

RECORDED AND VERIFIED
REGISTERED
NEW HANOVER CO. NC

BOOK

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DECLARATION OF CONDOMINIUM
PURSUANT TO THE PROVISIONS OF NCGS, 47C, THE NORTH CAROLINA
CONDOMINIUM ACT, FOR VALLEYGATE VILLAS, A CONDOMINIUM

THIS DECLARATION, made this 27th day of August
1987, by SHIPYARD DEVELOPMENT, LTD, a North Carolina corporation,
hereinafter referred to as the "DECLARANT", pursuant to the
provisions of Chapter 47C, North Carolina General Statutes,
entitled "North Carolina Condominium Act".

WITNESSETH:

THAT WHEREAS, Declarant is the owner of a certain tract or
parcel of land located in the County of New Hanover, State of
North Carolina, as more particularly described in EXHIBIT A
attached hereto and incorporated herein by reference, the same
being also described on a plat or map of the premises, a copy of
which is filed of record in Condominium Plat Book 8 at
Page 94-97 in the Office of the Register of Deeds of New
Hanover County.

AND WHEREAS, Declarant desires and intends to divide said
real property, and other improvements thereon into eight (8)
condominium units as defined under the provisions of the North
Carolina Condominium Act, and to sell and convey the same to
various purchasers subject to the covenants, conditions,
restrictions, limitations, and obligations herein contained to be
kept and performed in the manner provided for by and not
inconsistent with the North Carolina Condominium Act;

AND WHEREAS, the name of said real property, improvements,
buildings, and condominium units, collectively referred to as the
"Project" is to be and shall be known as "VALLEYGATE VILLAS, PHASE
ONE, A CONDOMINIUM".

AND WHEREAS, Declarant desires and intends, by the filing of
this Declaration, to submit the above-described real property,
improvements, and appurtenances thereunto belonging and therein
contained to Condominium Ownership pursuant to the provisions of
the North Carolina Condominium Act, Chapter 47C, North Carolina
General Statutes;

NOW THEREFORE, Declarant does hereby publish and declare

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RETURN TO

SCOTT. PAYNE
BOYLE & SWART
Attorneys at Law
201 Princess Street
Wilmington, N.C. 28401
(919) 763-3881

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that all of the property described above, in Exhibit A, and in paragraph 3 below, is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of a division of said property in the condominium units, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity requiring or owning an interest in the said real property and improvements, their grantees, successors, heirs, devisees, executors, administrators and assigns.

1. DEFINITIONS: Certain terms and provisions as used in this Declaration with its attached and incorporated exhibits shall be defined as follows, unless the context clearly requires and indicates a different meaning:

(a) "Act", "Unit Ownership Act" or "North Carolina Condominium Act" means the Statutory provision set forth in Chapter 47 C of the North Carolina General Statutes under which the condominium is established.

(b) "Additional Real Estate". The real estate described in Exhibit A-1 together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

(c) "Allocated Interest" shall mean the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(d) "Assessment" 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.

(e) "Association" or "Unit Owners Association" means the unit owners association organized under North Carolina General Statute 47C-3-101, and shall mean all of the unit owners acting as a group in accordance with this Declaration and the Articles of Incorporation and Bylaws under the name "VALLEYGATE

VILLAS HOMEOWNERS ASSOCIATION, INC."

(f) "Board of Directors" or "Executive Board" or "Board" shall mean the governing body from time to time of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC., a non-profit corporation whose purpose and function is to manage, maintain, operate, provide, care for, and administer VALLEYGATE VILLAS, PHASE ONE, a Condominium.

(g) "Building" or "buildings" shall mean all structures and improvements now or hereafter erected upon the premises.

(h) "Bylaws" means the Bylaws for the government of VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC. as they exist from time to time. A copy of the initial Bylaws are attached hereto as EXHIBIT D and made a part hereof by reference.

(i) "Common Areas and Facilities" or "Common Elements" means all portions of a condominium other than the units, and as more fully described in paragraph 7 below.

(j) "Common Expenses" shall mean and include the expenses of administration, maintenance, operation, repairs 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 by the Act in Section 47C-1-103(5).

(k) "Common Interests" shall mean the aggregate of the undivided interest of the unit owners in the common areas and facilities.

(l) "Condominium" means the condominium created by this Declaration and as defined in North Carolina General Statute 47C-1-103 (7).

(m) "Condominium Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations and all other exhibits attached hereto or thereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

(n) "Declarant" means SHIPYARD DEVELOPMENT, LTD, a North Carolina corporation who (i) as part of a common

promotional plan, offers to dispose of interests in a unit or units not previously disposed of, or (ii) reserves or succeeds to any special declarant rights.

(o) "Delaration" means this instrument as it may be from time to time amended or supplemented.

(p) "Declarant Control" means a period of Declarant Control of the Association, during which period the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Executive Board which period of Declarant Control terminates no later than the earlier of: (i) 120 days after conveyance of 75% of the units (including units which may be created pursuant to special Declarant rights) to unit owners other than Declarant; (ii) two years after Declarant, its successors or assigns have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised, or (iv) five years following conveyance of the first unit to unit owner other than the Delarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of Excutive Board before termination of the above defined period, but in that event Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(q) "Development Rights" shall mean any right or combination of rights reserved by the Declarant in the Declaration to add real estate to a condominium; to create units, common elements, or limited common elements within a condominium; to subdivide units or convert units into common elements, and to withdraw real estate from the condominium.

(r) "Limited Common Areas" or "Facilities" shall mean a portion of the common elements allocated by this Declaration or by operation of law for the exclusive use of one or more but fewer than all of the units.

(s) "Mortgage" shall mean a Deed of Trust as well as a

mortgage constituting a lien on a unit together with its undivided percentage interest in the common areas and facilities.

(t) "Mortgagee" shall mean a beneficiary under a mortgage.

(u) "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

(v) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, having an ownership interest of record in a unit within the property, other than a mortgagee or trustee of a Deed of Trust.

(w) "Plans" shall mean and refer to the plans and specifications of the condominium recorded under the name of VALLEYGATE VILLAS, a Condominium, in the office of the Register of Deeds of New Hanover County, a copy of which is attached hereto as EXHIBIT B and incorporated herein by reference, the same consisting of 4 pages.

(x) "Property" or "Real Property" or "Real Estate" shall mean the real property described on EXHIBIT A, and the real estate or portions thereof described on EXHIBIT A-1, if added by Delarant pursuant to this Declaration, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

(y) "Special Delarant Rights" are the rights reserved herein and in the Bylaws for the benefit of a Declarant, as follows: To complete the improvements indicated on the plats and plans filed with this Declaration; to exercise any development right, including but not limited to the Declarant's right to add additional real estate; to maintain sales offices, management offices, signs advertising the condominium, and models; to use easements through the common elements for purpose of making improvements within the condominium or within real estate which may be added to the condominium; to make the condominium part of

a larger condominium; or to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

(z) "Unit" or "Condominium Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in paragraph 4 below and as designated on the Exhibits attached to this Declaration.

The terms "Association", "Building", "Common Areas and Facilities", "Property", "Recordation", "Unit" or "Condominium Unit", "Unit Designation" and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meanings as set forth in Section 47 C of the North Carolina Condominium Act.

2. NAME OF CONDOMINIUM: The name by which the property shall be known is "VALLEYGATE VILLAS, PHASE ONE, a Condominium".

3. DESCRIPTION OF PROPERTY ON WHICH THE BUILDING AND IMPROVEMENTS ARE TO BE LOCATED: All of that certain tract or parcel of land with the buildings and improvements thereon erected or hereafter erected, situated and lying in New Hanover County, North Carolina and being more particularly described in a metes and bounds description being attached hereto as EXHIBIT A.

Declarant submits only that portion of the land described in EXHIBIT A attached hereto upon which Phase One of Valleygate Villas, a Condominium are to be constructed. The property hereby submitted is more particularly described by that condominium plat recorded in the New Hanover County Registry in Condominium Plat Book 8 at Page 94 through 97. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions of the land described on EXHIBIT A-1 to the coverage of this Declaration. If Declarant chooses to expand the property dedicated to condominium ownership, the expansion will contain a maximum of 80 units in addition to those in Phase One.

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Any extension shall occur, if at all, by the recordation of one or more Amendments to this Declaration and one or more supplementary condominium plats as required by law. Each Amendment to the Declaration shall be entitled "Supplemental Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such Supplemental Declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

Further terms, conditions, liabilities and rights concerning expansion into further phases of development, are to be found in paragraph 5, Additional Real Estate, of the Declaration.

4. DESCRIPTION OF BUILDING: The Declarant has constructed, or will construct, upon the property described in EXHIBIT A, attached hereto, one eight (8) unit building to be used for residential accommodation purposes. A plat or survey of the property showing the location of said building is attached hereto and made a part hereof as EXHIBIT B. The building is more particularly described in the plans thereof, a copy of which plans are attached hereto as EXHIBIT B and made a part hereof, showing all particulars of the building as required by law.

In general, the building has two stories built on concrete foundation and constructed primarily of wood frame with surewal exterior. The building will contain eight (8) units, each with approximately 994 sq. ft. of heated enclosed area along with a 19 sq. ft. exterior storage area. Each unit will contain two (2) bedrooms, two (2) bathrooms, a kitchen, a diningroom/livingroom/greatroom, a utility room, a front porch and rear deck.

In addition, each unit owner will be designated two parking spaces and will be served by necessary walkways, stairs and other required appurtenances and facilities.

The deed for any particular unit shall convey such unit by its unit and building designation and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the

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covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

The eight (8) units are and will be designated by their unit designations as is shown upon the plans of the buildings attached hereto as EXHIBIT B, which also shows graphically all particulars of the building and its eight (8) units, including but not limited to, the layout, location, ceiling and floor elevations, dimensions of the units, and the area and location of the common areas and facilities. Reference is hereby made to said plans for the purpose of identifying and locating each unit within the building, as well as identifying its dimensions, approximate areas, and number of rooms. No unit bears the same designation as any other. Any conflict between said plans and this definition shall be resolved by reference to the said plans, which shall control.

All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units perimeter walls, ceilings and floors, of the interior surface of the perimeter walls, ceilings and floors of the additional area conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the building whether the same now exist or may be caused or created by existing construction, settlement, or movement of the building, or by permissible repairs, construction or alteration. All units shall be substantially the same in design, construction, and material.

Each unit shall be equipped by the Declarant with and is defined to include its own electrical meter, and a heat pump. The air handling equipment for said heat pump shall be housed within the unit within the utility room designated for said purpose in said plans. The condensing units of said heat pumps shall be housed and stored outside and immediately adjacent to the building.

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Each unit is hereby defined also to include:

1. All non-load bearing partition walls located entirely within the units;
2. All materials, including, but not limited to, carpet, paint, and vinyl attached to or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the units; and all windowpanes, frames, panes and exterior doors.
3. All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines, located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the units. All such pipe, ducts, wires, conduits, and other such facilities are defined as a part of the unit at and from their point of entry into the unit.

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part of the units is defined hereby as a part of the common areas and facilities of the condominium.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in EXHIBIT C attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has

been determined by a ratio formulated upon the approximate relation that the fair market of each unit at the date of the Declaration bears to the then aggregate fair market value of all the units having an interest in the common areas and facilities. The fair market value of each unit and the aggregate fair market value of all of the units has been determined by the Declarant, and its determination shall be binding upon all units and unit owners. Except as provided in paragraph 5 below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

5. ADDITIONAL REAL ESTATE:

Declarant expressly reserves the right to add the Additional Real Estate to the condominium. All or part of the Additional Real Estate identified and described on EXHIBIT A-1 may be added to the condominium at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any or all of the Additional Real Estate. If the Declarant shall exercise its right to add Additional Real Estate, the same shall be accomplished by the Declarant's filing, with the office of the Register of Deeds of New Hanover County, North Carolina, such amendment or amendments to this Declaration as may be required by the act.

In the event that the Declarant creates additional condominium units by exercising its right to add additional real estate to the condominium, the common areas and common facilities will be adjusted and reallocated based upon the relative values assigned by the Declarant solely for this purpose. The value so assigned shall be based upon the approximate relationship that the fair market value of the unit as of the date of the Amendment to this Declaration bears to the then aggregate fair market value of all the units, including the newly created units, as of that date; provided, however, that such values may not necessarily reflect or represent the selling price of such units; and no appraisal, sale or market value transaction at a greater

or lesser price than the assigned value shall be interpreted as requiring or permitting any change in the percentage undivided interest assigned at that time.

The maximum number of additional units that may be created within the additional real estate is eighty (80) units. All of such units will be restricted exclusively to residential use.

Any buildings and units that may be erected upon the additional real estate or a portion thereof will be compatible with other buildings and units in the condominium in terms of architectural style, quality of construction, principle materials employed in construction, and size.

All restrictions in this Declaration and By-laws affecting use, occupancy and alienation of units will apply to any and all additional units that may be created within the Additional Real Estate.

In addition to the buildings and units that may be erected upon the Additional Real Estate or a portion thereof, the other improvements and common elements that may be made or created upon or within the Additional Real Estate or each portion thereof which may be added to the condominium will be generally similar in quality and quantity to the improvements and common elements located in the Condominium.

These Declarations may not be amended or merged to add Additional Real Estate or portions thereof without the prior written approval of the Veteran's Administration.

These assurances will not apply with respect to any additional real estate that is not added to the condominium.

6. SPECIAL DECLARANT RIGHTS:

The Declarant reserves the following special Declarant rights with respect to the condominium:

(a) To complete improvements indicated on plats and plans filed with this Declaration.

(b) To exercise any of the development rights stated in paragraph five (5) above;

(c) To use easements through the common elements (common area) of the condominium for the purpose of making

improvements within the condominium or within real estate which may be added to the condominium (See Exhibit A-1, attached hereto);

(d) To make the condominium part of a larger condominium; and

(e) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

7. COMMON AREAS AND FACILITIES: The common areas and facilities consists of all of the property other than the units as described in Paragraph 4 and any exhibits attached hereto, including the following:

(a) All central and appurtenant installations for services such as power and light, water and gas, except the heat pumps, compressors, and their applicable wiring and connections, as limited in paragraph 4 above, and such heating and cooling thermostats as are located within the interior perimeter walls, floors, and ceilings of a unit.

(b) All foundation, girders, beams, supports, and other structural members;

(c) All roofs and exterior walls, all interior load-bearing columns and weight-supporting walls beneath and outside of the horizontal and vertical boundaries of the interior surfaces of the perimeter walls, ceilings, and floors of the units, as set forth on EXHIBIT B, the plans of said units;

(d) All other areas shown on the plans, EXHIBIT B, which are not part of the individual units or otherwise designated;

(e) All other parts of the property and all apparatus and installations existing in the buildings and upon the property for common use, or which are necessary or convenient to the existence, maintenance, or safety of the property.

The percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owners is as set forth in EXHIBIT C, attached hereto and incorporated herein by reference; provided that the percentage of undivided interest

allocated to each unit owner in the common areas and facilities is subject to change if the Declarant adds additional real estate as set forth in paragraph 5 above.

The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described. A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit. The shares in the common areas appurtenant to each unit shall remain undivided and no action for partition of the common element shall lie.

8. LIMITED COMMON AREAS AND FACILITIES: Limited common areas and facilities shall mean and include those common areas and facilities reserved for the exclusive use of one or more but fewer than all of the units, including decks or patios, accessible only from a particular unit, outside stairways and entry ways to second story units and outside entry ways for ground level units. Each unit owner is hereby granted an exclusive and irrevocable license to use and occupy such limited common areas and facilities as are associated with such unit owner's unit, said license to exist in favor of said owner, his invitees and guests. The limited common areas and facilities which are appurtenant to any unit or units, shall not be separated therefrom and shall pass with title to any unit or units, whether or not separately described.

The responsibility for maintenance, painting, repair and replacement together with control over the exterior decoration and appearance of limited common area shall remain with the Association.

9. CONDOMINIUM ASSOCIATION: A non-profit North Carolina corporation known and designated as VALLEYGATE VILLAS HOMEOWNERS ASSOCIATION, INC. (the "Association"), has been or will be organized to provide for the administration of the property; and said corporation shall administer the operation and maintenance of the property and undertake and perform all acts and duties incident thereto in accordance with the terms of its By-Laws, a

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copy of which is attached hereto as EXHIBIT D. Each unit owner shall automatically become a member of the corporation upon his acquisition of an ownership interest in any unit and its apurtenant undivided interest in the common areas and facilities; and the membership of such unit owner shall terminate automatically upon such unit owner being divested of ownership interest in the title to such unit. In the operation and management of the property, the Board of Directors shall have the power to enforce the provisions of this Declaration; to levy and collect assessments in the manner herein provided; to grant permits, licenses and easements over the common areas for utility, roads and other purposes reasonably necessary for the proper maintenance and operation of the condominium; and to adopt, promulgate and enforce such rules and regulations governing the use of the units and common areas and facilities as the Board of Directors may deem to be in the best interest of the Association in accordance with the By-Laws.

The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any Officer or Officers of the Association until such time as the first of the following events occurs: (i) 120 days after conveyance of 75% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant; (ii) two years after all Declarants cease to offer units for sale in the ordinary course of business; (iii) two years after any development rights to add new units was last exercised; or (iv) five years following conveyance of the first unit to a unit owner other than a Declarant. Declarant may voluntarily surrender this right, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in an express Amendment to this Declaration, duly recorded in the New Hanover County Registry, executed by the Declarant, be approved by the Declarant before they become effective.

The above-referenced Declarant control over the Board of

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Directors is limited as follows: Not later than 60 days after conveyance of 25% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant, at least one member and not less than 25% of the members of the Executive Board shall be elected by unit owners other than the Declarant. Not later than 60 days after conveyance of 50% of the units (including units which may be created pursuant to Special Declarant Rights) to unit owners other than a Declarant, not less than 33% of the members of the Executive Board shall be elected by unit owners other than the Declarant. Further, not later than the termination of any period of Declarant control, the unit owners shall elect an Executive Board of at least three (3) members and a majority of this Executive Board must be unit owners.

Whenever the Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors or Executive Board of the Association or as officers of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the By-Laws of the Association; and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board or as officers and to replace such person or persons with another person or persons to act and serve in the place of any Director or Officer so removed for the remainder of the unexpired term of any Director or Officer so removed. Any Director or Officer designated and selected by Declarant need not be a resident in the property or unit owner.

If entered into by or on behalf of the Association before the Executive Board elected by the unit owners as set forth above, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an affiliate of the Declarant or (3) any contract or lease that is not bonafide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after