

Declaration of Covenants, Conditions and Restrictions of Summerlake

THIS DECLARATION, made this 12<sup>th</sup> day of April, 1985, by SUMMERLAKE ASSOCIATES, a Virginia General Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain properties in the City of Newport News, State of Virginia, which may be declared as follows:

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, containing 17.7141 acres in total and comprised of 11.1268 acres in of Lot Area, 2.9024 acres of R/W Area and 3.6849 acres of Common Area being all of Summerlake, Section One, as more particularly shown on that certain plat entitled "SUMMERLAKE, SECTION ONE" dated April 12, 1985, made by E. J. Keller, Inc., and Surveyor, and duly recorded in the Clerk's Office of Circuit Court for the City of Newport News, Virginia in Plat Book 15, pages 76 and 77, to which reference is here made.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to SUMMERLAKE HOMES ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sells, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be bought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The

Common Area to be owned by this Association at the time of conveyance of the first lot is described as follows:

All those certain pieces or parcels of land containing 3.6849 acres and designated as Common Area on that certain plat entitled "SUMMERLAKE, SECTION ONE" as recorded in Plat Book 15, pages 76 and 77, in the aforesaid Clerk's Office.

Section 5. "Lot" shall mean and refer to any lettered lot or plot of land within a numbered block as shown upon the plat hereinabove referred to, with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to SUMMERLAKE ASSOCIATES and its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development and shall specifically include Atlantic Homes Corporation for any lot purchased from Summerlake Associates.

Section 7. "Mortgage" as used herein shall mean a mortgage or deed of trust, said terms having the same meaning and may be used interchangeably.

## 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 Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by all members.
- (d) The transfer of a lot automatically transfers membership in the Association and all rights of the transferor with respect to the Common Areas and facilities to which ownership of such lot relate.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Leasing. Any owner may lease or rent his Lot as long as the use of the Lot is consistent with the restrictions herein and provided that the lease agreement between owner and lessee shall be written and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and all other documents of the Association and that failure of the lessee to comply with the terms of such documents shall constitute a default under the lease.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

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

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

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

CLASS B. The Class B member(s) shall be the Declarant, and shall be entitled to three (3) votes for each lot owned now or in any section which may be hereafter annexed. Such entitlement to three (3) votes shall be in effect at any time hereafter when the total votes outstanding in the Class A membership is less than the total votes outstanding in the Class B membership. At such time as the total votes outstanding in the Class A membership is equal the total votes outstanding in the Class B membership, then the Class B membership shall be entitled to only one (1) vote for each lot owned provided, however, that in the event of subsequent annexation or annexations lot ownership of the Class A and Class B members shall be counted in the aggregate and based upon said aggregate lot ownership, the entitlement as hereinabove set forth shall apply; provided, however, that in any event on December 31, 1995, the Class B membership shall cease and be converted to Class A membership and thereafter the Class B membership and the Class A members shall be entitled to one (1) vote for each lot ownership thereafter.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such a 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, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be TWO HUNDRED FORTY AND NO/100 Dollars (\$240.00) per lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of more than two-thirds (2/3rds) of each class of members 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 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 in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of more than two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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 Section 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members

or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice 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 be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot by the Declarant to an Owner not a Declarant as herein defined. 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 lot at least (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. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment 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 eighteen percent (18%) per annum. The Association may bring an action at law 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 lot.

Section 9. Subordination of the Lien to Mortgages.

The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure 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. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

Any lot owner of a duplex shall not make any modification to exterior colors, unless and until lot owner shall obtain written consent from adjoining owners, which consent shall not unreasonably withheld. For purposes of this provision, adjoining owners shall be only those persons whose dwelling units share a common party wall. This restriction shall not be applicable to repainting or residing in the existing colors.

## ARTICLE IV

### PROPERTY RESTRICTIONS

#### Section 1. Repair and Storage of Automotive Vehicles.

No inoperable, unlicensed or abandoned motor vehicle of any type shall be parked or stored upon the Properties and no portion of the Properties shall be used for any substantial repair, overhauling, painting, or work of a similar nature on any motor vehicle, routine maintenance being specifically permitted.

#### Section 2. Recreational Facilities

The Board of Directors shall promulgate Rules and Regulations for the use, security, maintenance, cleaning and operation of the Common Area including the lakes, ponds, recreation areas, and facilities in the Properties or in any annexed areas.

#### Section 3. Restricted Uses.

No numbered lot shown on said plat shall be used except for residential purposes. Every dwelling unit constructed in the subdivision shall be connected to the public sewerage disposal system. Easements for the installation, repair and maintenance of utilities (including but not limited to water and sanitary sewer) and drainage facilities and for egress and ingress thereto are reserved in the Common Area as shown on said recorded plat or as dedicated by separate instrument by the Declarant. No nuisance or offensive activity shall be carried upon any lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood.

#### Section 4. Fences.

Only wooden or brick fences not exceeding four feet in height may be placed within the area in front of any building on any lot. Metal fences, brick fences and wooden fences not exceeding municipal height regulations may be placed in the rear yard of any lot. The installation, repair or alteration of fences fronting on Boxley Boulevard or the lakes within the Common Area shall be subject to the prior approval of the Association; provided once installed a fence may be repaired or replaced with the same type and size of fence previously approved.

#### Section 5. Temporary Structures.

No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot as a temporary residence.

Section 6. Heating and Air Conditioning Equipment.

No air conditioning or heating equipment shall be placed in front of any residence, and no storage tanks erected above ground shall be permitted with the exception of solar heating or energy panels or collectors which shall be allowed on the front roof portion of dwellings.

Section 7. Trailers, Boats, Campers and Mobile Equipment

No trailers, boats, campers, or other mobile equipment, except passenger automobiles and small trucks may be parked on the streets or on any lot within the front property set back line.

Section 8. Limitation of Use.

The Association shall be entitled to promulgate and enforce such regulations as shall be deemed necessary to the orderly use and enjoyment of the Common Area by the owners. Anything herein to the contrary, notwithstanding, no boats, rafts, bikes, mopeds or vehicles of any kind powered by an engine or motor shall be allowed within the Common Area except for maintenance equipment, vehicles or craft, and no owner shall be allowed to erect or maintain a pier or dock on any lot fronting on lakes or ponds within the Common Area.

Section 9. Pumps and Drainage.

No lot owner shall install or operate a pump which draws water from the lake located in the Common Area and no lot owner shall at any time channel, discharge or dump any fluid or material into said lake.

Section 10. Antennas.

No lot owner shall install any antenna, disc or other transmitting or receiving device on any lot, other than one (1) residential, non-disc, television antenna of the skeletal variety, which antenna shall be attached to the rear or side of the house.

Section 11. Easement Reserved.

There is hereby reserved an easement ten feet (10') in width adjacent and along the banks of every lake and pond within the Common Area, over and upon each lot fronting on a lake or pond to provide for maintenance of the lakes and ponds and the land adjacent thereto. No fence, structure, dock or pier can be erected, placed or maintained within said ten-foot (10') easement.

## ARTICLE VII

### DUPLEX PARTY WALLS

Section 1. General Rules of Laws to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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 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 there after 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 of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his own negligent or willful act causes the party wall to be exposed to the elements.

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VIII

### 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 these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. 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, after which time they shall be automatically extended or 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 two thirds (2/3) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. The Declarant reserves the right to annex to the Properties at any time additional parcels of land owned by Declarant and contiguous to the Properties as shown on that Site Plan attached hereto as Exhibit "A" in the sole discretion of the Declarant without the necessity of the consent of Class A members, Class B members or The Association. Declarant may cause such annexation to be made by including the provisions of such annexation to be shown on such recordation plat, or by an instrument executed by Declarant and duly recorded, describing the parcel or parcels subject to the within Covenants, Conditions and Restrictions, or both. Upon any such annexation being so made, the real estate or "Properties" covered thereby, together with the Declarant and all Owners thereof, and their heirs, successors and assigns, shall be entitled to, and subject to, all of the terms of the within Covenants, Conditions and Restrictions in the same manner as if such annexed parcel had been included within the legal description as contained in the first whereas clause on Page 1 hereof, the same being defined as the "Properties" under Section 3 of Article 1 hereof.

It is further understood and agreed that such annexation of all or of any part of the real estate hereinabove described shall be solely at the option of the Declarant and Declarant may from time to time annex all or any part or parts thereof as determined solely by the Declarant without the necessity of approval of any Lot Owner of the Association, anything to the contrary notwithstanding in the Articles of Incorporation or By-Laws of the Association.

Section 5. Encroachments. In the event any portion of any improvement on any Lot encroaches upon the Common Areas and facilities, as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, a valid easement for the encroachment and for the maintenance of the same shall exist as long as the encroachment exists.

Section 6. Additional Covenants. It is understood and agreed, anything to the contrary contained herein notwithstanding, as follows:

- a) A first mortgagee will be provided written notification of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under the Planned Unit Development documents which is not cured within 30 days; as

used herein the terms 'first mortgagee', 'mortgage' or 'mortgagor' shall have the same meaning and import as 'first deed of trust noteholder', or 'first deed of trust', or 'grantor of a deed of trust'; the terms 'mortgage' and 'deed of trust' for the purposes herein shall have the same meaning and intent.

- b) Any first mortgagee who comes into possession of a unit in the Properties pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any 'right of first refusal'.
- c) Any first mortgagee who comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit which accrue prior to the time such holder comes into possession of the unit.
- d) Unless at least 75% of the first mortgages (based upon one vote for each first mortgage) of individual units in the Properties have given their prior written approval, the Association shall not be entitled to:
  - (1) by act or omission seek to abandon, petition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by such Association for the benefit of the Owners and Lots in the Properties. The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;
  - (2) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
  - (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;
  - (4) fail to maintain fire and extended coverage on insurable common area property on a current replacement cost basis in an amount not less than one hundred per cent (100%) of the insurable value based on current replacement cost);
  - (5) use hazard insurance proceeds for losses to any common area property for other than the repair, replacement or reconstruction of such improvements.

- e) First mortgages shall have the right to examine the books and records of the Association or any entity which owns the common area property of the Association.
- f) First mortgages of units in the Properties may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property and first mortgages making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement is hereby agreed to and this instrument shall constitute an agreement in favor of all first mortgages of units in the Properties.
- g) No provision of the Association Articles of Incorporation, or the declaration of easements, restrictions and covenants, or any similar instrument pertaining to the Properties or to units therein, gives a lot Owner or any other party priority over any rights of first mortgages of units herein pursuant to their mortgages in the case of a distribution to lot Owners of insurance proceeds or condemnation awards for losses to or taking of the Association's common property.
- h) Lot Owners have a right to enjoyment of the common area property and such property is owned in fee by the Association. The common area property was conveyed to the Association unencumbered except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Association.
- i) In the event that management other than self-management is required of the Association, and in the event that the Association elects or decides to terminate said management, then all first mortgages shall be given at least thirty (30) days' notice of said action.
- j) All first mortgages shall be entitled to receive reasonable written notice of damage to or condemnation of any part of the common areas and facilities.

IN WITNESS WHEREOF, the undersigned Declarant, SUMMERLAKE ASSOCIATES has caused the execution of this Declaration, all as of the date and year first above written.