

BK 1228 PG 1156

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
OF SUNSET OAKS GARDEN HOMES
A/K/A SUNSET OAKS TOWNHOUSES

FILED FOR REGISTRATION
DATE TIME

98 JUN 15 AM 10:45

ROBERT J. ROBINSON
REGISTER OF DEEDS
BRUNSWICK COUNTY, N.C.

WHEREAS, Declarant is the owner of certain property County of Brunswick, State of North Carolina, which is more particularly described in deeds recorded in Book 1163, Page 453, Book 1163, Page 455 and Book 1163, Page 457, and in Map Book 20 at Page 31, in the Brunswick County Registry and being hereinafter known as SUNSET OAKS GARDEN HOMES, which shall also be known as SUNSET OAKS TOWNHOUSES. All parcels and Garden Homes, which are also known as Townhouses, located there upon which shall hereinafter be conveyed as Garden Home Units, a/k/a Townhouses, shall herein be referred to as units for purposes of this Declaration.

NOW THEREFORE, Declarant hereby declares that all of the 000038 property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purposes of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

RET Karen Dale
TOTAL 17 REV TC 2512
REC# 17 CK AMT 26 CK 916
CASH REF BY CD

Section 1. "Association" shall mean and refer to SUNSET OAKS GARDEN HOMES OWNER'S ASSOCIATION, INC., its successors or assigns.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Owner or "Unit Owner" shall mean and refer to the record owner, whether one or more entities, of a fee simple title to any unit which is part of the property, as defined herein, including contract sellers, but excluding those having such interest merely as security for performance of an obligation

Section 4. "Common Area" shall mean and refer to all real property, including the improvements thereto, as described in that certain deed to the Association by the Declarant for the common use and enjoyment of the owners.

Section 5. "Unit" shall mean that improvement, hereinafter known as a Garden Home, a/k/a Townhouse, together

JK 1228 PG 1157

the property as depicted on a plat and deeded along with the Unit.

Section 6. "Declarant" shall mean and refer to SUNSET OAKS, L.L.C., its successors and assigns.

ARTICLE II

PROPERTY RIGHTS

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

(a) the right of the Association to suspend the voting rights for any period during which any assessment against his unit remains unpaid; and for a period not to exceed Sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the 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. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members has been recorded.

Section 2. Delegation of Use. Any owner may delegate in accordance with the Bylaws, his right of enjoyment to the common areas and facilities to his tenants, or contract purchasers who reside on the property, but such delegation of rights shall not relieve the owner of the obligation for payment of assessments.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Unit shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any unit.

Section 2. Each owner shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any unit.

BK F-228-PG 1158

ARTICLE IV

CCVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each unit owned within the property, hereby covenants, and each owner of any unit by acceptance of such deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the unit and shall be a continuing lien upon the unit upon which each such assessment is made.

Section 2. Purpose of Assessments. The assessments shall be used for the maintenance of the common area and its improvements. The Association shall impose assessments necessary for the annual maintenance of the exterior of the individual units, and for capital improvements and repairs to the unit exteriors and roof.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, provided that any such assessment shall have the assent of two-thirds (2/3) of the total votes at a meeting duly called for this purpose.

Section 4. Notice and Quorum of any Action Authorized under Sections 2 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 2 or 3 shall be sent to all members not less than Thirty (30) days nor more than Sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast Sixty percent (60%) of all the votes of the total votes outstanding 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 of the preceding meeting. No such subsequent meeting shall be held more than Sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all units and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments:
Due Dates. The annual assessments provided for herein shall commence as to all units on the first day of the month following the conveyance of the unit from the Declarant to the Buyer. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each unit 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. Adjustments to the annual assessments are to be determined by the Board of Directors. Annual assessments are due as of the first day of the year they are for, but may be paid in monthly payments during said year without any late fees.

Section 7. Effect of Non-Payment of Assessments:
Remedies of the Association. Any assessment not paid within Thirty (30) days after the due date shall bear interest from the due date at the rate of Ten (10.00%) percent, per annum. The Association may bring an action at law against the owner Personally obligated to pay the sum, or foreclose the lien against the property. 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 unit.

ARTICLE V

INSURANCE

Section 1. Acquisition. Insurance policies upon the common areas (except title insurance) shall be purchased by the Board of Directors of the Association in their name as Trustee for the Association, for the benefit of the lot owners and their respective mortgages as their interests may appear, and shall provide for the insurance of certificates or mortgage endorsements to the holders of the first mortgages or deeds of trust of the lots or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against unit owners, the Association and their respective servants, agents, guests and lessees. Each Unit owner may obtain insurance, at his own expense, affording coverage upon his personal liability as may be permitted or required by law.

Section 2. Coverage. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Association and the common property:

BK 1228 PG 1160

Casualty Insurance covering all improvements, including but not limited to, paving, sewer and fences and all personal property included in the common areas any additions added by amendment except such personal property as may be owned by the unit owners, shall be procured in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company to afford such coverage. Such coverage shall afford protection against (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to vandalism and malicious mischief.

Each unit owner must maintain (a) standard fire insurance and (b) casualty insurance affording coverage of his individual unit, and the unit owner shall be responsible for paying the premiums at his own expense. Each unit owner shall provide evidence of insurance to the Association. The insurance shall be in an amount equal to the maximum insurable replacement value thereof as determined annually by the insurance company to afford such coverage. Any loss sustained shall be governed in accordance with Section 8, hereunder. In the event that the owner fails to maintain adequate insurance as required herein, the Association shall be authorized to obtain adequate insurance and assess the premium paid therefor in the same manner as maintenance assessments are charged pursuant to Article IV.

Section 3. Public Liability Insurance. Public Liability and Property Damage insurance in such amounts and in such forms as shall be required or desired by the Association, including but not limited to, an endorsement to cover liability of the unit owners as a group or a single unit owner.

Section 4. Fidelity Coverage. Such fidelity coverage protecting against dishonest acts by the Association officers, directors, trustees and employees and all others who are responsible for handling funds of the Association, as the Board of Directors of the Association may deem prudent or desirable.

Section 5. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as a common expense.

Section 6. Insurance Beneficiaries and Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Board of Directors of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interests may appear for the purpose of compromising and settling claims arising under

BK 1228 PG 1161

insurance policies purchased by the Board of Directors of the Association. The Board of Directors of the Association is further empowered to execute and deliver releases to the insurance carrier upon payments of claims.

Section 7. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be payable to the Board of Directors of the Association, as trustees for the benefit of the unit owners in proportion to each unit owner's undivided interest in the common areas.

Section 8. Damage and Destruction.

A. Determination to Reconstruct or Repair. If any part of the common property and facilities shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:

(a) Common Areas and Facilities. If the damaged improvements are common areas and facilities (including those portions designated as limited common areas and facilities), the damaged property shall be reconstructed or repaired, unless it is determined in the manner provided elsewhere that the Garden Home shall be terminated.

(b) Units.

i. Partial Destruction. If the damaged improvement is a unit, or part of a unit, the damaged property shall be reconstructed and repaired, unless within Sixty (60) days after the casualty it is determined by agreement, in the manner provided in Section 9, that the Association shall be terminated.

ii. Total Destruction. If more than two-thirds (2/3) of the units are destroyed and the owners of three-fourths (3/4) of the units in the entire Association shall determine not to proceed with repair of restoration, then the procedure set forth in Section 47A-25 of the North Carolina General Statutes, as amended, shall take place.

B. Plans and Specifications. Any reconstruction or repair shall be substantially in accordance with the plans and specification for the original buildings, or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is a unit, by the owners of the damaged units (each as to his own unit), which approvals shall not be unreasonably withheld.

C. Responsibility. If the damage is to part or parts of one or more of the units then the owner shall be responsible for reconstruction and repair to his unit after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association having the right

BR 1228 PG 1162

to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one unit.

D. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds for the payment of such costs.

Section 9. Termination. The Association shall be terminated, if at all, in the following manner:

A. The termination of the Association may be effected only by the unanimous agreement of all lot owners expressed in an instrument duly recorded; provided only that the holders of all liens affecting any of the units consent thereunto, or agree, by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property as provided in subparagraph "C" below. Such termination shall become effective when such agreement has been recorded in the office of the Register of Deeds of Brunswick County, North Carolina.

B. If it is determined that the building shall not be reconstructed after casualty, the Association plan of ownership shall be terminated and the Declaration of Covenants, Conditions and Restrictions revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the office of the Register of Deeds of Brunswick County, North Carolina.

C. After termination of the Association, the unit owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the unit or units formerly owned by such unit owners shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the common area and facilities previously owned by each unit owner. All funds held by the Association and insurance proceeds, if any, shall be held for the unit owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a common expense.

D. The members of the Board of Directors acting collectively as agent for all unit owners, shall continue to have such powers as granted herein, even though the Association may be dissolved upon a termination.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any change, alteration or addition to the exterior or topography 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 and location in relation to surrounding structures and topography by the Board of Directors. In the event said Board fails to approve or disapprove such design and location within Thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with.

ARTICLE VII

ADDITIONAL PHASES

The Declarant hereby reserves to itself the exclusive right and option, but not the obligation, to add or expand the property subject to this declaration by additional improvements to all or any portion of the real property described in paragraph one of this Declaration. Additions shall be made in accordance with the following terms and in the following manner:

Any additions to real property subject to this declaration if any, shall occur only by the registration in the office of the Register of Deeds of Brunswick County, N.C., of one or more supplements to this declaration, said supplement consisting of a survey showing the additional phases. The addition to or expansion of the real property shall be subject to this declaration and shall be at the sole discretion of the Declarant, without consultation with or consent of any unit owner. Declarant reserves unto itself the right to tie into any existing utilities or facilities for use in developing any additions, and reserves any easements necessary to tie into said utilities or facilities.

ARTICLE VIII

PARTY WALLS

Section 1. Party Walls. Each wall which is built as part of the original construction of any unit and placed on the dividing line between units shall constitute a party wall, and the general rules of law regarding party walls and liability for

DK1228PG1-164

damage due to negligent or willful acts or omissions shall apply thereto.

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

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right any such owners to call for a larger contribution from any of the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. An owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner shall be appurtenant to the land and shall pass to such owner's successors in title.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and affect.

Section 3. Amendment. The covenants and restrictions of this declaration shall run with the land, for a term of Twenty (20) years from the date of this declaration, after which time they shall be automatically extended for successive periods of Ten (10) years. This Declaration may be amended during the first Twenty (20) year period by an instrument signed by not less than ninety (90.00%) percent of the unit owners, and thereafter by an instrument signed by not less than Seventy-five (75.00%) percent of the unit owners. Any amendment must be recorded in the office of the Brunswick County Register of Deeds.

BK:1228.PG1165

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this the 1 day of June, 1998.

Declarant By SUNSET OAKS, L.L.C.
[Signature] (SEAL)
 HARRY L. RICKENBACKER

Declarant [Signature] (SEAL)
 WILLIAM FORREST TAYLOR, SR.

Declarant [Signature] (SEAL)
 WILLIAM FORREST TAYLOR, JR.

STATE OF NORTH CAROLINA, BRUNSWICK COUNTY.

I, a Notary Public in and for the aforesaid State and County do hereby certify that Harry L. Rickenbacker, William Forrest Taylor, Sr., and William Forrest Taylor, Jr., personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 1 day of June, 1998.

My Commission Expires: 4-17-02

[Signature]
NOTARY PUBLIC

KAREN T. DALE
NOTARY PUBLIC
Brunswick County, North Carolina

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of [Signature]

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 15th Day of June, 1998,
in the Book and Page shown on the First Page hereof.

[Signature]
ROBERT J. ROBINSON, Register of Deeds