ALTON R. HARDISON, JR. and BRANCH BANKING & TRUST COMPANY, Substitute Trustee and Beneficiary, respectively, under that Deed of Trust recorded in Book 474 , Page 255, Carteret County Registry, and with joinder of 11. BUCKMASTER COYNE, JR., Trustee, under that Deed of Trust recorded in Book 476 , Page 294 , Carteret County Registry.

BACKGROUND STATEMENT

Declarant is the owner of certain property in Carteret County; North Carolina, which Declarant is developing into a residential community. Declarant has previously developed five portions of Section I of its property, as follows: .

Map One-A, recorded in Map Book 18, page 13, Carteret County Registry.

Map One-B, recorded in Map Book 18, page 94, Carteret County Registry.

Map Two (Revised), recorded in Map Book 17, page- 43, Carteret County Registry.

Map Three, recorded in Map Book 17, page 83, Carteret County Registry.

Map Four, recorded in Map Book 18, page 60, Carteret County Registry.

Declaration of Covenants and Restrictions has previously been filed in book 435, page 362, Carteret County Registry (covering flap Two (Revised)) and amendments have been recorded for the other developed portions as follows: Book 440, page 213 (rerecorded in Book 440, page 392); Book 447, page 118; Book 454, page 83; Book 463, page 154; Book UO-12, page 266 (rerecorded in Book 466, page 260).

The original Declaration provides for additional property to be made subject thereto by amendment. Declarant now is commencing development of Section 11 and desires to substantially revise the covenants as they pertain to Section II.

NOW, THEREFORE, Declarant hereby declares that all of that property known as Section II Map One-A, Brandywine Bay Development, (Map Book 20 page 2, Carteret County Registry) and more particularly described in Exhibit A, attached hereto, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right; title or interest in the property described in Exhibit A hereto or any part thereof: their heirs, successors and assigns.

ARTICLE I

Section i. Definitions.

- A. "Association" shall mean and refer to Brandywine Owners Association Inc., its successors and assigns.
- B. "Building" shall mean any structure built-for the support, shelter, or enclosure of persons, animals, chattels or property of any 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.
- C. "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, but shall not include any property designated in this Declaration (or amendments) or on a recorded subdivision map, as "Common Area".
- D. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding the fee simple title to any lot, situated in the property to which these covenants or amendments hereto, apply, but shall exclude those entities holding interest merely as security for the performance of an obligation.
- E. "Person" shall include any individual, partnership, corporation, trust or other entity.
- F. "Properties" shall mean and refer to all properties which are or shall become subject to this Declaration.
- G. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, living unit.
- H. "Family" shall mean and refer to one person living alone or two or more persons, whether related to each other by birth or not, and having common housing facilities.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of membership has been recorded.

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

ARTICLE III

ADDITIONS TO EXISTING PROPERTY

Additional land within the area described in Exhibit B, hereto, may be annexed by Declarant, and made subject to this Declaration, without the consent of owners and/or members, within 10 years from the date of this instrument.

ARTICLE IV

BRANDYWINE BAY OWNERS ASSOCIATION, INC.

Section 1. Membership. Each and every person having any fee ownership interest in a lot to which this Declaration, or amendments hereto, is applicable , shall be a member of the Association, excluding only persons holding such an interest as security for the performance of an obligation. Membership shall b appurtenant to and may not be separated from ownership of any lot which is subject to this Declaration or amendments hereto.

Section 2. Voting Rights. The Association shall have two classes of voting members. Class A members shall be all of those owners defined in Section 1 of this article, except Declarant. Class B members shall be Declarant. Class A members shall be entitled to one vote for each undeveloped lot owned, and two votes for each lot upon which there exists a fully constructed dwelling ready for occupancy. For purposes of this paragraph, a dwelling shall be deemed fully constructed if a Certificate of Occupancy has been issued for said dwelling. When one or more persons own such interest or interests in any lot, all such persons shall be members and the vote of such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast for any lot. Class B members shall be entitled to one vote for each undeveloped lot owned and two votes for each lot upon which there exists a fully constructed dwelling.

Section 3. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it within the property to which this Declaration applies, hereby covenants, and each owner of any lot within said property, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges, and
2. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person or entity who is the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Any assessment shall be deemed in default if not paid within 30 days of the billing date.

Section 4. Use of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of owners of property to which this Declaration applies, and residents within said property, and for the improvement and maintenance of Common Areas, specifically including, but not limited to, the streets and roads.

Section 5. Amount of Annual Assessment. The amount of the annual assessment shall be as set by a majority of votes cast at a duly constituted meeting of the membership of the Association.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Such special assessments shall also require approval by the Board of Directors by two-thirds vote.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots. The annual assessment shall commence for a lot on the date of recordation of this Declaration, or an amendment hereto, which makes the said lot subject to this Declaration. Written notice of the annual assessment shall be sent to every owner subject thereto. Provided, however, that when there is more than one owner for a lot, it shall be sufficient that notice be sent to only one. The due dates for assessments shall be established by the Board of Directors. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12) per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Enforcement of Lien. Enforcement of lien referenced above shall be by foreclosure in like manner as foreclosure of a deed of trust as described in Chapter 45 of the North Carolina General Statutes. The provision therein for hearing, notice of hearing and publishing of notice of sale shall be complied with, as they may exist at the time of the foreclosure. The Association is hereby granted, and each owner, by acceptance of a deed, grants to the Association a power of sale for purposes of foreclosure to enforce the aforesaid lien.

ARTICLE V

RESIDENTIAL SINGLE FAMILY USE

These restrictions shall apply to the property described in Exhibit A, attached hereto and to all property to which this Declaration, or amendments hereto, apply and to a designation of "residential, single family" is made by Declaration or amendments hereto.

Section 1. Residential Use. All lots designated "residential, single family" shall be restricted as to use for residential, single family dwellings. No building shall be erected or permitted to remain on any lot other than one, detached single family dwelling not to exceed two and one-half (2 1/2) stories in height and a private garage for not more than two (2) automobiles, or a carport for not more than two (2) automobiles.

Section 2. Dwelling Size. The minimum space requirement for residences on the property shall be 1650 square feet, exclusive of carports, garages and porches.

Section 3. Setbacks. No building shall be erected or allowed to remain on any of the lots in the subdivision which is located nearer the front (street) boundary line than the minimum setback line shown or described on the recorded plat. Further, no building shall be erected or allowed to remain which is less than thirty (30) feet from any rear lot line (opposite the front lot line) or which is less than ten (10) feet from any side lot line. With respect to side setback on a corner lot, the setback as shown on the recorded plat, if different than ten (10) feet, shall control.

Section 4. Motor Homes and Campers. Motor homes and travel trailers (also known as "R/V's") shall not be stored or parked on any lot for longer than one week.

Section 5. 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. "For Sale" and "For Rent" signs shall be removed upon completion of sale or rent transaction.

Section 6. Redivision of Lots. No lot 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 1650 square feet.

Section 7. 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, sewer, electricity, telephone, or drainage. Said easement shall be five (5) feet in width along each and every property line which abuts a road right of way as shown on the appropriate recorded plat.

Section 8. Temporary Structures and Trailers. No trailer, mobile home (specifically including "double wide mobile home"), nor any shed, tent, shack, barn or other out-building shall be erected or placed on any lot except that a trailer for construction office or outbuilding used in conjunction with construction may be used during construction on a limited, temporary basis. No trailers, boats, campers can be stored on property.

Section 9. 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 10. Waste. The disposal of waste matter, including garbage, refuse, etc., shall be in compliance with the regulations of State Board of Health of North Carolina, the Board of Health of Carteret County and all other governing authorities which have jurisdiction thereover. It is expressly prohibited that any rubbish, garbage, etc., 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. All exterior garbage cans shall be placed and/or screened in such a manner so as not to be visible from adjacent properties.

Section 11. Tanks. Fuel oil tanks, if applicable, shall be buried, placed in the basement of 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 VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. General. There is hereby created a separate Architectural Control Committee for Section II of Brandywine Bay Development consisting of five (5) members. Until such time as Declarant owns less than five (5) total lots in Section II (as same may be expanded as herein described), the members of the Committee shall be as follows:

- a) Two shall be appointed by the Board of Directors of the Association from the membership of the Association.
- b) Three shall be appointed by Declarant, and these three need not be members of the Association.

After Declarant no longer owns five (5) lots as aforesaid, all members of the Committee shall be appointed by the Board of Directors from the membership of the Association. A majority (3) of the Committee shall be deemed a quorum and decisions of the Committee shall be by simple majority vote.

Section 2. Submission of Plans. No person shall commence construction of any fence, building, outbuilding, or any other structure, until plans for same shall have been approved by the Architectural Control Committee as provided herein. All plans and specifications must be submitted to the Architectural Control Committee at least ten (10) 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. All plans shall be prepared in a professional manner. Construction should not however, be the total controlling factor in the layout and design of the structure.

Section 5. 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. A minimum of thirty-five (35) percent of each lot or parcel shall remain undisturbed except for routine maintenance. All trees over four (4) inches in caliper should be preserved when possible. The architectural Control Committee must approve the removal of all trees four (4) inches in caliper or greater. Natural drainage and the project drainage systems shall be utilized to the fullest extent possible so as to minimize site disturbance to accommodate drainage. 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 6. Completion of Construction. Construction of any dwelling or other structure on property to which these restrictions, or amendments hereto, apply must be completed within twelve (12) months after commencement of construction. For purposes of this section, commencement of construction shall be deemed to be the first day on which materials are delivered to the site or labor commences with respect to said construction, whichever date shall occur first.

ARTICLE VII

UTILITIES

Declarant covenants that either public or private water service will be available to purchasers of property to which these covenants, or amendments hereto, apply and that such service will be sufficient to serve all lots must be by a licensed contractor.

Section 3. 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 not 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 4. Architectural Standards. Tract owner, parcel owners, lot owners and all subsequent owners agree that the desired level of architectural quality of the entire property shall be consistently maintained and each building or structural element shall be compatible with its natural surroundings, adjacent existing structures and with future adjacent structures. Structures should reflect an influence of traditional architectural forms for residential buildings. Avante garde, highly-stylized, or thematic architecture is strongly discouraged. Building materials should be natural in character and color and the use of stained wood is strongly encouraged. Masonry should be considered as an accent element and not a primary material. Roof planes should be 5 in 12 slopes as a general rule, with variations used for avoidance of monotony. Building should incorporate all energy-saving features as possible within a reasonable architectural content. Orientation of windows, overhangs, porches and solar equipment.

Purchasers of property, by acceptance of a deed, agree to pay rates established by the proper authorities for the use of the services, specifically including, but not limited to, "tap fees" and periodic user charges. Individual wells are prohibited except as used for swimming pools, landscape maintenance or air temperature control.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, any owner or Declarant 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, or amendments hereto. Failure by the Association, by any owner, or by Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which said other provisions shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by vote of seventy-five (75) percent of each class of members voting, either in person or by proxy, at a duly constituted meeting of the Association, after due notice. Upon such vote, the amendment shall be signed by the appropriate officers of the Association. Thereafter, said amendment shall be recorded and shall be effective as of the date of recording. Recordation of an amendment signed by the officers of the Association and recorded as herein provided shall be conclusive evidence

NORTH CAROLINA

CARTERET COUNTY

I, *Linda B. Bush*, a Notary Public of the County and State aforesaid, certify that Leonard P. Bloxam personally appeared before me this day and acknowledged that he is Secretary of Brandywine Bay, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this 30th day of March, 1983.

Notary Public

My Commission expires: 1987

NORTH CAROLINA

CARTERET COUNTY

I, *Sandra L. Oldham*, a Notary Public of the County and State aforesaid, do hereby certify that ALTON R. HARDISON, JR., Substitute Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 31st day of March

Notary Public

My Commission expires: 12/21/87

NORTH CAROLINA CARTERET COUNTY

I, *Sandra L. Oldham*, a Notary Public of the County and State aforesaid, certify that *Edward W. Jairlies*, personally appeared before me this day and acknowledged that he is Assistant Cashier of Branch Banking & Trust Company, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice-President, sealed with its corporate seal and attested by himself as its Assistant Cashier.

WITNESS my hand and notarial seal, this 31st day of 1983.

Notary Public

My Commission expires: 12/21/87

NORTH CAROLINA CARTERET COUNTY

I, *Lisa B. Bush*, a Notary Public of the County and State aforesaid, do hereby certify that H. BUCKMASTER COYNE, JR., Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 30th day of March, 1983.

Notary Public

May Commission expires: April 14, 1987

EXHIBIT A

BEGINNING at a point on the eastern right of way margin of Lord Granville Drive, said point being also the southeast corner of Lot 42, Section II, Map One-A, Brandywine Bay Development as shown in Map Book , Page , Carteret County Registry; from said beginning point, with the south line of Lot 42, N 52-05 E 138.10 feet to a point; thence, with the north lines of Lots 38-42 as shown on the aforesaid map, the following five (5) courses and distances:

1. N 56-55 W 145.0 feet.
2. N 62-56-57 W 165.81 feet to a point.
3. Thence N 81-55-45 W 161.92 feet.
4. S 86-27-15 W 139.77 feet.
5. N 36-31-06 W 88.12 feet to a point in the southern right of way margin of East Chester Drive.

Thence in a northwesterly direction across East Chester Drive to the southeast corner of Lot 24 as shown on the aforesaid map; thence, with the east and north lines of said Lot 24, the following two (2) courses and distances:

1. N 38-52-24 W 100.0 feet.
2. N 88-38-21 W 107.01 feet to a point in the eastern right of way margin of Lord Granville Drive;

Thence, across Lord Granville Drive in a westerly direction to the northeast corner of Lot 18 as shown on the aforesaid map; thence with the north line of said Lot 18 N 88-51-59 W 160.0 feet to a point in the east line of Lot 14; thence with the east lines of Lots 13 and 14, the following two (2) courses and distances:

1. N 11-49-16 E 139.84 feet.
2. N 27-15 W 111.60 feet to a concrete monument;

Thence, with the rear lines of Lots 1-13 as shown on the aforesaid map, the following nine (9) courses and distances:

1. S 62-45-00 W 346.0 feet.
2. S 49-50-00 W 78.0 feet.
3. S 12-14-00 W 96.0 feet.
4. S 19-55-00 E 225.93 feet.
5. S 63-10-00 E 153.0 feet.
6. S 76-15-00 E 295.54 feet.
7. S 84-08-00 E 404.26 feet.
8. S 88-10-00 E 305.0 feet.

9. N 40-19-14 E 66.08 feet to a point in the western right of way margin of Lord Granville Drive, said point being also the northeast corner of Lot 1 as shown on the aforesaid map;

Thence, crossing Lord Granville Drive in an easterly direction to the southwest corner of the aforesaid Lot 42, the point or place of beginning.

monument in the Northerly margin of the right-of-way of N-. C. Highway No. 24; thence with tile northerly margin of the right-of-way of N. C. Highway No. 24 S. 73-41-00 W. 19.56.48 feet to a point in the easterly line of Micro Machine (now or formerly); ' thence with tile easterly line of Micro Machine N. 6-55-57 E. 1382.39 feet to a point t the northeasterly corner of Micro Machine; thence with tile northerly line of Micro Machine N. 60-16-03 W. 87.59 feet to a point in the northwesterly corner of Micro Machine; thence with tile westerly line of Micro Machine S. 6-55-57 W. 1451.02 feet to a point in the northerly margin of the right-of-way of N. C. Highway No. 2•1; thence with the northerly margin of the right-of-way y of N. C. Highway 24 the following three courses and distances: (1) .S. 73-41-00 W. 509.82 feet to a point, (2) in a generally westerly direction with the arc of a circular curve to the right having a radius of 1632.02 feet an arc distance of 994.81 feet to a point, and (3) N. 71-23-30 W. 2083.10 feet to the point and place of BEGINNING, containing approximately 602 acres as show on a map.

NORTH CAROLINA, CARTERET COUNTY

The foregoing certificate(s) of *Lisa B. Bush*

Is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 418, page 404,

This 15th day of April, 1983 at 11:45 o'clock AM.

Sharon Piner

Register of Deeds

By <signature>

Assistant Deputy