

BK 2314 PG 754

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF TWIN BROOK HILLS

THIS DECLARATION, made and entered into this 26th day of July, 2000, by and between Denis B. Koelsch, Trustee of The Greenleaf Trust w/ dated May 5, 2000 ("Developer"), and PROSPECTIVE PURCHASERS of lots in Twin Brook Hills, ("Owners");

WITNESSETH:

WHEREAS, Developer is the owner of all of that tract of real property located in Flat Creek Township, Buncombe County, North Carolina, and being more particularly shown and described on that certain map or plat entitled Twin Brook Hills recorded in Plat Book 76, at Page 163, Buncombe County Registry, (the "Plat") reference to which is hereby made for a more particular description; and,

WHEREAS, Developer proposes to sell and convey certain lots shown on the Plat to be used for residential purposes and to develop said lots, and other additional adjacent property which may be owned by or acquired by Developer; and,

WHEREAS, Developer, prior to selling and conveying such residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants, conditions and charges (hereinafter collectively the "Restrictions") for the benefit and complement of all of such lots in the subdivision in order to promote the best interests and protect the investments of Developer and Owners.

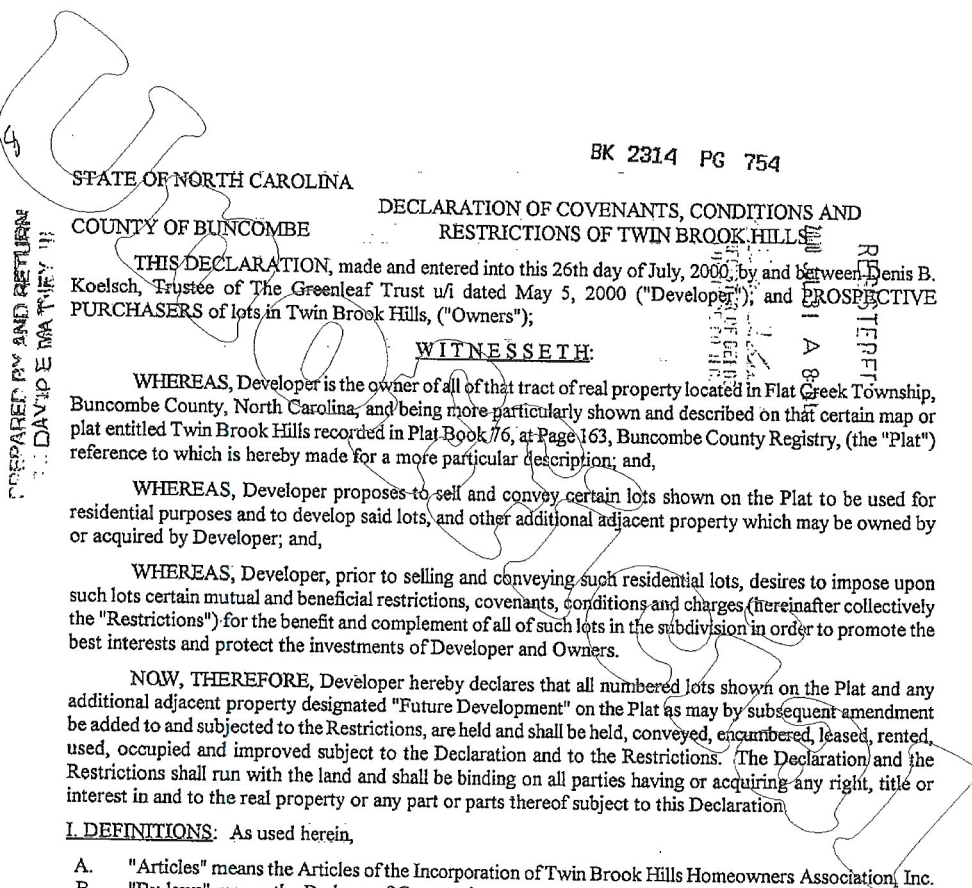
NOW, THEREFORE, Developer hereby declares that all numbered lots shown on the Plat and any additional adjacent property designated "Future Development" on the Plat as may by subsequent amendment be added to and subjected to the Restrictions, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the Restrictions. The Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

DEFINITIONS: As used herein,

- A. "Articles" means the Articles of the Incorporation of Twin Brook Hills Homeowners Association, Inc.
- B. "By-laws" means the By-laws of Corporation.
- C. "Community Use Property" means the roads, signs, and street lights and other lighting located within the reserved rights of way within the Subdivision. If and when the primary roads or streets in the Subdivision shall be accepted for maintenance and taken over by the North Carolina Department of Transportation ("DOT"), no permission or agreement shall be required of Developer or any Lot Owners, it being understood that Developer and the Lot Owners, for themselves and their heirs, successors and assigns, agree that such road or street shall become part of the State Road System at such time as the DOT assumes the responsibility of the maintenance and upkeep thereof. The lot owners and Developer agree to execute any documents that are necessary for said North Carolina Department of Transportation to accept the maintenance of the Subdivision road or street. At such time as the DOT assumes such maintenance, such roads shall cease to be Community Use Property.
- D. "Common Expenses" means and includes actual and estimated expenses of maintaining, improving and operating the Community Use Property and operating Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to the Declaration, the By-laws and the Articles.
- E. "Corporation" means Twin Brook Hills Homeowners Association, Inc., a North Carolina non-profit corporation. The "Board of Directors" shall be the elected body governing Corporation and managing the affairs of Corporation.
- F. "Dedication" means the act of committing a tract of land adjacent to the Subdivision as it then exists, to the purposes of the Declaration, by Developer, its successors or assigns. Developer may or may not

000004

PREPARED BY AND RETURN TO: DAVID E. MAFFLEY II



BK 2314 PG 755

dedicate any, all or none of the adjacent property now owned, or hereafter acquired by Developer, its successors or assigns.

- G. "Lot" means a separately numbered tract of land lying within the Subdivision and which, according to the Plat may be conveyed by Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "Dedicated". The Owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purpose of these Restrictions.
- H. "Subdivision" means Twin Brook Hills, as shown on the plat, and any additional adjacent property which has been Dedicated pursuant to this Declaration.

II. APPLICABILITY: The Restrictions shall apply to all subdivided numbered Lots shown on the Plat, and additional plats or maps of subdivisions of Dedicated land, (a "Lot" or "Lots"), which Lots are for residential purposes only. The Restrictions shall not be applicable to any unnumbered lands or lands designated on the Plat as "Future Development" or other lands of Developer.

III. HOMEOWNER'S ASSOCIATION:

A. Twin Brook Hills Homeowners Association, Inc. has been or will be formed pursuant to the rules and requirements of the North Carolina Nonprofit Corporation Act as an association of the Owners of Lots. Its purposes are to own the Community Use Property; to enforce the restrictions contained herein; and to make and enforce rules and regulations contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

B. Each Owner of each Lot within Subdivision shall be a member of Corporation. Declarant, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to Corporation:

- 1. That for so long as each is an Owner of a Lot within Subdivision, each will perform all acts necessary to remain in good and current standing as a member of Corporation;
- 2. That each shall be subject to the rules and regulations of Corporation with regard to ownership of a Lot; and

C. Each membership in Corporation shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of the Lot.

D. Corporation shall have one class of members who shall be all Owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

IV. MAINTENANCE ASSESSMENTS:

A. Twin Brook Hills Property Maintenance Association, Inc. ("Corporation") shall be responsible for the operation, maintenance and repair of the Community Use Property. It is anticipated that as the Subdivision is completed, the roadways within the Subdivision shall be taken over by the Department of Transportation ("DOT"), and that the only Community Use Property remaining shall be the street lights and the entrance sign. Developer is having the roads constructed to DOT specifications; however Developer does not warrant nor guarantee that the DOT will take over such maintenance. Corporation shall determine the assessment to be charged to each Lot to compensate Corporation for maintenance, repair and operation (including utilities, insurance and taxes) of the Community Use Properties. Corporation shall give notice of any change in the amount of the assessment (including the amount of the initial assessment) to each Lot Owner, at the address

BK 2314 PG 756

of such owner as listed with the Buncombe County Tax Collector. Each Owner of each Lot within the Subdivision shall pay to Corporation such monthly assessments.

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

C. Any maintenance assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of eighteen percent (18%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. Corporation may file notice of the same with the Clerk of Superior Court of Buncombe County or file a suit to collect such delinquent assessments and charges. Corporation may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

V. COMMUNITY EXPENSES: Community Expenses of Subdivision include:

A. All amounts expended by Corporation in insuring Community Use Property; in legal fees, accounting fees; all similar fees which may be incurred by Corporation from time to time in performing the functions delegated to Corporation by this Declaration; and all amounts expended by Corporation in enforcing the Restrictions, the Articles or the By-laws.

B. All amounts expended by Corporation in carrying out any duty or discretion as may be required or allowed by the Restrictions, the Articles or By-laws.

C. All amounts declared to be Community Expenses in the By-laws or in this Declaration.

D. All taxes and special assessments which may be levied from time to time by any governmental authority upon Community Use Property.

E. Reasonable amounts set aside by Corporation as reserves for repairs and replacement of Community Use Property, determined in such amount so as to be able to repair and replace such Property without the need of special assessments.

VI. ANNUAL GENERAL ASSESSMENT:

A. Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not expressed in such deed) is deemed to covenant and agrees to pay to Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of Paragraph E of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. The Board of Directors shall fix the annual general assessment. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Board of Directors.

C. The annual general assessments levied by Corporation shall be used exclusively to pay Community

BK 2314 PG 757

Expenses.

D. Corporation shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of Corporation as to the status of assessments on a Lot is binding upon Corporation as of the date of its issuance.

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

VII. SPECIAL ASSESSMENTS: Special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the By-laws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for extraordinary expenses. In the event the Owner of a Lot fails to comply with the provisions of the Restrictions, Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

VIII. LIEN FOR ASSESSMENTS: Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of eighteen percent (18%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. Corporation may file notice of the same with the Clerk of Superior Court of Buncombe County or file a suit to collect such delinquent assessments and charges. Corporation may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

IX. COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BY-LAWS OF CORPORATION: In the case of failure of a Lot Owner to comply with the Restrictions, the Articles or the By-laws, the following relief shall be available:

1. Corporation, aggrieved Owner or Owners of Lots on behalf of Corporation, or any Lot Owner on behalf of all Lot Owners shall have and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.
2. Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.
3. If the violation is the nonpayment of any general or special assessment, Corporation shall have the right to suspend the offending Owner's voting rights for any period during which an assessment against the Lot remains unpaid.
4. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.
5. The failure of Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the By-laws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

Prior to availing itself of the relief specified herein, Corporation shall follow the hearing procedures as set forth in the By-laws.

BK 2314 PG 758

X. PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT:

A. Developer shall have the right, at its election, at any time and from time to time, without the consent of any Lot Owner, to bring within the coverage and operation of these Restrictions any or all additional properties adjacent to the Subdivision as it then exists, now owned or hereafter acquired by Developer, its successors or assigns. The addition to property authorized hereby shall be made by filing in the Buncombe County Registry, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property.

B. Easements and rights-of-way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved exclusively to Developer for such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights-of-way being shown or noted on the Plat, which is incorporated by reference and made a part hereof for a more particular description of such easements and rights-of-way. The easements and right-of-way areas reserved by Developer on each Lot pursuant hereto or pursuant to a Supplementary Declaration shall be maintained continuously by the owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water, or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the owner except those for which a public authority or utility company is responsible.

C. Notwithstanding anything to the contrary elsewhere contained herein, Developer reserves the right to utilize the roads within the Subdivision and portions of a Lot or Lots to provide access to additional properties now owned or hereafter acquired which Developer its successors or assigns may develop; provided such additional properties shall be restricted to residential use; further provided, that any instrument referencing this provision to provide such access shall also provide a requirement and a method of calculation whereby the property owners in the additional property bear a reasonable proportionate share of the cost of any roadways so utilized within the subdivision which are not being state maintained.

D. There is reserved across Lots 5 and 20 an easement twenty feet (20') in width parallel to the site easement as shown on the plat extending from Jupiter Road to Double Brook Drive, to Developer and, following completion of the development of the Subdivision, to the Corporation for purposes of installation, improvement, maintenance and repair of a sign, landscaping, and illumination, identifying and describing the Subdivision.

XI. BUILDING PREREQUISITES: No residence or other improvements, including underground lines, shall be erected, placed or altered on any lot until the plans and specifications therefor have been submitted to and approved, in writing, by Developer, its successors or assigns, or its designated agents. All plans must show the location of any of such buildings to be placed, erected or altered on said lot. The transfer of the last Lot then owned by Developer (in the absence of a simultaneous explicit transfer of the approval rights of Developer contained in this Article) shall constitute the transfer of the approval right of Developer contained in this Article to the Board of Directors.

XII. RESTRICTIONS ON USE AND OCCUPANCY:

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on less than a numbered Lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling. No modular, mobile or manufactured home or trailer shall be placed in the Subdivision, or on any Lot; provided that good quality off frame modular homes may be permitted at Developer's sole discretion; further provided that during

BK 2314 PG 759

the period of development of the Subdivision, including all Phases, Developer may maintain within the Subdivision a trailer as a construction/sales office, but not as a residence.

B. Any dwelling constructed on a Lot subject to these Restrictions shall contain not less than one thousand three hundred (1300) square feet of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages and any outbuildings).

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any except within the minimum building setback lines as follows: twenty-five (25) feet from the closest road right of way margin, fifteen (15) feet from the Lot side line, and fifteen (15) feet from the Lot rear line.

D. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to an individual septic tank or other sewer system located upon such and approved by the appropriate governmental authorities. Each such approved individual septic tank or sewer system shall be maintained in good and proper working order and condition by the owner in accordance with the requirements of governmental authorities having jurisdiction. No outside toilet shall be constructed as herein expressly provided.

E. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. Once construction of a dwelling or other improvements is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.
2. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanship manner and quality. No used structures shall be relocated or placed on any Lot. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot.
3. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.
4. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the subdivision.
5. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.
6. No stripped, partially wrecked, or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.
7. All fuel storage tanks shall be buried below the surface of the ground and all outdoor receptacles for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street or recreation area.
8. No sign (excluding typical "For Sale" and builder identification signs or similar signs), billboard or other advertising structure of any kind may be erected or maintained upon any Lot; provided, however, that construction identification signs showing the Lot number and name of the builder may be exhibited upon the Lot during the period of construction.
9. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets in a reasonable number may be kept provided they are not kept, bred or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot owners or to the neighborhood.
10. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot owners

BK 2314 PG 760

or the neighborhood.

- 11. All driveways must be of concrete, asphalt or other hard impervious surface.
- 12. No exposed concrete block shall be permitted within the subdivision.
- 13. The exterior appearance and location of all improvements on a lot must be approved in writing by Developer.
- 14. Corporation may require prior to the commencement of construction of improvements on a lot, the deposit of a One Thousand Dollar (\$1,000.00) bond to pay the cost of clean-up of any construction debris or mud on the roads, community use property, or property adjacent to the lot on which construction is occurring. Following completion of such construction, any portion of such deposit not expended in cleanup shall be refunded to the Lot owner.

XIII. WAIVER: No provision contained in these Restrictions, the Articles or the By-laws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

XIV. VARIANCES: The Board of Directors in its discretion may allow reasonable variances and adjustments of this Declaration in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Persons. To be effective, a variance hereunder shall be executed on behalf of corporation, recorded in the Buncombe County Registry and refer specifically to this Declaration.

XV. DURATION, AMENDMENT AND TERMINATION:

A. The covenants and Restrictions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended in full or part during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners provided, that no amendment shall alter any obligation to pay Community Expenses to benefit Community Use Property, as herein provided, or affect any lien for the payment of same provided the rights of Developer, its successors and assigns to dedicate additional property shall not be changed or restricted without the consent of the holder of such right. To be effective any amendment must be recorded in the Buncombe County Registry.

B. Developer specifically reserves the right to amend or change any part or all of the restrictions, covenants and conditions herein set out by the filing in the office of the Register of Deeds of Buncombe County a Declaration of Amended Restrictive Covenants, which such amendments, modifications or additions to the Restrictions contained in this Declaration shall be made applicable to the conveyance of Lots made subsequent to the recording of such Declaration of Amended Restrictive Covenants.

C. Invalidation of any one of these covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

XVI. INTERPRETATION: The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

XVII. ASSIGNABILITY OF RIGHTS AND LIABILITIES: Developer shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be

BK 2314 PG 761

liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

XVIII. LIBERAL CONSTRUCTION: The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners' association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners. In all cases the Restrictions set forth or provided for in this Declaration, together with any supplements or amendments shall be construed together and shall be given that interpretation or construction which will best tend toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

IN WITNESS WHEREOF, Denis B. Koelsch, Trustee of The Greenleaf Trust u/i dated May 5th, 2000 has caused this instrument to be executed in its name by its duly appointed Trustee, the day and year first above written.

The Greenleaf Trust

By: Denis B. Koelsch, Trustee (SEAL)
Denis B. Koelsch, Trustee

SEAL-STAMP STATE OF FLORIDA, COUNTY OF Pinellas

I, a Notary Public of said State and County, certify that Denis B. Koelsch as Trustee of The Greenleaf Trust u/i dated May 5, 2000, personally appeared before me this day and acknowledged the due execution of the above instrument by him as Trustee of said The Greenleaf Trust and that he executed the same on behalf of said The Greenleaf Trust as the act and deed of said The Greenleaf Trust, with proper authority duly given.

Witness my hand and official stamp or seal, this the 27 day of July, 2000

Ruth Ann Knish
Notary Public

My commission expires: _____



State of North Carolina, County of Buncombe
Each of the foregoing certificates, namely of Ruth Ann Knish

_____ a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 31 day of July, 2000 at 8:44 A.M.

Otto W. DeBruhl Sharon C. Sawyer
OTTO W. DeBRUHL By: Assst./Deputy/Registrar of Deeds
Registrar of Deeds, Buncombe County