

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION, made on the day of
 , 1984, by SUNSTATES DEVELOPMENT COMPANY, formerly BRANDYWINE
BAY DEVELOPMENT CORPORATION ("Declarant"), a North Carolina cor-
poration with offices at Raleigh, North Carolina.

BACKGROUND STATEMENT

Declarant is the owner of certain real property (the
"Brandywine Bay Development Area") situated in Morehead Township,
Carteret County, North Carolina, and more particularly described
in Exhibit "A" attached hereto and made a part hereof. Declarant
is constructing on a portion of the Brandywine Bay Development
Area a residential townhouse development consisting of single-
family attached townhouses. This townhouse development shall be
known as The Villas at Brandywine Bay (the "Villas Project") and
the property on which the Villas Project is to be situated (the
"Villas Properties") is more particularly described in Exhibit
"B" attached hereto and made a part hereof.

Declarant also has constructed certain recreational facili-
ties on a portion of the Brandywine Bay Development Area for the
use and benefit of certain owners and occupants of the Brandywine
Bay Development Area. These recreational facilities are des-
cribed herein as the "Recreational Area" and are to be owned and
maintained by The Brandywine Bay Association, Inc. ("Brandywine
Bay Association"), a North Carolina nonprofit corporation. Fur-
thermore, Declarant has constructed certain entranceway gates,
streets and roadways on a portion of the Development Area for the
use and benefit of owners and occupants of the Brandywine Bay
Development Area, and such entranceway gates, streets and road-
ways are owned and maintained by Brandywine Bay Association. The
entranceway gates, street and roadway property are subject to a
Declaration of Easement which provides for pedestrian and vehic-
ular access to and from the Villas Properties as well as certain
other portions of the Development Area.

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In creating the Villas Project, Declarant desires to develop a residential community, with certain common areas and facilities to be used for the benefit of the Villas Project. Declarant desires to provide for the preservation of the values and amenities in the Villas Project and for the maintenance of common areas and facilities in the Villas Project, and therefore desires to subject the Villas Properties to the covenants, restrictions, easements, charges and liens described in this Declaration of Covenants, Conditions and Restrictions, all for the benefit of the Villas Properties and each owner of any part of any such properties.

Declarant has deemed it desirable to create a non-profit, incorporated association which will be delegated and assigned powers of maintaining and administering the common facilities of the Villas Project, of performing certain exterior maintenance on the townhouse units, of administering and enforcing the covenants and restrictions created in this Declaration and of levying, collecting and disbursing the assessments and charges created in this Declaration, and to take any steps or perform any acts deemed necessary or appropriate to promote the recreation, health, safety and welfare of the owners of townhouses and other residents of the Villas Project.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Villas Properties (all that property described in Exhibit "B" attached hereto) shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restrictions, covenants and conditions, which shall run with the Villas Properties and be binding on and inure to the benefit of, all parties having any right, title or interest in the Villas Properties or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

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Section 1. "Villas Association" shall mean and refer to The Villas at Brandywine Bay Association, Inc., its successors and assigns. The Villas Association is a separate and distinct entity from The Brandywine Bay Association, and shall be completely organized and in existence prior to the conveyance of the common area to the Villas Association.

Section 2. "Brandywine Bay Association" shall mean and refer to The Brandywine Bay Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Brandywine Bay Association is separate and distinct from the Villas Association.

Section 3. "Member" shall mean and refer to, depending upon the context in which such term is used, either (i) all owners who are members of the Villas Association as provided in ARTICLE II, Section 4. hereof, or (ii) members of the Brandywine Bay Association as provided in its Articles of Incorporation, Bylaws and Rules and Regulations.

Section 4. "Class A Member" shall mean and refer to owners of lots with the exception of Declarant as provided in ARTICLE IV, Section 2. hereof.

Section 5. "Class B Member" shall mean and refer to Declarant as provided in ARTICLE IV, Section 2. hereof.

Section 6. "Board of Directors", sometimes referred to herein as "the Board" or "the Directors", shall mean and refer to the Board of Directors of the Villas Association, except where the context so dictates the term Board of Directors shall mean and refer to the Board of Directors of the Brandywine Bay Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot (as defined herein) which is a part of the Villas Properties, specifically including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation.

Section 8. "Villas Properties" shall mean and refer to the property described in Exhibit "B" attached hereto and made a part hereof, and such additions thereto as may hereafter be subjected

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to this Declaration and brought within the jurisdiction of the Villas Association.

Section 9. "Lot" shall mean and refer to all real property, together with the improvements thereon, designated as lots numbered 101-111 on a plat entitled "The Villas at Brandywine Bay," which appears of record in Plat Book 17, at page 28, in the office of the Register of Deeds of Carteret County, North Carolina.

Section 10. "Common Area" shall mean and refer to all real property owned by the Villas Association, and the easements granted thereto, for the common use and enjoyment of the Owners. The common area to be owned by the Villas Association at the time of the conveyance of the first lot to an owner shall be all the Villas Properties with the exception of the lots designated by number on the plat described in Section 9. hereof, together with any easements or rights-of-way in favor thereof.

Section 11. "Brandywine Bay Development Area" shall mean and refer to the property described in Exhibit "A" attached hereto and made a part hereof, and such additions thereto as may be made from time to time.

Section 12. "Villas Expansion Area" shall mean and refer to the property described in Exhibit "C" attached hereto and made a part hereof.

Section 13. "Expansion Area Owner" shall mean and refer to Sunstates Development Company or to any purchaser from Sunstates Development Company of all of the Villas Expansion Area not, at the time of such purchase, already added to the Villas Properties as permitted in ARTICLE V, Section 1. hereof.

Section 14. "Declarant" shall mean and refer to Sunstates Development Company and its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from Declarant for the purpose of development or for the purpose of resale; provided, however, that Declarant shall not mean any successor to Sunstates Development Company if such successor shall no longer own any lot, but shall mean Sunstates Development Company so long as any part of the Villas Expansion Area may be

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subjected to this Declaration in accordance with ARTICLE V, Section 1. hereof.

Section 15. "Institutional Mortgage" sometimes referred to as "first mortgage" herein, shall mean and refer to a first mortgage or deed of trust originally executed and delivered to or held through assignment or assignments by a bank or a savings and loan association, or an insurance company, or a title insurance company, or a pension trust, or a real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing, or a designee of any of the foregoing, or Sunstates Development Company or any of its subsidiaries.

Section 16. "Institutional Lender" shall mean and refer to a bank or savings and loan association or an insurance company or a title insurance company or a pension trust or real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing or a designee of any of the foregoing, or Sunstates Development Company or any of its subsidiaries, which owns an Institutional Mortgage (first mortgage) on one or more lots, or any of the foregoing which acquires an Institutional Mortgage (first mortgage) as herein defined, by assignment or through mesne assignments from a non-institutional lender.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement 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 Villas Association, in accordance with its Articles of Incorporation and Bylaws, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided, however, that such right of the Villas Association and the rights of any such mortgagee shall be

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subordinate to the rights of the owners set out herein and provided further that the Villas Association may not so mortgage, pledge, deed in trust or hypothecate any of its property unless it shall have obtained the prior written consent of the holders of at least seventy-five percent (75%) of the Institutional Mortgages (first mortgages) then in force with respect to the lots, and with the assent of at least two-thirds (2/3) of each class of member as set out in ARTICLE XIII, Section 1. hereof;

(b) The right of the Villas Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

(c) The right of the Villas Association, as provided in its Articles and Bylaws, to suspend the voting rights of any member and the enjoyment rights of any member in the Recreational Area for any period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) The right of the Villas Association to charge reasonable admission fees, guest fees or other fees for use of its facilities or for special uses that might be made of certain parts of the common area by members of the Villas Association or by others;

(e) The right of the Villas Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members as provided herein; provided, however, that no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded. Such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument;

(f) The right of Declarant, prior to the conveyance of the common area to the Villas Association, and of the Villas Association, to grant and reserve easements and rights-of-way

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through, under, over and across the common area, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities;

(g) The right of the Villas Association to limit the number of guests or its members as to the use of any facilities situated upon the common area or any other property of said Villas Association;

(h) The right of the Villas Association to determine the time and manner of use of any of the facilities situated upon its property by its members or their guests;

(i) The right of the Villas Association to regulate, locate and direct access routes on its property and the location of parking therein and to allocate parking spaces to each lot, all to be done in a reasonable manner.

Section 2. Title to Common Area. Declarant covenants for itself, its successors and assigns, that it shall convey the common area to the Villas Association not later than the date of recordation of the deed conveying the first lot to an owner other than Declarant.

Section 3. Entranceway Gates, Street and Roadway Easement Area. The entranceway gates, street and roadway property which serve the Brandywine Bay Development Area are subject to a Declaration of Easement which provides for pedestrian and vehicular access to and from the Villas Properties, Oak Bluff and other parts of the Brandywine Bay Development Area. The entranceway gates, street and roadway property are described in Exhibit "D" attached hereto and made a part hereof. Such property has been conveyed to the Brandywine Bay Association, or will be conveyed prior to the conveyance of the first lot to an owner other than Declarant, for the use and benefit of the members of the Association and is not a part of the Villas Properties or the Villas Project.

Section 4. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the common area to members of his family, tenants or contract purchasers who

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reside on the Villas Properties or to such other persons as may be permitted by the Villas Association.

Section 5. Automatic Membership. All owners shall automatically be members of the Villas Association and shall enjoy the privileges and be bound by the obligations contained in the Articles of Incorporation, Bylaws and Rules and Regulations of said Association.

ARTICLE III

COVENANT FOR ASSESSMENTS OF VILLAS ASSOCIATION

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each lot owned within the Properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Villas Association: (1) annual assessments or charges, and (2) special assessments as provided in Section 4. of this ARTICLE III, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Villas Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners and other residents of the Villas Properties and in particular for the acquisition, improvement, maintenance and operation of the common area and the easements appurtenant thereto; services and facilities devoted to this purpose and related to the use and enjoyment of the common area; payment of taxes, insurance and governmental assessments on or to the common area, and exterior

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maintenance of and certain insurance on the improvements which are part of the lots, including but not limited to the cost of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the provision of a reserve fund for replacement, the employment of attorneys and accountants to represent the Villas Association when appropriate; the cost of utilities and fuel used in operating facilities in the common area; the maintenance and upkeep of all streets and roadways in the Villas Properties and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 1980, the maximum annual assessment for each lot shall be Seven Hundred Twenty Dollars (\$720.00), payable monthly.

(a) From and after December 31, 1980, the maximum annual assessment may be increased by the Board of Directors of the Villas Association each year, without a vote of the membership, not more than 5% above the maximum assessment for the previous year.

(b) From and after December 31, 1980, the maximum annual assessment may be increased above the increase allowed in Subsection (a) of this Section 3. by a vote of two-thirds (2/3) of each class of members of the Villas Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Villas 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: (i) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the common area, including but not limited to fixtures and personal property related thereto; (ii) the cost of any exterior maintenance on or replacement of improvements within the lots; (iii) the cost of paying special governmental assessments; or (iv) any other cost or expense, payment of which through special assessment is approved by two-thirds

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(2/3) of the votes of each class of members of the Villas Association who are voting in person or by proxy at a meeting duly called for this purpose. The time and method of payment of said special assessments shall be determined by the Board of Directors of the Villas Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3. and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3. or 4. of this ARTICLE III shall be sent to all members not less than seven (7) days nor more than sixty (60) days in advance of the meeting. The quorum required for any action authorized by Sections 3. and 4. of this ARTICLE III shall be as follows: at the first meeting called, as provided in Sections 3. and 4. of this ARTICLE III, the presence at the meeting 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 forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth herein, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments of the Villas Association must be fixed at a uniform rate for each lot; provided, however, that so long as any lot owned by Declarant is unoccupied as a residence, the rate of assessment for such lots owned by Declarant shall be fifty percent (50%) of the rate for other lots. The annual assessment shall be collected on a monthly basis, one-twelfth (1/12) of said assessment to be collected on the first day of each month.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence

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as to all lots on the first day of the month following the date of recordation of the deed conveying the common area to the Villas Association in the office of the Register of Deeds of Carteret County, North Carolina. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Villas Association. The Board of Directors shall apply the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise determined by the Board, annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month. The Villas Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the president or the treasurer of the Villas Association setting forth whether the assessments on a specified Lot have been paid. Such certification shall be conclusive evidence of payment of any assessment therein stated to have been paid as to any purchaser or mortgagee of a lot who relies thereon.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Villas Association. In the event that any assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board of Directors of the Villas Association may, at its option, declare the entire unpaid assessment, both annual and special; immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of six percent (6%) per annum. The Villas Association may bring an action at law against the owner personally obligated to pay the assessment or foreclose the lien against his property to collect said assessment, and interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each owner, by his acceptance of a deed to a lot, expressly grants to and vests in the Villas Association or its agents the right and power to bring

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such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Villas Association in the manner that a foreclosure of a mortgage or deed of trust would be brought, and each owner grants to the Villas Association a power of sale in connection with any such charge or lien. The lien provided for in this section shall be in favor of the Villas Association and shall be for the benefit of all other owners. The Villas Association, acting on behalf of the owners, shall have the power to bid in any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

Notwithstanding anything hereinbefore stated in this Section 8., during any period in which an owner shall be in default in the payment of any installment of an annual, special or other assessment levied by the Villas Association, the voting rights and the right to the use of any recreational services or facilities which the Association provides may be suspended by the Villas Association until such assessment is paid. In the event of violation by an owner of any rules or regulations duly established by the Villas Association, such owner's voting and use rights may be suspended by the Board of Directors of the Villas Association after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board of Directors of the Villas Association after giving such owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing; determination of the violation and the time of suspension shall be made by a majority vote of the Board of Directors of the Villas Association.

Section 9. Subordination of the Lien to Institutional Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Institutional Mortgage (being fully defined herein in Section 15. of ARTICLE I as a "first mortgage") on any lot or similar security interest owned or held

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by an Institutional Lender, and shall be subordinate to any tax lien or special assessment on a lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot by foreclosure of any Institutional Mortgage (first mortgage), or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Villas Association assessable against and collectible from all owners, including such acquiring mortgagee, his heirs, successors and assigns. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following parts of the Villas Properties shall be exempt from assessments of the Villas Association: (i) the common area; and (ii) any part of the Villas Properties, if any, dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Villas Properties to any public authority).

Section 11. Declarant's Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Villas Association for any purpose except for its obligation to make periodic payment of assessments levied on lots which Declarant may from time to time own.

Section 12. Reserve Funds. From and after the recording of this Declaration, the Villas Association shall establish and maintain a reserve fund or funds for replacement and maintenance of the Villas Properties by allocation and payment monthly to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board of Directors of the Villas Association. The reserve fund or funds shall be segregated from operating funds of the Villas Association and may be in the form of a cash deposit, or invested in the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose

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of repairing, replacing and maintaining any and all facilities owned by the Villas Association, for exterior maintenance or replacement of improvements within the lots, and for such other purposes as may be determined by the Board of Directors.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE VILLAS ASSOCIATION

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

Section 2. The Villas Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of Declarant and each such member shall be entitled to one (1) 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 among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) lot.

Class B. The Class B member(s) shall be the Declarant(s) and Declarant(s) 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 occurs earlier:

- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, provided, however, that the Class B membership shall be reinstated if at any time thereafter but before the time set forth in Subsection (2) of this Section 2., additional lands are added to the Villas Properties pursuant to ARTICLE V, Section 1. hereof and, as the result of such addition, Declarant(s) own(s) more than one-fourth (1/4) of the lots then subject to this Declaration, or
- (2) on January 1, 1987.

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ARTICLE V

ADDITIONS TO VILLAS PROPERTIES

Section 1. Additions to the Villas Properties by Declarant.

Notwithstanding the provisions of Section 2. of this ARTICLE V, Declarant, its successors or assigns, shall have the right, at any time prior to January 1, 1987, to add to the Villas Properties and to bring within the scheme of this Declaration additional properties, which are part of the Villas Expansion Area, together with all easements, rights and appurtenances belonging thereto, in future phases of the development, and to amend this Declaration as provided in Section 2. of this ARTICLE V in such respects as Declarant may deem advisable in order to effectuate the addition of such properties to the Villas Properties, provided that such additions are in accord with a General Plan of Development (the "General Plan") which consists of a landscaping plan entitled "General Development Plan-The Villas at Brandywine Bay," marked "L-1," and prepared by Lewis Clarke Associates, Landscape Architects, Raleigh, North Carolina; and an engineering plan dated June 22, 1978, entitled "Phase II, Brandywine Bay," and prepared by Bass, Nixon & Kennedy, Inc., Consulting Engineers, Raleigh, North Carolina; and provided further that any annexation of additional land shall be in accordance with plans as approved by the governmental authority having control of subdivision development in Carteret County and provided that such General Plan shall have been approved by the Federal Housing Authority or Veterans Administration; and provided further that improvements on any of the lots in such addition or additions shall be comparable in quality and compatible with the improvements on lots then subject to this Declaration. The General Plan shall be made known to every owner (which may be done by brochure delivered to each owner) prior to the conveyance of such lot. In the event Declarant does bring such additional properties within the scheme of this Declaration, Declarant hereby covenants for itself, its successors or assigns, that it will convey fee simple title to the common area which constitutes a portion of such addition or additions to the Villas Associa-

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tion, free and clear of encumbrances and liens except utility and related easements and the lien of ad valorem taxes for the year of transfer (which taxes shall be prorated as of the transfer date if separately assessed and paid by Declarant if not so separately assessed), prior to the conveyance of the first lot located in such addition to an owner other than Declarant. Any such addition or additional phase need not be contiguous to the Villas Properties, so long as such addition or additional phase is substantially in accordance with the General Plan.

The General Plan shall show the proposed additions to the Villas Properties and contain: (1) a general indication of size and location of additional development phases and proposed land uses in each; (2) the approximate size and location of common properties proposed for each phase; and (3) the general nature of proposed common facilities and improvements. Neither the General Plan nor anything contained in this Section 1. of ARTICLE V shall bind Declarant, its successors or assigns, to make the proposed additions or to adhere to the General Plan in any subsequent development of the Villas Expansion Area.

DECLARANT EXPRESSLY RESERVES THE RIGHT TO BRING SUCH ADDITIONS OR ADDITIONAL PHASES WITHIN THE SCHEME OF THIS DECLARATION IN ACCORDANCE WITH THE GENERAL PLAN, WITHOUT THE CONSENT OF THE VILLAS ASSOCIATION, ITS MEMBERS OR OWNERS. If, however, detailed plans for the development of any such addition or additional phase are not substantially in accordance with the General Plan or if improvements on lots proposed as part of such addition are not comparable in quality and compatible with the improvements on lots then subject to this Declaration, such addition or additional phase may be brought within the scheme of this Declaration only in accordance with the provisions of Section 3. of this ARTICLE V. Prior to commencement of any development of such additions or additional phase, Declarant, its successors or assigns, shall cause detailed plans for the proposed additional phase to be prepared and shall notify each Class A member of the Villas Association, by certified mail, return receipt requested, of the proposal to add such additional phase and of the location

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where the proposed plans will be available for inspection by such members for a period of thirty (30) days from and after the date of mailing of such notice. If, within said thirty-day period, no more than ten percent (10%) of the Class A members of the Villas Association file written objections with Declarant asserting, in good faith, that said detailed plans are not in accord with the General Plan or that improvements on Lots proposed as part of such addition are not comparable in quality and compatible with the improvements on lots then subject to this Declaration, then said detailed plans shall be conclusively deemed for all purposes to be in compliance with the General Plan and such proposed improvements deemed comparable in quality and compatible with such previously subject improvements and Declarant shall be free to bring such additional phase within the scheme of this Declaration as provided herein. If, however, more than ten percent (10%) of the Class A members of the Villas Association shall file written objection with Declarant within said thirty-day period, then the question of compliance of said detailed plans with the General Plan or comparability of quality and compatibility of proposed improvements shall be submitted to arbitration as follows: the Board of the Villas Association and Declarant each shall pick an arbitrator and the two arbitrators then selected shall then select a third arbitrator. Each of said arbitrators shall have had at least ten (10) years' experience in real estate development. These three arbitrators shall, within thirty (30) days after having been so selected, render their decision as to the issue of whether or not said detailed plans are substantially in accord with the General Plan or whether proposed improvements are comparable in quality and compatible with improvements then subject to this Declaration, the decision of a majority of said arbitrators being conclusive. If these arbitrators decide that said detailed plans are substantially in accordance with the General Plan and that such proposed improvements are comparable in quality and compatible with improvements then subject to this Declaration, Declarant may proceed with its development and annex such additional phase in accordance with the

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provisions of this Section 3. of ARTICLE V, and without the necessity to obtain the approvals required in Section 3. of this ARTICLE V. If these arbitrators decide that said detailed plans are not substantially in accordance with the General Plan or that such proposed improvements are not comparable in quality or compatible with improvements then subject to this Declaration, Declarant may bring such addition or additional phase within the scheme of this Declaration only in accordance with the provisions of Section 3. of this ARTICLE V.

The additions authorized under this and the preceding section shall be made by filing of record a supplementary Declaration of Covenants and Restrictions, or such other documentation or recording as may be required to add such parts of the Villas Expansion Area to the Villas Properties and subject such additions to the scheme of this Declaration.

Section 2. Additions to the Villas Properties by the Villas Association. Additional land may be annexed to the Villas Properties pursuant to the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. Such annexation shall be effectuated by filing for record in the office of the Register of Deeds of Carteret County, North Carolina, a supplemental Declaration or such other documentation or recording as may be required or deemed necessary with respect to such additional land.

Section 3. Other Additions. Upon approval in writing of the Villas Association pursuant to a vote of two-thirds (2/3) of the

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Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for such purpose in accordance with the provisions of Section 2. of this ARTICLE V, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Villas Association may file for record in the office of the Register of Deeds of Carteret County, North Carolina, a supplementary Declaration or such other documentation or recording as may be required or deemed necessary with respect to such property.

Section 4. Supplemental Declaration to Add Property. Each owner and his respective mortgagees, by acceptance of a deed conveying a lot or a mortgage encumbering such lot, as the case may be, hereby irrevocably appoint Declarant his or their Attorney-in-Fact, such power of attorney being coupled with an interest, and authorize, direct, and empower such Attorney, at the option of the Attorney, in the event that Declarant exercises the rights reserved in Section 1. of this ARTICLE V to add to the Villas Properties or in the event that property is added to the Villas Properties pursuant to Sections 2. or 3. of this ARTICLE V, to execute, acknowledge and record for and in the name of such owner and any such mortgagee a supplemental Declaration for such purpose, and for and in the name of such respective mortgagees a consent and joinder to such supplemental Declaration. Such supplemental Declaration may amend this Declaration in such respects as Declarant may deem advisable in order to effectuate the addition of such properties to the Villas Properties.

Section 5. Effect of Additions. In the event that any additional lands are added to the Villas Properties pursuant to Section 1., 2. or 3. of this ARTICLE V, (a) such additional lands shall be considered within the definition of "Villas Properties" for all purposes of this Declaration, specifically including without limitation the extension of the jurisdiction, functions, duties and membership of the Villas Association to such annexed properties, and (b) all voting of each class of membership of the Villas Association, and all voting by owners hereunder, shall be aggregated, it being intended that any voting requirements need

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not be fulfilled separately for the real property described in Exhibit "B" and for each tract of additional land described in a supplemental Declaration or other documentation.

Section 6. Mergers. Upon a merger or consolidation of the Villas Association with another association as permitted by its Articles of Incorporation, or by the laws of the State of North Carolina, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Villas Association as a surviving corporation pursuant to a merger; provided, however, that such merger shall have been approved by the vote of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for such purpose, in accordance with the provisions of Section 2. of this ARTICLE V. The provisions of Section 2. of this ARTICLE V with respect to notice, quorum, adjournment and proxies shall apply to any vote required under this Section 6. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Villa Properties together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Villas Properties except as hereinafter provided.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this ARTICLE VI, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each lot and any replacement thereof. In the event that any portion of any structure as originally constructed by Declarant, including any party wall or

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fence, shall protrude over an adjoining lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining lot, and the owners shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event that there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said owners have granted perpetual easements to the adjoining owner or owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements in conformance with the original structure, party wall or fence constructed by Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who own such party wall in proportion to their ownership.

Section 3. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this ARTICLE VI, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party.

ARTICLE VII

INSURANCE AND RECONSTRUCTION

Section 1. Villas Association Insurance. The Villas Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) Casualty Insurance. The Villas Association shall procure and maintain one or more insurance policies insuring the Villas Properties for the full replacement cost thereof, exclusive of excavation and foundation costs, against at least the following risks:

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(1) Loss or damage from all hazards and risks normally covered by a standard "All-Risk" policy, including fire and lightning; and

(ii) Such other risks as from time to time shall customarily be covered with respect to buildings similar in construction, location and use to the improvements situated on the Villas Properties, specifically including without limitation vandalism, malicious mischief, windstorm and water or flood (if available) damage.

Such policy or policies shall include an annual review clause, and shall be without deduction or allowance for depreciation, and shall be subject to such deductible amounts, not in excess of One Thousand Dollars (\$1,000.00), as the Board of Directors of the Villas Association shall determine. Such policy or policies shall be procured and maintained by the Villas Association for the benefit of the Villas Association, Declarant, owners and their respective mortgagees, all as their interests may appear, and shall provide for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the lots, if any.

Such policy or policies shall provide that all proceeds payable as the result of casualty losses shall be paid to the Board of Directors of the Villas Association, as Trustee for the owners and their mortgagees in the following shares:

(1) In the case of proceeds payable as the result of casualty loss to the common area or any improvements thereon, an undivided equal share for each lot; and

(ii) In the case of proceeds payable as the result of casualty loss to any lot or improvements thereon, for the owners of such damaged Lots, or for their mortgagees as the applicable mortgage instrument shall provide, in proportion to the cost of repairing the damage to each such lot or improvements thereon, which costs shall be conclusively determined by the Board of Directors of the Villas Association.

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(b) Liability Insurance. The Villas Association shall procure and maintain, or cause to be maintained, one or more policies of public liability insurance insuring the Villas Association; the members of the Board of Directors of the Villas Association; Declarant, its agents and employees; and the owners and their immediate families and any occupant of any lot, to the extent of not less than One Million Dollars (\$1,000,000.00) per person and not less than One Million Dollars (\$1,000,000.00) per occurrence against liability for bodily injury, including death resulting therefrom, and to the extent of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence against liability for damage to property, including loss of use thereof, incurring upon, in or about, or arising from or relating to, the Villas Properties or any portion thereof. Such policy or policies shall contain cross-liability endorsements to cover liabilities of the owners as a group to any owner.

(c) Fidelity Insurance. The Villas Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Villas Association and any other persons who handle or are responsible for the handling of funds of the Villas Association. Such fidelity insurance coverage shall, at least:

(i) name the Villas Association as an obligee thereunder;

(ii) be written in an amount equal to at least fifty percent (50%) of the estimated annual operating expenses of the Villas Association, specifically including reserves; and

(iii) contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) Other Insurance. The Board of Directors of the Villas Association, or its duly authorized agent, shall have the authority to and shall obtain such other insurance coverages as the Board of Directors shall determine from time to time to be desirable, specifically including without limitation directors

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and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds.

(e) Provisions of All Policies. The following terms shall govern all policies and insurance coverage of the Villas Association:

(i) Premiums upon all insurance policies purchased by the Villas Association shall be paid by the Villas Association at least thirty (30) days prior to the expiration date of such policies, and shall be deemed expenses of the Villas Association for all purposes.

(ii) All insurance policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in Best's Insurance Guide, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in Best's Insurance Guide.

(iii) The Villas Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Villas Association is hereby irrevocably appointed Agent for each owner and any holder of a mortgage on any lot or any lien upon a lot to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims.

(iv) In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by owners or their mortgagees as permitted in Section 2. of this ARTICLE VII, and any "no other insurance" or similar clause in any policy obtained by the Villas Association pursuant to the requirements hereof shall exclude such owner's or mortgagee's policy from consideration.

(v) All policies shall provide that such policies may not be cancelled nor substantially modified without at least thirty (30) days' prior written notice to any and all

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insureds named thereon, specifically including without limitation any and all mortgagees of the lots.

(vi) All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Villas Association, its Board of Directors, the owners and their respective agents, employees, invitees or mortgagees, and of any defenses based upon invalidity arising from the acts of the insured.

(vii) In the event a mortgagee endorsement to any policy or policies has been issued as to any lot, such mortgagee shall have no right to determine or participate in the determination as to whether or not any damaged property which is part of the Villas Properties shall be reconstructed or repaired, such determination to be made solely in accordance with the provisions of Section 3. of this ARTICLE VII, notwithstanding any provision or requirement contained in any mortgage instrument or deed of trust.

(viii) Duplicate originals of all such policies shall be furnished to all owners and their respective mortgagees, provided that in lieu of such duplicate original policies the Villas Association may deliver certificates to the owners and their respective mortgagees attesting the fact that such policies and such insurance are in force and effect. Furthermore, the Villas Association shall furnish to the owners and their respective mortgagees evidence that premiums for such insurance have been paid on an annual basis.

Section 2. Owners' Insurance. Any owner and any holder of a mortgage with respect to any lot may obtain such additional insurance with respect to a lot, totally at the expense of such owner or mortgagee, as is desired. Any such insurance shall either:

(i) Be written by the same insurer which carries the casualty insurance purchased by the Villas Association pursuant to the provisions of Section 1.(a) hereof; or

(ii) Shall provide that such policy or policies shall be without contribution with respect to the policy or poli-

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cies of casualty insurance maintained by the Villas Association. Any such owner's or mortgagee's policy also shall contain waiver of subrogation provisions identical to those contained in Section I.(e)(vi) hereof.

Declarant recommends that each owner obtain a "Homeowner's Policy" or its equivalent to insure against loss or damage to personal property used in or incidental to occupancy of the lot and improvements thereon, additional leasing (motel) expenses, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include the equivalent of a "condominium unit owner's endorsement" covering losses to improvements and betterments to the Lot made or acquired at the expense of owner.

Duplicate copies of any such policy or policies procured by an owner or his mortgagee shall be furnished to the Villas Association within ten (10) days of the effective coverage date of such insurance.

Section 3. Responsibility for Reconstruction or Repair. If any portion of the Villas Properties shall be damaged by perils covered by the casualty insurance maintained in accordance with Section 1.(a) hereof, the Villas Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any and such reconstruction or repair shall be substantially in accordance with the plans and specifications for the development of the Villas Properties. If, however, such damage renders two-thirds (2/3) or more of the improvements then situated on the lots untenable, the Villas Association may, upon the affirmative vote of seventy-five percent (75%) of the votes of each class of members and upon the written approval of the holders of seventy-five percent (75%) of the Institutional Mortgages (first mortgages) then in force with respect to the lots, elect not to reconstruct or repair such damaged part. A meeting shall be called within ninety (90) days after the occurrence of such casualty rendering more than two-thirds (2/3) of the lots untenable, or, if by such date the casualty insurance loss has not

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been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the owners whose lots were damaged, or to their mortgagees as the individual mortgage instruments may provide, in proportion to the cost of repairing damage to such lots; provided, however, that no owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his lot have been paid, released or discharged.

In the event that the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Villas Properties by fire or other casualty, or in the event such damage or destruction is caused by any casualty not insured against, or in the event that insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements or parts of the common area shall be accomplished promptly by the Villas Association and the extent of such repairs shall be an expense of the Villas Association; and the repair or reconstruction of any improvements contained within the lot shall be accomplished promptly by the Villas Association at the expense of the owner of the affected lot. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for same shall have all the priorities provided for in this Declaration.

Section 4. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Villas Properties, the following provisions shall govern and apply:

(i) Immediately after a casualty which causes damage to any portion of the Villas Properties, the Villas Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction.

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and repair by the Villas Association (including the afore-said fees and premiums, if any) one or more special assessments shall be made against all owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Board of Directors; provided, however, that the Villas Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of each class of members voting at a meeting duly called for such purpose.

(iii) The proceeds of the casualty insurance referred to in Section 1.(a) hereof and the sums deposited with the Board of Directors from collections of special assessments against owners on account of such casualty or proceeds of authorized loans shall constitute a construction fund which shall be disbursed to the Board of Directors and be applied by the Board of Directors to the payment of the cost of reconstruction and repair of the Villas Properties from time to time as the work progresses, but not more frequently than once in any calendar month. The Board shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Villas Association and by an architect in charge of the work who shall be selected by the Villas Association, setting forth: (1) that the sum then requested either has been paid by the Villas Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such

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work; and (3) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Board of Directors after the payment of the sum so required. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Villas Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board of Directors.

ARTICLE VIII

EXTERIOR MAINTENANCE

In addition to maintenance upon the common area and facilities located herein, the Villas Association shall provide necessary and reasonable exterior maintenance upon each lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, brick garden walls, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware, or floor surfaces of decks, balconies or patios, except that such exterior maintenance shall include painting of decks, balconies and patios, nor shall the Villas Association be obligated to provide lawn care or landscaping services within that portion of any lot which is enclosed by a fence, brick garden wall or planting screen or is otherwise made inaccessible by the owner of said lot. In order to enable the Villas Association to accomplish the foregoing, there is hereby reserved to the Villas Association the right to unobstructed access over and upon each lot at all reasonable times to perform maintenance as provided in this ARTICLE.

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In the event that the need for maintenance, repair or replacement is caused by or through the willful or negligent act of the owner, his family, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina "All Risk" insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such lot is subject. Whether any act was willful or negligent shall be determined, in good faith, by the Board of Directors of the Villas Association after hearing all available facts.

ARTICLE IX

MAINTENANCE OF PROPERTY

Each owner of a lot shall keep the lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. In the event an owner of any lot shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board of Directors, the Board of Directors shall give written notice to such owner and, if said notice is not complied with within twenty (20) days, then the Villas Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain and restore the lot and the exterior of the building and any other improvements erected thereon. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Villas Association against such owner and such owner's lot, shall become the personal obligation of such owner and shall become a lien against such lot enforceable as under the provisions of ARTICLE III, Section 8. hereof.

ARTICLE X

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained on the Villas Properties nor shall

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any exterior addition to, change or alteration therein or reconstruction thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by an Architectural Committee composed of three (3) persons or more. The right to appoint all three members of such Architectural Committee shall be in and belong to the following persons:

(a) So long as Declarant has the right to add a part of the Villas Expansion Area to the Villas Properties under ARTICLE V, Section 1. hereof, the Expansion Area Owner [as defined in ARTICLE I, Section 13. of this Declaration] shall have the right to appoint all three members of such Architectural Committee;

(b) At and after such time as there no longer exists any right to add a part of the Villas Expansion Area to the Villas Property under ARTICLE V, Section 1. hereof, Developer [or Expansion Area Owner as defined above] shall relinquish all special rights to the control and management of the Villas Properties; said relinquishment must take place within one hundred twenty (120) days after the date by which seventy-five percent (75%) of the units have been conveyed to unit purchasers, or within five (5) years after the first unit has been conveyed, whichever occurs earlier; and

(c) At and after such time as there no longer exists any right to add part of the Villas Expansion Area to the Villas Property and Developer has relinquished all rights to appoint members of an Architectural Committee, the Board of Directors of the Villas Association shall have the right to appoint all three members of such Architectural Committee.

In the event the Architectural Committee shall fail to approve or disapprove such plans and specifications submitted to it in accordance herewith, the approval required in this ARTICLE X shall be deemed granted and no further approvals or consent shall be required before the commencement of construction on such improvements.

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ARTICLE XI
EASEMENTS

Section 1. Construction, Settling and Overhangs. Each lot and the common area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a multi-family structure covering parts of two (2) or more lots is partially or totally destroyed, and then rebuilt, owners of the lots so affected agree that minor encroachment of part of the adjacent lots or common area resulting from construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under all of the Villas Properties for installing, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system to service the Villas Properties. By virtue of this blanket easement, it shall be expressly permissible for the providing electrical or telephone company to erect and maintain any necessary poles and other necessary equipment on the Villas Properties and to affix and maintain electrical or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of improvements within the lots. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and other parts of the common area in the performance of their duties. Further, an easement is hereby granted to the Villas Association, its officers, agents, employees, and to any management company selected by the Villas Association to enter into or to cross over the common area. Anything to the contrary contained in this section notwithstanding, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Villas Properties except as initially approved

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by Declarant or thereafter approved by Declarant or the Board of Directors. It is further provided, however, that any use of easements herein agreed shall not be detrimental to any improvements on the Villas Properties. Should any utility furnishing a service covered by the blanket easement herein provided request a specific easement by separate recordable document, Declarant or the Board of Directors of the Villas Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this ARTICLE XI shall in no way affect any other recorded easement on the Villas Properties.

Section 3. Underground Electrical Services. Underground single-phase electrical service shall be available to all lots and, where appropriate, to improvements to be constructed on the common area. Metering equipment shall be located on the exterior surface of the walls of any improvements at a point to be designated by the providing utility company. The providing utility company shall have a two (2) foot easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the lots. For so long as such underground service is maintained, the electric service to each lot and the common area shall be uniform and exclusively of the type known as single-phase, 120/240 volt, 60-cycle alternating current. Easements for underground service may be crossed by driveways, walkways, and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing driveways, walkways or parking areas.

Section 4. Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Villas Properties during such period of time as Declarant is engaged in any construction or improvement work on or within the Villas Properties and shall further have an easement for the purpose of the storage of materials, vehicles,

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tools, equipment, etc., which are being utilized in such construction. No owner, his guests or invitees shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

ARTICLE XII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building or structure other than single-family townhouses joined together by a common exterior roof shall be constructed on any lot. No structure of a temporary character, trailer, tent, shack, barn, shed or other outbuilding shall be used on any portion of the Villas Properties at any time as a residence either temporarily or permanently. It is expressly understood and agreed, however, that Declarant's use of any lot or any other part of the Villas Properties as a Sales Office, Construction Office, Storage Area, Business Office, Model Unit or such other facility as in the sole opinion of Declarant is reasonably necessary, convenient or incidental to the sale of the lots during the time Declarant owns any lot in the Villas Properties shall not be considered a violation of this restriction.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to neighboring owners or to residents of any part of the Development Area or which may endanger the health or safety of any owner or any resident of the Villas Properties.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot except small household pets, which pets may not be kept or bred for any commercial purpose and shall have such care and restraint that they will not be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than one household pet may be kept on any lot without written permission of the Board of Directors of the Villas Association. No pets may be permitted to run loose upon the com-

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mon area, and any owner who causes any pet to be brought or kept on his lot shall indemnify and hold harmless the Villas Association for any loss, damage or liability which the Villas Association may sustain as a result of the presence of such animal on the premises, whether or not the Villas Association has given its permission therefor.

Section 4. Alterations and Attachments by Owner. No owner shall make structural alterations or modifications to the improvements on his lot or to any of the common area, including the erection of awnings, the placement of any reflective or other material in the windows of his dwelling (other than draperies), the installation of aluminum (or similar material) storm doors in any dwelling or other exterior attachments without the written approval of the Architectural Committee described in ARTICLE X hereof. The Architectural Committee shall not approve any alterations, decorations or modifications which, as determined by such Committee in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Villas Properties.

Section 5. Use of Common Area. The common area shall not be used for storage of supplies, personal property or trash or refuse of any kind except in common area trash receptacles placed at the discretion of the Board of Directors of the Villas Association, nor shall the common area be used in any way for the drying, shaking or airing of clothing or other fabrics. Entrances, sidewalks, yards, driveways, parking area and other facilities in the common area shall not be obstructed in any way nor shall they be used for other than their intended purposes. Only operable automobiles shall be allowed to remain in any parking lot which may be provided for residents of the Villas Properties. The Villas Association may require that all other vehicles (including boats and trailers) be parked at all times in a designated area removed from the automobile parking lots. No vehicles of any type shall be permanently or semi-permanently parked on the Villas Properties unless parked in an area designated by the Villas Association for such parking. In

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general, no activity shall be carried on nor condition maintained by any owner either on his lot or upon the common area which despoils the appearance of the Villas Properties.

Section 6. Signs. Except with the express permission of the Architectural Committee of the Villas Association, no signs of any kind (except one sign per lot of not more than five square feet containing the words "for rent" or "for sale") shall be displayed to the public view on any lot or on the common area except signs used by Declarant or its agent to advertise the Villas Properties during the construction and sales period.

Section 7. Clothesline, Trash Cans, Etc. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and street. All rubbish, trash and gargage shall be regularly removed from each lot, and shall not be allowed to accumulate therein.

Section 8. Gardening and Fencing in Common Area. No planting or gardening shall be done (except within individual lots), and no fences, hedges or walls shall be erected or maintained upon the Villas Properties except such as are installed in accordance with initial construction of the buildings located thereon as approved by the Architectural Committee or its designated representatives. Except for the right of ingress and egress, owners are hereby prohibited and restricted from using any of the Villas Properties outside of exterior building lines, fenced-in or patio areas, except as may be allowed by the Architectural Committee. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the benefit of all members of the Villas, and is necessary for the protection of all owners.

Section 9. Decks, Screen Doors, Windows. Maintenance, upkeep and repair of any floor surfaces of decks or patios, screens and screen doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the Villas Association. Any action necessary or appropriate to the proper maintenance and upkeep of the common area and facilities,

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including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 10. Pipes, Wires, Etc. All fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act or work that will impair the structural soundness or integrity of other improvements or impair any easement, nor do any act or allow any condition to exist which will adversely affect any other lot or its owners.

Section 11. Antennas. Without prior written approval and the authorization of the Architectural Committee, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Villas Properties nor upon any structure situated upon the Villas Properties other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 12. Rules and Regulations. Reasonable rules and regulations governing the use of the Villas Properties may be made and amended from time to time by the Board of Directors of the Villas Association; provided, however, that all such rules and regulations and amendments thereto shall be approved at a regular or special meeting of the membership before such shall become effective. Copies of all such regulations and amendments thereto shall be furnished by the Villas Association to all Members upon request.

ARTICLE XIII

BRANDYWINE BAY ASSOCIATION

With respect to the Brandywine Bay Association, Declarant, by this Declaration, and all owners, by acceptance of their deeds, covenant and agree as follows:

Section 1. Automatic Membership. All owners shall automatically be members of the Brandywine Bay Association and shall

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enjoy the privileges and be bound by the obligations contained in said Association's Articles of Incorporation, Bylaws and Rules and Regulations, subject to:

(i) the right of said Association to charge reasonable fees for the use of any facilities situated upon its property;

(ii) the right of said Association to suspend the voting rights and the right to use any recreational facilities situated upon its property by a member 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;

(iii) the right of said Association to dedicate or transfer all or any part of its property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument or instruments signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded (such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument);

(iv) the right of said Association to limit the number of guests of members as to the use of any facilities situated upon said Association's property;

(v) the right of said Association, in accordance with its Articles of Incorporation and Bylaws, and with the assent of two-thirds (2/3) of the members of each class agreeing, to borrow money for the purpose of improving its property and facilities and in aid thereof to mortgage and grant liens and encumbrances upon said property and facilities, provided that the rights of any mortgagee of said Association's property and facilities shall be subordinated to the rights of the members hereunder;

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(vi) the right of said Association, through its Board of Directors, to determine the time and manner of use of any of the facilities situated upon its property by its members;

(vii) the right of said Association to reasonably regulate, locate and direct access routes on its property and the location of parking thereon.

Membership in the Brandywine Bay Association shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. Covenant for Assessment. Each owner of a lot subject to this Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Brandywine Bay Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. All such annual and special assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge and lien upon the lot of the respective owners thereof, and the same shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the owner or owners of such lot at the time when the assessment became due. All sums assessed by the Brandywine Bay Association but unpaid for the share of the common expenses chargeable to any lot shall constitute a lien on such lot prior to all other liens except (i) ad valorem tax liens and liens for special assessments on the lot made by a lawful governmental authority, (ii) all sums unpaid on the Institutional Mortgage (first mortgage) of record on such lot, if any, and (iii) other liens, if any, having priority by statutory authority.

Section 3. Purpose of Assessments. The assessments levied by the Brandywine Bay Association shall be used exclusively to provide for necessary insurance coverage, reserve fund for replace-

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ment, maintenance and operation of its facilities and to promote the recreation, health, safety and welfare of the members.

Section 4. Maximum Annual Assessments. Until December 31, 1979, the monthly payments towards maximum annual assessment made by the Brandywine Bay Association on each lot shall not exceed Twenty One and 50/100 Dollars (\$21.50). For and after January 1, 1980, the amount of annual assessments for the Brandywine Bay Association shall be established in accordance with the terms and provisions of this Declaration and the Articles of Incorporation and Bylaws of said Association, subject to the following limitations:

(i) From and after December 31, 1979, the annual assessment may be increased each year not more than five percent (5%) above the budgeted annual assessment for the previous year without a vote of the membership of the Brandywine Bay Association, as hereinbelow provided.

(ii) From and after December 31, 1979, the annual assessment may be increased more than five percent (5%) of the budgeted annual assessment for the previous year by a vote of two-thirds (2/3) of each class of members of the Brandywine Bay Association who are voting in person, or by proxy, at a meeting duly called for such purpose.

(iii) The Board of Directors may fix the annual assessment by an amount not exceeding five percent (5%) of the budgeted annual assessment for the previous year as herein provided.

Declarant shall have absolutely no obligation to make payments to or for the Brandywine Bay Association for any purpose except for its obligation to make periodic payment of assessments levied on lots which Declarant may, from time to time, own, or assessments on any class or classes of membership which Declarant may from time to time hold in the Brandywine Bay Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Brandywine Bay Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose

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of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including (but not limited to) fixtures and personal property related thereto or the expense of any other contingencies; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members of said Association who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6. Reserve Funds. The Brandywine Bay Association has established, or shall establish and maintain, a reserve fund or funds for replacement and maintenance of its property and by allocation and payment monthly to such reserve fund or funds in such amounts as are established from time to time by the Board of Directors of the Brandywine Bay Association.

Section 7. Notice and Quorum Requirement. Written notice of any meeting called for the purpose of taking any action authorized in this ARTICLE XIII shall be sent to all members of the Brandywine Bay Association not less than seven (7) 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 in said Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement 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 date set for the preceding meeting.

Section 8. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the date of recordation of the deed conveying the common area to the Villas Association in the office of the Register of Deeds of Carteret County, North Carolina; provided, however, that each lot is and shall remain subject to assessment as Class C Membership property or, in the event a lot or lots are sold to a successor

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or assign of Sunstates Development Company, Class B Membership property, as provided in the Articles of Incorporation of The Brandywine Bay Association, until conveyance of such lot to an owner other than Declarant, its successors or assigns. The first annual assessment for each lot shall be adjusted according to the number of months remaining in the calendar year following such lot's conveyance to its owner. The Board of Directors of the Brandywine Bay Association shall fix the amount of the annual assessment against each lot at least forty-five (45) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every member. The due dates shall be established by the Board of Directors, and, unless otherwise provided, said Association shall collect each month from the members one-twelfth (1/12) of the annual assessment for their lots. Said Association shall, upon demand, furnish a certificate signed by an officer of said Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of the assessment therein stated to have been paid, as to any purchaser or mortgagee of a lot who relies thereon.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Brandywine Bay Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the rate of six percent (6%) per annum, and the Brandywine Bay Association may bring an action at law against the member personally obligated to pay the same or foreclose the lien against the lot, and interest, costs, and reasonable attorneys' fees of any such action for collection thereof shall be added to the amount of such assessment. Each such owner, by his acceptance of a deed to a lot, thereby expressly grants to and vests in the Brandywine Bay Association, or its agents, the right and power to bring all actions against such owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by all methods available for the enforcement of such

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liens, including foreclosure by an action brought in the name of said Association in a like manner as a mortgage or deed of trust lien on real property, and such owner expressly grants to said Association power of sale in connection with any such charge or lien. The lien provided for in this Section 9. shall be in favor of said Association and shall be for the benefit of all other members. Said Association, acting on behalf of the members, shall have the power to bid in a Lot foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. NO MEMBER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE BRANDYWINE BAY ASSOCIATION'S PROPERTY OR FACILITIES OR ABANDONMENT OF HIS LOT.

Section 10. Subordination of the Assessment Lien to Mortgages, Deeds of Trust and Similar Security Interests. The lien of the assessments provided for in this ARTICLE XIII shall be subordinate to the lien of any Institutional Mortgage (being fully defined herein in Section 15. of ARTICLE I as a "first mortgage) on a lot and subordinate to tax liens and special assessments on the lot made by a lawful governmental authority and other liens granted priority by statutory authority. Sale or transfer of any lot shall not affect the assessment lien. However, where the mortgagee of an Institutional Mortgage (first mortgage) or other purchaser of a lot obtains title to the lot as a result of foreclosure of an Institutional Mortgage (first mortgage), such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments of the Brandywine Bay Association chargeable to such lot which became due prior to the acquisition of title to such lot as a result of foreclosure by such acquirer. Such unpaid shares of common expenses or assessments shall be deemed to be common expense collectible from all members of the Brandywine Bay Association including such acquirer, his heirs, successors and assigns. No such sale of a lot shall relieve such lot (or its owner) from liability for any assessments thereafter becoming due and payable or from the lien of any subsequent assessment.

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Section 11. Insurance: Insurance Assessments. The Board of Directors of the Brandywine Bay Association or its duly authorized agent shall have the authority to and shall obtain insurance for all the buildings and improvements owned by said Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering its property and facilities, and all damage or injury caused by the negligence of said Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be an expense of said Association. All such insurance coverage shall be written in the name of said Association as Trustee for each of the owners. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of said Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors. The Board of Directors may advertise for sealed bids with any licensed contractors and they may negotiate with any contractor, who shall be required to provide full performance and payment bond for the repair, reconstruction or rebuilding of such damaged or destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all members of the Association, to make up any deficiency for repair or rebuilding of its property and facilities.

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Section 12. Disclaimer. THE PROPERTY AND FACILITIES OF THE BRANDYWINE BAY ASSOCIATION HAVE NOT BEEN SUBMITTED TO THIS DECLARATION BY DECLARANT, AND THE SAME SHALL NOT BE CONSIDERED AS A PART OF THE VILLAS PROPERTIES OR THE COMMON AREA.

ARTICLE XIV

RENTAL OF TOWNHOUSES BY OWNERS

Dwellings constructed on Lots shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as any rental in which the occupants of the townhouse are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing, the owners, including Declarant, shall have the absolute right to lease or rent the same subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws and Rules and Regulations of the Villas Association; provided, however, that the restrictions herein contained shall not apply to any townhouse unit on a lot owned by Declarant and maintained by Declarant as a guest unit in connection with its sales and marketing program prior to Declarant's sale of all Lots owned by it.

ARTICLE XV

VOLUNTARY CONVEYANCE OF LOT

The lien for assessments of the Villas Association, created in ARTICLE III, Section 1. and for assessments of the Brandywine Bay Association, created in ARTICLE XIII, Section 2., shall not be affected by any voluntary conveyance of a lot, and shall remain a continuing charge on the land and a continuing lien which may be foreclosed as provided in ARTICLE III, Section 8, and ARTICLE XIII, Section 9. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board of Directors of each Association or from a president or treasurer of each Association, setting forth the amount of the unpaid assessments against the grantor due the Villas Association or the Brandywine Bay Association and such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any

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unpaid assessments made by the Villas Association or the Brandywine Bay Association against the grantor in excess of the amount therein set forth.

ARTICLE XVI

AMENDMENT OF DECLARATION

Section 1. Amendment Procedure. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded in the office of the Register of Deeds of Carteret County, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless an amendment approving the termination of said covenants and restrictions, executed and recorded in accordance with the procedures set out in this Section 1. of ARTICLE XVI, has been recorded in the office of the Register of Deeds of Carteret County, North Carolina, at least three (3) years prior to the end of such initial twenty-year period or any such successive ten-year period. This Declaration may be amended upon the filing for record in the office of the Register of Deeds of Carteret County, of an instrument in writing which sets forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by: (i) during the period ending twenty (20) years from the date this Declaration is recorded, owners holding not less than ninety percent (90%) of the votes of each class of members of the Villas Association, and holders of not less than ninety percent (90%) of the Institutional Mortgages (first mortgages) then in force with respect to the lots; and (ii) thereafter owners holding not less than seventy-five percent (75%) of the votes of each class of members of the Villas Association and holders of not less than seventy-five percent (75%) of the Institutional Mortgages (first mortgages) then in force with respect to the lots. Any amendment hereto must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached schedules and exhibits are recorded and must contain an affidavit by the president of the Villas Association

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or an officer of Declarant, as the case may be, that a copy of the amendment has been mailed by certified mail to all owners and all mortgagees having a bona fide lien of record against any lot.

Any such amendment must be recorded and indexed in the name of the Villas Association and each and every owner. The amendment procedure provided herein shall be in addition to, and shall have no effect upon the right of Declarant to amend as provided in ARTICLE V, Section 4, and in Section 2. of this ARTICLE XVI.

Section 2. Declarant's Right to Amend Declaration with Approval of Veterans Administration or Department of Housing and Urban Development. In the event that the Declarant shall seek to obtain approval of this Declaration and the plan of development of its property in order that the townhouse units constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD") or other governmental agency, it is possible that such agency or agencies will require changes in this Declaration in order to make the townhouse units eligible for such loans. In such event, Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval by the appropriate governmental agency, in the office of the Register of Deeds of Carteret County, North Carolina. A letter from an official of the VA, HUD and/or such other agency shall be deemed conclusive evidence for all purposes of such agency's requirement of changes. Each owner and his respective mortgagees, by acceptance of a deed conveying a lot or a mortgage encumbering such Lot, as the case may be, hereby irrevocably appoint Declarant his or their Attorney-in-Fact, such power of attorney being coupled with an interest, and authorize, direct, and empower such Attorney, at the option of the Attorney, in the event that Declarant exercises the rights reserved in this Section 2. of ARTICLE XVI to amend this Declaration as provided herein, to execute, acknowledge and record for and in the name of such Owner and any such mortgagee

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an amendment for such purpose, and for and in the name of such respective mortgagees a consent and joinder to such amendment or amendments.

Section 3. Effect on Expansion Area Owner. No amendment of this Declaration shall have any effect, however, upon the Expansion Area Owner or the rights of the Expansion Area Owner under this Declaration, until the written consent of the Expansion Area Owner has been secured. Such consent shall be obtained by the Secretary of the Villas Association or the Declarant, as the case may be, and his certification in the instrument of amendment as to the consent or nonconsent of the Expansion Area Owner may be relied upon by all persons for all purposes.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

Section 1. Directors Appointed by Declarant. The initial Board of Directors of the Villas Association shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of members, they shall constitute the Board of Directors of the Villas Association and exercise all powers and duties granted to the Board of Directors in the Bylaws. Said Directors are further specifically authorized to enter into a Management Agreement for the Villas Association upon the terms, provisions, conditions and limitations as are herein and in the Bylaws provided for and upon such other terms and conditions as the Directors may deem to be in the best interests of the Villas Association.

In addition thereto and notwithstanding any provision contained in this Declaration, the Articles of Incorporation or the Bylaws to the contrary, for so long as Declarant is the owner of three (3) or more lots, including any such lot which may be added thereto pursuant to the provisions of ARTICLE IV of this Declaration, Declarant shall and does have and retain the right, privilege and option to designate, as nearly as may be, one-third (1/3) of the members of the Board of Directors of the Villas

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Association. These appointees may or may not be employees of Declarant, and need not own or occupy a lot.

Notwithstanding the foregoing provisions and in the event that the Federal Housing Authority or the Veterans Administration shall be the holder or insurer of any mortgage on any unit of the Villas, at and after such time as there no longer exists any right of the Developer or the Expansion Area Owner to add further portions of the Expansion Area to the Villas properties under Article V § 1. hereof, Developer (or Expansion Area Owner) shall relinquish its rights to appoint such Directors within 120 days after the date by which 75% of the units have been conveyed to unit purchasers or within five (5) years of the conveyance of the first unit, whichever shall occur first.

Section 2. Notices of Mortgages. Any owner who mortgages his or her lot or his interest therein shall notify the Villas Association, in such manner as the Villas Association may direct, of the name and address of his mortgagee and thereafter shall notify the Villas Association of the payment, cancellation or other alteration in the status of such mortgages. The Villas Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 3. Copies of Notices to Mortgage Lenders. Upon written request to the Board of Directors of the Villas Association, the holder of any duly recorded mortgage on any lot or interest therein shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or owners whose lot or interest therein is subject to such mortgage.

Section 4. Covenants Running with the Land. Each owner, by the acceptance of a deed of conveyance for a lot, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed to be covenants running with

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the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such persons in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 5. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential townhouse community of the highest quality. Any owner, the Villas Association, Declarant or any Institutional Lender may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Villas Association or the Brandywine Bay Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.

Whenever there shall have been built within the Villas Properties any structure which is in violation of this Declaration, the Villas Association, or designated agents, may enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner; provided, however, that the Villas Association shall then, at the expense of the owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation and in restoring or repairing said property shall immediately be deemed a special assessment levied by the Villas Association against such violating owner and such owner's lot, shall become a personal obligation of such owner and shall become a lien upon such lot enforceable as under the provisions of ARTICLE III, Section 8. hereof.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or

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restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

Section 6. Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 8. Time Limits. If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living children of J. C. Livingston, an officer of the Declarant, and the now living children of Dennis H. Sullivan, each of Raleigh, North Carolina.

Section 9. Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or delegated to them or any of them by or pursuant to this Declaration.

Section 10. Retained Lands. Certain other properties adjoining or nearby the Brandywine Bay Development Area, owned by Declarant and not subject to this Declaration, are referred to

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herein as Retained Lands. Said Retained Lands are described in Exhibit "E" attached hereto and made a part hereof. Declarant, its successors and assigns, reserve and retain the right, privilege and option to develop and improve such Retained Lands (and to sell and dispose of all or any portions thereof) at such time in the future as may be selected by Declarant, its successors and assigns, for such use and purpose as may be permissible under and pursuant to applicable governmental control, if any. If any such development and improvement does occur, at such time the owners and occupants of said Retained Lands, or any portions thereof, may be entitled to membership, together with all rights and privileges appertaining thereto, in the Brandywine Bay Association, conditioned only upon payment of the prescribed assessments to be utilized for the operation of said Association and the maintenance and repair of its facilities and equipment, and other purposes as specified in its Articles of Incorporation and Bylaws and as set forth in ARTICLE XIII hereof. SAID RETAINED LANDS SHALL NOT BE CONSIDERED AS A PART OF THE VILLAS PROPERTIES OR THE COMMON AREA.

Section 11. First Mortgagees: Right to Examine Association Books. The holders of first mortgages or first deeds of trust on lots shall have the right to examine the books and records of the Villas Association.

Section 12. Loans to Association. Declarant may, at its discretion, loan funds to the Villas Association from time to time as required, which loans shall be repayable with interest at six percent (6%) per annum as funds are available, but in no event more than one (1) year from the date of advancement of funds.

Section 13. Failure of Villas Association to Pay Taxes and Special Assessments on Common Area. In the event the Villas Association shall, contrary to its obligation to do so, fail to pay the ad valorem taxes or any special governmental assessments on the common area on or before expiration of one hundred eighty (180) days from and after the date on which the same shall become delinquent, then and in such event, said taxes or assessments,

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together with any interest and penalties thereon shall be and become a lien, on a prorata basis, upon the lots covered hereby. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments and public improvements.

Section 14. Conveyance of Property to Villas Association.

It is understood and agreed that Declarant, its successors and assigns, shall convey the common area to the Villas Association free and clear of financial liens and encumbrances at or prior to the time the first lot is conveyed subject hereto to a purchaser thereof other than Declarant. To the extent that any work or construction remains to be done on or as to said common area and facilities at such time, then and in such event Declarant shall have theretofore delivered its contract and undertaking to complete such work or construction, lien free, to the Villas Association as the case may be, upon filing of the Declaration.

Section 15. Management Agreements. Each owner hereby agrees to be bound by the terms and conditions of any management agreements entered into by the Villas Association. A copy of all such agreements shall be made available to every owner. Any and all management agreements entered into by the Villas Association shall provide that said management agreement may be cancelled, prior to the expiration of said agreement, with or without cause upon thirty (30) days' notice. Except as provided herein, no such management agreement shall be cancelled prior to the effecting by the Villas Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become effective immediately upon the cancellation of the then existing management agreement; provided this restriction shall not prevent the Villas Association from immediately cancelling a management agreement and undertaking temporary self-management so long as notice is sent to all Institutional Lenders which sets forth the reason for the cancellation of the management agreement and which includes either a request for approval to undertake self-management on a permanent basis or an estimate of the length of time necessary to obtain a

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new management agreement. It shall be the duty of the Villas Association or its Board of Directors to effect a new management agreement upon the expiration of any prior management agreement, unless self-management is undertaken as herein provided. Any and all management agreements shall be made with a responsible party or parties who have experience adequate for the management of a project of the size and type of the Villas Project and shall run for a reasonable period of from one (1) to three (3) years, renewable by consent of the Villas Association and Management. The Villas Association may undertake self-management upon the affirmative vote of seventy-five percent (75%) of the votes of each class of members and upon the approval of the holders of seventy-five percent (75%) of the Institutional Mortgages (first mortgages) upon the lots.

Section 16. Emergencies. In the event of any emergency originating in or threatening any lot, the managing agent or his representative or any other person designated by the Board may enter the lot or improvement therein immediately, whether the owner is present or not, and in such event, the Villas Association reserves the right to enter such lot or improvements by force without any liability to the owner for any damage caused by such forcible entry.

Section 17. Headings. The heading to each Article and Section hereof is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

Section 18. VA/FHA Approval. Notwithstanding any provisions contained elsewhere in this Declaration to the contrary, as long as Declarant is in voting control of the Villas Association and there is in existence a mortgage of which the VA or the FHA is the holder or insurer, the following actions will require the prior approval of the VA and/or FHA: annexation of additional properties, mergers and consolidations, mortgaging of common area, dedication of common area, and dissolution and amendment of this Declaration.

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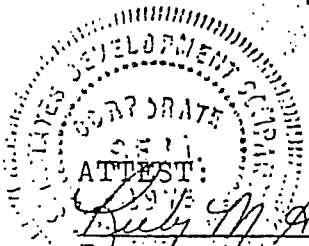
IN WITNESS WHEREOF, Sunstates Development Company acting in its capacity as Attorney-in-Fact for owners of lots within the townhouse development (see ARTICLE XVII, Section 2. of this Declaration) and acting on its own behalf as Declarant herein, has caused this Declaration to be executed by its Vice President, attested by its Asst Secretary, and its common seal to be hereunto affixed, all by authority of all of its Board of Directors duly given, this the day and year first above written.

SUNSTATES DEVELOPMENT COMPANY

DECLARANT/Attorney-in-Fact

by

R. James Hames
Vice President



ATTEST:

Ruby M. Anderson
Asst. Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Ruby M. Anderson personally came before me this day and acknowledged that she is the Asst. Secretary of SUNSTATES DEVELOPMENT COMPANY, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her as its Asst. Secretary.

WITNESS my hand and official stamp or seal, this the 27th day of April, 1984.

Glenn K. Payne
Notary Public

My Commission Expires:

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NORTH CAROLINA, CARTERET COUNTY

The foregoing certificate(s) of Claw & Pigeon
is (~~are~~) certified to be correct. This instrument was pre-
sented for registration and recorded in this office in
Book 497 Page 328
This 2 day of May, 1984 at 1:00 O'clock P.

Sharon Piner

Register of Deeds

By Melanie Cline

Assistant, Deputy



DESCRIPTION OF BRANDYWINE BAY DEVELOPMENT AREA

BEGINNING at a stake in the southerly property line of N. C. Highway No. 24, as shown on the plat of survey hereinafter referred to, said BEGINNING POINT being reached by commencing at a point in the southerly property line of N. C. Highway No. 24, which point is coincident with the center line of McCabe Road if said center line were extended from its present terminus to the southerly property line of said N. C. Highway No. 24, and RUNNING THENCE from said point along and with the southerly property line of the said N. C. Highway No. 24 in an easterly direction a distance of 1,388.29 feet to a stake in the southerly property of N. C. Highway No. 24, the PLACE AND POINT OF BEGINNING; and RUNNING THENCE from said BEGINNING POINT along and with the southerly property line of the said N. C. Highway No. 24, crossing the northern terminus of Bay Drive (a private street) South 71° 23' 31" East a distance of 140.47 feet to a stake in the southerly property line of N. C. Highway No. 24, the northwest corner of property belonging to the J. W. Murphree Company; thence along and with the westerly property line of the said J. W. Murphree Company South 18° 35' 29" West a distance of 53.39 feet to a stake in the westerly property line of the said J. W. Murphree Company; thence, North 71° 24' 31" West a distance of 17.0 feet to a stake in the easterly property line of the said Bay Drive; thence along and with easterly property line of the said Bay Drive along the arc of a curve to the southwest, said curve having a radius of 394.0 feet and a chord bearing of South 13° 35' 29" West, an arc length distance of 68.77 feet to a point in the easterly property line of the said Bay Drive; thence continuing with the easterly property line of the said Bay Drive South 8° 35' 29" West a distance of 368.26 feet to a stake in the easterly property line of the said Bay Drive; thence along the arc of a curve to the southeast, said curve connecting the easterly property line of Bay Drive with the northerly property line of Bogue Drive (a private street), said curve having a radius of 17 feet and a chord bearing of South 36° 24' 31" East, an arc length distance of 26.7 feet to a stake in the northerly property line of Bogue Drive, the southwestern corner of the J. W. Murphree Company property; thence along and with the northerly property line of the said Bogue Drive (said property line being coincident with the southerly property line of the said J. W. Murphree Company) South 81° 24' 31" East a distance of 400.97 feet to a stake in the southerly property line of the said J. W. Murphree Company; thence crossing the easternmost terminus of Bogue Drive South 9° 39' 59" West a distance of 30.0 feet to a point, the northeastern corner of the OAK BLUFF AT BRANDYWINE BAY, a Condominium, property, the same also being a point in the westerly property line of the Brandywine Bay Development Corporation; thence along and with the westerly property line of the Brandywine Bay Development Corporation property (a new line) the following courses and distances: South 9° 39' 59" West a distance of 100.87 feet to a stake; thence South 5° 27' 19" West a distance of 133.1 feet to a stake; thence South 00° 29' 12" West a distance of 191.44 feet to a stake; thence South 41° 09' 16" West a distance of 100.0 feet to a stake; thence South 28° 09' 36" West a distance of 126.09 feet to a stake at the mean high water line of Bogue Sound; thence along and with the mean high water line of Bogue Sound the following courses and distances: North 83° 35' 41" West a distance of 197.41 feet to a stake; thence South 59° 03' 59" West a distance of 101.0 feet to a stake; thence North 73° 36' 41" West a distance of 176.05 feet to a stake and corner with property owned by the Brandywine Bay Development Corporation; thence continuing along and with the mean high water line of Bogue Sound the following courses and distances: North 82° 32' 21" West a distance of 140.24 feet to a stake; thence South 74° 08' 59" West a distance of 48.91 feet to a stake; thence South 26° 34' 09" West a distance of 251.37 feet to a stake; thence North 79° 16' 21" West a distance of 104.34 feet to a stake; thence North 3° 23' 39" East a distance of 165.28 feet to a stake; thence North 57° 16' 31" West a distance of 197.96 feet to a stake; thence North 62° 00' 11" West a

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EXHIBIT A - continued

distance of 139.57 feet to a stake; thence North 69° 55' 01" West a distance of 222.38 feet to a stake; thence leaving the mean high water line of Bogue Sound a new line North 18° 07' 59" East a distance of 1,293.1 feet to a stake in the southerly property line of N. C. Highway No. 24; thence along and with the southerly property line of N.C. Highway No. 24 South 71° 23' 31" East a distance of 695.86 feet to a stake in the southerly property line of N. C. Highway No. 24, the PLACE AND POINT OF BEGINNING; the same being a tract or parcel of land containing approximately 34 acres and being labelled Parcels A, B and C plus the areas for Bogue and Bay Drive as shown on Sheet 3 of the "Drawings" for OAK BLUFF AT BRANDYWINE BAY, a Condominium, said "Drawings" being recorded among the Public Records of Carteret County, North Carolina. In addition, the BEGINNING POINT for this parcel or tract of land is locatable by reference to Sheet 2 of said "Drawings"; said Sheets 2 and 3 having been prepared by C. C. King, Registered Land Surveyor of Beaufort, North Carolina, dated the 14th day of October, 1976; Sheet 2 being labelled "Boundary and Final Map, Parcels A and B, OAK BLUFF AT BRANDYWINE BAY, a Condominium" and Sheet 3 being labelled "Boundary Map, Parcels A, B and C, OAK BLUFF AT BRANDYWINE BAY, a Condominium," each of said sheets being herein referred to more particular description of said property.

BEING THE SAME PROPERTY described in Schedule A to that certain Declaration of Unit Ownership recorded in Book UO-3, at page 218, in the Office of the Register of Deeds of Carteret County, North Carolina.

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DESCRIPTION OF VILLAS PROPERTIES

BEGINNING at a point in west right-of-way of Bay Drive, where the north right-of-way of a 24-foot access road intersects said right-of-way of Bay Drive; this point being further described as being located N 8-35-29 E 249.46 feet from an iron pipe at the northeast corner of Parcel "B" as recorded in Book 10A, Page 88 Carteret County Registry; thence from said BEGINNING point and along the north right-of-way of said 24-foot access road, a curve to the right with the length of 25.13 feet and a radius of 16.0 feet to a point; thence with a curve to the left with a length of 105.07 feet and a radius of 172.0 feet to a point; thence S 63-35-29 W 88.0 feet to a point; thence with a curve to the right with a length of 95.45 feet and a radius of 408.0 feet to a point; thence leaving the north right-of-way of said 24-foot access road N 15-1-10 W 120.0 feet to a point; thence S 74-58-50 W 10.0 feet; thence N 15-01-10 W 40.0 feet to a point; thence N 74-58-50 E 10.0 feet to a point; thence N 15-01-10 W 162.55 feet to a point; thence N 39-33-34 E 12.01 feet to a point; thence S 81-37-55 E 393.60 feet to a point in the west right-of-way of Bay Drive; thence along the west right-of-way of Bay Drive S 08-35-29 W 164.66 feet to the point and place of BEGINNING; the same being a tract or parcel of land as set out in that plat of C.C. King, Registered Surveyor, under date of June 28 1979 (rev. 3/17/80) entitled "The Villas at Brandywine Bay-Bay Court," recorded in Map Book 17, at page 28 of the Carteret County Registry.

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EXHIBIT C

DESCRIPTION OF VILLAS EXPANSION AREA

BEGINNING at a point in the westerly margin of the right-of-way of Bay Drive, which point is located N 08-35-29 E 249.46 feet from an existing iron pipe at the northeast corner of Parcel "B" as recorded in Map Book 10A, at page 88, in the Office of the Register of Deeds of Carteret County, North Carolina, said beginning point being the intersection of the northerly margin of the right-of-way of a proposed 24-foot access road as shown on the survey hereinafter described; and running thence from said beginning point in a generally southwesterly direction with the arc of a circular curve to the right having a radius of 15.0 feet, an arc length of 23.56 feet to a point; thence in a generally westerly direction with the arc of a circular curve to the left having a radius of 172.0 feet, an arc distance of 105.07 feet to a point; thence S. 63-35-29 W. 88.0 feet to a point; thence in a generally westerly or southwesterly direction with the arc of a circular curve to the right having a radius of 408.0 feet, an arc distance of 555.43 feet to a point; thence N. 38-24-31 W. 180.0 feet to a point; thence in a generally northerly or northeasterly direction with the arc of a circular curve to the right having a radius of 15.0 feet, an arc distance of 23.56 feet to a point; thence N. 51-35-29 E. 21.0 feet to a point; thence in a generally northerly direction with the arc of a circular curve to the left having a radius of 64.0 feet, an arc distance of 64.79 feet; thence N. 06-24-31 W. 107.0 feet to a point; thence in a generally northerly direction with the arc of a circular curve to the right having a radius of 187.5 feet, an arc distance of 132.54 feet to a point; thence in a generally northeasterly direction with the arc of a circular curve to the right having a radius of 110.5 feet, an arc distance of 94.75 feet to a point; thence N. 18-07-59 E. 69.45 feet to a point in the southerly margin of the right-of-way of N.C. Highway 24 (100-foot right-of-way); thence with the southerly margin of the right-of-way of N.C. Highway 24 S. 71-23-31 E. 695.86 feet to a point; thence S. 00-21 E. 40.04 feet to a point; thence S. 48-25 E. 40.0 feet to a point; thence S. 71-23-11 E. 17.0 feet to a point in the westerly margin of the right-of-way of Bay Drive; thence with the westerly margin of the right-of-way of Bay Drive the following two courses and distances: (1) in a generally southerly direction with the arc of a circular curve to the left having a radius of 450.66 feet, an arc distance of 78.66 feet to a point, and (2) S. 08-35-29 W. 255.26 feet to the point or place of BEGINNING containing approximately 10.35 acres as shown on a survey dated October 17, 1978, and entitled "Phase II,"--Brandywine Bay, and marked as file number C-2A-81, and prepared by C. C. King, Registered Land Surveyor, Beaufort, North Carolina.

EXCEPTING AND RESERVING therefrom the following parcel of real property:

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EXHIBIT C - cont.

BEGINNING at a point in west right-of-way of Bay Drive, where the north right-of-way of a 24-foot access road intersects said right-of-way of Bay Drive; this point being further described as being located N 8-35-29 E 249.46 feet from an iron pipe at the northeast corner of Parcel "B" as recorded in Book 10A, Page 88 Carteret County Registry; thence from said BEGINNING point and along the north right-of-way of said 24-foot access road, a curve to the right with the length of 25.13 feet and a radius of 16.0 feet to a point; thence with a curve to the left with a length of 105.07 feet and a radius of 172.0 feet to a point; thence S 63-35-29 W 88.0 feet to a point; thence with a curve to the right with a length of 95.45 feet and a radius of 408.0 feet to a point; thence leaving the north right-of-way of said 24-foot access road N 15-1-10 W 120.0 feet to a point; thence S 74-58-50 W 10.0 feet; thence N 15-01-10 W 162.55 feet to a point; thence N 39-33-34 E 12.01 feet to a point; thence S 81-37-55 E 393.60 feet to a point in the west right-of-way of Bay Drive; thence along the west right-of-way of Bay Drive S 08-35-29 W 164.66 feet to the point and place of BEGINNING; the same being a tract or parcel of land as set out in that plat of C.C. King, Registered Surveyor, under date of JUNE 23, 1979 (REV. 3/17/80), entitled "The Villas at Brandywine Bay-Bay Court," recorded in Book 17, at page 28 of the Carteret County Registry.

Map

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DESCRIPTION FOR ENTRANCEWAY GATE,
STREET AND ROADWAY EASEMENT AREABOOK
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BEGINNING at a stake in the southerly property line of N. C. Highway No. 24, as shown on the plat of survey hereinafter referred to, said BEGINNING point being reached by commencing at a point in the southerly property line of N. C. Highway No. 24, which point is coincident with the center line of McCabe Road if said center line were extended from its present terminus to the southerly property line of said N. C. Highway No. 24, AND RUNNING THENCE from said point along and with the southerly property line of the said N. C. Highway No. 24 in an easterly direction a distance of 1,388.29 feet to a stake in the southerly property line of N. C. Highway No. 24, the place and point of BEGINNING; AND RUNNING THENCE from said BEGINNING point a new line South $00^{\circ} 21'$ East a distance of 40.04 feet to a stake; thence South $48^{\circ} 25'$ East a distance of 40.0 feet to a stake; thence South $71^{\circ} 23' 11''$ East a distance of 17.0 feet to a stake in the westerly property line of Bay Drive (a private street); thence along and with the westerly property line of the said Bay Drive along the arc of a curve to the southwest, said curve having a radius of 450.66 feet, said curve also having a chord bearing of South $13^{\circ} 35' 29''$ West and a chord length distance of 78.55 feet, an arc length distance of 78.66 feet to a point in the westerly property line of the said Bay Drive; thence continuing with the westerly property line of the said Bay Drive South $8^{\circ} 35' 29''$ West a distance of 503.3 feet to a stake in the westerly property line of Bay Drive; thence continuing with the westerly property line of Bay Drive South $8^{\circ} 35' 29''$ West a distance of 171.0 feet to a point in the westerly property line of Bay Drive, a point of curvature; thence continuing along and with the westerly property line of said Bay Drive along the arc of a curve to the southwest, said curve having a radius of 91.372 feet, an arc length distance of 82.38 feet to a point in the westerly property line of Bay Drive; thence continuing along and with the westerly property line of the said Bay Drive South $60^{\circ} 14' 49''$ West a distance of 10.12 feet to a stake in the westerly property line of Bay Drive; thence continuing along and with the westerly property line of Bay Drive South $60^{\circ} 14' 49''$ West a distance of 177.44 feet to a point and corner with the property owned by BRANDYWINE BAY DEVELOPMENT CORPORATION; thence crossing the southernmost terminus of Bay Drive South $29^{\circ} 45' 11''$ East a distance of 56.66 feet to a stake and corner with the OAK BLUFF AT BRANDYWINE BAY, a Condominium, property; thence along and with the northwesterly property line of the OAK BLUFF AT BRANDYWINE BAY property North $60^{\circ} 14' 49''$ East a distance of 187.56 feet to a stake; thence continuing along and with the northwesterly property line of the said OAK BLUFF AT BRANDYWINE BAY property along the arc of a curve to the northeast, said curve having a radius of 148.032 feet, an arc length distance of 133.46 feet to a point in the westerly property line of the said OAK BLUFF AT BRANDYWINE BAY property; thence continuing along and with the westerly property line of the said OAK BLUFF AT BRANDYWINE BAY property North $8^{\circ} 35' 29''$ East a distance of 171.0 feet to a stake; thence continuing along and with the westerly property line of the OAK BLUFF AT BRANDYWINE BAY property North $8^{\circ} 35' 29''$ East a distance of 71.04 feet to a stake in the westerly property line of the said OAK BLUFF AT BRANDYWINE BAY Condominium property; thence along the arc of a curve joining the westerly property line of the OAK BLUFF AT BRANDYWINE BAY Condominium property with the northerly property line of the said OAK BLUFF AT BRANDYWINE BAY Condominium property (coincident with the southerly property line of Bogue Drive [a private street]) said curve being to the northeast and having a radius of 17 feet, said curve also having a chord bearing of North $53^{\circ} 35' 29''$ East and a chord length distance of 24.04 feet, an arc length distance of 26.7 feet to a stake in the northerly property line of the OAK BLUFF AT BRANDYWINE BAY Condominium property (and in the southerly property line of the said Bogue Drive); thence along and with the southerly

EXHIBIT D - continued

property line of the said Bogue Drive (a private street) and the northerly property line of the said OAK BLUFF AT BRANDYWINE BAY Condominium property South $81^{\circ} 24' 31''$ East a distance of 400.41 feet to a point in the line of property owned by BRANDYWINE BAY DEVELOPMENT CORPORATION, a new corner; thence crossing the easternmost terminus of Bogue Drive North $9^{\circ} 39' 59''$ East a distance of 30 feet to a stake in the southerly property line of the J. W. Murphree Company; thence along and with the southerly property line of the said J. W. Murphree Company North $81^{\circ} 24' 31''$ West a distance of 400.97 feet to a stake, the southwestern corner of the J. W. Murphree Company property; thence along the arc of a curve to the northwest, said curve joining the northerly property line of Bogue Drive with the easterly property line of Bay Drive and having a radius of 17 feet, an arc length distance of 26.7 feet to a point in the easterly property line of Bay Drive; thence along and with the easterly property line of the said Bay Drive North $8^{\circ} 35' 29''$ East a distance of 368.26 feet to a point in the easterly property line of the said Bay Drive, a point of curvature; thence continuing along and with the easterly property line of the said Bay Drive along the arc of a curve to the northeast, said curve having a radius of 394.0 feet, an arc length distance of 68.77 feet to a point in the easterly property line of Bay Drive; thence South $71^{\circ} 24' 31''$ East a distance of 17.0 feet to a stake and corner with the line of the western boundary of the J. W. Murphree Company property; thence along and with the line of the said J. W. Murphree Company North $18^{\circ} 35' 29''$ East a distance of 53.39 feet to a stake in the southerly property line of N. C. Highway No. 24, said stake being the northwestern corner of the J. W. Murphree Company; thence along and with the southerly property line of N. C. Highway No. 24 (crossing the northernmost terminus of Bay Drive as shown on the plat of survey hereinafter referred to) North $71^{\circ} 23' 31''$ West a distance of 140.47 feet to a stake in the southerly property line of said N. C. Highway No. 24 the place and point of BEGINNING; the same being a tract or parcel of land consisting of Bay Drive and Bogue Drive (both private streets), inclusive of the entry-way gate area (less and except the portion thereof owned by the J. W. Murphree Company) as shown on Sheet 2 and Sheet 3 of the "Drawings" for OAK BLUFF AT BRANDYWINE BAY, a Condominium, said "Drawings" being recorded among the public records of Carteret County, North Carolina; said Sheets 2 and 3 having been prepared by C. C. King, Registered Land Surveyor of Beaufort, North Carolina and dated the 14th day of October, 1976; Sheet 2 being labelled "Boundary and Final Map, Parcels A and B, OAK BLUFF AT BRANDYWINE BAY, a Condominium" and Sheet 3 being labelled "Boundary Map, Parcels A, B and C, OAK BLUFF AT BRANDYWINE BAY, a Condominium," each of said Sheets being herein referred to for more particular description of said tract or parcel of land.

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EXHIBIT E
RETAINED LANDS

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BEGINNING at a stake in the southerly property line of N. C. Highway No. 24, as shown on the plat of survey hereinafter referred to, said BEGINNING point being reached by commencing at a point in the southerly property line of N. C. Highway No. 24, which point is coincident with the center line of McCabe Road if said center line were extended from its present terminus to the southerly property line of said N. C. Highway No. 24; AND RUNNING THENCE from said point along and with the southerly property line of the said N. C. Highway No. 24 in an easterly direction a distance of 1,388.29 feet to a stake in the southerly property line of the said N. C. Highway No. 24, the place and point of BEGINNING; AND RUNNING THENCE from said BEGINNING point South 00° 21' East a distance of 40.04 feet to a stake; thence South 48° 25' East a distance of 40.0 feet to a stake; thence South 71° 23' 11" East a distance of 17.0 feet to a stake in the westerly property line of Bay Drive (a private street); thence along and with the westerly property line of the said Bay Drive along the arc of a curve to the southwest, said curve having a radius of 450.66 feet, said curve also having a chord bearing of South 13° 35' 29" West and a chord length distance of 78.55 feet, an arc length distance of 78.66 feet to a point in the westerly property line of the said Bay Drive; thence continuing with the westerly property line of the said Bay Drive South 8° 35' 29" West a distance of 503.3 feet to a stake in the westerly property line of Bay Drive; thence North 65° 28' 31" West a distance of 208.07 feet to a stake; thence South 68° 36' 09" West a distance of 133.8 feet to a stake; thence South 21° 23' 51" East a distance of 99.57 feet to a stake; thence South 68° 36' 09" West a distance of 90.28 feet to a stake; thence South 11° 06' 31" East a distance of 58.55 feet to a stake; thence South 82° 40' 11" East a distance of 86.30 feet to a stake; thence along the arc of a curve to the northeast to a stake, said curve having a chord bearing of North 19° 01' 09" East and a chord distance of 18.46 feet; thence along the arc of a curve to the southeast to a stake, said curve having a chord bearing of South 79° 28' 28" East and a chord distance of 66.84 feet; thence along the arc of a curve to the southeast to a stake, said curve having a chord bearing of South 69° 46' 34" East and a chord distance of 66.84 feet; thence South 20° 32' 09" West a distance of 11.97 feet to a stake; thence along the arc of a curve to the southeast to a stake, said curve having a chord bearing of South 14° 12' 01" East and a chord distance of 10.27 feet; thence South 52° 20' 41" East a distance of 55.39 feet to a stake in the northerly edge of a parking lot; thence South 73° 01' 11" East a distance of 18.22 feet to a point in the westerly property line of Bay Drive; thence along and with the westerly property line of Bay Drive South 60° 14' 49" West a distance of 10.12 feet to a stake in the westerly property line of Bay Drive; thence along and with the westerly property line of the said Bay Drive South 60° 14' 49" West a distance of 177.44 feet to a point; thence crossing the southernmost terminus of Bay Drive South 29° 45' 11" East a distance of 56.66 feet to a stake, a corner with the OAK BLUFF AT BRANDYWINE BAY, a Condominium, property; thence along and with a line of the OAK BLUFF AT BRANDYWINE BAY property South 18° 14' 31" East a distance of 123.1 feet to a stake; thence continuing with the line of the said OAK BLUFF AT BRANDYWINE BAY South 27° 18' 35" East a distance of 89.79 feet to a stake in the mean high water line of Bogue Sound, the southwestern corner of OAK BLUFF AT BRANDYWINE BAY, a Condominium; thence along and with the mean high water line of Bogue Sound the following courses and distances: North 82° 32' 21" West a distance of 140.24 feet to a stake; thence South 74° 03' 59" West a distance of 48.91 feet to a stake; thence South 26° 34' 09" West a distance of 251.37 feet to a stake; thence North 79° 16' 21" West a distance of 104.34 feet to a stake; thence North 3° 23' 39" East a distance of 165.28 feet to a stake; thence North 57° 16' 31" West a distance of 197.96 feet to a stake; thence North 62° 00' 11" West a distance of 139.57 feet to a stake; thence North 69° 55' 01" West a distance of 222.38 feet to a stake; thence leaving the mean high water line of Bogue Sound a new line North 18° 07' 50" East a distance of

EXHIBIT E - continued

1,293.1 feet to a stake in the southerly property line of N. C. Highway No. 24; thence along and with the southerly property line of N. C. Highway No. 24 South 71° 23' 31" East a distance of 695.86 feet to a stake in the southerly property line of N. C. Highway No. 24, the place and point of BEGINNING; the same being a tract or parcel of land containing 23.61 acres, more or less, and being labelled Parcel C, "Possible Future Additions to OAK BLUFF AT BRANDYWINE BAY, a Condominium, if any" as shown on Sheet 3 of the "Drawings" for OAK BLUFF AT BRANDYWINE BAY, a Condominium, said "Drawings" being recorded among the public records of Carteret County, North Carolina. In addition, the BEGINNING point for this parcel or tract of land is locatable by reference to Sheet 2 of said "Drawings"; said Sheets 2 and 3 having been prepared by C. C. King, Registered Land Surveyor of Beaufort, North Carolina, and dated the 14th day of October, 1976; Sheet 2 being labelled "Boundary and Final Map, Parcels A and B, OAK BLUFF AT BRANDYWINE BAY, a Condominium" and Sheet 3 being labelled "Boundary Map, Parcels A, B and C, OAK BLUFF AT BRANDYWINE BAY, a Condominium," each of said Sheets being herein referred to for more particular description of said property.

EXCEPTING AND RESERVING from this description and Declaration all of the Villas Properties as described in Exhibit B to this Declaration and all of the Villas Expansion Area as described in Exhibit C to this Declaration.

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STATE OF NORTH CAROLINA
COUNTY OF CARTERET

AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS,
FOR THE VILLAS AT BRANDYWINE BAY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Villas at Brandywine Bay, made this 19th day of April, 1984, by SUNSTATES DEVELOPMENT COMPANY, a North Carolina corporation and successor to Brandywine Bay Development Corporation (Declarant):

WHEREAS, Declarant caused to be recorded a DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Villas at Brandywine Bay, in Book 438, Page 181 of the Carteret County Registry, and has previously amended the same by a SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAS AT BRANDYWINE BAY recorded in Book 472, at Page 268, of the Carteret County Registry; and

WHEREAS, the said Declaration provides, in Article XVI, Section 2, that Declarant may, without the approval of any other owner, amend the said Declaration for the purpose of complying with requirements of the Veterans Administration or the Department of Housing and Urban Development as the case may be; and

WHEREAS, the Veterans Administration has requested certain amendments to the said Declaration and the By-Laws appended thereto, and has approved the same as evidenced by the correspondence attached hereto as Exhibit 1, and Declarant has incorporated the said requested amendments in an AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS; and

WHEREAS, the BY-LAWS OF THE VILLAS AT BRANDYWINE BAY ASSOCIATION, INC. which are appended to and incorporated in the Declaration provide in Article VIII, Section 1, that the By-Laws may be amended by a vote of 75% of the members of each class of the corporation's membership, and the requisite vote having been exercised by 100% of the class B members, as set out by the certification of the Secretary of the Association which is appended hereto as Exhibit 2.

NOW, THEREFORE, Declarant, with the joinder of the Association, does hereby amend, adopt and re-publish the said amended Declaration and By-Laws, the same being appended hereto and recorded with this instrument.

SUNSTATES DEVELOPMENT COMPANY

by: R. James Hines
Vice President

Attest:
Ruby M. Anderson
Secretary

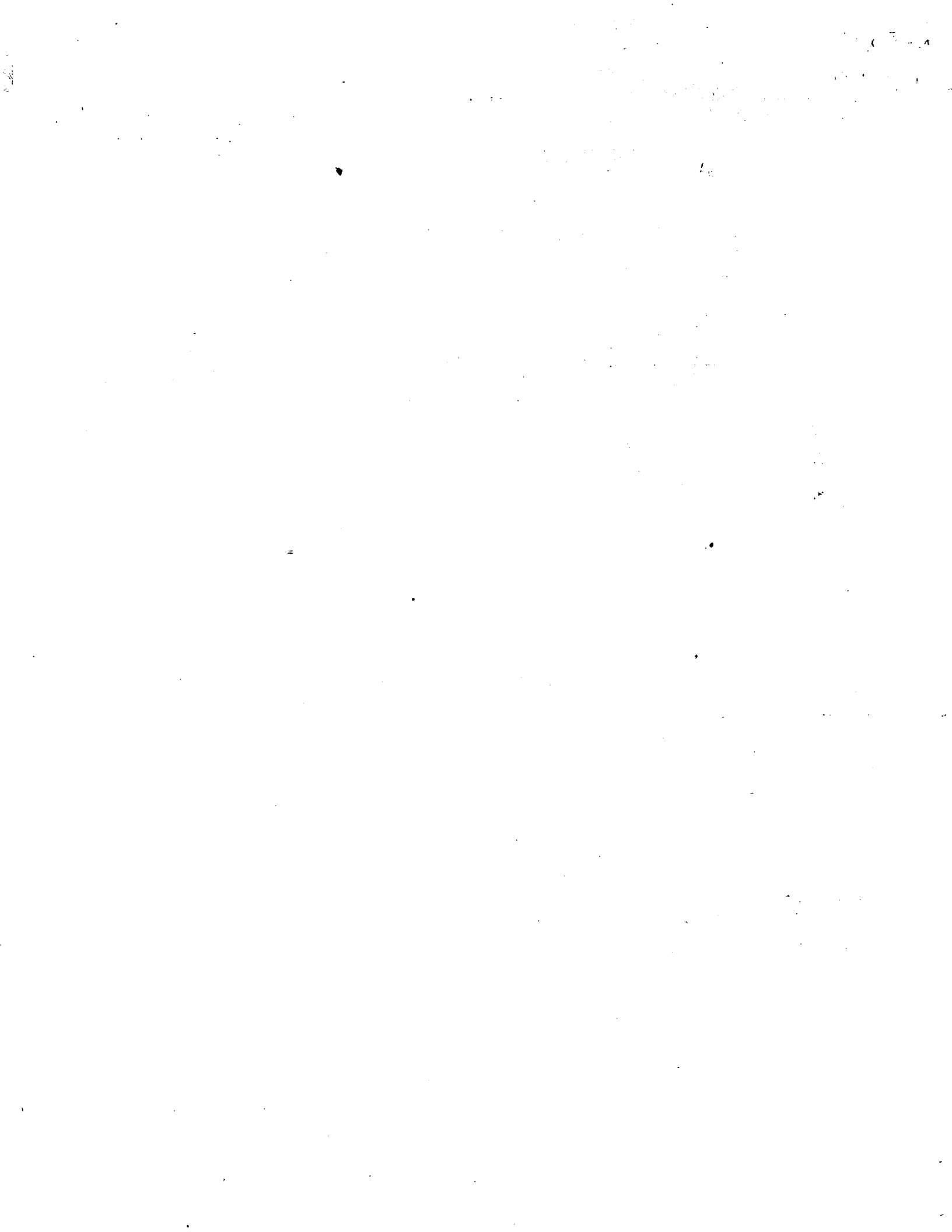
THE VILLAS AT BRANDYWINE BAY
ASSOCIATION, INC.

by: W. G. Cooper
Vice President

Attest:
Ruby M. Anderson
Secretary

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Veterans
AdministrationEXHIBIT 1

May 26, 1983

Brandywine Bay Dev. Corp.
4300 Six Forks Rd.
Raleigh, NC 27609

RE: LETTER OF ACCEPTANCE

Subdivision Name:

Villas at Brandywine Bay
Location:Morehead City, NC
VA File No.:

7572

VA environmental review has been completed. After we receive your signed concurrence with the contents of this letter, we will accept formal applications for commitments on individual properties or group submissions. All commitments issued will be subject to compliance with the following checked conditions.

1. Construct subdivision improvements in accordance with plans, specifications and other exhibits certified to by each professional on May 26, 1983

Allen Smith - Supervisory Construction Analyst

Obtain written approval from VA for any changes in exhibits prior to proceeding with work. HUD will accept exhibits without changes or additions.

2. Furnish one set of Street and Drainage Plans signed by local authority.
3. Comply with HUD Data Sheet 79G (including certifications by the Soils Engineer and the Erosion-control Specialist).
4. On completion of subdivision improvements, furnish your signed certification that all improvements have been constructed per VA accepted exhibits and all VA and local standards.
5. Furnish evidence that the streets, drainage, water supply and sanitary sewerage systems have been accepted for continuous maintenance by local authority that has jurisdiction.
6. Furnish copy of recorded plat and covenants with certifications including signatures of any mortgage or lien holder.

(Over)

In Reply Refer To: 318/26

FL 26-603a
Feb 1980 (RS)

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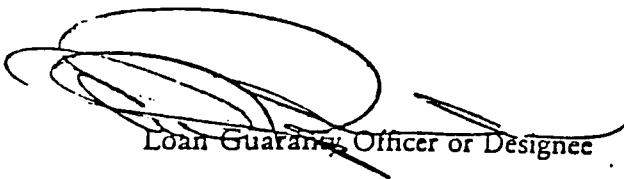


EXHIBIT 1 CONTINUED

7. Initial VA commitments will be limited to _____ until marketability is established.
8. Additional conditions: ~~Provide evidence the Common Area has been deeded free and clear of all liens and encumbrances to the Homeowners Association prior to the conveyance of the first lot to a homeowner. Title into the Association must be confirmed by Title Policy.~~

This letter is void if satisfactory compliance is not demonstrated within one year. Please indicate your concurrence by signing and returning the attached copy.

Sincerely yours,



Loan Guaranty Officer or Designee

Attachment

CONCURRENCE: _____

(Developer)

(Date)

Doc. 497

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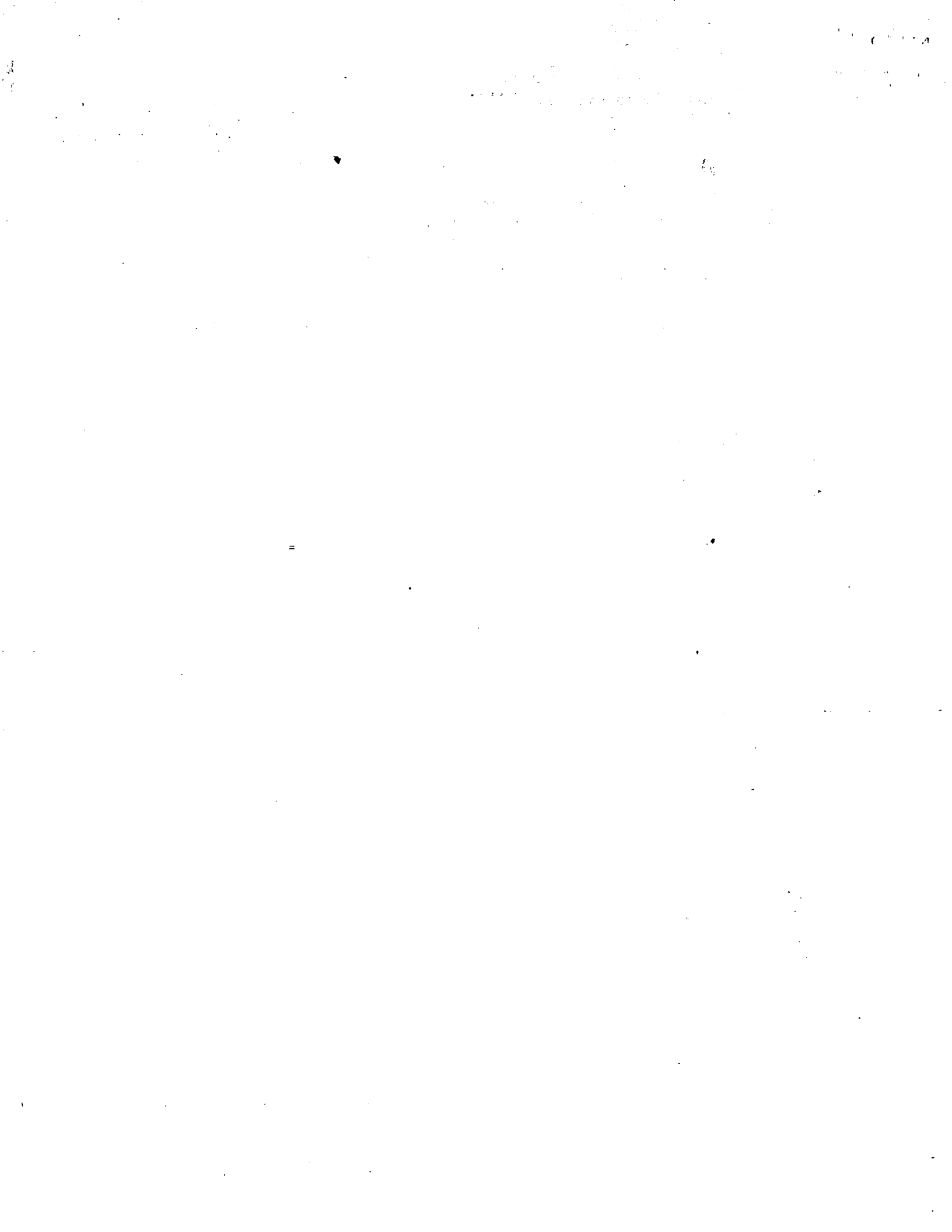


EXHIBIT 2

CERTIFICATE OF SECRETARY
OF
THE VILLAS AT BRANDYWINE BAY ASSOCIATION, INC.

I hereby certify that I am the duly elected and qualified Secretary of The Villas At Brandywine Bay Association, Inc., a corporation organized and existing under the laws of the State of North Carolina. I further certify that in accordance with the By-Laws, a meeting was held at the Bay Club, Brandywine Bay, Morehead City, North Carolina on April 23, 1983, at 12:00 o'clock noon; that notice of the meeting had previously been timely sent to all members of the Association. Present by proxy and in person were 13 members, being all of the members of both classes of the Association.

I further certify that at such meeting the voting requirements necessary for the amendment of the By-Laws of The Villas At Brandywine Bay Association, Inc., as provided in Article VIII, Section 1. of said By-Laws, were met in that the By-Laws, as amended and recorded in the office of the Register of Deeds of Carteret County as an attachment to the Amended And Restated Declaration Of Covenants, Conditions And Restrictions were thereby duly adopted by an unanimous vote as the Amended And Restated By-Laws Of The Villas At Brandywine Bay Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary, and have caused the corporate seal of the said corporation to be affixed hereto this 23rd day of April, 1983.

Ruby M Anderson (SEAL)
Secretary

Sworn to and subscribed before me the 18th day of April, 1984.

Clair K. Payne
Notary Public

My Commission Expires:

6/4/85

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STATE OF NORTH CAROLINA
COUNTY OF CARTERET

✓ KIRKMAN, KIRKMAN & JENKINS, P.A.

Louis K. ...

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
BRANDYWINE BAY DEVELOPMENT
(North Kerr Properties, Inc. Tract)

Mayor

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS, dated for purposes of reference only this 15th day of February, 1988 (as amended from time to time, the "New Declaration"), by NORTH KERR PROPERTIES, INC., a North Carolina corporation with offices in Carteret County, North Carolina, hereinafter called "Developer"; with joinder of JESSE W. HOWARD, Successor Trustee, and BRANCH BANKING AND TRUST COMPANY, Beneficiary, under that Deed of Trust recorded in Book 586, Page 431, Carteret County Registry, and with further joinder of OAK RIDGE COAL CO., INC., a West Virginia corporation with offices in Carteret County, North Carolina, hereinafter called "Seller."

W I T N E S S E T H:

WHEREAS, Seller or its predecessor in interest has previously recorded a Declaration of Covenants and Restrictions in Book 435, Page 362, Carteret County Registry, and has further caused said Declaration to be amended, inter alia, by documents recorded in Book 440, Page 213, Carteret County Registry (rerecorded in Book 440, Page 392, Carteret County Registry), and in Book 494, Page 345, Carteret County Registry (such Declaration of Covenants and Restrictions, as amended from time to time, being hereinafter called the "Existing Declaration"); and

WHEREAS, the Existing Declaration contemplates and provides for making additional property subject thereto, by amendment, in order that all of the property described on Exhibit A attached to the Existing Declaration recorded in Book 435, Page 362, Carteret County Registry, would be subject to the option to be developed in accordance with the uniform plan as set out in said Existing Declaration; and

WHEREAS, Seller has conveyed to Developer portions of the property above described, and has further transferred to Developer the right to amend the Existing Declaration to subject additional property to said Existing Declaration, in accordance with the terms contained within said Existing Declaration; and

WHEREAS, Successor Trustee and Beneficiary above have, at the request of Developer, agreed to join in the execution of this New Declaration solely for the purpose of subordinating that Deed of Trust recorded in Book 586, Page 431, Carteret County Registry, to the terms of this New Declaration; and

WHEREAS, Seller has, at the request of Developer, agreed to join in the execution of this New Declaration solely for the purposes of acknowledging its consent hereto; and

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NOW, THEREFORE, the hereinafter set forth covenants, restrictions and easements shall, from the time of the recordation of this instrument, govern the use of all land described in Article I below.

ARTICLE I

Section i. Description.

This New Declaration shall apply to the property described in Exhibit A hereto and to any other portions of the "Properties" brought under this New Declaration by amendment hereto.

Section ii. Designation.

The property described in Exhibit A hereto is hereby designated residential, single-family.

Section iii. Effectiveness.

This New Declaration shall become effective upon the conveyance by Developer of the first Lot within the property described herein.

Section iv. Application.

This New Declaration amends the Existing Declaration and restates the Existing Declaration except to the extent amended hereby. This New Declaration applies only to the property described on Exhibit A hereto.

ARTICLE II

Section i. Definitions.

A. "Allowable Living Unit" shall mean and refer to a permissible but unconstructed Living Unit on a Parcel as hereinafter defined. The maximum number of Allowable Living Units per Parcel shall be as designated by this New Declaration or amendments hereto or by the recorded map of a section.

B. "Association" shall mean and refer to Brandywine Owners Association, Inc.

C. "Building" shall mean any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind. The term "building" shall be construed as if followed by the words "or parts thereof," including porches, decks, carports, garages, sheds, roof extensions and overhangs and other projections. Any extension or addition to an existing building shall be considered a part of the pre-existing building if, upon reasonable evaluation by the Architectural Control Committee established hereunder, it is determined that the roof is aesthetically compatible with the roof of the existing building, and the building materials utilized are identical to or aesthetically compatible with the pre-existing structure or building.

D. "Constructed Living Unit" shall mean and refer to a living unit which has been fully constructed and is ready for occupancy. For purposes of this subparagraph a Living Unit shall be deemed "fully constructed" if a certificate of occupancy has been issued for said Living Unit by the appropriate authority. Twelve (12) months shall be considered adequate time to complete construction of building once construction has begun.

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E. "Family" shall mean and refer to one person living alone or two or more persons, whether related to each other by birth of not, and having common housekeeping facilities.

F. "Living Unit" shall mean or refer to a room or combination of rooms in an apartment house, condominium, cooperative residential building, multifamily house, patio home, cluster home, single-family dwelling or any other building intended for occupancy by one family on a temporary or permanent basis. "Living Unit" shall also refer to any rentable room or suite with sleeping facilities in a motel, hotel, guest lodge, inn, motor court, tourist home, or other building used commercially for lodging of guests.

G. "Lot" shall mean and refer to any individual plot of subdivided land shown upon a recorded subdivision map which is restricted by these covenants, or amendments hereto, to use for detached Single-Family Dwelling.

H. "Multifamily Buildings" shall mean and refer to any combination of two or more Constructed Living Units which have at least one common wall (including floor or ceiling).

I. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, holding the fee simple title to any Lot, Living Unit, or Parcel or combination of Lots, Living Units or Parcels situated in the property to which this New Declaration applies.

J. "Parcel" shall mean an area of land shown on a subdivision map and designated by this New Declaration for unified development as multifamily.

K. "Person" shall include any individual, partnership, corporation, trust or other entity.

L. "Properties" shall mean and refer to all properties which are or shall become subject to this New Declaration.

M. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, Living Unit.

N. "Section" shall mean and refer to each designated portion of the Properties which shall be developed and for which subdivision map or maps shall be recorded.

Section ii. Additions to Existing Property.

Additional lands may become subject to this New Declaration in the following manner:

As new Sections are developed, Developer may, by supplemental declaration to be filed in the Office of the Register of Deeds of Carteret County, make additional portions of the Properties subject to this Declaration so that owners of Lots, Living Units or Allowable Living Units within the added Sections will automatically become members of the Association and their lands subject to the restrictions and covenants herein provided, or provided in amendments hereto. It is the intent of this provision to grant to Developer the right to develop the Properties under a unified plan. Developer reserves the right to impose different types of covenants on additional Sections of the Properties by amendment hereto. Provided, however, that in no respect shall any amendment hereto affect the validity of those covenants as they would apply to the property described on Exhibit A.

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ARTICLE III

Brandywine Owners Association, Inc.

Section i. Membership.

Each and every person having any fee ownership interest in a Living Unit, Lot or Allowable Living Unit in property to which this New Declaration, or amendments hereto, are applicable, shall be a member of the Association, excluding only persons holding such an interest as security for the performance of an obligation. Further, lessees, regardless of the length of the term of the lease, shall not be members.

Section ii. Voting Rights.

Each member shall have the voting rights set forth in Article III, Section ii, of the Existing Declaration. Each member shall be bound by the provisions of said Existing Declaration relating to membership and voting rights in said Association, including all amendments thereto relating to the Association. In addition, all members shall be bound by the By-Laws and the rules and regulations of said Association, as in effect from time to time.

Section iii. Use of Common Property.

All common property owned by the Association shall be available equally for the use and benefit of each member of the Association. However, nothing contained herein shall prevent the Association from adopting reasonable rules and regulations governing the use of such facilities, including methods of selection for utilizing facilities which may not be able to accommodate all owners.

Section iv. Allowable Assessments.

The owner of every Lot, Allowable Living Unit and Constructed Living Unit is obligated and bound, whether or not expressly stated in any instrument of conveyance, to pay to the Association, FOR EACH LOT, ALLOWABLE LIVING UNIT or CONSTRUCTED LIVING UNIT OWNED:

- (a) annual charges or dues;
- (b) special assessments; and
- (c) charges for the services or facilities provided by the Association.

All such assessments, charges and dues, together with any interest thereon, shall be a debt of the Owner and charge on the land and shall be a continuing lien upon the property against which such assessments are made. The time for perfecting said liens shall be as established by the Association from time to time, but in no event more than 360 days from the due date of the charge or assessment.

The assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the residents of the property, and in particular, for the improvement and maintenance of common properties. Included, but not limited, is the payment of taxes and insurance on common properties, repairs and replacements and additions thereto, the cost of labor,

equipment, materials and management and supervision thereof, and particularly, the cost of maintenance of streets, drainage, or other community facilities, such as security, as decided by the Association.

Section v. Amount of Assessments.

(a) Annual. The annual assessment shall be the assessment determined in accordance with Article III, Section vi, of the Existing Declaration.

(b) Special. A special assessment may, from time to time, be levied by the members present at any regular or special meeting, if two-thirds (2/3) of the total votes cast are in favor of such assessment, and upon approval thereof by the Board of Directors, likewise upon a two-thirds (2/3) vote.

(c) Services. Charges for services or facilities shall be assessed by the Board of Directors of the Association on a nonprofit basis.

Section vi. Organization.

The organization of the Association and the functioning of it shall be as established in the Articles of Incorporation and the By-Laws of the Association.

Section vii. Amendments.

All amendments to Article III of the Existing Declaration shall be binding on all members of the Association, including, without limitation, those members subject to the provisions of this New Declaration.

ARTICLE IV

Residential, single-family use restrictions. These restrictions shall apply to all Sections or portions of Sections to which this New Declaration apply and which are designated "Residential, single-family" by this New Declaration.

Section i. Residential.

All lots designated, "Residential, single-family" shall be restricted as to the use for residential, Single-Family Dwellings. No buildings shall be erected or permitted to remain on any lot other than one (1) detached Single-Family Dwelling not to exceed two and one-half stories in height including a private garage for not more than two (2) automobiles, or a carport for not more than two (2) automobiles. No Lot shall be used for any purpose other than single-family residential construction. No home business or home occupation shall be allowed which requires the postage of any signage on the premises, or which requires the construction of parking spaces more than would normally and routinely be permitted in a residential subdivision.

No Living Unit shall be constructed that does not contain a minimum of 1,600 square feet of enclosed, heated living space. Furthermore, no such Living Unit shall be permitted that does not contain a minimum of 100 square feet of storage space accessible from the outside of said dwelling. An enclosed garage shall be considered storage space.

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Other than expressly permitted by this Article IV, Section i, no other building shall be permitted on any lot, except that one (1) dog house may be constructed on any lot. This prohibition includes, but is not limited to, pump houses, storage buildings, or other so called out buildings.

Notwithstanding the above, swimming pools constructed primarily below grade shall be permitted if a determination is made by the Architectural Control Committee that the location of the swimming pool is compatible with surrounding properties, and upon a determination that the swimming pool can be drained properly, without detriment to surrounding properties or to any drainage easement or waterway.

Section ii. Setbacks.

No building shall be erected or allowed to remain on any of the Lots in the subdivision which is located nearer the boundary line than the minimum setback line shown on the recorded plat. Further, no building shall be erected or allowed to remain which is less than ten (10) feet from any side lot line or thirty (30) feet from any rear lot line. As to corner lots, there shall be a side setback line of fifteen (15) feet on the side street.

Section iii. Fences.

No Owner shall construct, or allow to be constructed, planted or installed on his Lot any fence, barricade, or wall of any material, including shrubbery or vegetation, without the consent of the Architectural Control Committee applying the standards set out in Article V of this New Declaration. In no event shall the Architectural Control Committee approve the erection or planting of such if the same exceeds five (5) feet in height, except along the rear lot line of McCabe Road and along the common property line between any of the Property and any property zoned for other than single family residential use, in which case the maximum height from general ground level shall be eight (8) feet.

Section iv. Signs.

No signage shall be permitted on any Lot unless expressly authorized by the terms of this New Declaration. The only signs authorized shall be a sign no larger than four (4) square feet in size, constructed of sandblasted and painted wood, which states only "For Sale" and includes a name and a telephone number. This provision shall not be deemed to exclude use by Developer, or its assigns, of advertising signs which shall advertise the entire project. Any permitted "For Sale" sign shall be removed immediately after execution of a binding sales contract for the applicable Lot. The Architectural Control Committee may for good cause shown, allow other signs in accordance with standards adopted by said Committee.

Section v. Redivision of Lots.

No Lot or Lots shall be divided or resubdivided unless such division or resubdivision yields a total number of lots which is equal to or less than the total number of Lots prior to division or resubdivision as shown on the recorded plat.

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Section vi. Easements.

Developer hereby reserves an easement or right-of-way for purposes of installation of water lines, sewer lines, telephone lines, electric lines, poles, wires, cables and all other equipment necessary for the installation, use and maintenance of utilities, including water, sewage, electricity, telephone, or drainage. This easement shall, further, be for the use of Developer, or the Association, where applicable, to dedicate additional road rights-of-way such that all road rights-of-way may be sixty (60) feet in width. The said easement or right-of-way across and upon said subdivision Lots shall be five (5) feet in width along every and all property lines which abut a street as shown on the platted map of the subdivision. No additional right-of-way shall be dedicated for purposes of road right-of-way unless it is determined that it is in the best interest of members of the Association that the streets and roads be dedicated to the general public and maintained by the State of North Carolina, or a subdivision thereof.

This determination shall be made only by vote of two-thirds (2/3) or more of the votes present, in person or by proxy, and by vote of two-thirds (2/3) or more of the Board of Directors, at a duly called regular or special meeting of the Association and Board of Directors of the Association.

Section vii. Trailers.

No mobile home or house type trailer shall be permitted on any Lot within the subdivision, except that a trailer may be utilized as a construction office in conjunction with, and during the period of construction of, any building on a Lot within the subdivision.

Section viii. Animals.

No animals other than cats and dogs or other generally accepted household pets shall be allowed on the Properties. No Owner shall be permitted to leave unattended outside the confines of his Lot any household pet unless secured by leash.

Section ix. Waste.

The disposal of all waste matter, including garbage, rubbish, etc., shall be in compliance with the regulations of the State Board of Health of North Carolina, the Board of Health of Carteret County, and all other governing authorities which have jurisdiction thereover. It is expressly prohibited that any rubbish, garbage, etc., shall be placed or permitted to drain into any of the drainage areas. All Living Units shall be equipped to contain an accepted garbage disposal system.

Section x. Tanks.

All tanks such as propane, fuel or other shall be buried underground, with the exception of portable tanks, which shall be allowed, if at all, in a place approved by the Architectural Control Committee.

Section xi. Mobile Vehicles and Buildings.

This New Declaration shall not be interpreted to allow inclusion on any Lot of a temporary building, including,

SEEK 540

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but not limited to, a tent or other nonpermanent structure. In addition, no motor home, including camper trailers, boat trailer or boat shall be allowed on any Lot for a period of time exceeding one successive week; in addition, at least one week must elapse between the removal of any such motor home, camper trailer, boat trailer, or boat, and the relocation on the Lot for an additional one week of such mobile vehicle.

ARTICLE V

Architectural Control Committee

Section 1. General.

There is hereby created an Architectural Control Committee. Said Committee shall consist of three (3) members. The members of the Committee shall be appointed by Developer until such time as plans for house construction have been approved on 80% of the Lots described on Exhibit A, or until such earlier time as the Developer shall elect one of the two options for transferring control of such Architectural Control Committee as more fully set out in subparagraph (a) and (b) below. At the time such termination by Developer is elected, Developer may elect either the following:

(a) To cause an election to be made among property Owners within the Properties to select the members of the Architectural Control Committee, who shall be Lot Owners; or

(b) The functions of the Architectural Control Committee may be transferred to the standing Architectural Control Committee of the Association.

Should Developer elect to cause an election to be made among the Owners within the Properties to select an Architectural Control Committee, voting shall be conducted at any annual meeting of the Association, or at any special meeting of the Owners within the Properties called by Developer. The three (3) members shall be selected as follows: one (1) for a one (1) year term, and two (2) for two (2) year terms. After the expiration of the initial terms, all members shall be elected for two (2) year terms. Any vacancy on the Architectural Control Committee may be filled until the expiration of the unexpired term by the remaining members or member of the Architectural Control Committee. Should there be no remaining members, the replacement committee may be selected by Developer, or in the absence of a selection by Developer, the option set out in subparagraph (b) of this Article V, Section 1, shall be deemed selected. A quorum is hereby deemed to be two (2) members present at any meeting, and decisions of the Committee shall be by simple majority vote. As to Sections made subject to this New Declaration, by amendment hereto, each Section shall have an identically constituted Architectural Control committee for such Section. Upon approval of house plans for 80% of the lots in each such Section, Developer shall either merge such Section's Association with the one established under Article V, Section 1(a), or elect the option set out in Article V, Section 1(b).

All complaints pertaining to, or violations of, this New Declaration, whether regarding buildings, building additions, fences, shrubbery, animals, general appearance, or otherwise, should be reported promptly to Developer and/or the Chairman of the Architectural Control Committee.

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No building, fence or wall, sign or other structure shall be commenced, or erected or maintained upon a portion of the property to which this New Declaration, or amendments thereto apply, nor shall any addition, change or alteration to any exterior be made until the plans and specifications showing the nature, kind, height, materials, color and locations of the same shall have been submitted to and approved in writing by the Committee.

Section ii. Plans.

It shall not be required that house plans be prepared by a registered architect licensed to practice in the State of North Carolina. All plans presented to the Architectural Control Committee must be of professional quality, must be complete, and must fairly depict the exterior appearance and site plan for the proposed improvements. All plans and specifications must be submitted to the Architectural Control Committee at least ten (10) days prior to application for a building permit. The submissions shall show by plot plans, elevations, and perspective sketches all proposed improvements including locations, architectural features and landscaping. In the event said Committee fails to act on a submission within thirty (30) days after sufficient plans have been submitted to it, this Article will be deemed to have been fully complied with.

Section iii. Approval.

The Committee will review and shall approve the plans and specifications if the proposed improvements meet all of the requirements of this New Declaration, if in its opinion, the exterior appearance of the property will be visibly compatible with other development in the subdivision or, at a minimum, will not be detrimental to future property sales or surrounding property values. No architectural "style" or materials will be excluded; however, all materials, features, and styles must be, in the opinion of the Committee, professionally and aesthetically acceptable.

By acceptance of a Deed, purchasers agree that the actions of the Committee are in the best interest of all Owners within the subdivision and that they will abide by the decisions of the Committee. Developer, the Committee, or other Owners may seek injunctions to compel compliance with Committee decisions, or damages resulting from failure to act in accordance with directions of the Committee.

Section iv. Site Standards.

All Owners agree to leave all vegetation, trees, brooks, creeks, hillsides, springs, water courses, and ravines in as near their natural state as is compatible with good building and land use practices, to the end that an attractive exterior lot appearance will be evident at each building site, and in keeping with surrounding properties. The locations of buildings and parking areas shall be preserved and land left undisturbed. All site plans must show existing elevations and shall cover so that the Architectural Control Committee may determine if this provision has been adequately considered.

Section v. Appeal.

Any Owner submitting plans, as required by this New Declaration, to the Architectural Control Committee, shall be entitled to appeal to the Board of Directors of the

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Association any adverse ruling. In order to avail himself of this right of appeal, the aggrieved party must notify the Board of Directors, in writing, requesting a hearing, said notification to be given to the Board of Directors within seven (7) days after his receipt of written notification of the adverse decision. The Association shall schedule the hearing within fourteen (14) days after receipt of said notice, shall give to the aggrieved Owner written notice of the date of said hearing, and shall give the Owner the right to appear and personally state his case. The decision of the Board of Directors of the Association shall be controlling in all such matters, and all Owners hereby agree to be bound by such decision. The Board shall overturn a decision of the Committee only if a finding is made that the decision of the Committee was arbitrary, and without rational basis.

ARTICLE VI

Utilities.

Developer covenants that either public or private water and sewer services will be available to purchasers of lots in Sections to which these covenants, or amendments hereto, apply and that such services will be sufficient to serve all lots. All users of such services agree to pay rates established by the proper authorities for the use of the services. Individual wells are prohibited except as used for swimming pools, landscape maintenance or air temperature control. No individual sanitary waste treatment facilities are permitted. Further, wastewater from cooling and/or heating systems shall not be discharged into the sanitary waste treatment system.

ARTICLE VII

Buffers.

All those common areas set aside as buffers and/or designated as reserved on recorded maps of Sections shall be left in their natural state.

ARTICLE VIII

Duration.

The provisions of this New Declaration shall run with the land and shall bind and inure to the benefit of Developer, purchasers and their respective heirs, personal representatives, successors and assigns, until January 1, 2008, after which time said provisions shall be automatically extended for periods of ten (10) years unless a majority of the then Owners of property to which this New Declaration, and amendments hereto apply, shall sign and record an agreement to change said provisions in whole or in part.

ARTICLE IX

Enforcement.

Enforcement of this New Declaration shall be by any proceeding in law or equity against any person violating or attempting to violate any provision hereof, whether to restrain a violation or to recover damages, and against the land to enforce any lien created by this New Declaration, and failure by the Association or any Owner to enforce any provision herein contained shall in no event be deemed a

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waiver of the right to do so thereafter. Invalidation of any provision of this New Declaration by judgment or court order shall in no wise affect any other provision, and the same shall remain in full force and effect. The right of enforcement of these covenants is hereby decreed to be vested in any Owner, or Developer, or the Association, acting either singularly or in concert.

ARTICLE X

Interpretation.

This New Declaration shall be interpreted in the spirit of reasonableness and, in the absence of authoritative court decisions, the interpretations placed thereon by Developer shall prevail.

ARTICLE XI

Dues.

No Lot Owner shall be required to pay dues to the Association (and no Lot Owner shall be entitled to vote as an Association member) until the earlier of the following:

(a) Conveyance by Developer of record title to a third party at which time dues shall become payable for all lots described within the recorded plat upon which such lot is described; or

(b) Expiration of twelve (12) months following recordation of a final subdivision plat.

ARTICLE XII

Joinder.

Branch Banking and Trust Company joins in the execution of this New Declaration for the sole purpose of consenting to the terms and conditions contained herein, and for the purpose of subordinating that Deed of Trust recorded in Book 586, Page 431, as the same may have been modified from time to time, to the provisions of this New Declaration and by affixing its duly authorized signature, under seal, hereto, Branch Banking and Trust Company does hereby specifically subordinate said Deed of Trust recorded in Book 586, Page 431, (including any modifications), to the terms of this New Declaration but except for said subordination, the lien of said Deed of Trust shall remain in full force and effect until released by Branch Banking and Trust Company by instrument duly recorded in the office of the Register of Deeds of Carteret County.

Oak Ridge Coal Co., Inc., joins in the execution of this New Declaration for the sole purpose of consenting to the terms and conditions contained herein.

IN TESTIMONY WHEREOF, said parties have caused this Declaration to be executed in their corporate names by their corporate officers, and their corporate seals to be hereto affixed, all by order of their Board of Directors first duly given, the day and year set out opposite each signature.

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7/11/88
DATE

BY: [Signature]
HARRY W. STOVALL, III, President

ATTEST:

Mary K. Lambert
MARY K. LAMBERT, Assistant Secretary

(Corporate Seal)

OAK RIDGE COAL CO., INC.

July 11, 1988
DATE

BY: [Signature]
Vice-President

ATTEST:

[Signature]
(Assistant) Secretary

(Corporate Seal)

BRANCH BANKING AND TRUST
COMPANY

JULY 11, 1988
DATE

BY: [Signature]
Vice-President

ATTEST:

[Signature]
(Assistant) Secretary

(Corporate Seal)

NORTH CAROLINA, CATAWBA COUNTY
The foregoing certificate(s) of [Signature]
is/are certified to be correct. This instrument was
dated for registration and recorded in this
Book 590 Page 171
This 12 day of July, 1988 at 11:00 o'clock A.M.

Sharon Piner
Register of Deeds

By [Signature]
Assistant Deputy

STATE OF NORTH CAROLINA

COUNTY OF Catawba

I, Cathy D. Piner

a Notary Public in and for the above named State and County, do hereby certify that personally appeared before me this day HARRY W. STOVALL, III, who being by me duly sworn, says that he is the President of NORTH KERR PROPERTIES, INC., and that he knows that Mary K. Lambert is the Secretary, and that he knows the common seal of the said corporation; that the corporation's name was subscribed to the within document by him as President and was attested by its Secretary, with its corporate seal thereto affixed, and all by order of its Board of Directors duly given, and that the said instrument is the act and deed of said corporation.

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WITNESS my hand and notarial seal, this 11th day of July, 1988.

Cathy J. Ballard
Notary Public



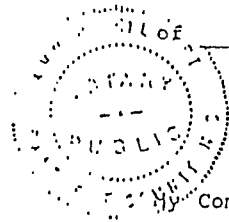
My Commission Expires: 9-19-91

STATE OF North Carolina
COUNTY OF Carteret

I, Ann H. Hilbert, a Notary Public in and for the above named State and County, do hereby certify that personally appeared before me this day Leonard P. Bloxam, who being by me duly sworn, says that he is the (Vice) President of OAK RIDGE COAL CO., INC., and that he knows that W. W. McClung is the (Assistant) Secretary, and that he knows the common seal of the said corporation; that the corporation's name was subscribed to the within document by him as (Vice) President and was attested by its (Assistant) Secretary, with its corporate seal thereto affixed, and all by order of its Board of Directors duly given, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this 11th day of July, 1988.

Ann H. Hilbert
Notary Public



My Commission Expires: 1/25/89

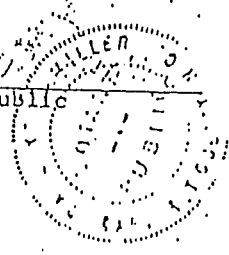
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Arthur P. Miller, a Notary

Public in and for the above named State and County, do hereby certify that personally appeared before me this day W. W. McClung, who being by me duly sworn, says that he is the (Vice) President of BRANCH BANKING AND TRUST COMPANY and that he knows that Arthur P. Miller is the (Assistant) Secretary, and that he knows the common seal of the said corporation; that the corporation's name was subscribed to the within document by him as (Vice) President and was attested by its (Assistant) Secretary, with its corporate seal thereto affixed, and all by order of its Board of Directors duly given, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this 11 day of July, 1988.

Arthur P. Miller
Notary Public



My Commission Expires: 1/25/89

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