

DARE COUNTY
NORTH CAROLINA

THIS DECLARATION is made and entered the 3rd day of March, 2000 by Trenton Crow and wife, Tanya T. Crow being referred to as the "Declarant" within this document.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain land identified on a plat recorded in Plat Cabinet E at Slide 346 and of the Dare County Public Registry and known as Colingwood, Phase One, same being located in Atlantic Township of Dare County, North Carolina, and being a subdivision consisting of twelve (12) lots as shown on the map or plat referred to above;

AND WHEREAS, the Declarant intends to sell lots in the subdivision described on the plat referred to above subject to certain protective restrictions, reservations and covenants in order to insure the most beneficial development of the said subdivision as a residential subdivision and to prevent any such use thereof as might tend to diminish the value or pleasurable enjoyment thereof, and it is the purpose of this declaration to declare and make known the covenants, conditions and restrictions which shall apply to the lands shown on said plat;

AND WHEREAS, the Declarant desires to reserve and retain the right to make these covenants applicable to certain other properties and to include such other properties, in the discretion of the Declarant, within the development community contemplated by this declaration;

NOW, THEREFORE, Declarant hereby declares and makes known that the following restrictions, reservations and covenants are hereby imposed upon the said subdivision which shall run with the land in the subdivision and shall be binding upon Declarant, its agents, heirs and assigns, and upon all parties and persons claiming by, through or under them.

1. Residential Use. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than single family residences and garages. Only one family shall occupy the same main dwelling and its accessory buildings, provided, however, that servants' quarters or a guest suite may be erected, but such facilities may not be rented, leased or sold separately from the main premises. No business or business activity may be carried on upon the property at any time, provided, however, that nothing herein shall preclude the Declarant, its



6004737
Page: 1 of 11
03/03/2000 04:50PM

Subdivision and, also, adjacent to Colington Rd. (NC 1712) is reserved for village commercial development by Declarant, and is excepted from this declaration. Any lot or property dedicated to use for common purposes, shall not be subject to assessment or dues, as set forth hereafter in the declaration, so long as such use is dedicated to the use and benefit of the property owners association, its members and guests as defined in this declaration. No house nor any part of a house in the subdivision may be rented for a shorter period of time than three months.

2. Subdivision of Lots. No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant, however, it shall be permissible to combine two or more adjacent lots, which have a common ownership, into one tract of land for purposes of building a dwelling which would be authorized on such lots individually. It shall, also, be permitted to divide one lot between two adjoining lots for purposes of creating two larger lots, if permission is first obtained from County zoning officials. In the event of such a combination, the setback requirements relating to the common boundary between the lots will not prohibit building upon that boundary so long as setback requirements relating to the outside border of that tract are met. This provision does not reduce or remove any other restriction that may exist as a result of this declaration. If any requirements of these covenants differ or contradict the plat of the subdivision on file, the requirements of these covenants shall prevail and shall supercede the requirements of the plat.



proposed location and elevation of such building structure, drives and parking areas) including the area of each lot designated to be cleared for placement of building structures, drives and parking areas, shall have been submitted in duplicate to Declarant in writing as evidenced by an approved copy of the elevation plans left in the permanent possession of the Declarant. The Declarant or the successors or designee may refuse to approve plans, locations or specifications upon any ground, including purely aesthetic considerations, which in the sole discretion of the Declarant shall deem sufficient. No alterations in the exterior appearance of any building or other structure shall be made without like approval by Declarant.

The minimum square footage required shall be 1200 square feet of living area, and a total of 400 square feet porches and decks, to total 1600 square feet, exclusive of other unfinished areas and other protrusions from base dimensions of the residence. For all structures within the subdivision, the roofs shall be constructed so that the pitch shall not be less than five to twelve. The foundation of all houses constructed within the subdivision shall be built of masonry materials and shall be enclosed on all sides of the building except for access and ventilation openings, or shall be set upon appropriately treated piers so that the rear and sides are enclosed with lattice work or other siding material of attractive appearance and will prevent open visibility under the house.

The exterior of all houses and other structures, after approval of the building plans, must be completed within six months from the commencement of construction, except where such completion is impossible, or results in great hardship to the owner or builder due to strikes, fire, national emergencies or calamities. Where more than six months are required due to the size or type of structure, the owner shall have the right to reasonably extend the time of completion.

Construction or erection of any television satellite dishes or similar receiving apparatus shall occur only under the guidelines approved by the Declarant or its successors and assigns which guidelines shall be framed so as to limit the visibility of any structure by the location on the property and by the erection of fences, screens or other devices to limit its visibility.

At such time as sixty percent (60%) of the lots within the subdivision are owned by persons or firms other than the Declarant herein, the process of approval described in this paragraph shall become the authority and responsibility of the owners association described in this declaration (or its designated architectural review committee), if it is at that time existing as an active entity or organization; and until the owners association is so activated, the authority as described herein shall remain with the Declarant or the designee of the Declarant.



otherwise removed or destroyed at any place on any lot after submission and approval by Declarant or the homeowners association, if it has been duly organized, of areas proposed to be cleared for buildings, structures, drives or parking areas. Nor shall any such trees be removed within 20 feet (20") of any lot line that is exterior to the subdivision without the authority of the Declarant or the successor authority under this declaration.

4. Maintenance of Buildings. All buildings, structures and their appurtenances shall be maintained in a suitable state of repair; in the event of destruction or casualty, premises are to be cleared and debris removed within sixty days from the date of such casualty. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt condition of buildings and other structures or grounds on his/her lot which shall tend substantially to decrease the beauty of the neighborhood and of the subdivision as a whole. Upon the failure of an owner to comply with this requirement, the Declarant reserves the right, at its option, within three weeks after written notice has been mailed to such lot owner's last known address, to clean such property up or remove same if such property has been destroyed by fire or other disaster and Declarant's expense in so doing shall constitute a lien upon such owner's lot and improvements thereof, enforceable in the same manner as other liens described hereafter in the sections of this declaration dealing with liens and assessments.

5. Maintenance of Yards and Grounds. No unsightly salvage vehicles nor disabled vehicles (including cars, trucks, trailers, boats, motorcycles, recreational vehicles or other self propelled or towed vehicles) shall be kept on any lot for more than 3 months. This restriction shall not interfere with the privilege of any homeowner to maintain functioning, well maintained vehicles of any nature which are of attractive appearance for extended periods. The penalty for violation of this section shall be that Declarant or the Homeowners Association may have the vehicles removed at the owners expense. No debris or other materials shall be permitted to accumulate to an extent that it constitutes an unsightly appearance.

6. Maintenance During Construction. During construction of improvements on the lots within the subdivision, the lot owner or builder shall maintain facilities for or arrange for a portable toilet on the premises. During construction, the owner or builder shall maintain a trash or rubbish bin of a type and size sufficient to avoid trash or debris from spreading from the building site and shall cause such area to be maintained and cleaned periodically, both during and at the end of construction.

7. Temporary Buildings. No trailer, double-wide modules, tent, shack or other temporary building shall be erected or placed on the lands within the subdivision except for the storage of materials or the convenience of workmen shall be permitted during the erection of a residence upon said lands, and such temporary structure shall be removed from said premises upon issuance of an occupancy permit of such residence.



approval granted by the Declarant or the architectural review committee of the property owners association, shall be allowed for identification of the property owner and signs and notices of the property for rent or sale provided such sign shall be no larger than six square feet in size.

9. Animals. Property owners may keep dogs, cats or other household pets, provided that they are not kept, bred or maintained for any commercial purposes. No animals shall be permitted which constitute a danger to other tenants, including, but not limited to, wild animals of any nature or type, horses, snakes, nor breeds of dogs which have been adjudged dangerous by County, State or Federal Government. All such pets which are permitted to be outside shall be kept in an effective and secure fence which will effectively contain them or shall be kept on a leash or shall be under the immediate, continuous and effective control of a person 16 years of age or older.

10. Easements. The Declarant reserves the perpetual, assignable and releasable easement and right-of-way over, on and under the ground to erect, maintain and use electric, cable television and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, cable television, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in, over or under the front ten feet (10") and the rear ten feet (10") of each lot. In addition, the term "front ten feet" may be construed to mean a side of a lot if such side of a lot lies along a roadway.

11. Occupancy. No residence erected upon any lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities and issuance of an occupancy permit.

12. Road Maintenance. It shall be the obligation of the Declarant to maintain the roadways within the subdivision, until such obligation is assumed by the State of North Carolina. Declarant shall, also, be obligated to maintain the water lines and utilities until those obligations are assumed by the appropriate public agencies.

13. Water and Sewage. All wells and toilets and sewage units installed on the property shall be in accordance with the rules and regulations of the North Carolina Department of Health and the Dare County Environmental Health Department or the successor agency to such agencies or departments and shall be located on such lands in positions approved by such departments. No outside toilets will be permitted under any circumstances; except temporary toilets used during construction.

14. Setbacks. No building shall be located or constructed closer than 25 feet from any street or roadway, nor closer than 15 feet from the side lines of any lot, nor closer than 25 feet from any property line which is exterior to the subdivision. One or more of



15. Variances and Modifications. So long as it owns one or more lots in the subdivision, Declarant reserves the right to include in any declaration, contract or deed to these protective covenants, which will, in the sole opinion of Declarant, raise the standards or enhance the desirability of the subdivision as a residential area. Such reservation shall not be construed as authorizing Declarant to relieve any purchaser of any lot in the subdivision, in whole or in part, from any of the protective covenants set forth. Declarant, or the property owners association acting through its appropriate boards or committees, may allow reasonable variances and adjustments of these covenants in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

16. Violations. If the owners or occupants of any lot, or all of them, or their successors and assigns, shall violate any of the covenants and restrictions herein, it shall be the right of the Declarant herein, or its successors and assigns, or any lot owner in the subdivision, to institute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction for the purpose of preventing him or her or them from so doing, or to recover damages for such violation, or both.

17. Severance. The failure of Declarant or any of such party entitled to enforce any protective covenant contained in this declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Any provision of this declaration shall be deemed severable from the other provisions and in the event that any provision or portion of a provision or condition set forth within this declaration shall be deemed unenforceable, void, or unlawful, such a decision shall not affect the remainder of the covenants and conditions set forth within this declaration.

18. Continuation and Terminations. The foregoing conditions, reservations, declarations, covenants and easements shall be run with the lands and be binding upon all purchasers of lands or lots in said properties covered by these restrictions, and upon all persons or entities claiming under them through the 1st day of January, 2018, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the lots subject thereto has been recorded, agreeing to change the restrictions and covenants in whole or in part. For the purpose of such vote, the owners will be entitled to one (1) vote per lot regardless of the number of persons or entities owning any one lot.



association as described hereinafter, the rule making authorities shall then pass to the property owners association.

20. Property Owners Association. Each lot owner shall automatically become a member of the property owners association. It is acknowledged that the association shall consist of the owners of all lots within the subdivision and that each lot shall be entitled to equal voice or vote in the affairs of the association. The association shall have the right to assess the owners of lots within the subdivision for prorata shares of various costs, based upon the number of lots within the subdivision (excluding lots dedicated entirely to common uses, non-residential lots or undeveloped lots). Such costs will include the costs of maintenance of common properties, if any and other common expenses at the sole discretion of the homeowners association. The Association shall maintain the sign advertising and identifying the subdivision, the common garbage can disposal site, if any and any other common facilities erected on the property. Any delay on the part of the Declarant herein, or by the owners of lots within the subdivision or additional sections of the subdivision to formally organize the homeowners association or to exercise rights belonging to association or to otherwise cause such association to function as a legal entity, shall not invalidate or affect the right to form the association. Until such time as the association shall be formally incorporated under the laws of the State of North Carolina, it shall exist as an unincorporated association. Until such time, the Declarant and its successors and assigns shall act on behalf of the association. The name of the association shall be Colingwood Homeowners Association, Inc. or such other name as may clearly designate the nature and existence of the organization.



within the subdivision shall be subject to the obligation for the payment of dues and assessments according to the terms of this declaration. The association shall have the right to place a claim of lien against any of the lots within the subdivision to collect unpaid dues or assessments and to maintain a civil action for collection of such sums. The following paragraphs set forth the guidelines, rules and regulations for the purposes of allocating such assessments and dues and the collection thereof:

Section 1. Creation of the lien and personal obligation of assessments: Each subsequent owner other than the Declarant, by acceptance of a conveyance for a lot within the subdivision, whether or not it shall be expressed in any such deed or conveyance, regardless of the method of conveyance and regardless of whether such subsequent owner is a direct purchaser from the Declarant or a successive purchaser, shall be deemed to covenant and agree to pay to the association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such interest thereon and cost of collection thereof as hereinafter provided, in Section 9 of these provisions, shall also be the personal obligation of the person who was the owner of each property at the time when the assessment fell due.

Section 2. The assessments and fees levied by the association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the residents in the subdivision and the property owners, and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common properties and of the homes situated upon the lots within the subdivision, including but not limited to, the payment of taxes and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. The annual assessment shall be twenty five dollars (\$25.00) per lot. The board of directors of the association may, after consideration of current maintenance costs and future needs of the association, fix the actual assessment for any year at a lesser amount or greater amount, from time to time.

Section 4. In addition to the annual assessments authorized by Section 3 hereof, the association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital item or improvement upon the common properties, if any, including the necessary fixtures and personal property related thereto, provided any such assessment shall have the assent of



meeting.

Section 5. Subject to the limitation of Section 3 hereof, and for the periods therein specified, the association may change the maximum and basis of the assessments fixed by Section 3 hereof, prospectively for any such period provided that any such changes shall have the assent of three-fifths (3/5) of the voting 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 purposes of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and 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.

Section 6. The quorum required for any action authorized by Section 4 and 5 hereof shall be as follows: At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at the meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum of any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. The annual assessments provided for herein shall commence on the 1st day of January, 2000. The assessment for each succeeding year shall become due and payable on the 1st day of January of each year. No adjustment or prorations of assessments shall be made by the association. For purposes of levying the assessment, assessments shall be considered to be paid in advance and shall be levied against any property which is subject to the declaration or any supplemental declaration. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. The board of directors of the association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster 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 the assessment has been paid. Such statement shall be conclusive evidence of payment of an assessment therein stated to have been paid.



6004737

Page: 9 of 11
03/03/2000 04:50PM

with interest thereon and costs of collection thereof, including attorney's fees, as hereafter 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 not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, a penalty fee not to exceed five dollars (\$5.00) shall be added thereto and from that date interest at the then legal rate as established by law may be added to the delinquent balance and penalty and the association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property. There shall be added to such assessment, delinquent fee and interest, the cost of preparing and filing a complaint in such action and in the event that judgment is obtained, such judgment shall include interest on the total amount as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action. The Declarant or association shall establish a registered office where determination may be made of the amount of any unpaid fees and charges hereunder and the failure so to do within ten (10) years from the date of this instrument shall terminate the obligation, if any, of the purchaser for value of a lot in said subdivision from being encumbered by such delinquent fee.

Section 10. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; 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, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve any property owner from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. The following property subject to this declaration shall be exempted from the assessments, charges and liens created herein: (a) all property 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 referred to in the declaration or set forth on the plat of the subdivision referred to above; (c) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. No property or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens. Property bordering Colington Road (NC 1712) may be developed as village commercial at a later time and is excepted from these declarations.



6004737

Page: 10 of 11
03/03/2000 04:50PM