

Bucks

NORTH CAROLINA)
)
CARTERET COUNTY)

DECLARATION OF COVENANTS
AND RESTRICTIONS-BOGUE VILLAGE
AT BRANDYWINE BAY

THIS DECLARATION, made and entered into this 20 day of April, 1983, by BRANDYWINE BAY, INC., a North Carolina corporation with offices in Carteret County, North Carolina (hereinafter "Declarant"), with joinder of J. C. Livingston and SUNSTATES DEVELOPMENT COMPANY (formerly Brandywine Bay Development Company), Trustee and Beneficiary, respectively, under that Deed of Trust recorded in Book 472, page 31, Carteret County Registry, and as modified in Book 473, page 229, Carteret County Registry, and with joinder of H. 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 is now developing a portion of its property on Bogue Sound, as described below.

NOW, THEREFORE, Declarant hereby declares that all of that property known as Bogue Village at Brandywine Bay, (Map Book 20, page 6, 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.

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ARTICLE I

Section 1. Definitions.

A. "Association" shall mean and refer to Bogue Village 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 any 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.

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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.

I. "BBA" shall mean and refer to Brandywine Bay Association, Inc., its successors and assigns.

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 the 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.

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ARTICLE III

BOGUE VILLAGE 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 be 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 three votes for each lot owned. Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

A. When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or

B. On April 12, 1988.

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 therefor, whether or not it shall

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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. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$ 72.00 per lot.

A. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

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B. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five percent (5%) by a vote of 2/3rds of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 2/3rds 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 only to 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.

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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 assessment 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 provisions 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 IV

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 which a designation of "residential, single family" is made by Declaration or amendments hereto.

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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 1750 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. Provided, however, notwithstanding the above setback provisions, with respect to Lots 1-8, no structure shall be erected or allowed to remain nearer than 50 feet from the south property line of said lots, as said south property line is shown on the recorded plat.

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.

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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 1750 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

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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 V

ARCHITECTURAL CONTROL COMMITTEE

Section 1. General. There is hereby created an Architectural Control Committee for Bogue Village at Brandywine Bay. Said committee shall consist of three (3) members. Until such time as Declarant owns less than five (5) lots in Bogue Village at Brandywine Bay, the members of the Committee shall be appointed by Declarant, and 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 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

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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

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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 VI

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.

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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 VII

BRANDYWINE BAY ASSOCIATION

With respect to the Brandywine Bay Association, Declarant, by this Declaration, and all owners, by acceptance of their deeds, covenant and agree as follows:

Section 1. Automatic Membership. All Owners shall automatically be Members of the Brandywine Bay Association and shall enjoy the privileges and be bound by the obligations contained in said Association's Articles of Incorporation, Bylaws and Rules and Regulations, subject to:

(i) The right of said Association to charge reasonable fees for the use of any facilities situated upon its property;

(ii) The right of said Association to suspend the voting rights and the right to use any facilities situated upon its property by a member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(iii) The right of said Association to dedicate or transfer all or any part of its property 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 or instruments signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded (such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument);

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(iv) The right of said Association to limit the number of guests of members as to the use of any facilities situated upon said Association's property;

(v) The right of said Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving its property and facilities and in aid thereof to mortgage and grant liens and encumbrances upon said property and facilities, provided that the rights of any mortgagee of said Association's property and facilities shall be subordinate to the rights of the members hereunder;

(vi) The right of said Association, through its Board of Directors, to determine the time and manner of use of any of the facilities situated upon its property by its members;

(vii) The right of said Association to reasonably regulate, locate and direct access routes on its property and the location of parking thereon. Membership in the Brandywine Bay Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Covenant for Assessments. Each Owner of a Lot subject to this Declaration, by acceptance of a deed therefor, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay to the Brandywine Bay Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. All such annual and special assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge and lien upon the Lot of the respective Owners thereof, and the same shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Owner or Owners of such Lot at the

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time when the assessment became due. All sums assessed by the Brandywine Bay Association but unpaid for the share of the common expenses chargeable to any Lot shall constitute a lien on such Lot prior to all other liens except (i) ad valorem tax liens and liens for special assessments on the Lot made by a lawful governmental authority, (ii) all sums unpaid on the Institutional Mortgage of record on such Lot, if any, and (iii) other liens, if any, having priority by statutory authority.

Section 3. Purpose of Assessments. The assessments levied by the Brandywine Bay Association shall be used exclusively to provide for necessary insurance coverage, reserve fund for replacements, maintenance and operation of its facilities and to promote the recreation, health, safety and welfare of the members.

Section 4. Maximum Annual Assessments. Until December 31, 1980, the monthly payments towards maximum annual assessment made by the Brandywine Bay Association on each Lot shall not exceed Twenty-One and 50/100 Dollars (\$21.50). From and after December 31, 1980, the amount of annual assessments for the Brandywine Bay Association shall be established in accordance with the terms and provisions of this Declaration and the Articles of Incorporation and Bylaws of said Association, subject to the following limitations:

(i) From and after December 31, 1980, the annual assessment may be increased each year not more than five percent (5%) above the budgeted annual assessment for the previous year without a vote of the membership of the Brandywine Bay Association, as hereinbelow provided.

(ii) From and after December 31, 1980, the annual assessment may be increased more than five percent (5%) of the budgeted annual assessment for the previous year by a vote of two-thirds (2/3) of each class of members of the Brandywine Bay Association who are voting in person, or by proxy, at a meeting duly called for such purpose.

(iii) The Board of Directors may fix the annual assessment by an amount not exceeding five percent (5%) of the budgeted annual assessment for

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the previous year as herein provided.

Declarant shall have absolutely no obligation to make payments to or for the Brandywine Bay Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may, from time to time, own, or assessments on any class or classes of membership which Declarant may from time to time hold in the Brandywine Bay Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Brandywine Bay 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, includign (but not limited to) fixtures and personal property related thereto or the expense of any other contingencies; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members of said Association who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6. Reserve Funds. The Brandywine Bay Association has established, or shall establish and maintain, a reserve fund or funds for replacement and maintenance of its property and by allocation and payment monthly to such reserve fund or funds in such amounts as are established from time to time by the Board of Directors of the Brandywine Bay Association.

Section 7. Notice and Quorum Requirement. Written notice of any meeting called for the purpose of taking any action authorized in this Article VII shall be sent to all members of the Brandywine Bay Association not less than seven (7) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership in said Association shall constitute a quorum. If the required

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quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 8. Date of Commencement of Annual Assessments: Due Date.

The annual assessments provided for herein shall commence as to all lots on the 11th day of May, 1983. The class of membership and, consequently, the assessment amount, shall be as provided in the Articles of Incorporation of the Brandywine Bay Association, which Articles are incorporated herein, by reference. The first annual assessment for each lot shall be adjusted according to the number of months remaining in the corporation's fiscal year after the 11th day of May, 1983. The Board of Directors of Brandywine Bay Association shall fix the amount of the annual assessment against each lot at least forty-five (45) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every member. The due date shall be established by the Board of Directors, and, unless otherwise provided, said Association shall collect each month from the members one-twelfth (1/12) of the annual assessment for their lots. Said Association shall, upon demand, furnish a certificate signed by an officer of said Association setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive evidence of payment of the assessment therein stated to have been paid, as to any purchaser or mortgagee of a Lot who relies thereon.

Section 9. Effect of Nonpayment of Assessments: Remedies of the

Brandywine Bay Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the rate of six percent (6%) per annum, and the Brandywine Bay

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Association may bring an action at law against the member personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, thereby expressly grants to and vests in the Brandywine Bay Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of said Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner expressly grants to said Association a power of sale in connection with any such charge or lien. The lien provided for in this Section 9 shall be in favor of said Association and shall be for the benefit of all other members. Said Association, acting on behalf of the members, shall have the power to bid in a Lot foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. NO MEMBER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NONUSE OF THE BRANDYWINE BAY ASSOCIATION'S PROPERTY OR FACILITIES OR ABANDONMENT OF HIS LOT.

Section 10. Subordination of the Assessment Lien to Mortgages, Deeds of Trust and Similar Security Interests. The lien of the assessments provided for in this Article VII shall be subordinate to the lien of any Institutional Mortgage on a Lot and subordinate to tax liens and special assessments on the Lot made by a lawful governmental authority and other liens granted priority by statutory authority. Sale or transfer of any Lot shall not affect the assessment lien. However, where the mortgagee of an Institutional Mortgage or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of an Institutional Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common

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expenses or assessments of the Brandywine Bay Association chargeable to such Lot which became due prior to the acquisition of title to such Lot as a result of foreclosure by such acquirer. Such unpaid shares of common expenses or assessments shall be deemed to be common expenses collectible from all members of the Brandywine Bay Association including such acquirer, his heirs, successors and assigns. No such sale of a Lot shall relieve such Lot (or its owner) from liability for any assessments thereafter becoming due and payable or from the lien of any subsequent assessment.

Section 11. Insurance: Insurance Assessments. The Board of Directors of the Brandywine Bay Association or its duly authorized agent shall have the authority to and shall obtain insurance for all the buildings and improvements owned by said Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering its property and facilities, and all damage or injury caused by the negligence of said Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be an expense of said Association. All such insurance coverage shall be written in the name of said Association as Trustee for each of the Owners. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of said Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by

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signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by said Board of Directors. The Board of Directors may advertise for sealed bids with any licensed contractors and they may negotiate with any contractor, who shall be required to provide full performance and payment bond for the repair, reconstruction or rebuilding of such damaged or destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all members of the Association, to make up any deficiency for repair or rebuilding of its property and facilities.

Section 12. Disclaimer. THE PROPERTY AND FACILITIES OF BRANDYWINE BAY ASSOCIATION HAVE NOT BEEN SUBMITTED TO THIS DECLARATION BY DECLARANT, AND THE SAME SHALL NOT BE CONSIDERED AS A PART OF THE PROPERTY OF BOGUE VILLAGE AT BRANDYWINE BAY, OR THE COMMON AREA OF BOGUE VILLAGE AT BRANDYWINE BAY.

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.

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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 that all the provisions of this Section 3, with respect to amendment, have been complied with.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals, the day and year first above written.

BRANDYWINE BAY, INC.

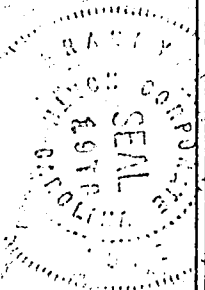
J.R. Hardin

 President

ATTEST:

Leonard P. Bluforn

 Secretary



J. C. LIVINGSTON, as Trustee, SUNSTATES DEVELOPMENT COMPANY, as Beneficiary, and H. BUCKMASTER COYNE, JR., as Trustee, all as hereinbefore stated, do join in the execution of this Declaration of Covenants and Restrictions for purposes of subordinating the Deeds of Trust hereinbefore referenced to the Covenants and Restrictions contained herein.

J.C. Livingston
 ↓ J. C. LIVINGSTON, TRUSTEE

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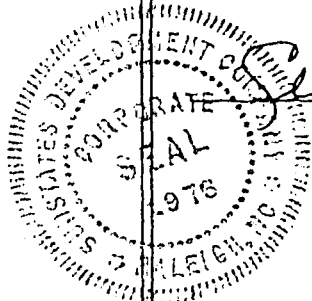
SUNSTATES DEVELOPMENT COMPANY

[Signature]
SR/VKE President

ATTEST:

Clair K. Payne
Secretary

[Signature]
H. WICKMASTER COONE, JR., TRUSTEE



NORTH CAROLINA

CARTERET COUNTY

I, a Notary Public of the County and State aforesaid, certify that LEONARD P. BLOXAM personally came 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 _____ President, sealed with its corporate seal and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this 20 day of April, 1983.

Mary Jane Rogers
NOTARY PUBLIC

My Commission expires: 8/19/85

NORTH CAROLINA
Wake COUNTY

I, a Notary Public of the County and State aforesaid, certify that J. C. LIVINGSTON, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 18th day of April, 1983.

Ruby M. Anderson
NOTARY PUBLIC

My Commission expires: 4-2-85

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NORTH CAROLINA

Wake COUNTY

I, a Notary Public of the County and State aforesaid, do hereby certify that Clair K Payne personally came before me this day and acknowledged that she is _____ Secretary of SUNSTATES DEVELOPMENT 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 S. Vice President, sealed with its corporate seal and attested by herself as its _____ Secretary.

WITNESS my hand and notarial seal, this 18th day of April, 1983.

Ruby M Anderson
NOTARY PUBLIC

My Commission expires: April 2, 1985

NORTH CAROLINA

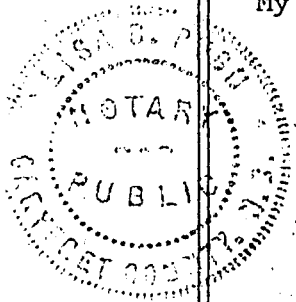
CARTERET COUNTY

I, 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 21st day of April, 1983.

Lisa B. Bush
NOTARY PUBLIC

My Commission expires: April 14, 1985



Lisa B. Bush
+
Ruby M. Anderson

NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Mary Jane Rogers
is (are) certified to be correct. This instrument was pre-
sented for registration and recorded in this office in
Book 479 Page 269
This 26 day of April, 1983 at 11:15 O'clock A.M.

Sharon Piner
Register of Deeds
By Monette Thomas
Assistant, Deputy

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EXHIBIT A

Being all of Bogue Village at Brandywine Bay, as shown in Map Book 20,
Page 6, Carteret County Registry.

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