

PREPARED BY AND MAIL TO: C. THOMAS BIGGS, ATTORNEY AT LAW
P.O. BOX 376, DURHAM, NC 27702

NORTH CAROLINA

BOOK 1477 PAGE 167

BOOK NOTED DURHAM COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 25th day of August, 1988, by
CIMARRON CAPITAL, INC., a North Carolina Corporation, hereinafter called
"DEVELOPER", whose address is 20 West Colony Place, Suite 120, Durham, North
Carolina 27705.

W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described in
Article II of this Declaration and desires to create therein a residential
community with open spaces and other common facilities for the benefit of the
said community; and

WHEREAS, Developer desires to provide for the preservation of the values
and amenities in said community and for the maintenance of said open spaces
and other common facilities; and, to this end, desires to subject the real
property described in Article II together with such additions as may hereafter
be made thereto to the covenants, restrictions, easements, charges and liens,
hereinafter set forth, each and all of which is and are for the benefit of
said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient
preservation of the values and amenities in said community, to create an
agency to which should be delegated and assigned the powers of maintaining and
administering the community properties and facilities and administering and
enforcing the covenants and restrictions and collecting and disbursing the
assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated or will incorporate within one month
hereafter under the laws of the State of North Carolina, as a non-profit
corporation, Westgate Townes Homeowners Association, Inc., for the purpose of
exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described
in Article II, and such additions thereto as may hereafter be made pursuant to
Article II hereof is and shall be held, transferred, sold, conveyed and
occupied subject to the covenants, restrictions, easements, charges and liens
(sometimes referred to as "covenants and restrictions") hereinafter set forth.

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Supplemental
Declaration
of Covenants
& Restrictions

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ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to Westgate Townes Homeowners Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivision plat of the Properties or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Properties as heretofore defined.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family, whether as owners or tenants.

(f) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such living unit is situated upon its own individual Lot.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui qui trust unless and until there has been a transfer of title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

(i) "Mortgagee" shall include the noteholder or cestui qui trust secured by a deed of trust.

ARTICLE II

Property Subject To This Declaration:
Additions Thereto

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in City Outside Township, City of Durham, County of Durham, North Carolina, and is more particularly described in Schedule A attached hereto, all of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions by Developer. Additional land within the area described in Deed Book 1414 at Page 460 of the land records of Durham County, State of North Carolina, may be annexed by the Developer without the consent of members within four (4) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property or by adopting these Covenants and Restrictions in whole or in part by reference.

Such supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(b) Other Additions. Upon approval in writing of the Association pursuant to a vote of two-thirds (2/3) of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a) hereof.

(c) Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit or undeveloped and undesignated land which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

Class B. Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot or Living Unit in which it holds interests required for membership. The Class B membership shall cease and become converted to Class A membership at the earlier occurrence of the following events:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or

(b) on June 1, 1992.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit. In addition, every Class A member shall have the right and privilege of using two designated parking spaces for the benefit of his or her Living Unit.

Section 2. Title to Common Properties. The Developer must relinquish the legal title to the Common Properties to the Association prior to the transfer of any Lot or Living Unit included within the Properties.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) the right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) the legal right of an owner of property shown on the same plat to include portions of the Common Properties as may be necessary for said owner to qualify under governmental requirements such as set back lines, open space, parking or other aspects which may be needed for inclusion for a building permit to be secured to rebuild a damaged Living Unit.

(f) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purposes or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

ARTICLE V

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Except as hereinafter specifically provided, each Owner of any Lot or Living Unit, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration of Covenants and Restrictions. These assessments may be classified as (A) Regular for (1) operation, maintenance, repair, replacement and improvement of Common Properties, (2) maintenance and repair of the premises of an Owner and (3) other purposes, and (B) Special assessments for (1) capital improvements to Common Properties and (2) maintenance, repair or improvements of the premises of an Owner. These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Regular and Special assessments, together with such interest thereon and cost 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 thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and (2) of the Lots and Living Units situated upon the Properties. Without limitation, such uses shall include satisfaction of the Association's obligation regarding the Common Properties to pay hazard and liability insurance, ad valorem taxes, the payment of governmental assessments for public and private capital improvements made to or for the benefit thereof, the repair, replacements, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis for Computing Assessments. The Board of Directors shall categorize the purposes for which it makes assessments so that each purpose will be one which is charged in the same amount to each owner of a Lot or Living Unit.

Section 4. Maximum Regular Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Twenty and No/100 Dollars (\$420.00) 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 (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(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 (5%) percent by a vote of two-thirds (2/3) 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 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this document, the Association may levy, in an 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 (2/3) of the votes of each class of members who are voting in person or proxy at a meeting duly called for this purpose.

Section 6. Change in Basis of Assessments. The Association may change the basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

Section 7. Quorum for Any Action Authorized Under Sections 4, 5 and 6. The quorum required for any action authorized by Sections 4, 5 and 6 hereof shall be as follows:

At the first meeting called, as provided in Sections 4, 5 and 6 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60%) percent 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 4, 5 and 6, and the required quorum at any such subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments: Due Dates. The Regular assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first Regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Regular assessment against each Lot at least thirty (30) days in advance of each Regular assessment period. Written notice of the Regular assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then

Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, 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 Owners personally obligated to pay the same and/or to foreclose the lien against the property, and there shall be added to the amount of such assessment a charge to be determined by the Association of at least Fifty Dollars (\$50.00) for the cost of preparing and filing the complaint in such action, and in the event of judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee of at least Fifty Dollars (\$50.00) to be fixed by the court together with the costs of the action.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the properties subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I Section 1 hereof.

ARTICLE VI

Rights of First Mortgagees

Section 1. First mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

Section 2. Upon its written request, the holder of a first mortgage upon a Lot or Living Unit shall be entitled to written notification of any default by the Owner of said Lot or Living Unit in the performance of his obligations pursuant to these Covenants or the Bylaws of the Association, if such default is not cured within thirty (30) days.

Section 3. One or more first mortgagees of Lots or Living Units may, jointly or singly, in respect to the Common Properties, pay taxes or other charges which are in default and have or may become a charge against same, pay overdue hazard insurance premiums or secure new hazard insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association.

Section 4. Without having first received written approval from at least seventy-five (75%) percent of the first mortgagees (based upon one vote for each mortgagee) of the Lots or Living Units, the Association may not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the real property which is owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause.

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against the owner of a Lot or Living Unit.

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties.

(d) fail to maintain hazard insurance on insurable improvements upon the Common Property in an amount less than one hundred (100%) percent of the current insurable replacement cost.

(e) use hazard insurance proceeds from losses to any Common Property for other than the repair, replacement or reconstruction of such improvements.

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 shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs 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.

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 must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall 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. 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 5. 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 6. 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 of a majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE VIII

Aesthetics Committee

Section 1. Review by Committee. No building, fence, wall or other structure nor any planting or landscaping change (other than on the inside of a fenced area) shall be commenced, erected or maintained upon the Properties by other than the Developer nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an aesthetics committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. The Association shall have the right to bring action to enjoin any activity taken in violation of this Article.

ARTICLE IX

Exterior Maintenance

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces (other than windows, screens and glass doors), trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Special Assessments for Capital Improvement. In addition to the annual assessments authorized by this document, the Association may levy, in an 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 defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement for exterior maintenance of any lot or living unit, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day.

ARTICLE X

Refuse Collection

Section 1. Refuse Collection. Individual pickup refuse collection shall be provided for each Lot and Living Unit which is subject to assessment under Article V hereof by the Association.

Section 2. Assessment of Costs. The cost of such refuse collection may be assessed against the Lot or Living Unit for which such collection is provided and shall be added to and become part of the annual assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof.

ARTICLE XI

General Provisions

Section 1. No Lot or Living Unit shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations.

Section 2. No noxious or offensive trade or activity shall be carried on upon or in any Lot of Living Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 3. No trailer, mobile home, basement, tent, shack or garage shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

Section 4. The Board of Directors shall have the authority to adopt rules for the use of the Common Properties and shall furnish a written copy of said rules to the owners. Any violation of such rules shall be punishable by fine and/or suspension of the voting rights. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common Properties.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall insure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of ninety (90%) percent of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. (For purposes of meeting the ninety (90%) percent requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.) Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed change is sent to every Owner at least ninety (90) days in advance of any action taken; and provided, however, that at all times during the existence of these covenants and restrictions that those areas set forth and set aside as common areas shall be retained for those purposes.

Section 6. Amendment. These covenants and restrictions may be amended during the first twenty (20) year period by the vote of not less than ninety (90%) percent of each class of members cast in person or by proxy at a meeting duly called for this purpose, written notice of which including the subject matter of the proposed amendment, shall be sent to all members at least thirty (30) days in advance. Thereafter, these covenants and restrictions may be amended by the vote of at least seventy-five (75%) percent of each class of members cast in person or by proxy at a meeting duly called for this purpose, written notice of which including the subject matter of the proposed amendment, shall be sent to all members at least thirty (30) days in advance. Matters mentioned elsewhere in these covenants requiring the approval of first mortgagees or requiring a greater percentage of members for approval shall be so governed. Any such amendment shall become operative and binding upon all members and their properties when set forth in an Amended Declaration of Covenants and Restrictions and recorded in the Office of the Register of Deeds of Durham County, North Carolina.

Section 7. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9. Severability. Invalidity of any one 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 10. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, CIMARRON CAPITAL, INC. a North Carolina Corporation, has caused this instrument to be signed in its corporate name by its President and its corporate seal to be hereto affixed and attested by its Secretary, all by authority of its Board of Directors duly given, the day and year first above written.

ATTEST:

Maurice E. Oakes
Secretary (Hss't.)

CIMARRON CAPITAL, INC.

BY:

Shirley M. Menn
President

(Corporate Seal)



NORTH CAROLINA

DURHAM COUNTY

I, V. Carol Lawrence, a Notary Public, do hereby certify that Maureen E. Oakes personally appeared before me this day and acknowledged that she is Asst. Secretary of Cimarron Capital, 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 herself as its Asst. Secretary.

Witness my hand and official seal, this 25th day of August, 1988.

V. Carol Lawrence
Notary Public

My Commission Expires:

5-12-92



State of North Carolina-Durham County

The foregoing certificate(s) of

V. Carol Lawrence
A Notary (Notaries) Public for the Designated Governments units is (are) certified to be correct.

This the 8 day of Sept. A.D. 1988

Ruth C. Garrett
Register of Deeds

Gaire Baker
By: Assistant, Deputy
Register of Deeds

FILED

BOOK 1477 PAGE 167-183

SEP 6 3 23 PM '88

RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

ANNEX "A"

That tract of land containing 1.892 acres shown as Phase 1 on Final Plat of WESTGATE TOWNHOMES, Section 2, Phase 1, as per plat and survey thereof now on file in the Office of the Register of Deeds of Durham County in Plat Book 118 at Page 159, to which plat reference is hereby made for a more particular description of same.