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Declaration

BOOK 2491 PAGE 388

NORTH CAROLINA
WAKE COUNTY

AMENDMENT OF THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR KILDAIRE FARMS SUBDIVISION

THIS AMENDMENT, executed on this the 8th day of February, 1977, by and between the undersigned Owners of Lots in the following developed sections of Kildaire Farms Planned Unit Development which have been annexed to the Properties of Kildaire Farms Subdivision and made subject to the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision (herein called "Declaration"), dated November 6, 1973 and recorded in Book 2202, Page 324, Wake County Registry.

WITNESSETH, that Whereas,

1. The Declaration in effect provides for the Kildaire Farms Homeowners Association (referred to in the premises of this instrument as the "Homeowners Association") to be the owner of all amenities of Kildaire Farms, whereby each owner of residential property in Kildaire Farms which is annexed is automatically a member of the Homeowners Association and is required to pay assessments for the maintenance of all amenities;
2. Governmental agencies which guarantee, insure or purchase loans have indicated that they would approve the developed portions of Kildaire Farms for the purpose of guaranteeing, insuring or purchasing of loans on residential property in Kildaire Farms provided that the existing Homeowners Association is changed whereby two associations are created as hereinafter set forth, whereby one association (to be known as the Kildaire Farms Racquet & Swim Club) membership in which is to be voluntary, will own and maintain designated major amenities requiring high maintenance costs, such as clubhouse, swimming pool and certain types of tennis courts, and whereby the other association (already existing and known as the Kildaire Farms Homeowners Association), membership in which is compulsory, will own and maintain landscaped areas and designated minor amenities requiring low maintenance costs, such as greenways, playgrounds, ballfields, nature trails, picnic areas and lakes;
3. The overwhelming majority of the members of the Homeowners Association desire to amend the Declaration as hereinafter set forth, and in addition thereto, create the Kildaire Farms Racquet & Swim Club, as set forth herein;
4. Kildaire Farms Company has assigned its rights as Declarant to Kildaire Farms Development Corporation by an instrument dated April 11, 1975, and recorded in Book 2409, Page 469, Wake County Registry.

NOW, THEREFORE, in consideration of the premises and the execution of this instrument by each of the parties hereto, each of the undersigned, for himself, his heirs, or successors and assigns, does hereby agree with each of the other undersigned as follows:

1. That the Declaration of Covenants, Conditions and Restrictions recorded in Book 2202 at Page 324, Wake County Registry, are hereby deleted and the following two instruments are substituted in its stead:

BOOK 2491 PAGE 389

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILDAIRE FARMS SUBDIVISION, BOOK OF MAPS 1973, VOLUME 4, PAGE 439, BOOK OF MAPS 1973, VOLUME 4, PAGE 440, BOOK OF MAPS 1973, VOLUME 4, PAGE 441, BOOK OF MAPS 1973, VOLUME 4, PAGE 452, BOOK OF MAPS 1974, VOLUME 1, PAGE 61, BOOK OF MAPS 1974, VOLUME 1, PAGE 77, BOOK OF MAPS 1974, VOLUME 1, PAGE 93; and BOOK OF MAPS 1975, VOLUME 1, PAGE 26, WAKE COUNTY REGISTRY.

THIS DECLARATION, made on the date hereinafter set forth by KILDAIRE FARMS DEVELOPMENT CORPORATION, a North Carolina corporation, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (except for lots sold heretofore) in Cary Township, County of Wake, State of North Carolina, which is more particularly described as:

1. Woods of Kildaire Section, Phases One, Two, Three and Five, Kildaire Farms Subdivision, as shown on maps recorded in Book of Maps 1973, Volume 4, Page 439, Book of Maps 1974, Volume 1, Page 77, Book of Maps 1974, Volume 1, Page 61, and Book of Maps 1973, Volume 4, Page 441, Wake County Registry.
2. Farmington Woods Section, Phases One, Two and Three, Kildaire Farms Subdivision, as shown on maps recorded in Book of Maps 1973, Volume 4, Page 440, Book of Maps 1973, Volume 4, Page 452, and Book of Maps 1974, Volume 1, Page 93, Wake County Registry.
3. Pebble Creek Townhomes, Phase One, Kildaire Farms Subdivision, as shown on map recorded in Book of Maps 1975, Volume 1, Page 26, Wake County Registry.

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

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

BOOK 2491 PAGE 390

Section 1. "Association" shall mean and refer to Kildaire Farms Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, including private streets, greenways and recreation areas. The Common Area of Woods of Kildaire, Phases One, Two, Three and Five are those areas designated as "greenway" and as "private streets" as the same are shown on maps recorded in Book of Maps 1973, page 439, Book of Maps 1974, page 77, Book of Maps 1974, page 61, and Book of Maps 1973, page 441, Wake County Registry. The Common Area of Farmington Woods, Phases One, Two and Three are those areas designated as "greenway" and as "private streets" as the same are shown on maps recorded in Book of Maps 1973, page 440, Book of Maps 1973, page 452 and Book of Maps 1974, page 93, Wake County Registry. The Common Area of Pebble Creek Townhomes, Phase One are those areas designated as "greenway" as the same are shown on map recorded in Book of Maps 1975, page 26, Wake County Registry.

Section 4. "Private Streets" shall mean those portions of the Common Area which are designated as street area, whether or not constructed or opened, but which are not dedicated as a public street and are not publicly maintained.

Section 5. "Limited Common Area" shall mean those portions of the Common Area that serve only a limited number of lots and which may include, but specifically is not limited to, driveways and walkways serving Patio house and Townhouse Lots, parking buildings or areas serving only specified lots, and such other similar areas as may be designated by the Association. Limited Common Areas shall be maintained at the expense of the Owners of Lots served thereby and not at the expense of the Association.

Section 6. "Racquet and Swim Club Common Area" (herein referred to as "R & S Common Area") shall mean those portions of the Common Area designated by the Declarant and approved by the Town of Cary, which serve the Owners of Lots who voluntarily join the Kildaire Farms Racquet and Swim Club and which serve persons residing outside Kildaire Farms who are permitted to join said Club pursuant to the provisions of the Articles of Incorporation of the Kildaire Farms Racquet and Swim Club and the Declaration of Covenants, Conditions and Restrictions for the Kildaire Farms Racquet and Swim Club. Racquet and Swim Club Common Area may include, but specifically is not limited to, tennis courts, swimming pool(s), clubhouse(s) and parking areas, driveways and walkways which serve members of the Kildaire Farms Racquet and Swim Club. Racquet and Swim Club Common Areas shall be maintained at the sole expense of the members of the Racquet and Swim Club and not at the expense of the Association.

Section 7. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the Common Area, Limited Common Area and R & S Common Area.

Section 8. "Detached House Lot" shall mean and refer to any lot other than lots located in sections designated for Townhouse construction, Patio house construction, and apartment construction.

Section 9. "Townhouse Lot" shall mean and refer to any lot located in an area designated for Townhouse construction, the designation of which is not changed before improvements are constructed thereon.

Section 10. "Patio House Lot" (or "Garden House Lot") shall mean and refer to any lot located in an area designated for Patio (or Garden) house construction, the designation of which is not changed before improvements are constructed thereon.

BOOK 2491 PAGE 391

Section 11. "Lot in Use" shall mean and refer to any lot on which a dwelling unit, other than apartment, has been fully constructed and occupied as a dwelling unit.

Section 12. "Townhouse parking areas" shall mean those parking areas and driveways which are constructed on lots or on common areas but are for the benefit of the owners of Townhouse lots.

Section 13. "Patio house parking areas" shall mean those parking areas and driveways which are constructed on lots or on common areas but are for the benefit of the owners of Patio house lots.

Section 14. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Declarant" shall mean and refer to Kildaire Farms Development Corporation and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 17. "Amenities" shall mean the facilities constructed, erected, or installed on the Common Area for the use, benefit, and enjoyment of Members.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Properties only if both two-thirds (2/3) of all of the votes entitled to be cast, in the aggregate, by Class A members and also two-thirds (2/3) of all of the votes entitled to be cast by Class B members, if any, are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all members of the Association, setting forth the time, place, and purpose of the meeting, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

For the purposes of such meeting, the presence thereof of members or proxies entitled to cast sixty (60%) percent of the votes of the Class A members and sixty (60%) percent of the votes of the Class B members, if any, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and the majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority either of the Class A or of the Class B votes, or both, required for approval of the annexation, and it appears that the required two-thirds (2/3) majority of either class may be achieved if the members not present or voting by proxy assent to the annexation, then and in that event, the members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within 120 days following the date of the meeting at which the vote was taken. Each member so assenting or dissenting shall be deemed to have cast, respectively, all of the

votes to which he is entitled under Article IV of this Declaration either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of all votes entitled to be cast by the Class A members, in the aggregate, and by the Class B members, the annexation shall stand approved.

Section 2. Annexation by Declarant. The Declarant may annex additional lands to the Properties in the following manner:

(a) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop additional lands within the boundaries shown on the general plan of Kildaire Farms heretofore submitted to the Town of Cary, such additional lands may be annexed to said Properties without the assent of the Class A members. Detailed plans for the development of additional lands may be submitted to the Town of Cary prior to such development if such submission is required by ordinances of the Town of Cary.

(b) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop, from time to time, an additional tract or additional tracts of land, other than as set in subsection (a) above, consisting of any portion or all of the 178.461 acres of land shown on a map entitled Kildaire Farms, Inc., and recorded in Book of Maps 1974, Page 160, Wake County Registry, such additional lands may be annexed to said Properties without the assent of the Class A members, provided, however, that such annexation shall be approved by the Town of Cary if such approval is required by ordinances of the Town of Cary and, provided further, that the development of the additional lands described in this Section shall include amenities, exclusive of lakes, equivalent in replacement cost (computed at the time that construction of the additional amenities is commenced and on the basis of the number of dwelling units being served), to those constructed on the Properties, except as hereafter stated. (For example, if the number of dwelling units constructed on the additional lands which are annexed should be one-half (1/2) the number of dwellings on the Properties, the value of the amenities constructed on account of the additional lands would be one-half (1/2) to the value of the amenities constructed on the Properties).

(c) The Declarant may annex to the Properties the additional lands described in Subsections (a) and (b) of this Section 2 by recording in the Wake County Registry a declaration of annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions therein. The additional land shall be deemed annexed to the Properties on the date of recordation of the declaration of annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the Town of Cary, and either the Veterans Administration (VA) or the Federal Housing Administration (FHA), as provided in Subsections (a) and (b).

(d) Subsequent to recordation of the declaration of annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed. It is understood, however, that the amenities which have been planned for inclusion within the general plan of Kildaire Farms referred to in this Section 2 are intended for the use of the occupants of 2,290 dwellings. Notwithstanding any provision in this instrument to the contrary, if less than 2,290 dwelling units are constructed within the boundaries shown on the general plan of Kildaire Farms referred to in Subsection (a) of this Section 2, no additional amenities shall be required on account of the annexation of additional properties outside the boundaries shown on the general plan of Kildaire Farms until the number of dwelling units within and outside said boundaries exceeds 2,290.

ARTICLE III
MEMBERSHIP

Section 1. Members. The Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision.

ARTICLE IV
VOTING RIGHTS

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

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. 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 any Lot, and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership hereunder, additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all within the times and as provided for in Article II, Section 2 above; or
- (b) on January 1, 1986.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article V, Section 1(c).

ARTICLE V
PROPERTY RIGHTS

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

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, or any portion thereof, except Private Streets, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that if any Common Area is mortgaged while the Class B membership is in existence, the execution of such mortgage shall require the same approval of the membership which is required for Special Assessments for Capital Improvements as set forth in Article VI, Section 4 of this Declaration.

(c) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member or any person to whom he has delegated his right of enjoyment for any period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;

(d) 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; provided, however, that no conveyance of Limited Common Area shall deprive any member of the full use thereof. No such dedication or transfer shall be effective unless approved by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance. The instrument effecting such dedication, transfer or conveyance shall be sufficient if executed by appropriate officers of the Association, and contains a recital of the approval of the members;

(e) The right of the individual members to the exclusive use of parking spaces as provided in this Article;

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

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

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area shown on the aforementioned recorded maps to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility, antenna and drainage easements and easements to governmental authorities. Similarly, Declarant will convey to the Association common areas which are parts of Kildaire Farms as those portions are annexed in the future until all common areas as shown on the plans approved by the Town of Cary have been conveyed to the Homeowners Association.

Section 4. Parking Rights. Ownership of each Lot upon which a Townhouse or Patio House is constructed shall entitle the owner or owners thereof to one assigned automobile parking space and to the use of at least one additional parking space (provided, the Association, in its discretion, may permit the use of more than one additional space), and the assigned space shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas; provided, however, that the foregoing shall not be applicable if parking is available on the Lot. The Association may regulate the parking of boats, trailers, and other such items on the Common Area (including the provision of special facilities for which a reasonable charge may be made). No boats or trailers shall be parked within the right of way of any public or private street in or adjacent to Kildaire Farms Subdivision.

BOOK 2491 PAGE 395

Section 5. TV Antennas and Piped-In Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music, provided that the cost of such service shall be borne by those who subscribe to the service and not included in the annual or special assessments of the Association for all of its members.

ARTICLE VI
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Notwithstanding any provision or inference in this Declaration to the contrary, no detached house lot, Townhouse lot, or Patio House lot, shall be subject to any annual or special assessment until and unless such lot becomes a Lot in Use, except as follows: Following approval of each area for annexation by both the Town of Cary and either the Veterans Administration or the Federal Housing Administration and the annexation of each such area by the Declarant, and before the sale of any lot in the area annexed, the Common Area of such annexed area shall be conveyed to the Association. Thereafter, beginning on the first day of the first month following such conveyance, the owner of every lot within the annexed areas which is not a Lot in Use shall pay to the Association for each lot owned a sum equal to one-fourth (1/4) of the monthly sum payable by the owner of a Lot in Use as annual assessment. Such payments shall continue monthly as to each such lot until each such lot becomes a Lot in Use.

The Declarant, for each Lot in Use owned within the Properties, hereby covenants, and each Owner of any Lot in Use, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments on Lots in Use and the annual assessments on lots which are not Lots in Use, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area other than Limited Common Areas shall be shared equally by the owners of each Lot in Use. All assessments which are for the maintenance or improvements of Limited Common Areas shall be shared equally by those Owners of Lots served by such Limited Common Areas.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Properties, the recreation, health, safety, and welfare of the residents in the Properties, the enforcement of these Covenants and the rules of the Association, and, in particular, for the improvement and maintenance of the Properties and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Notwithstanding any provision or inference to the contrary herein, the paramount duty of the Association is to maintain the Private Streets in at least as good condition as publicly maintained streets in Kildaire Farms Subdivision, and this duty shall have precedence over the maintenance of the remainder of the Common Area.

Section 3. Basic and Maximum Annual Assessments. To and including December 31, 1976, the basic (and maximum) annual assessment shall not be in excess of \$90.00 per Lot in Use, except as otherwise provided herein, the exact amount of which shall be determined from time to time as provided in subsection (c) of this Section 3.

(a) From and after December 31, 1976, the basic annual assessment may be increased by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed 5% per year or the percentage increase reflected in the U. S. City average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percent changes from selected dates (published by the U. S. Bureau of Labor Statistics, Washington, D. C.), or such Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1, whichever is greater; and such increased assessment shall be the maximum annual assessment.

(b) After December 31, 1976, the basic annual assessment may be increased by an affirmative vote of two-thirds (2/3) of the members or proxies who are entitled to vote at a meeting called for such purpose, and the increased basic annual assessment shall be the basic annual assessment. Written notice of the meeting shall be given to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the date, time, place, and purpose of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the basic and maximum assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided that any such assessments shall be adopted by a two-thirds (2/3) affirmative vote of each class of members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the time, place and purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments relating to the Common Area must be fixed at a uniform rate for all lots in Use and may be collected on a monthly basis. Similarly, annual assessments relating to the Common Areas must be fixed at a uniform rate for all other lots and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called for the purposes stated in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence as to all Lots in Use and other Lots, then or thereafter existing, on the first day of the month following the conveyance of a portion of the Common Area. The first annual assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. If the Board of Directors of the Association shall determine that it would be inequitable to require the payment of the full amount of annual assessment (as might be the case if only a few of the recreational amenities are available for the use of members) the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association upon demand at any time shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the 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 the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use 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; provided, however, that the sale or transfer of any Lot, pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure 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.

ARTICLE VII
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

BOOK 2491 PAGE 398

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. The owner of any Lot may construct, reconstruct or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII
ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will

BOOK 2491 PAGE 399

be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE IX
EXTERIOR MAINTENANCE

The maintenance of lots and improvements constructed thereon shall be the duty of the owners of such lots and shall not normally be interfered with by the Association or any person. If, however, in the opinion of the Association any owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the lot as the removal of trash, cutting of grass, pruning of shrubbery, seeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The cost incurred by the Association in rendering all such services, plus a service charge of fifteen (15%) percent of such cost, shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE X
USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties which may be or may become a nuisance or annoyance to the neighborhood.

ARTICLE XI
EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the conveyance of lots to subsequent owners or the conveyance of Common Area to the Association; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

All Patio House and Townhouse Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots approved or constructed by the Declarant to the extent that such initial improvements actually encroach, including, but not limited to, such items as fireplaces, overhanging eaves, gutters, downspouts and walls.

An easement is hereby established for the benefit of the Town of Cary over all Common Area hereby or hereafter established for setting, removing, and reading water meters, maintaining and replacing water, sewer and drainage facilities, firefighting and garbage collection.

ARTICLE XII
RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Section 1. Notice of Default to First Mortgagees and Insurers of First Mortgages. In the event that any Member is in default in any obligation hereunder which remains uncured for a period of sixty days, every lender who is a first mortgagee as to the Lot of the defaulting Member and the insurer of such first mortgage, shall be immediately notified of such default, provided that such lender and/or insurer shall have given notice to the Association that it is a first mortgagee or insurer as to the Lot of such Member and shall have requested the notice of default as herein set forth.

Section 2. Right to Inspect Books of the Association. Every first mortgagee and/or insurer of a first mortgage of the Lot of a Member of the Association shall have the right during regular business hours to examine the books and records of the Association.

ARTICLE XIII
GENERAL PROVISIONS

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

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

Section 3. Exchange of Common Area for other Portions of the Properties. Notwithstanding any provision herein to the contrary, other than Section 9 of this Article XIII, it is expressly provided that the Association may convey to the Declarant, as well as any other member, in exchange for other portions of the Properties conveyed by the Declarant or other member to the Association, any portion of the Common Area theretofore conveyed to the Association, all as provided in the Articles of Incorporation of the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be Common Area and shall cease to be subject to the provisions of these Covenants relating to the Common Area, but the area thus conveyed to the Association shall become Common Area and subject to the provisions of these Covenants relating to Common Area. (The following hypothetical situation is by way of illustration, but not of limitation: Due to a surveying error, an undesirable drainage area is designated for the location of Townhouse lots. Under this provision, the Declarant and the Association exchange deeds so that the Townhouse lots may be relocated within the Townhouse Common Area and the Area designated for Townhouse lots may be converted to Common Area.)

Section 4. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration

BOOK 2491 PAGE 401

may be amended during the first thirty (30) year period by an instrument signed by the Owners of not less than ninety (90%) percent of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing, or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Wake County Registry.

Section 5. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following execution by the Owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 4 of this Article. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS
CONDITIONS AND RESTRICTIONS OF KILDAIRE FARMS SUBDIVISION

By authority of its Board of Directors, Kildaire Farms Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Kildaire Farms Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Kildaire Farms Subdivision.

This the _____ day of _____, 1976.

KILDAIRE FARMS HOMEOWNERS ASSOCIATION

ATTEST:

BY _____
President

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots in Kildaire Farms Subdivision.

Section 6. Declarant's Right to Amend Declaration with Approval of Veterans Administration or Department of Housing and Urban Development. In the

BOOK 2491 PAGE 402

event that the Declarant shall seek to obtain approval of this Declaration and the plan of development of the Properties in order that the lots and improvements constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD"), or other governmental agency, it is likely that such agency or agencies will require changes in this Declaration in order to make the lots and improvements thereon eligible for such loans. In such event, the Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval by the appropriate governmental agency, in the Wake County Registry. A letter from an official of the VA, HUD, or other appropriate governmental agency, requiring an amendment as a condition of approval, shall be sufficient evidence of the approval of VA, HUD, and/or such other agency.

Section 7. Right of Declarant or Association to Amend To Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, in order to qualify the Association or the Properties, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 8. Protective Covenants for Detached House Lots. Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of Detached House Lots and the size and location of buildings thereon.

Section 9. FHA/VA Approval. Notwithstanding any provision in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of Kildaire Farms for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas; exchange of Common Area for other portions of the properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XIV
EASEMENTS APPURTENANT TO LOTS

All Private Streets and Limited Common Areas shall be subject to an easement in favor of every lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such lot, whereby the owner of each such lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to every encumbrance of whatever nature to which any of the Common Area may be subjected.

ARTICLE XV
DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

In the event that the Association becomes insolvent, is dissolved or for any reason whatsoever loses the ownership of any of the Private Streets or Limited Common Areas referred to in Article XIV above, the Owners of lots having an interest in such Limited Common Areas and Private Streets may, at their election as determined by majority vote, form a non-profit corporation as provided in the Charter and By-Laws of the Association and assign to it the duty and authority to assess on a per lot basis all lots abutting such Common Area, whereupon such corporation shall maintain such Common Area in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

BOOK 2491 PAGE 403

(Example: Upon loss of ownership by the Association, a majority of the Owners of lots abutting one Private Street might wish to form a corporation for the maintenance of such street, and such corporation would serve as the instrument for the maintenance of that one street rather than for the maintenance of several streets.)

Membership in such corporation would be compulsory for all Owners abutting the Private Street or Streets or having an interest in the Limited Common Area or Areas to be maintained by the corporation. Such corporation would have no powers except those provided for in this Article or reasonably incidental thereto.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on this the 8th day of February, 1977.

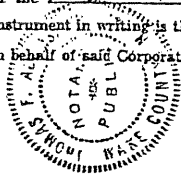


KILDAIRE FARMS DEVELOPMENT CORPORATION

BY [Signature]
PRESIDENT

STATE OF NORTH CAROLINA, Wake COUNTY (Name of State and County when acknowledgment or deed is taken)

This 8th day of February, A.D. 1977, personally came before me, Thomas F. Williams a notary public, J. E. Harrington who, being by me duly sworn, says that he is President of the Kildaire Farms Development Corporation and that the seal affixed to the foregoing or annexed instrument in writing is the Corporate Seal of said Corporation, and that said writing was signed and sealed by him in behalf of said Corporation by its authority duly given. And the said J. E. Harrington acknowledged the said writing to be the act and deed of said Corporation.



WITNESS my hand and official seal, this 8th day of February, 1977

Thomas F. Williams
Notary Public

My commission expires 10-15-80
(Do not abbreviate)