

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
BRANDYWINE PLACE, a Planned Unit Development**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (hereinafter, the "Declaration") is made and entered into this the 10th day of May, 1995, by LTR COMPANY, a North Carolina corporation (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of that certain tract or parcel of land in Morehead Township, Carteret County, State of North Carolina, designated as Brandywine Place Phase I, a subdivision recorded in Map Book 28, Page 654, as revised in Map Book 28 at Page 741, Carteret County Registry (hereinafter "Subdivision").

It is desired that the property constituting the subdivision be made subject to certain covenants and restrictions for the benefit of the said Declarant and successors in title to Declarant such that the subdivision will be developed in a uniform manner to the benefit of all present and future owners.

The property comprising Brandywine Place Phase I is a portion of a larger tract which is included within the Brandywine Bay Planned Unit Development and which is owned by Declarant. In accordance with the Declaration of Covenants, Restrictions, and Easements for The Villas at Brandywine Bay, recorded in Book 438 at Page 181, in the office of the Register of Deeds of Carteret County, the subject property was planned originally as an expansion of a townhouse development known as "The Villas at Brandywine Bay". Phases I and II of The Villas at Brandywine Bay, known as "Sound Court" and "Bay Court" were constructed in accordance with plats recorded in Map Book 17 at Page 28 and in Map Book 19 at Page 53, respectively.

Rights of the Declarant to add additional properties to The Villas project expired, by operation of the instrument referenced above, in 1987. Declarant now wishes to construct on the property, or such part of it as is submitted to this Declaration from time to time, a group of free-standing single-family residential units to be described as "Brandywine Place".

The total property comprising Brandywine Place is described in Exhibit A to this Declaration. The portion of the property which is made subject to this Declaration as Phase I of Brandywine Place is described in Exhibit B hereto.

Owners of property in Brandywine Place are subject to certain additional requirements for the maintenance of roads and other master amenities in common areas which are owned by, and the use of which is governed by, Brandywine Bay Association, Inc., hereinafter referred to as the "Master Association". Those provisions of the Articles of Incorporation and the Bylaws of Brandywine Bay Association which are recorded in Book 438 at Page 181 in the office of the Register of Deeds of Carteret County are, to the extent that their context requires, incorporated in this Declaration by reference, including in particular (but not by way of limitation) the responsibility of purchasers of lots in Brandywine Place to pay assessments to Brandywine Bay Association, Inc. for the maintenance of roads and other amenities as applicable.

OPERATIVE PROVISIONS

IT IS THEREFORE provided that said real property known as Brandywine Place, Phase I, as shown on that map recorded in Map Book 28 at Page 654, as revised in Map Book 28 at Page 741, Carteret County Registry, is hereby made subject to the following covenants, restrictions, easements and conditions, to wit:

1. **Definitions.**

a. **Association.** A North Carolina non-profit corporation (hereinafter referred to as "Association") named Brandywine Place Owners Association, Inc.

b. **Master Association.** Brandywine Bay Association, Inc.

c. **Lot.** "Lot" shall mean the separately numbered parcels (numbered 1 through 3 and 6 through 8) depicted on the above-mentioned map.

d. **Common Areas.** The "Common Areas" of the subdivision shall be as follows:

(1) All streets and drives lying within the boundary lines of Brandywine Place Phase I which are for the use of more than one individual Lot owner.

(2) All of that property shown as "The Green" on the Master Plan for Brandywine Place as filed in the Office of the Planning Director of Carteret County.

(3) All remaining property within the outer boundaries of Phase I of the subdivision as described in Exhibit A hereto, and which is not incorporated within those lots numbered 1 through 3 and 6 through 8 on the plat.

(4) Common Area lighting and subdivision street lighting.

(5) Any and all improvements on the properties described in this subparagraph.

e. **Articles.** The Articles of Incorporation of the Association.

f. **Bylaws.** The duly-adopted by-laws of the Association.

g. **Home (or Patio Home).** An individual residential structure erected on an individual lot in Brandywine Place.

h. **Declarant.** LTR Company, a North Carolina corporation and its successors and assigns.

i. **Patio side.** That side of each Home which contains an open area, or patio, separating the Home from the side wall of the adjoining home.

j. **Zero line side.** That side of each home which is predominantly located on a side line of the lot upon which the home is situated. The zero line side is opposite to the patio side of each home.

k. **Board.** The Board of Directors of the Brandywine Place Owners Association, Inc.

2. **Owners Association, Membership, etc.** Declarant has or will cause to be formed the Association pursuant to Chapter 55A, North Carolina General Statutes, for purposes of owning, managing, maintaining and operating the Common Areas, enforcing the terms of this Declaration, and making assessments, as detailed herein and as described in the Articles and Bylaws of the Association.

a. **Membership.** Each owner of a lot within the subdivision shall be a member of the Association. The Declarant, by this Declaration, and the owners of individual lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Association:

i) That for so long as each is an owner of a lot within the subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association;

ii) That each shall be subject to the rules and regulation of the Association with regard to ownership of a lot; and

iii) That any unpaid assessment, whether general or special, levied by Association in accordance with this Declaration, the Articles or the By-Laws of the Association, shall be a lien upon the Lot upon which such assessment was levied, and shall also be the personal obligation of the owner of the Lot at the time the assessment was levied.

b. **Classes of Membership, Voting Rights.** The Association shall have one class of members who shall all be owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to one Lot.

With respect to voting rights for lots which are owned other than by one individual or by a husband and wife, the Secretary of the Association shall certify that person entitled to cast the vote for that lot as follows:

a. Tenants in common: on the basis of a written proxy, executed by all record owners, designating that individual who shall vote.

b. Corporations: on the basis of a corporate resolution of the directors, naming the person who shall vote.

c. Partnerships: on the basis of an instrument executed by all general partners, naming the person who shall vote.

Further, there shall be no fractional votes allowed. Only members in good standing shall have the right to vote. A member is in good standing when no assessments or fines levied against his or her Lot are over 30 days in arrears.

c. **Management and Administration.** The management and administration of the Common Areas of the subdivision shall be the right and responsibility of the Association, acting through its Board of Directors. The management shall be carried out in accordance with the terms and conditions of this Declaration, and the Articles and By-Laws of the Association, but may be delegated or contracted to managers or management companies.

d. **Additional Powers of Board of Directors.** The Board of Directors shall have additional power as follows:

1. To establish an Architectural Control Committee of three members, to appoint said members, and to establish their terms.

2. To adopt and publish rules and regulations concerning use and maintenance of the property, particularly with respect to the Common Areas, and to enforce the same by levying fines or by temporarily suspending the rights to the use of Common Area (except streets and drives) by members who violate such rules and regulations, or who violate any of the provisions of this Declaration. Any member who may be subject to a fine or suspension shall receive written notice thereof, and may call for a hearing before the Board to contest such action. Fines shall be limited, for each offense, to an amount not to exceed one-third of the then-authorized quarterly assessment. Continued violations, after notice, may be treated as successive, separate violations. These powers are in addition to such powers as may be vested in the Directors as a matter of law, by the Articles of Incorporation, and by the By-Laws of the Association.

3. **Common Expenses.** The common expenses of the subdivision include:

a) All amounts expended by the Association in operating, administering, managing, repairing, replacing and improving the Common Areas of the subdivision, as defined in this document; all amounts expended by the Association in insuring the Common Areas in the subdivision; all amounts expended by the Association in legal, accounting, engineering, or architectural fees; all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by this Declaration; and all amounts expended in any form by the Association in enforcing this Declaration, the Articles or the By-Laws.

b) All amounts expended for utilities, including subdivision lighting, for the benefit of the Common Areas.

c) All taxes and special assessments which may be levied from time to time by any governmental authority upon the Common Areas in the subdivision or upon the Association as a corporate entity.

d) Expenses, including premiums associated with casualty and liability insurance as more fully set out in Paragraph 13, infra.

e) Maintenance and repair expenses incurred as provided in paragraph 5 below.

4. **ASSESSMENTS.**

a. **Quarterly General Assessment.** A quarterly general assessment levied by the Association shall be used exclusively to pay the Common Expenses of the Association, to pay assessments to the Master Association, and to promote the recreation, health, safety and welfare of the members.

Each lot owner of any lot by acceptance of a deed for same, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association a quarterly general assessment as herein provided for common area expenses and for payments to the Master Association. The quarterly general assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and lien on the land and shall be a continuing lien on the property against which

each such assessment is made. Additionally, lot owners shall be personally liable for payment of the assessment, and such personal liability as to unpaid assessments shall continue after transfer of the lot to third parties. The quarterly general assessment shall be \$147.00 per lot, as lots are shown on the plat.

b. **Home Maintenance Assessment.** In addition to the general assessment for common area maintenance as set out in paragraph (e) above, each owner of a home in Brandywine Place shall be responsible for the payment of an additional periodic assessment, collectible at such intervals as may be determined by the directors of the Association but no less frequently than quarterly, for the exterior maintenance and repair of the individual homes, and landscaping on the individual Lots. Whereas the Quarterly General Assessment shall be equal for all homes, the Home Maintenance Assessment varies in proportion to the home size. The initial quarterly assessment shall be shown in Exhibit C, and if revised as provided elsewhere herein, shall be revised so as to preserve the proportions between the three home styles.

5. **INCREASES IN QUARTERLY ASSESSMENTS.**

From and after May 1, 1995, the maximum quarterly general assessment may be increased each calendar year by the Board of Directors of the Association not more than fifteen percent (15%) above the assessment for the previous year without any vote of the membership. Quarterly general assessment increases of more than fifteen percent (15%) may be made only by a vote of two-thirds (2/3rds) of the total number of members of the Association voting in person or by proxy at a meeting called for this purpose or at an annual meeting.

6. **SPECIAL ASSESSMENTS.** Extraordinary expenses, including the cost of common area improvements, may be approved by an affirmative vote of two-thirds of the total number of members in the Association, voting in person or by proxy at a special meeting called for this purpose, or, upon notice, at an annual meeting of the Association.

7. **EXTERIOR MAINTENANCE.**

a. The Association shall be responsible for the exterior maintenance of all homes. Exterior maintenance shall include the exterior of any structure on each Lot, including fencing around each lot. Said maintenance responsibility shall include, but not by way of limitation, roof maintenance, replacement of siding, painting of buildings and trim, grass mowing, fertilization, pruning, seeding and reseeding, litter pickup, and service of all utility lines and systems to any structure.

b. The maintenance schedule and frequency of repairs shall be determined solely by the Association. Any owner may request, in writing or otherwise, any repair or maintenance desired; however, the Association shall be under no obligation to perform such repair or maintenance request unless the same is deemed by the Association to be of an emergency nature. However, the Association shall maintain a regular schedule of maintenance and repair and landscape care, in order to uniformly provide the subdivision with a pleasing exterior appearance. The Association shall be under an affirmative obligation to maintain the exterior of the subdivision in a way so as to maintain property values and to promote pleasing aesthetics.

c. Notwithstanding the above, each owner of a living unit shall be specifically responsible for the upkeep, maintenance, and expense of maintaining his heating and air conditioning system, regardless of whether or not elements of the same are located outside of the structure.

d. Notwithstanding anything contained within this Declaration, repair or replacement of exterior windows, doors, skylights, and exterior lighting shall be the responsibility of the individual owner, and all expense thereof shall be borne by the individual unit owner.

e. Homes in Brandywine Place are designed, constructed and sold landscaped with appropriate lawn areas, ground cover, shrubs, and other landscape features, including in certain instances garden structures. Association shall maintain a file of landscape plans as constructed, and such landscaping shall be maintained by Association. However, subject to the approval of the board of the Association, owners may create additional plantings within an area defined as the "Patio Area" which is defined generally as the area located on the "patio" side of each home, and being bounded by the zero line side lot line of the neighboring Lot and by the projection of the master bedroom wall toward the patio side of the home.

If an owner shall expand upon the basic landscaping plan, he or she shall be responsible for all maintenance of such additional landscaping. If such owner fails to maintain the additional landscaping, so as to maintain the appearance, and thus the property values, in the subdivision, the Association shall provide such additional maintenance and shall account for the cost of so doing, which cost shall then be charged to the owner and shall be treated as an assessment, subject to all of the provisions of this instrument and of the Articles and By-Laws of the Association.

f. All interior maintenance of homes in Brandywine Place shall be the responsibility of the owner of the home. Each owner is under an affirmative obligation to maintain the structural integrity of his home.

g. Notwithstanding anything contained within this Declaration, any maintenance or repairs performed by the Association which are occasioned by the negligent or wilful act of a member or guest of a member, shall be charged to the member, and shall be treated as a separate assessment under the terms of this Declaration.

8. **OWNERSHIP OF THE COMMON AREAS.** The common areas of Brandywine Place shall be conveyed, phase by phase, to the Association, in fee simple but subject to all of the terms and conditions of these instruments and such other easements for utilities and for the Master Association as may be of record. Membership in the Association entitles each homeowner to a membership interest in the common area equal to that of all other members. The equality of interest in the common area among units shall be preserved as additional phases are added to Brandywine Place, until such time as, at the option of the Declarant, the complete total of 19 lots shall be sold and homes constructed thereon.

9. **PROHIBITION AGAINST FURTHER SUBDIVISION OR ALTERATION OF HOMES SO AS TO CREATE MULTIPLE OCCUPANCY.** No lot in Brandywine Place may be subdivided, nor may any portion thereof be conveyed to any other person without the transfer of the whole, with the exception that, subject to the approval of the Board of Directors, conveyances may be made between lot owners or between lot owners and the Association for the purpose of any necessary adjustment of property lines in the case of minor encroachments or inaccuracy in the location of structures or improvements. Further, owners whose lots are separated by an undeveloped lot may acquire such undeveloped lot and may divide such intervening lot: but provided, however, that such owner shall pay assessments as provided in Paragraph 4(b) herein, and that no improvements may be erected upon such lots other than low walls (not exceeding four feet in height and/or garden structures, subject to approval of the Architectural Control Committee.

In addition, no owner of a lot in Brandywine Place may alter his home in such a manner as to make the home susceptible to occupancy by more than one single family. For this purpose, a

separate single family dwelling unit is defined as a separate apartment or portion of the home which is independently self contained: that is to say, would contain an additional kitchen, one or more baths, living quarters, and sleeping quarters. This prohibition is not intended to affect circumstances in which accommodations are made in the interior design of a home to provide for living quarters for members of an immediate family, including direct antecedents or descendants of the owner. Any modifications made to accomplish this latter purpose shall be submitted to, and may be approved by, the Board of Directors.

10. **PARKING.** In determining the amount of parking space allocated to Lots in Brandywine Place, available parking has been provided for four (4) spaces per unit, two (2) housed in the garage and two (2) in the driveway area, with the exception of those homes designated as Design 100A, which are constructed with single car garages and which thus have two (2) parking spaces allocated, one (1) in the garage and one (1) in the driveway. In addition to the four (4) spaces unit so provided, additional parking is available in the Common Area for visitors and guests. The Board of Directors shall adopt reasonable rules and regulations respecting the use of such additional parking space.

11. **EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.** In the event that any assessment, general, home maintenance, or special, is not paid within thirty days of its due date, the Board of Directors of the Association may, at its option, declare the entire unpaid assessment, whether general, home maintenance, or both, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent per annum. The Association may bring an action at law against the owner personally obligated to pay the assessment or may foreclose the lien against his Lot to collect said assessment. Interest, reasonable attorney's fees actually incurred and costs of such action or foreclosure shall be added to the amount of each assessment. Each Lot Owner, for himself, his heirs, successors and assigns, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or a deed of trust under a power of sale would be brought as outlined in Chapter 45, North Carolina General Statutes, and each owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. 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.

12. **PRIORITY OF LIEN.** The lien of the assessments provided for herein shall be prior to all other liens and encumbrances except first mortgages to institutional mortgagees. Sale or transfer of any Lot shall not affect the assessment lien. However, sale or transfer of any Lot by foreclosure of any senior mortgage or deed of trust, 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. Such unpaid assessment shall be deemed to be an expense of the Association assessable against and collectable from all Owners, including such acquiring mortgagee, his heirs, successors and assigns. No such sale or transfer shall release such Lot from liability for assessments thereafter becoming due, or from the lien thereof, nor shall any such sale or transfer release the personal obligation of the Owner of the Lot at the time the unpaid assessment became due.

13. **RESERVE FUNDS.** From and after the recording of this Declaration, the Association shall establish and maintain a reserve fund or funds for maintenance of the common area improvements and the homes by allocation and payment monthly to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board of Directors of the Association. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in the obligations of, or fully guaranteed as to principal by, the United States of

America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any and all facilities of the subdivision and for such other purposes as may be determined by the Board of Directors. The aforesaid allocation and payment monthly to such reserve fund or funds shall be made out of regular assessments.

14. **AUTHORITY TO PURCHASE INSURANCE.** Insurance policies upon the common area shall be purchased by the Board of Directors for the Association. If available, such policies as are procured for the common area shall provide that the insurer waives its right of subrogation as to any claims against Lot Owners, the Association and its respective servants, agents, lessees and guests. Individual Lot Owners are obligated and do hereby covenant, to procure and maintain on their individual properties fire and extended coverage insurance at replacement cost levels, and copies of such policies, or certificates of insurance, shall be maintained on file by the Board of Directors of the Association. The Board, in its absolute discretion, may establish minimum limits of coverage for the various types of homes within Brandywine Place. Such policies shall, if available, contain the same waiver of subrogation rights as described hereinabove for insurance in the common areas.

15. **INSURANCE COVERAGE FOR ASSOCIATION AND THE COMMON AREA:**

a. **Insurance Coverage and Use and Distribution of Proceeds.** The following insurance coverage shall be maintained in full force and effect by the Association covering the common areas:

i. Casualty insurance covering any buildings and all improvements upon the common area and all personal property of the Association, in an amount equal to 100% of replacement cost thereof (exclusive of excavation, foundations, streets, and parking facilities) as determined annually by the Board of Directors. Such coverage shall afford protection against all risk, subject to normal exclusions, including (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement and (b) such other risks as may from time to time customarily be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

ii. Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off premises employee coverages.

iii. Officers and Directors liability coverage, in the discretion of the Board of Directors.

iv. All liability insurance shall contain cross liability endorsements to cover liabilities of the Lot Owners, as a group, to a Lot Owner.

v. Fidelity coverage protecting against dishonest acts by Association officers, directors, trustees and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. In the event professional management is obtained by the Association and it (the professional management company) has such coverage and it handles all funds of the Association, then this requirement will be satisfied.

b. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as a common expense.

16. **INSURANCE BY OWNERS MANDATORY.** All owners shall procure policies for fire and extended coverage on their homes. Such coverage shall be at replacement cost levels, and current Certificates of Insurance shall be filed with the Association. Upon failure of an owner to comply with this requirement, the Association is authorized to procure such insurance and to assess the owners the full amount of the premium, plus any incidental expense. Such assessment shall constitute a lien and be enforceable in the same manner as for regular periodic assessments.

17. **RECONSTRUCTION OR REPAIR AFTER CASUALTY DAMAGE.**

a. **Determination to Reconstruct or Repair.** If any home in Brandywine Place shall be damaged or destroyed by casualty and if the cost of repairing the damage to the home exceeds 75% of its replacement cost, or if the home shall be totally destroyed, the Lot Owner must repair or replace a home on the property, but the Lot Owner may elect to replace the structure with a different home design from among the three standard designs comprising Brandywine Place: that is to say, if a number 102 unit is substantially or totally destroyed, it may be replaced with a number 100, 100A, 101 unit, provided that the setback requirements and other requirements of the Carteret County subdivision and zoning ordinances, as well as the building codes, may be satisfied. In the event of damage amounting to less than 75% of the replacement cost of the home, the home shall be reconstructed in its existing design.

The Board of Directors of the Association shall replace any structures in the common area which are destroyed or damaged to an extent equal to more than 75% of their replacement cost, except that the membership of the Association, by vote of 2/3rds of the members present in person or by proxy at a special meeting called for the purpose, may elect not to replace the improvements.

18. **RESERVATION OF DECLARANT RIGHTS.** The Declarant reserves the right to expand Brandywine Place by the addition of additional lots up to the total of 19 lots as shown on the master plan for Brandywine Place, but the Declarant is not obligated to do so. The Declarant may, if it opts to add lots and in its sole discretion, make alterations in the design or the mix of homes offered on lots which may be added by amendment subsequently, but provided, however, that in no event shall the enclosed and heated space within such additional homes be less than 1,700 square feet, and any additional homes shall be compatible in design, quality, and the use of construction materials with the existing homes. The right of the Declarant to so expand the subdivision shall expire ten years from the date hereof.

19. **OBLIGATION OF THE DECLARANT TO PAY ASSESSMENTS.** Declarant shall be responsible for the payment of the full assessment for any lot upon which a home has been erected, completed, and for which a Certificate of Occupancy has been issued. In addition, the Declarant shall be responsible for the payment of all costs associated with the maintenance of the common area in each phase of Brandywine Place, to the extent that such costs are not covered by assessments from individual lot owners. This obligation is limited further to the payment, periodically, of an amount equal, per platted and approved lot, to an amount not in excess of the pro-rata general assessment paid by other lot owners.

20. **USE RESTRICTIONS.**

a. **Residential Use.** The owner of a home shall occupy and use his home as a single family private dwelling for himself and the members of his family, his guests, licensees, lessees and invitees.

b. **Prohibited Acts.** The Lot Owner shall not permit or suffer anything to be done or kept in any home which will increase the rate of insurance on the property or which will obstruct or interfere with the rights of other Lot Owners, or annoy other Lot Owners by unreasonable noises or

otherwise. Further, the Lot Owner shall not commit or permit any nuisance, or any immoral or illegal act in or about the subdivision.

c. **Signs.** No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any of the property comprising Brandywine Place, including Lots. This restriction shall not apply to the marketing activities of the Declarant while it is engaged in the development of the property. The Board of Directors may adopt size and design limitations on customary realtors' "For Sale" or "For Rent" signs.

d. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property, except that dogs, cats or other usual household pets may be kept by the respective owners only, in their respective homes, provided that they are not kept, bred or maintained for any commercial purposes and do not endanger the health of or, in the sole discretion of the Board of Directors of the Association, unreasonably disturb the owner of any Lot or any resident thereof, and provided, further, that such pets shall not be allowed in the general common area of the condominium unless on a leash or carried by the owner thereof.

e. **Vehicles.** Recreational vehicles, motor homes, travel trailers, campers, boat trailers, trucks (except as delineated hereafter), tractors, or commercial vehicles generally shall not be parked or otherwise allowed to remain on the property, with the following exceptions:

(1) Such vehicles may be brought onto the property to be loaded or unloaded, but in no event overnight.

(2) Pick-up trucks, minivans, station wagons, sports utility vehicles and other vehicles in general use as family passenger vehicles and having an over-all length less than 22 feet and a gross vehicle weight less than 6,000 lbs. are permitted.

(3) Any vehicle which is housed entirely within a closed garage.

21. **EASEMENTS.** The nature of the design of Brandywine Place, in particular the fact that the homes in the Subdivision are sited so as to place certain exterior walls on lot lines, creates a need for systems of easements to accommodate the design and to make the use and enjoyment of the property feasible.

a. **Easements for Encroachment.** Each lot in Brandywine Place is subject to easements for encroachments by improvements on adjoining lots as follows:

1. For minor encroachments resulting from minimal survey and construction errors.

2. For footings, to the extent that footings are poured to a width in excess of foundation width.

3. For overhang of eaves or other structural projections.

4. For utilities servicing adjoining properties.

5. To the Association, for maintenance of lot line walls and for building maintenance generally.

6. For drain lines, vents, clean-out outlets, and other such encroachments.
7. For accommodating landscaping improvements by the patio-side owner, in the area running to the adjoining zero-side wall.
8. To the Declarant, for construction of a home on an adjoining lot or lots, to the extent that such construction activities may encroach temporarily on any lot. Declarant shall be responsible for repair or restoration of any damage caused by such activities.

22. COMPLIANCE WITH STORMWATER RUN-OFF LOW DENSITY REQUIREMENTS.

BRANDYWINE PLACE is designed and constructed in accordance with the requirements of the State of North Carolina for "low density" development. These requirements establish the maximum amount of impervious surface which may exist within the subdivision, whether within individual lots or within the common areas. BRANDYWINE PLACE is divided into two areas, or "zones" for the purpose of establishing such maximum areas. These zones are set out in the approved stormwater runoff plan prepared by Stroud Engineering, dated August 31, 1994, and being filed in the records of the North Carolina Division of Environmental Management at Wilmington, N.C., and also maintained in the corporate records of the BRANDYWINE PLACE OWNERS ASSOCIATION (referred to subsequently in this instrument as the "approved plan"). The approved plan is incorporated in this Declaration by reference. The northerly of the two zones shown thereon drains to the Highway 24 drainage system, and the southerly zone drains to Core Drive. Under the regulations in effect at the time of adoption of this instrument, the maximum allowable impervious coverage within these two zones is 30% and 25% respectively. To achieve adherence to these limitations, the Declarant adopts the following express covenants and restrictions:

a. The provisions of this Article shall run with the land and shall be binding upon the Declarant, its successors and assigns.

b. For the purpose of enforcement of this Article, the State of North Carolina is expressly made a third-party beneficiary hereto, and no amendment to this Article shall be effective without the written consent of the State. The rights of the State hereunder are limited to this Article alone, concerning stormwater runoff regulation and control, and do not extend to other articles of this Declaration unrelated thereto.

c. With respect to the common areas of the subdivision, the Association shall erect or cause to be placed within the common areas no impervious surfaces which are not shown on the approved plan referenced above, without obtaining the express written consent of the State.

d. With respect to individual lots within the subdivision, all construction shall be subject to approval of the Association, and in particular no owner shall at any time, without the approval of the Association and of the State, erect or place on any lot any impervious surface not incorporated in the approved design. The design or model which is approved for each lot in the Subdivision is set out in the approved plan and is also incorporated in tabular form in Exhibit B. to this Declaration. Within each zone, the aggregate square footage of permissible impervious surface in the lots is 30,989 square feet in the northerly zone and 23,599 square feet in the southerly zone. The following rules shall apply to the placement of individual designs, or models, on the lots:

(1) The designated design according to the approved plan and set out in Exhibit B. may be constructed on any lot.

(2) An approved design having impervious footage equal to or less than the one designated for the lot may be substituted. In such event, a written memorandum to the change shall be forwarded to the Division of Environmental Management or any successor agency thereto, unless such notification is waived by the State.

(3) Designs may be exchanged as between lots, but only within a zone, not across the boundaries of the zones, and provided that no such exchange shall result in an increase in the aggregate impervious square footage in the zone. As in (2) above, written notification of any such exchange shall be furnished to the State.

(4) Lots shall be conveyed with express reference to these covenants, and lots shall be conveyed only with an accompanying contract to construct a specific design on the lot. The deed shall also specify the impervious surface allowable on the lot, in accordance with the limitations set out in this Article, in Exhibit B., and in the approved plan.

23. **RENTALS OF HOMES BY OWNERS.** Owners shall have the right to rent their homes, but provided that in no event shall rentals be for a period of less than six months. The Board of Directors shall have the authority to establish such reasonable rules and regulations concerning rental of the home as may be deemed necessary in the future, including the right to review and approve lease forms. Subject to such rules and regulations, the Lot Owners, including Declarant, shall have the absolute right to lease or rent the same subject to the terms of this Declaration and further subject to the rules and regulations of the Association.

Anything in the preceding paragraph to the contrary notwithstanding, each Lot Owner, by acceptance of a deed, grants unto the Association the right to evict tenants of the Lot Owner from Owner's home, without notice to the Owner, for violation of this Declaration or of duly-adopted rules or regulations of the Association. Any lease for a home, whether or not same shall be in writing, shall be deemed to include, and shall be subject to, the terms of this Declaration and rules and regulations of the Association.

The Declarant shall have the right to lease any home or homes within the subdivision from any owner or owners who agree to enter into such leases, for any term of months, for use as a model home or homes. This right of the Declarant expires upon the sale of all lots in the subdivision by the Declarant.

24. **AVAILABILITY OF ASSOCIATION RECORDS.** The Association shall make available to Lot Owners and lenders, holders, insurers or guarantors of any mortgage on a Lot, current copies of the Declaration (and amendments thereto), By-Laws, and other rules and regulations concerning the condominium and the books, records and financial statements of the Association. For purposes of this article the term "available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

25. **RIGHTS RESERVED UNTO LENDERS.** So long as any entity shall hold any mortgage or lien upon any Lot or Lots, or shall be the owner of any Lot or Lots, such entity shall have, in addition to the rights otherwise provided herein, the following rights:

a. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting, and to designate a representative to attend.

b. To be given written notice of default by any Lot Owner owning a Lot encumbered by a mortgage or lien held by such entity, such notice to be sent to the place which said entity may designate in writing.

c. To be given written notice of any loss to or taking of the common areas of the condominium if such loss or taking exceeds \$10,000.00, or damage to a home in excess of \$5,000.00.

d. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

e. To receive written notice of delinquency in the payment of assessments by a Lot Owner which remains for a period of sixty days.

f. To receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

g. To receive written notice of any proposed action which would require consent of a specified percentage of mortgage holders.

Whenever an entity holding any mortgage or lien upon any Lot or Lots desires the provisions of this article to be applicable to it, it shall serve written notice of such fact upon the Association identifying the Lot or Lots upon which such entity holds any mortgage, or identifying any Lots owned by it, together with sufficient facts to identify such Mortgagee, and such notice shall designate the place to which notices are to be given by the Association to such entity. In the absence of such written notice by a lender, the Association shall have no obligation to give notice to such entities under this Article.

26. MISCELLANEOUS PROVISIONS

a. Covenants Running with the Land. This Declaration shall be governed by, and construed and enforced pursuant to, the laws and judicial decisions of the State of North Carolina. Each Lot Owner, by the acceptance of a deed of conveyance for a Lot, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, as same may be amended. All rights, benefits and privileges of every character hereby granted, created, or reserved or declared, and all impositions and obligations hereby imposed shall be deemed to be covenants running with the land, and shall bind any entity having at any time any interest or estate in said land, and shall inure to the benefit of such entity in like manner as if the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

b. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the Development Area and the operation of a residential community of the highest quality. Any Lot Owner, the Association, Declarant or any entity holding a mortgage or deed of trust on a Lot may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby. There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including, without limitation, reasonable attorney's fees actually incurred and court costs.

c. Amendment. This instrument may be amended by a recorded instrument executed by the owner(s) of two-thirds of the lots in the subdivision with the following exceptions:

1. Any amendment impairing the rights of any institutional mortgage or mortgagee shall be ineffective unless executed by such mortgagees.

2. Any amendment affecting stormwater run-off restrictions shall require the joinder of the State of North Carolina.

3. Any amendment impairing the development or marketing rights of the Declarant shall be ineffective unless executed by the Declarant.

c. **Waiver.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

d. **Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of this Declaration.

e. **Headings.** The heading to each article and section hereof is inserted only as a matter of convenience for reference and in no way limits or describes the scope or the intent of this Declaration nor in any way affects this Declaration.

f. **Person to Receive Service of Process.** R. D. DARDEN, JR. is hereby designated to receive service of process in any action which may be brought against or in relation to the common elements. Said person's address is 102 Dunstan Lane, Morehead City, North Carolina 28557. Service of process in any action which may be brought against or in relation to a Lot shall be made upon the Lot Owner.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

LTR COMPANY

By: _____
President

ATTEST:

Secretary

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, a Notary Public of the aforesaid County and State, do hereby certify that R. D. DARDEN, JR. personally came before me this day and acknowledged that he is Secretary of LTR 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 President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this _____ day of _____, 1995.

Notary Public

My Commission Expires: _____

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