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Jim Rogner

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BOOK 2838 PAGE 211

NORTH CAROLINA
WAKE COUNTY

REC. CLERK
WAKE COUNTY, N.C.

DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR PHASE 1A
SUNSCAPE TOWNHOME COMMUNITY

THIS DECLARATION, made on the date hereinafter set forth by Sunscap Associates, a North Carolina General Partnership with its principal office in Wake County, North Carolina, hereinafter referred to as the "Declarant":

W I T N E S S E T H :

THAT WHEREAS, the Declarant is the owner of certain property near the City of Raleigh, Wake County, North Carolina, which is more particularly described as Sunscap Townhome Community, as the same is described on Schedule A attached hereto and made a part hereof.

WHEREAS, Declarant will convey a portion of the said properties, subject to certain protective covenants, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that Phase 1A as described on Schedule B attached hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Sunscap Homeowners Association, Inc. its successors and assigns.

Section 2. "Properties" 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. "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 the Association at the time of the conveyance of the first lot is described on Schedule "B" attached hereto and made a part hereof.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the Common Area.

Section 5. "Lot in Use" shall mean and refer to any lot on which a dwelling unit has been fully constructed and occupied as a dwelling unit. In addition to the foregoing, a Lot may become a Lot in Use by contractual agreement between the Declarant and the Owner of such Lot.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in Article III hereof.

Section 7. "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, but excluding those having such interest merely as security for the performance of any obligation.

Section 8. "Declarant" shall mean and refer to Sunscap Associates and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 9. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

BOOK 2938 PAGE 212

Section 10. "Building" shall mean and refer to a multi-unit structure containing townhomes constructed or erected on the Property.

Section 11. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 12. "Common Expenses" shall mean and include:

- (a) Expenses for maintenance of the townhomes as provided in this Declaration;
- (b) Expenses of administration, maintenance, repair, or replacement of the Common Areas;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or By-Laws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the By-Laws may require the Association to purchase;
- (e) Expenses agreed by the members to be common expenses of the Association.
- (f) Ad Valorem Taxes and public improvement assessments levied against the Common Area by the City of Raleigh and/or Wake County.

Section 13. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a Lot within the Property and constituting a part of a building; provided, however, that this definition of "Townhome" shall not apply when this word is used as a part of the project name "Sunscape Townhome Community".

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional Property shall require the assent 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 this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty-seven (67%) percent of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting(s) may be called subject to a notice requirement of ten (10) days and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding called meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Section 2. If within seven years of the date of incorporation of this Association, the Declarant, its successors or assigns, should develop any additional portion(s) of the tract of land deeded to Declarant by deed recorded in Book 2947, Page 63, Wake County Registry, said additional portion(s) may be annexed to said properties herein described without the assent required by Section 1 of this Article II so long as said additional portion(s) are contiguous to the properties described herein or added hereto by reason of either Section 1 or Section 2 of Article II hereof, and provided further that the FHA or the VA and the City of Raleigh determine that the annexation is in accord with the General Plan heretofore approved by them. The additional lands shall be deemed annexed to the properties on the date of recordation of the Declaration of Annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish said annexation. Any improvements on additional lands so annexed shall be consistent in quality with improvements made to the property described herein.

BOOK 2958 PAGE 213

Section 3. Subsequent to recordation of the Declaraton of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association; provided, however, that for voting purposes every lot shall be entitled to only one vote and the Board of Directors of the Association may from time to time set forth a procedure whereby the owners of each lot shall be required to designate the person who shall cast the vote for said lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article I with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lots, 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 vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article III, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article II, Section 2 above, or

(b) On December 31, 1985.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association shall have the right, after control of said Association passes to the Class A Members, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said properties, in accordance with its Articles and By-Laws.

BOOK 2988 PAGE 214

(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; provided, however, that no conveyance of Common Area shall deprive any Member of the full use thereof. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance, and

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

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area shown as Phase 1A on the map attached hereto to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility and drainage easements and easements to government authority. Similarly, the Declarant will convey to the Association Common Areas which are part of Sunscape Townhome Community as those portions are annexed in the future until all Common Areas, as shown on plans approved by the City of Raleigh, have been conveyed to the Homeowners Association.

Section 4. Parking Rights. Ownership of each Lot shall include a driveway/ parking area sufficient to park two automobiles. The Association may regulate the parking of boats, trailers, campers, motor homes, trucks or tractors, and other such items on Lots and the Common Area. The Association shall from time to time adopt appropriate rules for the temporary parking of these items on the Lots and Common Areas.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property upon which a townhome has been constructed, hereby covenants, and every other owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Special assessments for purchase and reconstruction of townhomes as hereinafter provided.

In addition, Declarant covenants and agrees to pay to the Association on all lots owned by the Declarant an amount equal to twenty-five (25) percent of the sum actually assessed from time to time on lots owned by Owners. At such time as there is an occupied dwelling on any lot owned by an Owner, the Declarant covenants and agrees to pay to the Association on each lot owned by the Declarant a sum equal to one hundred (100) percent of the sum actually assessed from time to time on lots owned by Owners. Such assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall

be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; improving and maintaining the Property and the townhomes situated thereon; and providing the services and facilities for purposes of and related to the use and enjoyment of the common area; and paying the Common Expenses of the Association.

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 Three Hundred Sixty (\$360.00) Dollars 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 five (5%) percent 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 five (5%) percent by a vote of two-thirds (2/3) 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 costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60%) percent 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 a notice requirement of ten (10) days and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding called meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the payment of such shall commence as to each lot on the first day of the month following the conveyance of the Common Area. 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 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. The Association, upon demand at any time, shall furnish a certificate in writing 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 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum. The Association may foreclose the lien

against any property for which assessments are not paid within thirty (30) days after the due date or may bring an action against the owner personally obligated to pay the same, and interest, costs, late payment charges and reasonable attorney's fees of such action shall be added to the amount of such assessment. 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 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any first (1st) mortgage on such Lot. 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 assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. Any portion of the property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessment.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide maintenance upon each Lot and townhome and the Common Areas which are subject to assessment hereunder, as follows: Stain and/or paint the exterior of townhouses and replace and repair roofs, replace, repair and care for walks, driveways and parking spaces, trails, trees, shrubs, grass (including cutting) and other similar exterior improvements, maintain the roads, and provide garbage collection and centrally located garbage dumpsters. Such exterior maintenance shall not include glass surfaces.

Any Owner who fences or encloses or screens by plants or structures the rear portion of his Lot (which fence, enclosure and screen shall require the prior approval of the Association), may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the townhome, the remaining yard spaces, or the Common Area. No such maintenance by an Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the approval given to said Owner and require said Owner to remove at his expense said enclosure. No Owner shall plant any vegetation in front of his townhome except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or his family, tenants, contract purchasers, guests, or invitees, or is caused by fire, 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.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhome upon the property 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. 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 4. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every owner shall have an easement and right of entry upon the lot of any other owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot or lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5. Certification With Respect to Contribution. If any owner desires to sell his lot, he may, in order to assure a prospective purchaser that no adjoining owner has a right of contribution as provided in this Article, request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without charge. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefore. If said certification is not issued within ten (10) days after request thereof, it shall be conclusive evidence that no claim is being made which runs with the land.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of the Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE IX

ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residence, outbuilding, fences, walls, screens (whether by plants or structures) and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification or any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In general, the construction or planting of fence, walls, screens and other structures will not be permitted if in the opinion of the Declarant, Board, or Architectural Committee, as applicable, such construction or planting constitutes an unreasonable obstruction of the view of another owner.

In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each lot and the limited common area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each building, the townhomes therein, and the common area and facilities shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws.

(a) All buildings and the common area and facilities shall be used for residential and related common purposes. Each townhome shall be used as a single-family residence and for no other purpose, except that the Declarant may use one or more townhomes for offices and/or model townhomes for sales purposes for the Sunscape Townhome Community only.

(b) Nothing shall be kept and no activity shall be carried on any building or townhome or on the common area and facilities which will increase the rate of insurance, applicable to residential use, for the Property. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the common area and facilities which will result in the cancellation of insurance on any portion of the Property, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the common area and facilities.

(c) No animal shall be kept on any Lot in use or the Common Area except for small household pets. Such pets may not be kept or bred for any commercial purpose and shall have care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions or other nuisance. No savage or dangerous animals shall be kept or permitted. No more than two (2) household pets may be kept on any Lot in use without the permission of the Board. No pets may be permitted to run loose upon the common areas and facilities. Any person who causes or permits any animal (including household pets) to be bred or kept upon any Lot in use or the Common Areas shall indemnify and hold harmless the Association for and from any loss, damage, or liability which it sustains as a result of the presence of such animal regardless of whether the Association or the Board has given its permission therefore.

(d) No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all government agencies having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(e) Nothing shall be done in or to any townhome or in, to, or upon any of the common area and facilities which will impair the structural integrity of any building, townhome, or portion of the common area and facilities or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(f) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agents may use any unsold townhome for sales or display purposes for the Sunscape Townhome Community only.

(g) No owner shall display, or cause or allow to be displayed, to public view any sign, (except unit identification signs required by the Raleigh Code of Ordinances) placard, poster, or billboard, upon any townhome, building, or any portion of the common area and facilities, except as allowed by the Association pursuant to its By-Laws; provided, however, that the Declarant, any Owner, and any mortgagee who may become the owner of any

unit, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied townhomes and in suitable places on the common area, with the size of said signs to conform to the Raleigh Code of Ordinances.

(h) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the common area and facilities except at the direction or with the express written consent of the Association.

(i) The common area and facilities shall be used only for the purpose for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws.

* Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the Property.

ARTICLE XI

EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the Property, including lots and common area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the Property to this Declaration by Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Encroachments. All lots and the common area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affecting lot or lots to as near the original condition as practicable.

Section 3. Structural Support. Every portion of a townhome which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other townhomes within the building.

Section 4. Emergencies. Every lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any lot or within any townhome and that endangers any building or portion of the Common Area.

Section 5. Easement for Governmental Agencies. An easement is hereby established over all Common Areas for the benefit of applicable governmental agencies for the setting, removing, and reading of water meters, maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail.

ARTICLE XII

INSURANCE

Section 1. Authority to Purchase Insurance. Insurance policies upon the Property (except title and casualty insurance) shall be purchased by the Association

In the name of the Board of Directors of the Association, as Trustees for the Owners, for the benefit of the Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Lots or any of them; and if the companies writing such policies shall agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Owners, the Association and their respective servants, agents and guests.

Section 2. Insurance Coverage to be Maintained -- Use and Distribution of Insurance Proceeds.

(a) The Owner of each lot shall be responsible for having in full force and effect at all times fire and hazard insurance with extended coverage on a replacement-cost basis (including coverage for all exterior glass) in an amount equal to the 100% insurable replacement cost value of the buildings and all improvements. Each Owner shall be responsible for insuring his contents. Evidence of the required insurance coverage shall be provided to the Association upon request.

(b) The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Lots and Common Property:

(1) Bodily Injury Liability and property damage liability insurance in such amounts and in such forms as shall be required by the Association, covering all premises and all operations necessary or incidental to the conduct of the business of the Association including hired automobile and non-owned automobile bodily injury and property damage liability coverages. All liability policies shall contain a severability of interest (cross-liability) endorsement. The insurance afforded under the liability section of the policy shall be applied separately to each insured against whom claim is made or suit is brought except with respect to each company's limit of liability.

(2) (a) Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

(c) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.


(d) All insurance policies purchased by the Association shall be for the benefit of the Association and the 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 Association shall hold such proceeds in trust for the benefit of the Association, the Owners and their respective mortgagees in the following shares:

(1) Proceeds on account of damage to Common Property: in undivided shares for each Owner and his mortgagee, if any.

(2) Proceeds on account of damages to Lots shall be held for the Owners of damaged Lots to be used for repairing the damage suffered by each damaged Lot. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners of damaged Lots and their mortgagees as their interests may appear.

(e) In the event a mortgagee endorsement has been issued as to a Lot, the share of the Owner shall be held for the mortgagee and the Owner as their interests may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.

(f) Each Owner at his expense, shall keep in force comprehensive personal liability insurance covering liability for damages to person or

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property of others located within such Owner's Lot, in such amounts as the Board of Directors shall, from time to time, determine, but in no case less than \$250,000 for each occurrence.

Section 3. Reconstruction or Repair of Casualty Damage to Common Property.

(a) If any part of the Common Property shall be damaged by casualty, it shall be reconstructed or repaired unless at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Owners who own two-thirds (2/3) or more of the building vote against reconstruction or repair.

time limit

(b) Immediately after the casualty causing damage to property, the 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 appropriate.

(c) Each Owner delegates to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

ARTICLE XIII

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 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%) percent of the Lot Owners, and thereafter by an instrument signed by not less than ninety (90%) percent of the Lot Owners. No amendment shall become effective until approved by the Raleigh City Attorney. In the event that the City Attorney fails to approve or disapprove the proposed amendment within thirty (30) days after it has been submitted and received by the City Attorney, approval by the City Attorney will not be required. Any amendment must be recorded.

Section 4. Additional Requirements During Existence of Class B Membership. As long as there is a Class B membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional Property, declaration of Common Area, amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 5. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any lot to be examined);

(b) Attach to the amendment a certificate as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

BOOK 2888 PAGE 222

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS
CONDITIONS AND RESTRICTIONS OF SUNSCAPE TOWNHOME COMMUNITY

By authority of its Board of Directors, Sunscape Townhome Community Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Sunscape Townhome Community and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Sunscape Townhome Community.

SUNSCAPE TOWNHOME COMMUNITY

By: _____
President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Sunscape Townhome Community.

Section 7. Amendment of Declaration Without Approval of Owners. The Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made pursuant to this Section shall not be effective until duly recorded in the Register of Deeds of Wake County.

Section 8. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 9. City of Raleigh Code Requirement. The City of Raleigh Code states that in no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to developments or their occupants when such failure is due to the lack of access to said developments due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, Homeowners' Association, or occupants.

Section 10. Underground Utilities and Street Lighting. Declarant reserves the right to subject the real property described herein to a contract with Carolina Power & Light Company for the installation of underground electric

cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the Owner of each Lot.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this the _____ day of _____, 1981, by authority of its Board of Directors.

SUNSCAPE ASSOCIATES
A North Carolina General Partnership

By: Sunscape Incorporated
General Partner

By: *[Signature]*
President

By: Arrakis, Inc.
General Partner

By: *[Signature]*
President

ATTEST:

[Signature]
Secretary

ATTEST:

[Signature]
Secretary



STATE OF NORTH CAROLINA
COUNTY OF WAKE

Form 2958 Rev. 224

This is to certify that before me personally came _____ Secretary of SUNSCAPE INCORPORATED, General Partner of SUNSCAPE ASSOCIATES and acknowledged that _____ is President and he is the Secretary of SUNSCAPE INCORPORATED, the corporation which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal and the name of the corporation was subscribed thereto by the said President, and the said President and Secretary subscribed their names thereto and said common seal was affixed all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

SWORN to and subscribed before me, this the 11th day of January, 1981.

My Commission Expires: 11-24-83

Jo Ann Jamison
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This is to certify that before me personally came *John S. Williams, Assistant* Secretary of ARRAKIS, INC., General Partner of SUNSCAPE ASSOCIATES and acknowledged that *John S. Williams* is President and he is the Secretary of ARRAKIS, INC., the corporation which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal and the name of the corporation was subscribed thereto by the said President, and the said President and Secretary subscribed their names thereto and said common seal was affixed all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

SWORN to and subscribed before me, this the 14th day of December, 1981.

My Commission Expires: 3-22-83

Nancy J. Marshall
Notary Public

NOTARY PUBLIC
WAKE COUNTY, N.C.

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of *Jo Ann Jamison* at *Nancy J. Marshall*

Notary (ices) Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

R. B. BUCKENHE JR. Register of Deeds

R. B. Buckenhe Jr.
Deputy Register of Deeds

SCHEDULE A to Declaration of Covenants, Conditions, and Instructions
for Phase 1A Sunscapc Townhome Community

ADD: 2988 PAGE 225

DESCRIPTION OF PHASE 1-A

Commencing at an iron stake, Essie K. Tucker's northwest corner, as recorded in Deed Book 2009, Page 102, on the southern right-of-way line of Pleasant Grove Church Road and going thence along Tucker's western line 140.00 feet South 02° 31' 19" West to the point of BEGINNING, an iron pipe in Tucker's line, thence with Tucker's line South 02° 31' 19" West 244.99 feet to an iron pipe, Tucker's southwest corner; thence South 74° 01' 19" West 255.00 feet to a point; thence South 12° 34' 56" West 163.37 feet to an iron pipe; thence South 89° 44' 05" West 225.00 feet to an iron pipe, thence North 05° 42' 47" East 349.79 feet to an iron pipe; thence South 87° 47' 04" East 236.62 feet to an iron pipe; thence North 06° 46' 24" East 52.66 feet to an iron pipe; thence with a 45 foot radius curve a length of 91.44 feet to an iron pipe; thence along a 25 foot radius curve a length of 28.00 feet to an iron pipe in the right of way of a 50 foot ingress-egress easement; thence South 87° 13' 04" East 211.00 feet to the point of BEGINNING, containing 3.27 acres and being part 1-A of the property shown on plat entitled "Survey for Sunscapc Townhome Community, December, 1981," by A1 Prince & Associates, P.A., and being subject to all easements shown thereon.

SCHEDULE B to Declaration of Covenants, Conditions, and Restrictions
for Phase 1A Sunscape Townhome Community

BOOK 2988 PAGE 226

DESCRIPTION OF PHASE 1-A

Commencing at an iron stake, Essie K. Tucker's northwest corner, as recorded in Deed Book 2009, Page 102, on the southern right-of-way line of Pleasant Grove Church Road and going thence along Tucker's western line 140.00 feet South 02° 31' 19" West to the point of BEGINNING, an iron pipe in Tucker's line, thence with Tucker's line South 02° 31' 19" West 244.99 feet to an iron pipe, Tucker's southwest corner; thence South 74° 01' 19" West 255.00 feet to a point; thence South 12° 34' 56" West 163.37 feet to an iron pipe; thence South 89° 44' 05" West 225.00 feet to an iron pipe, thence North 05° 42' 47" East 349.79 feet to an iron pipe; thence South 87° 47' 04" East 236.62 feet to an iron pipe; thence North 06° 46' 24" East 52.66 feet to an iron pipe; thence with a 45 foot radius curve a length of 91.44 feet to an iron pipe; thence along a 25 foot radius curve a length of 28.00 feet to an iron pipe in the right of way of a 50 foot ingress-egress easement; thence South 87° 13' 04" East 211.00 feet to the point of BEGINNING, containing 3.27 acres and being part 1-A of the property shown on plat entitled "Survey for Sunscape Townhome Community, December, 1981," by Al Prince & Associates, P.A., and being subject to all easements shown thereon.

EXCEPTED from this property described above are the following properties shown in Book of Maps 1981, Page 1107, Wake County Registry being more particularly described as "Bldg. B, Reserved for Units 1b through 5b", Bldg. A, Reserved for Units 1a through 8a" and Bldg. C, Reserved for Units 1c through 8c" incorrectly referred to 8a.