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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVERDECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR SUNCOURT VILLAS,
A PATIO HOME DEVELOPMENT

MAR 19 4 46 PM '84

RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

THIS DECLARATION made this the 19th day of March, 1984, by SUNCOURT VILLAS, a North Carolina partnership, with its principal place of business located in Wilmington, North Carolina, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of certain property located in Wilmington, County of New Hanover, State of North Carolina, in fee simple, said property being more particularly described herein, and in that regard, hereby submits said property to condominium ownership pursuant to Chapter 47A of the North Carolina General Statutes, together with common lands and facilities for the sole use and benefit of the owners of the patio homes to be located thereon; and

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WHEREAS, Developer is desirous of maintaining design criteria, location, construction specifications, and other controls to assure the integrity of the planned development; and

WHEREAS, each purchaser of a lot or patio home in SunCourt Villas will be required to maintain and construct patio homes in accordance with the design criteria herein contained; and

WHEREAS, the Developer desires to provide for the preservation of the value and amenities in such development and for the maintenance of such common lands and facilities, and to this end, desires to subject the real property described in Schedule "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Developer deems it desirable and advisable, for the efficient preservation of the values and amenities in such community, to create an association to which will be delegated and assigned the powers of maintaining and administering the Patio Home Development, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, known as "SunCourt Villas Homeowners Association, Inc." for the benefit of the owners of the lots or patio homes in SunCourt Villas and for the purpose of exercising the functions previously set forth;

NOW, THEREFORE, the Developer hereby declares that all the properties described in Schedule "A" shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE IDefinitions

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

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Section 1. "Act" means the Unit Ownership Act set forth in Chapter 47A of the North Carolina General Statutes, as may be supplemented or amended from time to time.

Section 2. "Assessments" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Unit Owner by the Association.

Section 3. "Association" means the entity responsible for the operation of the planned development pursuant to the Act, whether or not incorporated.

Section 4. "Board of Directors" or "Board" means the Board of Directors of the Association and "Director" means a member of said Board of Directors.

Section 5. "By-Laws" means the By-Laws for the government of the Association as they exist from time to time.

Section 6. "Common Areas and Facilities" shall mean all real property, including improvements located thereon, owned by the Association for the common use and enjoyment of the owners.

Section 7. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement, (including a capital reserve for repair, maintenance and replacement) of the common areas and facilities, and other expenses declared by the Association to be common expenses as further defined in the Act.

Section 8. "Common Surplus" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses. Any such common surplus shall be used to reduce the assessments for members for the following fiscal year of the Association, based upon the proposed budget for the Association for the following fiscal year.

Section 9. "Documents" means this Declaration, the By-Laws, the rules and regulations promulgated by the Board of Directors of the Association, and all other exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended or supplemented from time to time.

Section 10. "Declaration" means this instrument as it may be from time to time amended or supplemented.

Section 11. "Developer" and "Declarant" shall mean and refer to SunCourt Villas, a North Carolina partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Developer for the purpose of development.

Section 12. "Development", "Project", and "Community" shall all mean and refer to SunCourt Villas, to be developed and constructed by the Developer.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, such as a mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

Section 14. "Property" shall mean and refer to that certain real property hereinafter described, together with any buildings and improvements located thereon, as are subject to this Declaration, and more particularly described in the attached Schedule "A".

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Section 15. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the common area, as hereinbefore defined.

Section 16. "Patio Homes" as that term is used herein, or in any other document pertaining to the sale of property in the subject area, shall be synonymous with the term "lot" and/or "lots".

Section 17. "Plans", "Specifications", "Elevations", "Exterior Designs" and such like terms shall refer to and encompass the Plans, Specifications, Elevations and Designs as well as setbacks, locations, etc., contained in this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for SunCourt Villas, a Patio Home Development.

Section 18. "Zero lot line" shall mean and refer to that lot line parallel to any portion of the building which comprises an integral part of the patio wall, or duplex party wall.

Section 19. "Duplex" shall mean any two (2) units that share a common interior wall.

Section 20. "Single Units" shall mean any unit that does not share a common interior wall.

Section 21. "Unit" means a part of the property which is to be subject to private ownership and use, as designated on the exhibits attached to this Declaration, and as further defined in the Act. The word "apartment" as used herein is synonymous with the word "unit" as defined herein.

ARTICLE II

Description of Property

All that certain lot, parcel, piece or plot of land with the buildings and improvements thereon erected or to be erected situated, lying and being in Masonboro Township, County of New Hanover, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

ARTICLE III

Property Rights

Section 1. Owner's easements of enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility, public or private, for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Dedication of use. Any owner may dedicate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

Uses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, or other improvements shall be placed or altered on any lot except in accordance with the provisions of this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for SunCourt Villas.

Section 2. Subdivision of lots. No lot shall be subdivided except as hereinafter provided and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established except as herein provided.

Section 3. Alteration of building lines in the best interest of development. Where because of size, natural terrain, or any other reason in the opinion of the Developer, it should be to the best interest of the development of this subdivision that the building lines of any lot should be altered or changed, then Developer reserves unto itself, its successors or assigns and no other, the right to change said lines to meet such conditions. The Developer specifically reserves the right to transfer and assign this right of approval to the Architectural Control Committee hereinafter established.

Section 4. Completion of improvements. The exterior of all patio homes and other structures must be completed within one (1) year after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed.

Section 5. Residential use of lots. All lots shall be used for residential purposes only. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than those indicated in the plans and specifications herein defined in Article V.

Section 6. Maintenance of lots. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole. The Association shall have authority to enforce the provisions of this Section according to the terms of Article X, Section 1, hereinafter set forth.

Section 7. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No trash, leaves or rubbish may be burned on any lot or within the development nor shall there be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof. Without limiting the foregoing, exterior lighting may not be so installed as to illuminate any portion of a neighboring lot or to shine directly into any window or otherwise enter a dwelling unit located on an adjoining lot.

Section 8. Exclusion of above ground utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the premises, except with the express written permission of the Board of Directors of the Association. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 9. Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be approved by the Association on request of the lot owner, shall be permitted. It shall also be permissible to have a sign, the design and size of which shall be approved by the Association, on request of the lot owner, advertising a house or lot for sale. No other sign of any kind or design shall be allowed.

Section 10. Prohibition against business activity. No business activity, including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop of the like or any trade of any kind whatsoever shall be carried on upon a lot or lots. Provided, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said lot or the showing of said houses for the purpose of selling houses in the subdivision. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as may be necessary for its operation and sales in the subdivision.

Section 11. Garbage disposal. Each lot owner shall provide garbage receptacles in accordance with reasonable standards established by the Developer, or a roll-out garbage rack of the type approved by the Developer, which shall be visible from the streets on garbage pickup days only. Provided, that the owner shall be permitted to modify the requirements of this Section where necessary to comply with orders of governing bodies.

Section 12. Easement for utilities. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of egress and ingress, over, upon, across and under each lot and common area for the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including easements for privately owned television and other communications cable and equipment, and the Developer may further cut drainways for surface water when such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designed for use on the applicable plat of the residential subdivision, or to locate same upon an adjacent lot with permission of the owner of such adjacent lot. Such rights may be exercised by the licensee of the Developer but this reservation shall not be considered an obligation of the Developer to provide or maintain any utility service. No structures, including walls, fences, paving or planting shall be erected upon any part of the property

which will interfere with the rights of ingress and egress provided for in this paragraph. Provided, however, that such easements and rights, shall be restricted to the roads, streets, alleys and easements as shown and designated on the applicable plat or plans of the Development.

Section 13. Temporary structures. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used as a residence or permitted to remain on the lot after completion of construction.

Section 14. Trailers, etc. No trailer, mobile home, tent, barn, camper, tree house or other similar out-building or structure shall be placed on any lot at any time either temporarily or permanently.

Section 15. Storage receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house or buried underground. Any exterior air conditioning or heating units shall be screened from view from all common areas and adjacent lots.

Section 16. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any common area or from any adjoining lots.

Section 17. Water systems. No individual water supply system shall be permitted upon the premises with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing in all respects, by the utility company serving the project, including the pump and the covering or screen thereof, by the Developer, its successors and assigns, prior to installation.

Section 18. Sewer system. No surface toilets are permitted on the premises. Developer assumes responsibility for attaching to public sewer systems including all fees associated therewith.

Section 19. Underbrush, etc. In the event an owner of any lot permits any underbrush, weeds, etc., to grow upon any lot to heights of two (2) feet (except as part of a landscaping plan approved by the Developer or the Association) and on request fails to have the premises cut within thirty (30) days, agents of the Developer or the Association, or its assigns, may enter upon said land and remove same pursuant to the provisions of Article X, Section 1, and may likewise enter upon said land to remove any trash which has collected on said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot. This provision shall not be construed as an obligation on the part of the Developer or the Association or its assigns to provide garbage or trash removal services.

Section 20. Miscellaneous.

A. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

B. In the event of a violation or breach of any of these restrictions by any owner, or agent, or agent of such owner, the owners of lots in the subdivision, the Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer or the Association, its successors and assigns, shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where

such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Developer or the Association employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Developer's or the Association's counsel shall be paid by the owner of such lot or lots in breach thereof.

C. The Developer or the Association herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

ARTICLE V

Description of Patio Homes and Unit Designations

Section 1. Description of Patio Homes. The Declarant has constructed or will construct, upon the property described in Exhibit "A" attached hereto, patio homes or a multi-unit building, designated as "duplex", to be used for residential and lodging accommodation purposes, as hereinafter provided. A plat of survey of the property showing the location of the patio homes or duplexes is attached hereto and made a part hereof as Exhibit "B". The patio homes or duplexes are more particularly described in the plans for such patio homes and duplexes, a copy of which plans are attached and included as a part of Exhibit "B" attached hereto, showing all particulars of the building as required by law.

Section 2. Unit Designations. The unit designations of each patio home or duplex, its location, approximate area, and immediate common areas and facilities to which it has access and other data necessary for its proper identification are set forth in Exhibit "B" attached hereto and made a part hereof. Each unit is bounded vertically from the top of the first floor slab to the underside of the finished roof shingles. Each unit is bounded horizontally by the inside of all outside walls, and in duplexes, by the walls separating units, which are shown on said plans, subject to such encroachments as are contained in each building, whether the same now exist or may be caused or created by the existing construction, settlement or movement of the building, or by permissible repairs, construction or alterations.

Section 3. Description of Units.

A. Duplex: 2 bedroom, 2 bath dwelling unit sharing one party wall with another unit. A studio or 3rd bedroom on a second floor is available by original option or future renovation. The rear portion of the lot is walled and private. The master bedroom has a separate walled patio.

B. 2 Bedroom Single: 2 bedroom, 2 bath dwelling unit. Living room and both bedrooms have south facing sliding glass doors opening onto a walled private courtyard.

C. 3 Bedroom Single: 3 bedroom, 2 bath dwelling unit. Living room and all bedrooms have south facing sliding glass doors opening onto a walled private courtyard.

Section 4. General. All structures of every type and description shall be constructed, placed or erected within the Development in accordance with the provisions of this Article together with other applicable provisions of this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for SunCourt Villas, a Patio Home Development.

Section 5. Patio home defined. A Patio Home refers to a single-family dwelling unit consisting of one (1) or more courts partially or completely surrounded by enclosed living areas and walls. Dwelling units on Patio Home sites must be constructed so as to utilize a patio wall partially or completely enclosing the portion of the lot as indicated in Section 6. A dwelling unit may utilize a portion of the patio wall as one of its exterior walls.

Section 6. Patio Home Concept. The Patio Home emphasizes an indoor-outdoor use relationship and full utilization of the site for living purposes. Its potential attributes include:

- A. Visual and acoustical privacy;
- B. Division of public/private areas;
- C. Environmental sensitivity and response to views, breezes, and sun;
- D. Interior and exterior spatial volumes and sequences.

Section 7. Size of Patio Homes and lot coverage. All Patio Homes shall have a minimum of 1,000 square feet of enclosed dwelling areas as herein defined. The actual ground floor area of a one-story house must not exceed 50% percent of the total lot area. The actual ground floor area of a two-story house cannot exceed 40% percent of the total lot area.

Section 8. Height of Patio Homes. To maintain the scale of the neighborhood of Patio Homes, height will be restricted to two (2) floors of enclosed living space. Limitation to "Floors" and not "height in feet" will allow for sloping roof lines and flexibility in architectural expression. But under no condition will the Architectural Review Board or the Developer allow a two-story structure to compromise the privacy of an adjacent neighboring out-door space.

Section 9. Placement of Patio Homes on patio lots. Setback restrictions affecting patio lots in SunCourt Villas are as follows:

A. Minimum side-yard setback is not less than ten (10) feet inside and parallel to the property line opposite the zero lot line.

B. Front setback for all permanent structures must be maintained at twenty (20) feet inside and parallel to the front property line, provided that a garage or carport may be erected to encompass the parking areas as referred to hereinafter so long as the design and construction thereof is approved as hereinafter set forth.

C. Rear setback must be maintained at twenty (20) feet inside and parallel to the rear lot line for all duplex units.

D. The area included within these setbacks is the buildable area. All enclosed dwelling areas of the Patio House must be contained within the buildable area. Provided, however, that "eaves" or "overhangs" may extend beyond the building area if approved by the Developer. The Patio House is to be designed to its site. In passing on the acceptability of a Patio House, the Architectural Review Board and/or the Developer will consider plans submitted for Patio Homes on lots on either side of the plan under review.

Section 10. Location of patio wall. Patio walls shall be constructed according to the diagram attached hereto as Exhibit "B".

A two (2) foot easement is reserved along the boundary line of the lot, as shown on the attached Exhibit "B", for the construction, maintenance and repair of the patio wall, dwelling unit and/or garage on the adjoining lot. The use of said easement by an adjoining lot owner shall not exceed a reasonable period of time, nor shall the same be used without reasonable notice to the adjoining lot owner. Any shrubbery or planting in the two (2) foot easement that is removed or damaged, or any other damage permitted by the adjoining lot owner during the construction, maintenance and repair of his patio wall, dwelling unit and/or garage, shall be repaired or replaced at the expense of the said adjoining lot owner causing such damage.

No shrubbery or planting shall be allowed in the two (2) foot easement that would interfere with the use of said easement.

Section 11. Character of the patio wall. The patio wall should not be merely a "fence" but part of a courtyard enclosure. In the cases where two (2) lots abut on the rear lot line, then the patio wall may become a party wall and the responsibility for construction and maintenance is equally divided.

Section 12. Height and material of the patio wall. To provide visual and acoustical privacy between homes, height of the patio wall shall be a minimum of six (6) feet above finished outside grade or deck or terrace, not to exceed seven (7) feet. Where the wall turns it is permissible to introduce another screening material. Acceptability of such a fence or screen material will be decided upon by the Architectural Review Board to insure that it is consistent with good design principles and overall character of the house. A good solution is one that sensitively combines only two materials in a solid flowing relationship. Height of other patio walls shall be in the discretion of the Architectural Review Board, but in no event higher than seven (7) feet.

Section 13. Temporary privacy wall. If a neighboring patio lot is vacant and if privacy is desired, a temporary fence erected along the property line will be permitted, subject to the approval of the Developer. Cost of said fence will be borne by the lot owner erecting the fence. This fence must be removed when the patio wall or dwelling unit is constructed on the adjacent lot.

Section 14. Use of exterior space in Patio Homes.

A. Front Yard. The patio wall extending toward the front twenty (20) feet setback requirement should turn to form one or more private or semi-private outdoor enclosures. Two (2) on-site parking spaces must be provided. No more than two (2) spaces are allowed within the twenty (20) foot front setback area.

B. Side and Rear Yards. In keeping with the concept of a patio home, enclosed side yards should be treated as outdoor living extensions of the home itself, and not simply as storage or usable space typical of traditional side yards.

A yard enclosing wall may extend to and along the rear property line to allow the owner the maximum use of his property. The Developer may permit a rear privacy wall which does not enclose the entirety of the lot.

Section 15. Maintenance of privacy. To facilitate privacy to the neighboring lot, the dwelling unit shall be constructed so that neither the patio wall nor the dwelling unit provides any window or view openings looking into or over-viewing the adjacent lot, and provides no access way or entry way into said adjacent lot, except a removable panel that permits access to the two (2) foot easement reserved along the boundary line of each lot. The Architectural Review Board will not approve any structure that will allow a view into the neighboring private outdoor space.

Section 16. Additional Requirements.

A. No permanent structures shall be constructed in the designated easements to allow access for maintenance for patio walls on the adjacent lot. However, landscaping or other uses which do not restrict the adjoining lot's utilization of said easement for maintenance purposes will be permitted in the easement.

B. Cost of construction, maintenance and repair of a patio wall shall be the sole responsibility of the lot owner on whose lot the same is situated. Maintenance and repair of patio walls that are shared shall be the joint responsibility of those sharing such walls. Disputes over the maintenance and repair of patio walls shall be arbitrated by the Homeowners Association.

C. The patio home shall be constructed with gutters to insure that no excessive rainwater is discharged upon the adjoining lot.

D. Every effort should be made to preserve natural vegetation and to fully utilize existing topographic amenities.

ARTICLE VI

Membership and Voting Rights in the Association

Section 1. Membership. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessments.

Section 2. Voting rights. The Association shall have two (2) classes of voting membership.

A. Class A. Class A members shall be all owners, with the exception of the Developer, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any lot.

B. Class B. The Class B member shall be the Developer and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever shall first occur:

(1) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(2) On the 1st day of July, 1986.

When a purchaser of an individual lot or lots takes title thereto from the Developer, he becomes a Class A member.

ARTICLE VIIProperty Rights in the Common Area

Section 1. Member's easements of enjoyment. Subject to the provisions of Section 2 of this Article VII, every member shall have a right and easement of enjoyment in and to the common areas, and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to common areas. The Developer hereby covenants for itself, its successors and assigns, that on or before conveyance of the first lot, it will convey to the Association, by general warranty deed, with covenant against Grantor's acts, fee simple title to the common areas, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration, subject, however, to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns, to wit:

In order to preserve and enhance the property values and amenities of the community, the common areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the common areas shall include, but not be limited to, the repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, if any, recreational equipment, if any, fences, storm drains, and sewer and water lines, connections and appurtenances.

This Section shall not be amended, as provided for in Article XIV, Section 5, to eliminate or substantially impair the obligation for the maintenance and repair of the common areas.

Section 3. Extent of member's easements. The rights and easements created hereby shall be subject to the following:

A. The right of the Developer, and of the Association, to dedicate, transfer or convey all or any part of the common areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, either public or private, provided that no such dedication, transfer or conveyance shall adversely affect the use of the common areas by the members of the Association.

B. The right of the Developer, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the common areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over and upon and across the common areas for the completion of the Development, and for the operation and maintenance of the common areas.

C. The right of visitors, invitees, etc., to ingress and egress in and over those portions of the common areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the common areas in the case of landlocked adjacent owners) to the nearest public highway.

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D. The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that the right of a member to ingress and egress over the roads and/or parking areas shall not be suspended.

E. The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the common areas and in pursuance thereof, to mortgage the same.

Section 4. Parking rights. Any owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the common areas and facilities to his employees, tenants, invitees or licensees.

Section 5. Additional structures. Neither the Association nor any owner or any group of owners shall, without the prior written approval of Developer, erect, construct or otherwise locate any structure or other improvements in the common areas.

ARTICLE VIII

Completion, Maintenance and Operation of Common Areas and Facilities and Covenant for Assessment Therefore

Section 1. Completion of common areas by Developer.

A. The Developer will complete the construction of the streets, roadways, walkways, parking facilities and outdoor lighting serving such lot or lots in the Development.

B. The Developer will fulfill all its obligations to complete the construction of all common areas which development will be done at Developer's sole cost and expense.

Section 2. Operation and maintenance of common areas by Developer and Association. Commencing on the date of conveyance of the first lot or lots, and terminating when seventy-five percent (75%) of the units are sold, the Developer shall operate and maintain the common areas, at its sole cost and expense, and shall provide, at its sole expense, the requisite services contemplated by Section 3B of this Article VIII insofar as the same have been completed. Thereafter, the Association at its sole cost and expense, shall operate and maintain the common areas and provide the requisite services in connection therewith.

Section 3. Assessments, liens and personal obligations therefor, and operation maintenance of common areas solely by the Association.

A. Commencing when seventy-five percent (75%) of the units are sold, and at all times thereafter, the Developer, for each lot owned by it within the properties, hereby covenants, and each and every other owner of any lot or lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, 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 are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot or lots against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the owner of such lot or lots at the time when the assessment fell due.

B. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development, and in particular for the improvement and maintenance of the common areas, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance, and refuse collection, all of which obligations the Association hereby assumes as of the date set forth in A above.

C. Pending the commencement of payment of assessments by each owner of any lot or lots within the properties, the Association may contract, on behalf of such owners, for refuse collection, the cost of the same to be paid for by each owner of any lot or lots within the properties. Each owner, by acceptance of their deed, shall be deemed to covenant and agree to pay to the Association their prorata share for refuse collection pending their obligation to pay assessments as outlined in A. above.

Section 4. Amount and payment of annual assessment. The Board of Directors of the Association shall at all times fix the amount of the annual assessment at an amount sufficient to pay the costs of maintaining and operating the common areas and performing the other exterior maintenance required to be performed by the Association under this Declaration. The amount of the annual assessment shall be uniform for each lot. The Board shall also fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the lots and assessment applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by an owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto.

Each annual assessment shall be fully payable in advance on the first day of July each year, but the Board of Directors of the Association shall have the option to permit monthly or quarterly payments. The annual assessment shall not be less than One Hundred Dollars (\$100.00) per lot, and the exact amount of each annual assessment shall be fixed by the Board of Directors of the Association.

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

This Section shall not be amended as provided in Article XIV, Section 5, to eliminate or substantially impair the obligation to fix the assessment at any amount sufficient to properly maintain and operate the common areas and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 5. Special assessments for capital improvements. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment (which may be fixed at a uniform rate for all lots) applicable to that year only, in an amount no higher than the maximum annual assessment then

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 permitted to be levied hereunder for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The due date of any specified assessment shall be fixed in the Resolution authorizing such assessment.

Section 6. Notice and quorum for any action authorized under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 of this Article VIII shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership, shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform rate of assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 8. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the common areas and in the discharge of the Association's duties throughout the community.

Section 9. Reserve fund separate assessment of owners therefor. At the time of acquiring title to a lot or lots from the Developer, each owner acquiring such title shall deposit with the Association a reserve fund payment in the sum of One Hundred Dollars (\$100.00) to provide for a reserve fund for the obligation of the Association. Such reserve fund payment shall in no way be considered a prepayment of the annual assessment fee. Such reserve fund payments shall be used solely for the purposes specified in Section 3B above, as determined from time to time by Resolution of the Board of Directors of the Association, after the cessation of the Class B membership of the Developer, as specified in Article VI, Section 2, of this Declaration.

Section 10. Effect of non-payment of assessment. The personal obligation of the owner; the lien, remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the lot or lots, which shall bind such lot or lots in the hands of the then owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%), per annum, and the Association may bring legal action against the then owner personally obligated to pay the same or may enforce or foreclose the lien against the lot or lots; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his lot.

Section 11. Subordination of the lien to mortgages. 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 assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. This Section shall not be amended as provided in Article XIV, Section 5, of this Declaration.

Section 12. Exempt property. The following properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein: All common areas, as defined in Article I, Section 6 hereof. Notwithstanding any provisions herein, no land or improvements devoted to building use shall be exempt from said assessments, charges and liens.

ARTICLE IX

Architectural Control

No building, fence, wall or other structure, and no change in topography, landscaping or any other items constructed by the Developer shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Developer. When the Class B membership ceases and is converted to Class A membership, as provided in Article VI above, this right of approval shall be transferred to an Architectural Control Board appointed by the Association. Such Architectural Control Board shall be comprised of not less than three (3) representatives to be appointed by the Board of Directors of the Association. Provided, further, that the Developer may transfer its rights of approval under this Declaration prior to its selling all of the lots in the development if it so chooses. In the event the Developer or the Architectural Control Board fails to approve or disapprove any request within sixty (60) days after complete plans and specifications have been submitted to it, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer or the Architectural Control Board may seem sufficient. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

ARTICLE X

Exterior Maintenance, Reasonable Access and Maintenance of Common Areas

Section 1. Exterior Maintenance. The owner shall maintain the structures and grounds on each lot at all times in a neat and attractive manner. Upon the owner's failure to do so, the Association may, at its option, after giving the owner ten