

Prepared by and return to: Beemer, Savery & Hadler, P.A., P.O. Drawer 3150, Chapel Hill, N.C., 27515.

BOOK 1487 PAGE 553

NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
SUNSET CREEK

ORANGE COUNTY

THIS DECLARATION, made and entered into this the 9th day of July, 1996, by HOMESCAPE DEVELOPMENT COMPANY, INC., a North Carolina corporation, party of the first part, hereby referred to as Declarant, whose address is 107 Creekview Circle, Carrboro, North Carolina, 27510.

WITNESSETH:

Whereas, Declarant is the owner of the real property located in the Town of Carrboro, Chapel Hill Township, Orange County, more particularly described as:

BEING all of Tract "A," containing 40.591 acres more or less as shown on a plat entitled "Property of Alice B. Newsome," recorded in Plat Book 61, Page 31, Orange County Registry, to which plat reference is made for a more particular description of same.

AND WHEREAS, Declarant intends to develop said tract of land as a residential subdivision to be known as SUNSET CREEK with sixty-nine (69) building lots upon which will be located single family detached residential homes. Declarant intends to convey all such Lots from said property subject to the Covenants, Conditions and Restrictions contained in this Declaration, with ByLaws attached. Declarant will develop SUNSET CREEK in three (3) phases. Therefore, this Declaration, with ByLaws attached, shall apply with equal force to all Lots subdivided from the tract of land shown on Plat Book 61, Page 31, Orange County Registry as shown on all recorded plats thereof.

NOW, THEREFORE, Declarant declares that all the property in the development

FOR MULTIPLE PIN SHEET
SEE BOOK 1487 PAGE 550-552

known as SUNSET CREEK and shown on Plat Book 61, Page 31, Orange County Registry, and any subsequently recorded plat of SUNSET CREEK, shall be held, sold, and conveyed subject to the following restrictions, covenants and conditions.

Preamble: The purpose of this instrument is to protect the value, desirability and attractiveness of the aforesaid real property; to ensure the best use and the most appropriate development and improvements of each Lot located therein; to protect the Owner of each Lot against such improper use of surrounding Lots as will depreciate the value of said Owner's property; to preserve, as far as practicable, the natural beauty of said property; to guard against the erection of poorly designed or proportioned structures and/or structures built of improper or unsuitable materials; to obtain harmonious color schemes; to ensure the highest and best development of said property; and to enhance, as far as is practical, the value of investments made by Owners of Lots therein. To that end, Declarant herein creates a Homeowners' Association and vests it with certain powers and authority consistent with the intentions expressed in this Preamble. Lastly, said restrictions, covenants and conditions shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE ONE: Definitions:

Section 1: "Properties" shall mean and refer to that certain real property, the sixty-nine single family residential Lots subdivided therefrom and the areas dedicated as Open Space or Common Area, excluding the streets and rights-of-way dedicated to the public which serve the Properties, all known collectively as SUNSET CREEK, shown on Plat

Book 61, Page 31, Orange County Registry, and any subsequently recorded plat of this land. All of the Properties, excluding the streets and rights-of-way dedicated to the public, will be brought within the jurisdiction of the "Association" subject to this Declaration.

Section 2: "Association" shall mean and refer to the SUNSET CREEK HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 3: "Lot" shall mean and refer to any plot of land as shown on any recorded subdivision map of the "Properties" excluding the aforesaid Open Space or Common Area lands.

Section 4: "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 sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5: "Open Space" and/or "Common Area" shall mean and refer to all real property (including any improvements thereto) owned in fee simple by the Association or for which the Association shall have been granted by Declarant easement rights for the common use and enjoyment of all the Owners of Lots in SUNSET CREEK, subject to this Declaration and ByLaws. Among other things, playground equipment and facilities will be constructed on a portion of the Common Area. The Common Area property will also include land and any building thereon to be used for indoor and/or outdoor recreational purposes such as the SUNSET CREEK clubhouse and swimming pool.

Section 6: "Declarant" shall mean and refer to Homescape Development Company, Inc., a North Carolina corporation, its successors and assigns. Such assignment, if any, shall be evidenced by a written statement of assignment of rights as Declarant filed in the Orange County Registry.

Section 7: "Member" shall mean and refer to any person or entity entitled to membership in the Association as provided for herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to an assessment by the Association. The Owner of a Lot shall become a member of the Association merely by virtue of being an Owner of a Lot. In the event of multiple ownership of any given Lot, each Owner shall be a member of the Association but only one vote total shall be accorded to each Lot.

Section 8: "Builder and/or General Contractor" shall mean and refer to any person or entity to whom Declarant sells and conveys a Lot for the express purpose by Builder and/or General Contractor of constructing thereon a residential dwelling to be sold to a third party purchaser. For purposes of this Declaration, such a person or entity shall be known and identified as "General Contractor."

ARTICLE TWO: Property Rights:

Section 1: Owners' Easements of Enjoyment: Each Owner of a Lot in SUNSET CREEK whether such lot be classified as an "A" or a "B" lot as hereinafter provided in Article Three, Section 2, shall have a right and easement of enjoyment in common with every other Lot Owner in and to the Open Space or Common Area lands. Such easement rights shall be appurtenant to the land and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Declarant and/or the Association to charge reasonable admission and other fees for the use of any recreational facilities and playground facilities situated upon Common Area lands;

(b) The right of the Declarant and/or the Association to publish rules and regulations for the use and enjoyment of the Common Areas and in particular for the use and enjoyment of the Clubhouse and the swimming pool and the right to amend, from time to time, as applicable, such published rules and regulations.

(c) The right of the Association to suspend the voting rights and the right of access to and through the Common Area lands if such access is intended for recreational purposes and the right to the use of the recreational facilities located on the Common Area lands 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;

(d) The right of the Association to dedicate or transfer all or any part of Common Area lands to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of each class of Members has been recorded.

(e) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area lands and any facilities constructed thereon and to mortgage said property for such purposes. This right shall be deemed a "material change" within the context of Article Ten, Section 3(b) hereof.

Section 2: Delegation of Use: Subject to this Declaration and By-Laws, a Lot Owner may delegate his right of use and enjoyment to the Open Space and Common Area lands and facilities to his heirs and assigns, members of his family, invitees, agents, licensees, guests, tenants, or contract purchasers who reside on the property.

Section 3: Conveyance of Common Areas: Declarant shall, prior to the conveyance of the first subdivided Lot in the Properties convey fee simple title to the Common Area lands to the Homeowners Association, free and clear of all encumbrances except for street or road rights of way, sidewalks, parking areas and utility easements. Subject to Declarant's reserved easement rights, the Association, from and after the sale and conveyance of eighty (80%) percent of the Lots in SUNSET CREEK to third party residential purchasers, but not to Builders, shall be solely responsible for maintaining and insuring the Common Area lands.

Section 4: So long as Declarant remains the record owner of any Lot within the Properties, Declarant expressly reserves the right to alter and restructure existing Lot lines for those Lots owned by Declarant or, in conjunction with General Contractor to consent to such alteration or restructuring on those Lots sold to General Contractor but not yet conveyed to third party purchasers provided the number of existing buildable Lots shall not increase or decrease thereby.

ARTICLE THREE: 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 Lot Owners with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot owned. Class A members shall include both third party purchasers and General Contractors. 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 four (4) votes for each Lot owned. For purposes of this Article, Declarant intends to develop SUNSET CREEK in three distinct phases.

The definition of Class A and Class B membership and voting rights shall apply collectively to the total development of SUNSET CREEK, meaning, specifically, that at all times during the development of SUNSET CREEK, there shall be a total of sixty-nine (69) lots to be classified as membership lots with voting privileges whether or not a plat or plats actually creating the additional phases and the additional lots in each phase have actually been recorded. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, or

(b) December 31, 2000.

ARTICLE FOUR: Covenant for 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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) an Annual Assessment, and (2) a Special Assessment for capital improvements, both such assessments to be established and collected as hereinafter provided. The Annual Assessment, and as applicable, the Special Assessment, together with interest, costs 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, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. For each recorded Lot owned by Declarant, whether vacant or in any stage of construction, but not yet conveyed, and for each recorded Lot owned by a General Contractor, whether vacant or in any stage of construction, Declarant and/or said General Contractor shall pay to the Association one-tenth (1/10) of the Annual Assessment set forth in Section 3, of this Article. Neither Declarant nor a General Contractor shall be liable for any Special Assessment.

Section 2: Purpose of Assessments.

(a) The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Properties and, subsequent to the completion by Declarant of initial Common Area improvements, may be used or expended by the Association to purchase additional Common Area equipment and to construct, improve and maintain existing and/or additional Common Area facilities. The assessment may also be used to maintain the playground facilities, the

clubhouse and the swimming pool constructed on the Common Area land and to provide insurance therefor. Further, the assessment shall be used for any normal and reasonable expenses associated with additional landscaping undertaken after Declarant has finalized the initial landscaping of the Common Area lands, for each of the three Phases of SUNSET CREEK, on a phase by phase basis, including, but not limited to, bush and plant replacement and grass mowing. Lastly, the assessment may be used to repay any debt made to the Association in the course of performing its duties, functions and obligations as herein contained; provided such debt was appropriately obtained by the Association as herein provided.

(b) By way of example, and not by way of limitation, the Board of Directors of the Association, being responsible for procuring general liability insurance on all Open Space and Common Area lands and for procuring adequate fire and extended casualty insurance on all structures built upon Common Area lands and then owned by the Association shall defray the cost of the same from the Annual Assessment.

(c) The Annual Assessment shall also be used to pay for the electricity lighting Common Area lands and if necessary the streets serving the Properties. In addition, the assessment may be used to repair or reconstruct the sign identifying the name of the subdivision that may be constructed by Declarant at the entrance to the Properties or any other signs within the subdivision pertaining to the Properties..

Section 3: Maximum Annual Assessment. From the date the Annual Assessment first commences as herein set forth until January 1, 1997, the maximum Annual Assessment shall be Five Hundred Forty (\$540.00) Dollars per Lot, payable at the rate of One

Hundred Thirty-five (\$135.00) Dollars per quarter.

(a) From and after January 1, 1997, the maximum Annual Assessment may be increased each year by the Board of Directors of the Association, without a vote of the Lot Owners, in an amount equal to but not more than ten (10%) percent of the prior year's assessment or, in the alternative, in an amount equal to but not more than the increase in the Consumer Price Index (as published by the United States Department of Labor) for the preceding calendar year, whichever amount is greater.

(b) From and after January 1, 1997, the maximum Annual Assessment may be increased above the amount set forth in Article IV, Section 3(a) only by a vote of two-thirds (2/3) of all the Lot Owners 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 any amount not in excess of the maximum.

Section 4: Special Assessments for Capital Improvements. In addition to the Annual Assessment 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 Common Area lands, including fixtures and personal property related thereto or for the repayment of any indebtedness and interest incurred by the Association for the benefit of the Association. Any such special assessment must have the assent of two-thirds (2/3) of the votes of all the Lot Owners 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 or 4 shall be sent to all Lot Owners not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of the proxies entitled to cast fifty percent (50%) 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 quota at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6: Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots. Annual assessments will be collected on a quarterly basis, with one-fourth ($\frac{1}{4}$) of the annual assessment being due each quarter. The Board shall direct the manner and timing of the collection of any Special Assessment.

Section 7: Date of Commencement of Annual Assessment: Due Dates. The Annual Assessment, payable quarterly, for any given Class A Lot shall commence on the day of closing and conveyance of said Lot to a third party purchaser for residential occupancy pursuant to a duly issued Certificate of Occupancy. At each such closing, the assessment due for the balance of the quarter, prorated for the month in which the

issued Certificate of Occupancy. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the annual period. Written notice of the amount of the Annual Assessment shall be sent to every Owner subject thereto, with the due dates being January 1, April 1, July 1 and October 1 of each year. 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, until paid in full, at the rate of eighteen (18.0%) percent per annum, or at the rate of the Prime Rate as published daily in the Wall Street Journal plus one (1.0%) percent, whichever is greater, plus a maximum one-time late payment penalty of Thirty-five (\$35) Dollars. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Such action shall be for not only the delinquent assessment plus accrued interest thereon but also for all costs associated with bringing the action, including, but not limited to, reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas 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 except that such an extinguished lien may be reallocated and assessed to all of the Lots as a common expense. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10: In addition to the above, the Annual Assessment shall be allocated by the Board of Directors in part to a reserve fund to be established by the Board of Directors. This reserve fund shall be used for periodic maintenance of Common Area lands and for periodic repair and replacement of any structures owned by the Association located on Common Areas lands and for any and all emergency purposes. This reserve fund shall be supplemented by the working capital or reserve fund created herein to be funded with the sale and conveyance of each Lot within the Properties as set forth in Article Ten, Section 7.

Article Five: Insurance:

Section 1: The premiums for all insurance policies owned by the Association shall be deemed a common expense and shall be paid as part of the Annual Assessment from each Lot in the Properties. All insurance policies required as set forth herein will be obtained in the name of the Association and will designate the Association, through its Board of Directors, as a loss payee.

Section 2: The Board of Directors shall have the authority to and shall obtain insurance for any and all buildings or other structures owned by the Association located on

Common Area lands against loss or damage by fire or other hazards in an amount equal to the maximum insurable replacement value (100% of current replacement costs) as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage such that the coverage will be sufficient to cover the costs of all repair or reconstruction work necessitated by damage or destruction from any insurable hazard.

Section 3: The Board of Directors shall have the authority to and shall also obtain a broad form public liability policy covering all Open Space and Common Area lands and all damage or injury to person or property caused by the negligence of the Association or any of its agents.

Section 4: In the event of any conflict between the terms and conditions set forth herein and the terms and conditions of any policy of hazard or general liability insurance duly obtained by and through the responsible actions of the Board of Directors, then the terms and conditions of the actual policy shall control.

ARTICLE SIX: Architectural Review and Control:

Section 1: Declarant intends to create in SUNSET CREEK a community which is both functional and aesthetically pleasing. To facilitate achieving this goal, Declarant will review all plans, specifications and site location drawings for all improvements to be constructed on any Lot in SUNSET CREEK prior to any ground breaking occurring on any Lot in SUNSET CREEK. Further, Declarant will, after initial construction is completed, review any and all plans, such as changing the initial exterior paint color, all construction plans and specifications designed to alter, modify, or add to what was initially constructed. As part of each mandatory review process, Declarant will approve

only those plans, specifications and site locations which, in its sole opinion and discretion, will best maintain a harmonious relationship among all structures within SUNSET CREEK, its topography, its vegetation, and its overall community design.

(a) As to all construction within the Properties, initial or otherwise, Declarant will specifically review all construction plans, specifications and site locations prior to the commencement of any construction on any Lot in SUNSET CREEK. Declarant will approve or reject same in writing, and in the case of rejection, give its reasons.

(b) This approval process will remain the sole responsibility of Declarant so long as Declarant owns one or more Lots in SUNSET CREEK, or until such time as Declarant, in writing, voluntarily transfers this responsibility to the Board of Directors of the Association.

(c) Upon the occurrence of either of these two events, the Board of Directors of the Association will then have the authority and responsibility to establish an Architectural Review Committee. This committee shall be composed of three (3) or more representatives appointed by the Board. Once created, the Architectural Review Committee shall be the successor in interest to the Declarant but shall remain subject to the authority of the Association's Board of Directors.

(d) In order to further the intent of Section 1 of this Article, Declarant shall establish and from time to time as necessary amend objective standards and guidelines for SUNSET CREEK. These standards and guidelines shall include, but not be limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations, Landscape Guidelines and rules and regulations for environmental concerns in the Common Area lands. These standards and guidelines

shall be binding upon all Lot Owners within the Properties. At such time as Declarant transfers the Architectural Review approval process to the Architectural Review Committee the responsibility for maintaining these standards and guidelines shall pass to said Committee.

Section 2: No building, fence, wall, residence or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration to any existing structure be made, as, for example, changing its exterior paint color, nor shall any landscaping or relandscaping of any Lot be commenced until the plans and specifications showing the nature, kind, shape, height, material, color and location of the same shall have been submitted to and approved in writing by Declarant.

Section 3: Declarant shall have the right to refuse to approve any improvements to any Lot which are, individually or collectively, in its sole opinion and discretion, incompatible with the external design, construction and location of said improvement(s) with respect to surrounding structures, topography or the general plan of development for the Properties; subject, however, to the provision that in the event Declarant fails to give written approval or disapproval 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 fully complied with. All such requests shall be sent by certified mail to the Declarant or directly to the Architectural Review Committee, as the case may be, at the last known address of the party to whom the request is being sent.

Section 4: The commencement of clearing, landscaping or construction of any sort prior to the time Declarant issues its approval for same shall be deemed a violation of

this Declaration and subject the offending party to damages, either in law or in equity, which damages may be monetary or may result in the offending party removing, at his sole expense, the violation; provided, however, that this paragraph shall not apply to repair work done on any existing structure, which repair, consistent with restoring the structure to its original condition and accomplished according to the standards of workmanship prevailing in the Carrboro-Chapel Hill-Orange County area, shall be the sole responsibility of a Lot Owner and will not require prior architectural approval.

ARTICLE SEVEN: Easements:

Section 1: All of the Properties, including all Lots, Open Space and Common Area lands, shall be subject to such easements for water lines, sanitary sewer lines, storm drainage facilities, gas lines, cable TV, telephone and electric power lines and other public utilities as shall be or shall have been granted by the Declarant or by its predecessors in title. No TV antennae shall be permitted on any Lot within the Properties, save and except for those satellite dishes no greater than eighteen (18) inches in diameter and provided further that such satellite dish is discreetly sheltered from common view. Declarant, while it retains fee simple title to at least one Lot in the Properties, or the Board of Directors of the Association, shall have the power and authority to grant and establish upon, over, under and across the Common Area lands as conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property as well as its proper maintenance or operation.

Section 2: All Lots shall be subject to easements for encroachment of initial improvements constructed on adjacent Lots or on the Common Area lands to the extent that such initial improvements reasonably and actually encroach, including, but not

limited to, overhanging eaves, gutters and downspouts, driveways, steps, porches, stoops and walls, so long as said encroachment does not conflict with or violate any applicable governmental regulation or ordinance.

ARTICLE EIGHT: Use Restriction

Section 1: Rules and Regulations. Declarant and/or the Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area lands.

Section 2: Use of Property. No portion of the Property (except for temporary office of the Declarant and/or a model used by Declarant for sales purposes) shall be used except for residential purposes and related incidental purposes. "Single-family residential" purposes may include "light-housekeeping" attached apartments containing no more than one bedroom. No Lot may be stripped of its topsoil and trees or permitted to go to waste by being excavated, neglected or having trash or refuse thrown, dropped or dumped on it.

Section 3: Setback Lines: No building or other improvement permanent in nature shall be constructed on any Lot within thirty (30) feet of the front line; within twenty-five (25) feet of the rear line; and within ten (10) feet of each side line, except that for those lots on Buckeye Lane and for Lots 66-68 on Farmhouse Drive, the side line setbacks shall be five (5) feet. All corner lots shall have a side street setback of eighteen (18) feet.

The front door shall, for any street corner lot, face the front property line. Violations of these setback requirements can be waived by Declarant and/or the Architectural

Review Committee by recording a written waiver thereof in the Orange County Registry

so long as said violation does not conflict with or violate any applicable governmental regulation or ordinance. Subject to the architectural guidelines and the architectural review process established herein, individual Lot Owners shall be permitted to construct a treehouse, a children's clubhouse or dollhouse on their Lot provided said structure, as to its location, conforms to all applicable setback provisions and provided further that it is located on the rear portion of the Lot behind the house and is discreetly screened from public view.

Section 4: Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or become a nuisance or annoyance to the neighborhood. No trash, rubbish, stored materials, wrecked or inoperable vehicles, recreational vehicles, trailers or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that this shall not be construed to prohibit temporary deposits of trash, rubbish, and other such for pickup by governmental or other similar garbage/trash removal services.

Section 5: Signs. No signs of any kind, except those advertising an individual Lot "For Sale" or "For Rent" and those signs used by the Declarant in advertising the Properties, shall be displayed for public view on any Lot.

Section 6: Use of Common Areas. No planting or gardening shall be done upon or in any Open Space or Common Area lands except as done by Declarant or as authorized by the Board of Directors of the Association.

Section 7: Items to be Approved by Association: Without the prior approval of Declarant or the Board of Directors of the Association as to location, style, type, size and composition, no aerials, pole towers, solar collectors or similar structures, no fuel

tanks or any similar type of storage receptacle, no mailbox replacements or newspaper containers and no temporary structures such as shed, mobile homes, trailers or tents may be placed on any Lot or upon the Open Space or Common Area lands. Declarant, its successors or assigns, may place one or more construction trailers on any Lot or the Common Areas during construction provided the same are removed within a reasonable period of time after construction on that Lot or in that area has been completed. No travel trailers or recreational vehicles shall be at any time used as a residence either temporarily or permanently.

Section 8: After construction of a dwelling on any Lot is completed and said Lot is conveyed to a third party purchaser, then all trees located on a Lot over four (4) inches in diameter at a height of twenty-four (24) inches above the surface of the land and all redbud, dogwood and beech trees of every size shall be retained, unless Declarant or the Architectural Control Committee shall have given consent in writing to their removal; provided that all dead or diseased trees, shrubs, bushes or other vegetation shall be cut and promptly removed from any Lot by the Owner thereof, in the Owner's discretion, or at such time as the Owner has been given written notice by Declarant or the Architectural Review Committee to remove the dead trees, shrubs, bushes or other vegetation within ten (10) days of the notice being given.

Section 9: Violation of any of these provisions shall subject the violating Lot owner to legal action, in law or in equity, filed against said Owner by either the Board of Directors of the Association or any other Lot owner in the Properties. Such legal action, if successful, shall provide for the payment of reasonable attorney's fees in addition to remedies in law or in equity.

ARTICLE NINE: Easements for Construction Purposes:

The Declarant, or its duly authorized agents, successors or assigns, shall have full rights of ingress and egress to and through, over and about the Common Area lands during such period of time as the Declarant is engaged in any construction or improvement work on or within the Properties described herein. Declarant shall further have an easement for the purposes of storage of materials, vehicles, tools, equipment and so forth which are being utilized in such development or construction. No Lot Owner, his guests, licensees, clients or invitees shall in any way interfere or hamper Declarant, its employees, successors, agents or assigns in connection with construction.

ARTICLE TEN: General Provisions:

Section 1: Enforcement. The Association, or any Lot 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 Lot 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 way affect any other provisions which shall remain in full force and effect. In the event of any contradiction, real or apparent, between the Articles of Incorporation and the ByLaws, the ByLaws shall control and in the event of any contradiction, real or apparent, between the ByLaws and this Declaration, then the terms and conditions of this Declaration shall control.

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 seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in Orange County.

(a) Any "material" change to the Declaration or ByLaws will require the written consent of at least fifty-one (51%) percent of the mortgagees who hold a first mortgage lien on a unit.

(b) Consistent with Federal National Mortgage Association guidelines, any amendment dealing with any of the following is herein identified as constituting "material" changes: voting rights; assessments, assessment liens, or subordination of assessment liens; reserve for maintenance, repair and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the general common areas, if any, or rights to their use; boundaries of any Lot unless said change is an adjustment of lot lines between adjacent Lot Owners which adjustment neither creates nor eliminates a building Lot; convertibility of any Lot into common area or the reverse thereof; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project unless the right to annex property to the project by way of phasing has been specifically reserved in the Declaration; insurance or fidelity bonds; leasing of Lots; imposition of any restriction on a Lot Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required previously; restoration

or repair of the Properties after a hazard damage or partial condemnation in a manner other than as specified in the documents; and any provision that expressly benefits mortgage holders, insurers or guarantors.

(c) In the event an amendment is not deemed, as herein defined, a "material" change, then notice of the change must nevertheless be given to all first mortgage holders which holders shall have thirty (30) days in which to protest or otherwise object to the amendment. If no response has been given by a mortgage holder within the aforesaid thirty (30) days, then the amendment shall be deemed accepted by the mortgagee.

Section 4: FHAVA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association: Annexation of additional properties, dedication and/or mortgaging of the Common Areas lands, and amendment of this Declaration.

Section 5: Mortgagee's Rights. A first mortgagee, or the insurer or guarantor of a first mortgage shall be entitled, upon written request, to receive copies of this Declaration, the ByLaws, Rules and Regulations, and Articles of Incorporation of the Association; entitled to inspect the books and records of the Association during normal business hours or under other reasonable circumstances; entitled to receive at no additional cost the annual audited financial statement within ninety (90) days following the end of the fiscal year; entitled to receive written notices of meetings of the Association and to designate a representative to attend all such meetings; entitled to receive timely notice of any substantial damage to or destruction of any part of the Common Area lands and

facilities; entitled to receive notice if any Lot or any part of the Common Area lands and facilities are subjected to a condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority; entitled to receive notice of any sixty (60) days delinquency in the payment of assessments or charges of any Lot Owner upon which that mortgagee, insurer or guarantor holds a mortgage; entitled to receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and entitled to receive notice of any proposed action which requires the consent of a specified percentage of mortgage holders.

Section 6: Additional Rights and Duties of Association. The Association shall maintain in effect at all times casualty and liability insurance and fidelity bond coverage as is consistent with Federal National Mortgage Association guidelines, including, at a minimum, a One Million (\$1,000,000.00) Dollar per occurrence liability policy covering all the Open Space and Common Area lands.

* Section 7: Working Capital or Additional Reserve Account. Upon the first-time sale and conveyance of a Lot to a third party residential purchaser, the third party purchaser thereof shall pay to the SUNSET CREEK HOMEOWNERS' ASSOCIATION a sum of money equal to one quarter of the Annual Assessment to create or be added to the Association's reserve fund referenced in Section 10, ARTICLE FOUR. Such sum shall not be deemed an advanced payment of the regular Annual Assessment.

Section 8: Reserved Rights of Lot Owners. No Lot Owner shall be subject to a restraint imposed by the Association upon his right to sell, transfer, or otherwise convey his Lot. Under no circumstances shall the Association have a right of first refusal upon the sale

and conveyance of any Lot. No Lot Owner shall be subject to any restraint imposed by the Association upon his right to mortgage his Lot with whomever or whatever institution and upon those terms and conditions the Lot Owner is willing to accept. Each Lot Owner is entitled, as set forth in Article X, Section 5 above, to likewise inspect the books and records and other related documents of the Association during normal business hours or under other reasonable circumstances.

Section 9: Contracts. Any contract, lease or agreement, if any, entered into by the Association on its own behalf or by Declarant on behalf of the Association must be terminable by either party without cause upon not more than ninety (90) days notice to the other party and with cause upon not more than thirty (30) days notice to the other party. If so terminated, no termination fee shall be required to be paid to the party so terminated. This provision shall include, but not be limited to, contracts for professional management of the project.

ARTICLE ELEVEN: Annexation of Additional Property: So long as Declarant owns one or more Lots in the Properties, Declarant shall have the right, in Declarant's sole discretion, to annex additional properties into the SUNSET CREEK HOMEOWNERS' ASSOCIATION, Inc., without a vote of the Lot Owners.

ARTICLE TWELVE: Certain Rights Accruing to the Owners of Lot 69: Prior to the recordation of this Declaration, Lot 69 was sold and conveyed by Declarant to Roger D. Hannay and Janet R. Hannay. Lot 69 is now subject to a two year lease, with two options to extend, each for six months, by and between Declarant and the Hannays. So long as Lot 69 remains subject to a lease between Declarant, its successors and assigns, as Lessee, and Roger D. Hannay and Janet R. Hannay, their heirs and

assigns, as Lessor, then the record owner of Lot 69 shall pay the same amount of Annual Assessment as paid by Declarant - or one-tenth (1/10) of the Annual Assessment paid quarterly, as set forth in Article Four, Section 1. In addition, during this time, the record owner of Lot 69, their heirs and assigns, shall not be liable for any Special Assessment. At such time as the aforesaid lease is terminated or expires and is not renewed, then the record owner of Lot 69, their heirs and assigns, shall pay the regular Annual Assessment as set forth herein and shall, along with all lot owners in Sunset Creek, be liable to pay Special Assessments, when and if authorized, as provided in Article Four, Section 4.

Roger D. and Janet R. Hannay join in the execution of this Declaration to subject Lot 69 to this Declaration pursuant to the terms and conditions set forth herein and to the terms and conditions of Article Twelve.

Southland Associates, Inc., as Trustee, and Central Carolina Bank and Trust Company, as Beneficiary, join in the execution of this instrument for the sole purpose of subordinating the liens of their deeds of trust recorded in Book 1460, Page 200, and in Book 1479, Page 586, Orange County Registry, to this Declaration to the same extent as if this Declaration had been executed and recorded prior to the recording of the aforesaid two Deeds of Trust.

Charles G. Beemer, as Trustee, and Ery Magasanik, as Beneficiary, join in the execution of this instrument for the sole purpose of subordinating the lien of their deed of trust recorded in Book 1264, Page 472, Orange County Registry, to this Declaration to the same extent as if this Declaration had been executed and recorded prior to the recording of the aforesaid deed of trust.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed in its corporate name, with corporate seal affixed, all by order of its Board of Directors, the day and year first above written.



Homescape Development Company, Inc.
Declarant

By: James A. Brandewie
James A. Brandewie, President

Attest:

Ruth C. Brown
Ruth C. Brown, Assistant Secretary
corporate seal

Roger D. Hannay (Seal)
Roger D. Hannay

Janet R. Hannay (Seal)
Janet R. Hannay

Southland Associates, Inc.
Trustee

Central Carolina Bank and Trust Company

BEEMER, SAVERY
& HADLER, P.A.
ATTORNEYS AT LAW
SUITE 800-B, FRANKLIN SQUARE
1000 E. FRANKLIN STREET
R.O. DRAWER 100
CHAPEL HILL, N.C. 27514

By: W. R. Pomeroy
VICE President

By: David Kimball
Senior Vice President

Attest:
[Signature]
AST Secretary
corporate seal

[Signature]
Secretary
corporate seal

Ery Magasanik by R. Liff
Charles G. Beemer (seal)

BOOK 1487 PAGE 580

Charles G. Beemer (seal)
Charles G. Beemer, Trustee

Ery Magasanik, by his a/l/f
Charles G. Beemer, Beneficiary

Laura Magasanik by R. Liff
Charles G. Beemer (seal)

Laura Magasanik by her a/l/f
Charles G. Beemer, Beneficiary

Charles G. Beemer, as Trustee, was vested with the authority by instrument recorded in Book 1233, Page 528, Orange County Registry, to which instrument reference is hereby made, to execute this instrument as attorney-in-fact for and on behalf of Noteholders.

NORTH CAROLINA - COUNTY OF ORANGE

I, Wayne R. Hadler, a notary public in and for said county and state do hereby certify that Ruth C. Brown personally came before me this day and acknowledged that she is Assistant Secretary of Homescape Development Company, Inc., and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by its Assistant Secretary.

Witness my hand and notarial seal, this the 9th day of July, 1996.

My commission expires:
5/22/2000

Wayne R. Hadler
Notary Public

NORTH CAROLINA - COUNTY OF ORANGE

I, Wayne R. Hadler, a notary public in and for said county and state, do hereby certify that Roger D. Hannay and Janet R. Hannay personally appeared before me this day and acknowledged the execution of the foregoing.

Witness my hand and notarial seal, this the 9th day of July, 1996.

My commission expires: 5/22/2000

Wayne R. Hadler
Notary Public

NORTH CAROLINA - COUNTY OF Durham

I, Nancy A. Pierce, a notary public in and for said county and state do hereby certify that Shawn W. Turner personally came before me this

day and acknowledged that he is Asst Secretary of Southland Associates, Inc., Trustee, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by its Asst Secretary.

Witness my hand and notarial seal, this the 9th day of July, 1996.

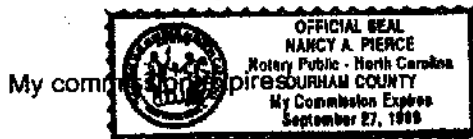


Nancy A. Pierce
Notary Public

NORTH CAROLINA - COUNTY OF Durham

I, Nancy A. Pierce, a notary public in and for said county and state do hereby certify that Charles L. Harrison personally came before me this day and acknowledged that he is Asst Secretary of Central Carolina Bank and Trust Company, Beneficiary, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by its Asst Secretary.

Witness my hand and notarial seal, this the 9th day of July, 1996.



Nancy A. Pierce
Notary Public

NORTH CAROLINA - COUNTY OF ORANGE

I, Wayne R. Hadler, a Notary Public in and for said county and state do hereby certify that Charles G. Beemer, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing and I further certify that Charles G. Beemer, attorney in fact for Ery Magasanik and Laura Magasanik personally appeared before me this day and being by me duly sworn says that he executed the foregoing and annexed instrument for and on behalf of Ery Magasanik and Laura Magasanik and that his authority to execute and acknowledge said instrument is contained in an instrument duly recorded in Book 1233, Page 528, Orange County Registry, and that this instrument was executed under and by virtue of the authority given in said instrument granting him power of attorney; that the said Charles G. Beemer personally acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and on behalf of the said Ery Magasanik and Laura Magasanik.

Witness my hand and notarial seal, this the 9th day of July, 1996.

My commission expires:
5/22/2000

Wayne R. Hadler
Notary Public

BEEMER, SAVERY
& HADLER, P.A.
ATTORNEYS AT LAW
SUITE 900-B, FRANKLIN SQUARE
1618 E. FRANKLIN STREET
P.O. DRAWER 3550
CHAPEL HILL, N.C. 27514

NORTH CAROLINA - ORANGE COUNTY

The foregoing certificate(s) of _____

Wayne R. Hadler and Nancy A. Pierce,

~~Notaries~~ Notaries) Public of the designated Governmental units ~~is~~ (are) certified to be correct. Filed for registra-

tion this the 12th day of July 19 96, at 4:35:32 o'clock, P.M.

in Record Book 1487 Page 553

Return: _____

29
FILED
12 JUL 1996, at 04:35:32pm
Book 1487, Page 553 - 593
Betty June Hayes,
Register of Deeds,
Orange County, N. C.
By: Betty June Hayes Register of Deeds
Assistant/Deputy
Register of Deeds