

2

BOOK 1402 PAGE 764

Prepared by and return to  
Robert O. Belo  
P.O. Box 51579  
Durham, N.C. 27717-1579

DECLARATION OF RIGHTS, RESTRICTIONS,  
AFFIRMATIVE OBLIGATIONS AND CONDITIONS  
APPLICABLE TO ALL PROPERTY IN DOWNING CREEK

WHEREAS, DOWNING CREEK ASSOCIATES, a North Carolina Partnership (the "Company"), is the owner of certain lands located within a community known as "Downing Creek" in Durham, North Carolina.

WHEREAS, the Company wishes to declare certain restrictive covenants affecting certain lands in Downing Creek.

NOW, THEREFORE, the Company does hereby declare that the covenants contained herein shall be covenants running with the land and shall apply to the lands described in Exhibit "A" attached hereto (the "Properties"), and such additions thereto as may hereinafter be made pursuant to paragraph (8) of Part VI hereof. The Company reserves in each instance the right to add additional restrictive covenants in respect to lands to be conveyed in the future within the Properties, or to limit therein the application of this Declaration.

DEFINITIONS

"Downing Creek" when used herein shall refer to the lands in Durham County, North Carolina, which are shown as a part of Downing Creek on the Company's Master Plan as revised from time to time.

Whenever used herein, the term "Company" or "the Company" shall refer to Downing Creek Associates, a North Carolina Partnership, its successors and assigns, and any agent or agents appointed by Downing Creek Associates, its successors and assigns, to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved unto the Company in this Declaration.

Whenever used herein, the term "Association" shall refer to Downing Creek Community Association, Inc., a North Carolina nonprofit, non-stock corporation, its successors and assigns, and any other community or owners association within Downing Creek organized by the Company or by others with the consent of the Company.

The terms "Property" and "Properties" when used herein shall refer to any tract of land or subdivision thereof in Downing Creek which has been subjected to the provisions of this Declaration of any Supplemental Declaration under the provisions of paragraph (8) of Part VI hereof, as may be referenced in deeds issued by the Company or any third party with the consent of the Company, including, without limitation, all that tract or parcel of land, situate, lying and being in Durham County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

22077

Declaration Decl.  
BK 1590 BK 1631  
Pg 29 Pg 28  
5-1-90 9-2-17-90

Declaration Declaration  
BK 1541 BOOK 1562  
Pg 224 Page 273  
8-15-89 11-30-89

Decl.  
BK 1616  
Pg 828  
4-1-91

Decl.  
BK 1689  
Pg 10  
11-4-91

#4750

The terms "Property Owner," "Owner of Property" and "Owner" when used in this Declaration shall mean and refer to all owners of an interest in real property in Downing Creek which has been subjected to the provisions of this Declaration, including, but not limited to, owners of property or tracts of land and owners of condominium units, whether such property, tracts or units are used or intended to be used for residential, commercial or recreational purposes.

The term "Master Plan" when used in this Declaration shall mean and refer to the drawing which represents the conceptual plan for the future development of Downing Creek. Since the concepts of the future development of Downing Creek are subject to continuing revision and change by the Company, present and future references to the "Master Plan" shall be references to the latest revision thereof.

The term "Open Space" when used in this Declaration shall mean and refer to all those parcels and tracts of land within the Properties designated on the Master Plan or on recorded plats as "Open Space" (hereinafter sometimes referred to as "Open Space Areas").

The term "Private Open Space" when used in this Declaration shall mean and refer to all those parcels and tracts of land within the Properties designated on the Master Plan or on recorded plats as "Private Open Space" (hereinafter sometimes referred to as "Private Open Space Areas").

The covenants and restrictions below will be referred to as the General Property Covenants of Downing Creek, and will be recorded in the Office of the Register of Deeds, Durham, North Carolina, and may be incorporated by reference in deeds to real property issued by the Company by reference to the book and page of recording in the land records of said Office of the Register of Deeds.

PART I.  
COVENANTS, RESTRICTIONS AND AFFIRMATIVE  
OBLIGATIONS APPLICABLE TO ALL  
PROPERTIES IN DOWNING CREEK

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Property and of technological advances and environmental values. In order to implement the purposes of these covenants, the Company shall establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations, Landscape Guidelines and Environmental Rules and Regulations as defined hereinafter, which shall be in addition to and more restrictive than said

Conditional Use and which shall be binding on all Property Owners within Downing Creek.

1. No building, fence or other structure shall be erected, placed or altered nor shall a building permit for such improvement be applied for on any Property in Downing Creek until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), the land management plan described in paragraph 1 of Part II and construction schedule shall have been approved in writing by the Company. In addition, the Company may, at its election, require prior written approval of a landscape plan. The Company further reserves the right to promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Architectural Standards and Construction Specifications") for specific neighborhoods and areas or for all Properties within Downing Creek, and such Architectural Standards and Construction Specifications shall establish, define and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or within the Properties, including, but not limited to, architectural style, exterior color or finish, landscape design and construction technique. Refusal or approval of plans, location, exterior color or finish or specifications may be based by the Company upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Company. One (1) copy of all plans and related data shall be furnished the Company for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Company of written demand for approval, the provisions of this paragraph shall be thereby waived.

2. In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight and breeze will be available to each building or structure within the confines of each Property, and to assure that structures will be located with regard to the topography of each Property, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Company reserves the right to control absolutely and solely to decide (subject to the provisions of the Zoning Ordinance of the County of Durham and City of Durham, North Carolina) the precise site and location of any building or structure on any Property in Downing Creek for reasons which may, in the sole and uncontrolled discretion and judgment of the Company, seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight or breeze available to a building or structure on a given Property shall not be affected by the location of a building or structure on an adjacent Property.

3. Each Property Owner shall provide space for the parking of automobiles off of public streets prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Company.

4. Except as may be required by legal proceedings, no sign shall be erected or maintained on any Property by anyone including, but not limited to, a Property Owner, a tenant, a realtor, a contractor or a subcontractor, until the proposed sign size, color, content, number of signs and location of sign(s) shall have been approved in writing by the Company. Refusal or approval of size, color, content, number or signs or location of sign(s) may be based by the Company upon any ground including purely aesthetic considerations which, in the sole and uncontrolled discretion of the Company, seems sufficient. The Company further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs erected upon any Property in Downing Creek.

The Company and its agent shall have the right and easement, whenever there shall have been placed or constructed on any Property in Downing Creek, any sign which is in violation of these restrictions, to enter immediately upon such Property where such violation exists and summarily remove the same at the expense of the Property Owner.

5. It shall be the responsibility of each Property Owner, tenant, contractor or subcontractor to prevent the development of any unclean, unsightly, unkempt, unhealthy or unsafe conditions of buildings or grounds on any Property which shall tend to substantially decrease the beauty or safety of Downing Creek, the neighborhood as a whole or the specific area. The Company and its agents shall have the right to enter upon any Property for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Property, and the cost of such corrective action shall be paid by the Property Owner. Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) days period; provided, however, that should such condition pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Company to take any such corrective action.

6. No mailbox shall be erected or maintained on any Property until the proposed mailbox design, color and location have been approved in writing by the Company. Refusal or approval of design, color or location may be based by the Company upon any ground, including purely aesthetic considerations, which, in the sole and uncontrolled discretion of the Company, seems sufficient. No alteration in the exterior appearance of

any mailbox shall be made without like prior written approval by the Company. The Company further reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Property in Downing Creek.

7. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made for the disposal of sewage by connection with the sewer system presently approved by Durham County for use in Downing Creek, or other means of sewage disposal if other means are approved by Durham County for use in Downing Creek.

8. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions for water shall be made by connection with the water lines of the Durham City and Durham County public water system which is the only system presently approved by Durham City and County for use in Downing Creek, or other water system if other water system is approved by Durham City and County for use in Downing Creek.

9. The Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releasable easement and right on, over and under the Properties to erect, maintain and use electric, Community Antenna Television and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Company or (b) such portion of the Property as may be designated as the site for a building on a plot plan for erection of a building which has been filed with the Company and which has been approved in writing by said Company. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Company further reserves the right to locate wells, pumping stations, siltation basins and tanks within Downing Creek in any Open Space or on any Property designated for such use on the applicable plat of said Property, or to locate same upon any Property with the permission of the Owner of such Property. Such rights may be exercised by any licensee of the Company, but this reservation shall not create any obligation on the part of the Company to provide or maintain any such utility or service.

PART II  
ADDITIONAL RESTRICTIONS TO IMPLEMENT  
EFFECTIVE ENVIRONMENTAL AND  
LAND MANAGEMENT CONTROLS

In order to protect the natural beauty of the vegetation, topography and other natural features of all Properties within Downing Creek, the following environmental and land management controls are hereby established:

1. Topographic and vegetation characteristics of Properties within Downing Creek shall not be altered by excavation, grading, removal, reduction, addition, clearing, cutting, pruning, seeding, planting, transplanting or any other means without the prior written approval of the Company. In addition, the Company may, at its election, require prior written approval of a landscape plan. Refusal or approval of plans or any alteration of topographic or vegetation characteristic(s) may be based by the Company upon any ground including purely aesthetic considerations which, in the sole and uncontrolled discretion of the Company, seem sufficient. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of paragraph 1 of Part I of these covenants. Should written notice be served by the Company upon any Property Owner requiring corrective alteration of topographic and vegetation characteristics pursuant to paragraphs 3 and 4 of this Part II, such notice shall be deemed to constitute written approval by the Company for such corrective alteration under the provisions of this paragraph 1.

2. Notwithstanding anything in the foregoing to the contrary, the Company reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods and procedures for landscape management on specific Properties in Downing Creek, and such authorized standards, methods and procedures may be utilized by the Owners of such specified Properties without prior written approval by the Company; provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the prior written approval by the Company. Approval for the removal of trees located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property. The provisions of this paragraph 2 shall in no way constitute a waiver of the requirement to receive prior written approval for any alteration of topographic or vegetation characteristics, pursuant to the provisions of paragraph 1 of Part I, other than for those alterations specifically authorized in said Landscape Guidelines.

3. In order to implement effective and adequate erosion control, the Company and its agents shall have the right to enter upon any Property before or after a building or structure has

been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices; provided, however, that prior to exercising its right to enter upon the Properties for the purpose of performing any grading, landscaping work, constructing or maintaining erosion prevention devices, the Company shall give the Owner of the Property the opportunity to take any corrective action required by giving the Owner of the Property written notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner. If the Owner of the Property fails to take the corrective action specified immediately, the Company or its agent may then exercise its right to enter upon the Property in order to take the necessary corrective action. The cost of such erosion prevention measures, when performed by the Company or its agent, shall be kept as low as reasonably possible. The cost of such work, when performed by the Company or its agent on an improved Property or any Property for which a building permit has been issued by the appropriate governmental authorities, shall be paid by the Owner thereof.

4. In order to implement effective insect, reptile, rodent and woods fire control, the Company and its agents have the right to enter upon any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth which, in the opinion of the Company, detracts from the overall beauty, setting and safety for Downing Creek. The cost of this vegetation control shall be kept as low as reasonably possible and shall be paid by the Owner of the Property. Such entry shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need of such work and unless such Owner fails to perform the work within said thirty (30) day period. The provisions in this paragraph shall not create any obligation on the part of the Company to mow, clear, cut or prune any Property.

5. In addition, the Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releasable easement and right on, over and under any Property to dispense pesticides and take other actions which, in the opinion of the Company, are necessary or desirable to control insects and vermin and to cut fire breaks and take other actions which, in the opinion of the Company, are necessary or desirable to control fires on any Property or any improvements thereon.

The rights reserved unto the Company, its successors and assigns, and its agents, in this paragraph 5 and in paragraphs 3 and 4 above shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of said paragraphs.

PART III  
ADDITIONAL RESTRICTIONS AFFECTING OPEN SPACE AREAS

1. It is the intent of the Company to maintain and enhance (or to convey subject to open space restrictions to the Association) certain Properties which the Company designates as

"Open Space" (hereinafter referred to as "Open Space Areas") or "Private Open Space" (hereinafter referred to as "Private Open Space Areas") on its Master Plan or on plats recorded in the Office of the Register of Deeds, Durham County, North Carolina, by the Company. It is the further intent and purpose of these restrictions and covenants to protect, maintain and enhance the conservation of natural and scenic resources; to promote the conservation of soils, wet lands, wildlife, game and migratory birds; to enhance the value of abutting and neighboring Properties adjacent to such forests, open areas and open spaces; and to afford and enhance recreation opportunities, preserve historic sites and implement generally the Downing Creek Master Plan for development. The Company reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing architectural and design program, and such modifications may change the boundaries of certain Open Space or Private Open Space areas designated as such upon the Master Plan. The Company further reserves the right to transfer, sell, convey, give, donate or lease to the Association or to any other third party any parcel of land designated as Open Space or Private Open Space on the Master Plan.

2. As easement in Open Space Areas is hereby granted to the Owners of the Properties in Downing Creek, tenants of such Properties and their guests, which easement shall entitle such Owners, tenants and their guests to enjoy the Open Space Areas subject to the rules and regulations established by the Company.

3. Land designated as "Open Space Areas" may be employed in the construction, maintenance and enjoyment of the following facilities:

- (a) Social, recreational and community buildings;
- (b) Public and private profit making clubs, golf courses and other recreational facilities;
- (c) Daycare centers, nursery schools and kindergartens;
- (d) Indoor and outdoor recreational establishments;
- (e) Art school and/or art gallery and/or nature museum;
- (f) Light commercial activities;
- (g) Emergency squad(s) and fire stations.

4. Land designated as "Private Open Space Areas" shall be subject to the easement granted in paragraph 2 of this Part III in every respect except that the enjoyment thereof shall be and is hereby limited to Owners of Property, tenants of such Property and their guests, which Property is immediately contiguous and adjacent to such land and to Owners of non-contiguous Property, tenants of such Property and their guests, which Property is designated on plats of Property in Downing Creek as being entitled to the enjoyment thereof. The easement in Private Open Space Areas hereby granted shall not be extended to any area not clearly designated as "Private Open Space." All expenses incurred in the protection, maintenance and enhancement of "Private Open Space Areas" shall be paid equally by the Property

Owners who are entitled to an easement of enjoyment over such areas.

5. Upon receipt of the written request of seventy-five percent (75%) of the Owners having an easement of enjoyment over a Private Open Space Area, the Company may permit the construction, maintenance and operation of indoor and/or outdoor recreation and community facilities upon such Private Open Space Area. The cost of such construction, maintenance and operation shall be at the sole cost of the Owners entitled to such easement of enjoyment.

6. The Company reserves unto itself, its successors and assigns, and its agent, the right to enter upon any Open Space Area or Private Open Space Area for the purpose of constructing, landscaping, maintaining and operating any (i) indoor and/or outdoor recreational and community facilities, including, but not limited to, tennis courts, platform tennis courts, handball courts, squash courts, basketball courts, swimming pools, gymnasiums, golf courses, ice skating rinks and any showers, locker rooms or other picnic shelters, picnic tables, parks, horseback riding stables, riding arenas, riding trails, walking trails, bike trails, boardwalks, decks, boating facilities and marinas, boat rental facilities, boat storage facilities, trailer storage facilities, fishing facilities, beach facilities, bicycle rental facilities, operating farms and/or animal pastures, wildlife conservancies and feeding stations, nature interpretive areas, amphitheatres, community meeting facilities and all restroom facilities, parking lots, service buildings, and concession-type food services associated with all such uses; and (ii) places of worship; libraries; fire stations and rescue squads; postoffices; day care centers, nursery schools and other schools and instructional centers; nonprofit or charitable community, civic or cultural clubs and institutions; and other similar community facilities. The Company further reserves the right to authorize the construction, landscaping, maintenance or operation of such facilities within the Open Space Areas and Private Open Space Areas by the Association or any other third party. The provisions of this paragraph shall not create any obligation on the part of the Company to construct, landscape, maintain or operate any such facilities.

7. The Company and its agent shall have the right to protect from the erosion the lands described as Open Space Areas or Private Open Space Areas by planting trees, plants and shrubs where and to the extent necessary, or by such mechanical means as construction and maintenance of siltation basins or other means deemed expedient or necessary by the Company. The right is likewise reserved unto the Company and its agent to take steps necessary to provide and insure adequate drainage ways in Open Space Areas and Private Open Space Areas, to cut fire breaks, remove diseased, dead or dangerous trees and carry out other similar activities.

8. The Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releasable easement of right to go on, over and under any Open Space Area or

Private Open Space Area to erect, maintain and use electric, Community Antenna Television, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage or other public conveniences or utilities. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, rights to make any gradings of the soil or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Company further reserves unto itself, its successors and assigns, and its agents, the right to locate, construct and maintain wells, pumping stations, siltation basins and tanks within such Open Space Areas and Private Open Space Areas. Such rights shall not create any obligation on the part of the Company to provide or maintain any such utility or service.

9. No television antenna, radio receiver, radio sender or other similar device shall be attached to the exterior portion of any building or structure on any Open Space Area or Private Open Space Area or installed on any Open Space Areas or Private Open Space Areas within Downing Creek; provided, however, that the provisions of this paragraph shall not prohibit the Company from installing or approving the installation of equipment necessary for a master antenna system, Community Antenna Television (C.A.T.V.), mobile radio systems or other similar systems on any Open Space Areas or Private Open Space Areas within Downing Creek.

10. No dumping of trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon any Open Space Area or Private Open Space Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as an Open Space Area or Private Open Space Area.

11. The granting of the easement in Open Space Areas and Private Open Space Areas in this Part III in no way grants to the public or to the owners of any land outside the Properties in Downing Creek the right to enter any Open Space Area or Private Open Space Area without the prior written permission of the Company.

12. The Company expressly reserves unto itself, its successors and assigns, and its agent, every reasonable use and enjoyment of said Open Space Areas and Private Open Space Areas in a manner not inconsistent with the provisions of this Declaration.

13. The Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releasable easement of right to go on, over and under any Open Space Areas to erect, maintain and use any suitable equipment and support structures incidental thereto for the purpose of extracting any hydrocarbons located under the Properties. This easement and right expressly includes the right to cut any trees, bushes or

shrubbery reasonably necessary to provide economical and safe mineral extraction. Such actions by the Company or its agent will be conducted within the framework of the intentions of these Covenants and with regard to the beauty and safety of Downing Creek. Such rights may be exercised by any licensee of the Company.

14. The Company reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releasable easement of right to go on, over and under any Open Space Area and Private Open Space Areas to construct and maintain a bike trail network. These reservations and rights expressly include the right to cut any tree, bushes or shrubbery, rights to make any gradings of the soil or take any other similar action reasonably necessary to provide an economical and functional internal transportation network and to maintain reasonable standards of safety and appearance. Such rights may be exercised by any licensee or assignee of the Company, but this reservation shall not create any obligation on the part of the Company to provide or maintain any such bike trail network.

15. The Company reserves unto itself, its successors and assigns, the right to convey "Open Space Areas" and "Private Open Space Areas" to the Association. Such conveyance shall be made subject to the provisions of this Part III, all other restrictions and limitations of record and any other restrictions or limitations which the Company, in its sole and uncontrolled discretion, shall elect to impose. As an appurtenance to such conveyances, the Association shall have all of the powers, immunities and privileges reserved unto the Company in this Part III as well as all of the Company's obligations with respect thereto, including the obligation to maintain and enhance set out in paragraph 1 of this Part III; provided, however, that so long as the Company, its successors and assigns, is the Owner of Property subject to the provisions of this Declaration, the Company and its agent, in addition to and jointly with the Association, shall retain all rights of easement reserved unto it in this Part III and shall, furthermore, retain all rights of entry granted in this Part III for the purposes of correcting, repairing, enhancing, improving, cleaning, preserving, clearing out, removing or taking any action to prevent a violation of these Covenants, and the retention of said rights of easement and entry by the Company shall in no way create any obligation on the part of the Company to perform any affirmative action. Property conveyed to the Association pursuant to the authority of this paragraph 15 shall become "Common Properties" or "Restricted Common Properties" as prescribed by the "Declaration of Covenants and Restrictions of the Downing Creek Community Association and Downing Creek Associates, a North Carolina Partnership," which are to be recorded in the Office of the Register of Deeds, Durham County, North Carolina, contemporaneously herewith.

16. It is expressly understood and agreed that the granting of the easements set out in this Part III in no way places a burden of affirmative action on the Company, that the Company is not bound to make any of the improvements noted herein or extend

to any Property Owner any service of any kind, except as such may be undertaken at the expense of the Association.

PART IV  
ADDITIONAL RESTRICTIONS AFFECTING  
RESIDENTIAL PROPERTIES

1. "Residential Properties" as used in this Part IV shall mean and refer to all those parcels or tracts of land within the Properties defined as "Single Family Lots," "Patio Home Sites" and "Multiple Family Tracts" in paragraphs 2, 3 and 4 of this Part IV.

2. "Single Family Lots" or "Lots" as used herein shall mean and refer to all those parcels or tracts of land within the Properties intended for subdivision or subdivided into Properties or lots intended for the construction of detached dwelling units including Single Family A (Conventional), Single Family C (Cluster) and attached Single Family D (Duplex) as defined and controlled by the applicable zoning for Downing Creek granted by the Durham County Commissioners.

3. "Patio Home Site" or "Sites" as used herein shall mean and refer to all those parcels or tracts of land within the Properties intended for subdivision or subdivided into Properties or lots intended for construction of detached dwelling units and on which a Patio Wall will be required to be erected, including Single Family B (Patio or Zero Lot Line) as defined and controlled by the applicable zoning for Downing Creek granted by the Durham County Commissioners.

4. "Multiple Family Tract" or "Tracts" as used herein shall mean and refer to all those parcels or tracts of land within the Properties intended for development of or developed as attached dwelling units including Multiple Family A (Townhouse Lots) and Multiple Family B (Condominiums and Apartments) as defined by the applicable zoning for Downing Creek granted by the Durham County Commissioners.

5. Plans required under paragraph 1 of Part I of these Covenants will not be approved unless the proposed house, dwelling unit, phase or group of Multiple Family dwelling units or any other structures will have the minimum square footage of enclosed dwelling space. Such minimum requirements for each Lot, Site or Tract will be specified in each sales contract and stipulated in each deed. The term "enclosed dwelling area" as used in these minimum size requirements does not include garages, terraces, decks, open porches, screened porches and the like area.

6. (a) All Residential Properties shall be used for residential purposes, recreational purposes incidental thereto and for customary accessory uses. The use of a portion of a dwelling unit on a Residential Property as an office by the Owner or tenant thereof shall be considered a residential use if such use does not create undue customer or client traffic as

