

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
JOANNE B. TRIMB)
JPMC)
LEXINGTON COUNTY)
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS--
MALLARD LAKES POND #3

THIS DECLARATION, made on the date hereinafter set forth by THREE SEVENTY-EIGHT CO., INC., a South Carolina Corporation, hereinafter referred to as "Declarant,"

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain property in Lexington, County, South Carolina, more particularly described as follows:

All those certain pieces, parcels or lots of land, lying, being and situate in the Town of Lexington, County of Lexington, State of South Carolina, shown and designated on a Bonded Plat of Site Improvements for Mallard Lakes Phase I, prepared by B. P. Barber & Associates, Inc., dated June 2, 1987, and recorded June 22, 1987, in Plat Book 216-G at page 184 in the Office of the Register of Mesne Conveyances for Lexington County as Lots 34, 35, 36, 37, 38, 39, 40, 41 and 42 and Pond #3, all of which are more specifically described, in the aggregate, as follows:

Commencing at an iron in the southeastern corner of the intersection of Deerglade Run and Mallard Lakes Drive and running therefrom along the curve of Deerglade Run a distance of Seventy-nine (79.0) feet, the chord of which runs N 83° 49' 24" E a distance of Seventy-eight and Sixty-eight Hundredths (78.68) feet to an iron; thence turning and running S 83° 09' 29" E a distance of Thirty-five and Seventy-one Hundredths (35.71) feet to an iron; thence turning and running S 79° 06' 33" E a distance of Ninety-three (93.00) feet to an iron; thence turning and running S 72° 45' 19" E a distance of Forty-two and Forty-eight Hundredths (42.48) feet to an iron; thence turning and running along the curve of Deerglade Run a distance of One Hundred Ten (110.0) feet, the chord of which curve runs S 49° 58' 57" E a distance of One Hundred Eight and Five Tenths (108.5) feet to an iron; thence continuing along said same curve a further distance of Twenty-seven and Fifty-seven Hundredths (27.57) feet, the chord of which curve runs S 29° 26' 53" E a distance of Twenty-seven and Fifty-five Hundredths (27.55) feet to an iron; thence turning and running S 25° 19' 56" E a distance of Sixty-two and Forty-three Hundredths (62.43) feet to an iron; thence continuing along said same bearing a further distance of Seventy (70.0) feet to an iron; thence continuing along said same bearing a further distance of Forty (40.0) feet to an iron; thence turning and running along the curve of Deerglade Run a distance of Forty (40.0) feet, the chord of which curve runs S 11° 45' 00" W a distance of Thirty-eight and Ninety-four Hundredths (38.94) feet to an iron; thence continuing along said same curve a distance of Fifty-six and Eighty-one Hundredths (56.81) feet, the chord of which curve runs S 43° 42' 57" E a distance of Fifty-three and Eight Tenths (53.8) feet to an iron; thence continuing along the curve of Deerglade Run a distance of Forty (40.0) feet, the chord of which runs N 80° 49' 06" E a distance of Thirty-eight and Ninety-four Hundredths (38.94) feet to an iron; thence turning and running S 32° 56' 35" E a distance of One Hundred Seventy-five and Sixty-two Hundredths (175.62) feet to an iron; thence turning and running N 44° 29' 57" E a distance of Sixty-eight and Three Hundredths (68.03) feet to an iron; thence turning and running S 07° 27' 13" E a distance of Four Hundred Twenty-six and Fifty-one Hundredths (426.51) feet to an iron; thence turning and

running S 79° 15' 50" W a distance of Forty-seven and Forty-eight Hundredths (47.48) feet to an iron; thence turning and running N 21° 52' 24" W a distance of One Hundred Forty (140.00) feet to an iron; thence turning and running N 89° 40' 20" W a distance of Sixty (60.00) feet to an iron; thence turning and running N 68° 22' 48" W a distance of Eighty (80.00) feet to an iron; thence turning and running N 56° 53' 00" W a distance of Seventy (70.00) feet to an iron; thence turning and running N 59° 32' 31" W a distance of Seventy (70.00) feet to an iron; thence turning and running N 24° 43' 50" W a distance of Seventy (70.00) feet to an iron; thence turning and running N 15° 23' 30" W a distance of Seventy (70.00) feet to an iron; thence turning and running N 26° 24' 59" W a distance of Seventy (70.00) feet to an iron; thence turning and running N 40° 48' 42" W a distance of Seventy-five (75.0) feet to an iron; thence turning and running N 66° 28' 30" W a distance of Eighty (80.0) feet to an iron; thence turning and running S 59° 27' 50" W a distance of Eighty-eight and Ninety-nine Hundredths (88.99) feet to an iron; thence turning and running N 18° 12' 04" W a distance of One Hundred Fifteen and Forty-nine Hundredths (115.49) feet to an iron; thence turning and running N 05° 14' 12" W a distance of Twenty-five and Ninety-four Hundredths (25.94) feet to an iron; thence turning and running N 02° 52' 10" W a distance of Forty-four and Five Hundredths (44.05) feet to an iron; thence turning and running N 02° 52' 10" W a distance of Seventy-four (74.0) feet to an iron; thence continuing along said same bearing a further distance of Seventy-four (74.0) feet to an iron; thence continuing along said same bearing a further distance of Seventy-nine (79.0) feet to an iron at the point of commencement, be all measurements a little more or less.

This being a portion of the property heretofore conveyed to Three Seventy-Eight Co., Inc., by Deed of Sun Properties of Columbia, Inc., dated February 6, 1986, and recorded February 7, 1986, in Deed Book 784 at page 166 in the Office of the Register of Mesne Conveyances for Lexington County.

WHEREAS, the Declarant has developed on the property hereinabove described a residential community known as Mallard Lakes, providing well-planned residential, and open spaces, and desires to impose these Covenants, Conditions and Restrictions upon the lots adjoining Pond #3, as shown on said plat,

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

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Mallard Lakes Pond #3 Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that real property hereinabove described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean and refer to all real property (including the improvements thereon) owned by the Association for the common and exclusive use and enjoyment of the owners and others entitled to the use thereof. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

(See EXHIBIT A.)

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties, together with the improvements thereon, with the exception of the roads and Common Area.

Section 6. "Member" shall mean and refer to every person who is a member of the Association.

Section 7. "Declarant" shall mean and refer to Three Seventy-Eight Co., Inc., a South Carolina corporation, or any person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, if the instrument of sale or assignment expressly so provides, or by exercise of a right of foreclosure of a mortgage given by the Declarant or a deed in lieu

thereof. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Declarant by this Declaration, the Articles of Incorporation or Bylaws of the Association.

ARTICLE II

Property Rights

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

(a) The right of the Association to formulate, publish and enforce rules and regulations regarding the use of the Common Area and to charge reasonable admission and other fees for the use of any recreational facilities located thereon;

(b) The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

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

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his rights of enjoyment of the Common Area and facilities to members of his family, his tenants, or contract purchasers, provided, however, that each such delegate shall reside upon a Lot of such Owner.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area described herein to the

Association, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first Lot, subject only to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and utility and drainage easements specifically reserved or indicated on any recorded plat.

ARTICLE III

Membership and Voting Rights

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

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant, and each shall be entitled to one (1) vote for each Lot owned. If more than one person owns an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(ii) On December 31, 1990.

ARTICLE IV

Covenants 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 accep-

tance 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:

(i) Annual assessments or charges, and

(ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, 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 interest, costs and reasonable attorneys' 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 of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents of the Properties, and in particular for the maintenance of the Common Area, and payment of electric utility charges for streetlights around Tamwood Circle, the payment of any taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the establishment of an adequate reserve for the maintenance, repair and replacement of the improvements in the Common Area, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Amount of Annual Assessments. The maximum annual assessment for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

(a) Up to and including January 1, 1988, the maximum annual assessment shall be One Hundred and no/00 (\$100.00) Dollars per Lot.

(b) The maximum annual assessment for the calendar year

beginning January 1, 1988, and for each calendar year thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed Five (5%) Percent of the maximum annual assessment of the previous year.

(c) The maximum annual assessment may be increased without limit by the affirmative 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.

(d) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the costs thereof per Lot.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including 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. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast

Sixty (60%) Percent of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be One-Half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 6. Uniform Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, or any other basis approved by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment and give every owner subject thereto written notice of each assessment. Due dates shall be established by the Board of Directors. The Association, upon demand at any time and for a reasonable charge, 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 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any monthly assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest chargeable by law in the State of South Carolina on money judgments. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in like

manner as a mortgage of real property, and, in either event, interest, costs and a reasonable attorneys' fee shall be added to the amount of such assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the annual assessment due and payable and collect the same through foreclosure. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after commencement of the foreclosure action; the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to (1) the lien of any first mortgage, and (2) the lien of any unpaid ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Working Capital. Each Owner, upon acquiring title to any Lot, shall be required to pay to the Association a sum equal to one (1) year's assessment, to be maintained in an account for the use and benefit of the Association. Amounts so paid are not be considered as advance payments of regular assessments.

ARTICLE V

Architectural Control

Section 1. Approval Required. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the

nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Board of Directors of the Association or by an architectural committee appointed by the Board. No change shall be made in the color, stain or painting of any structure or door thereof, or balcony or deck thereunto attached, unless so approved.

Section 2. When Approval Deemed Granted. In the event the Board of Directors' said committee shall fail to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to them, approval shall be deemed granted, and this Article will be deemed to have been fully satisfied, provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Board or its committee shall be expected to base its decision.

Section 3. Right to Inspect. The Board or its committee shall have the right, at its election, to enter upon any Lot during the construction, erection or installation of improvements or alterations, to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications, and in a good and workmanlike manner, approving utilized methods and good quality materials.

ARTICLE VI

Use Restrictions

Section 1. Rules and Regulations. 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 the yard space of each lot and the 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. The Properties shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

(a) No Lot shall be used except for private residential purposes of a single family, provided, however, that nothing herein shall prevent Declarant from using any dwelling as a model or sales office. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling;

(b) Nothing shall be kept and no activity shall be carried on in any building or residence or on the Common Area which will increase the rate of insurance applicable to other residential units. No owner shall do or keep anything, or cause or allow anything to be done or kept, in his residence or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or any contents thereof, or which will be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the Common Area or facilities situate thereon.

(c) 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 governmental agencies having jurisdiction shall be observed.

(d) Nothing shall be done in or to any residence or in, to or upon any of the Common Area which will impair the structural integrity of any building, residence or portion of the Common Area, or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) 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 Properties, except that

Declarant or its agents may use any unsold residence for sale or display purposes.

(f) No owner shall display, or cause or allow to be displayed, to public view, any sign, placard, poster, billboard or other identifying name or number upon any residence, building or portion of the Common Area and facilities, except as may be allowed by the Association pursuant to its Bylaws, provided, however, that the Declarant 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 Lot.

(g) No person shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area or facilities except under the direction of and with the express consent of the Association.

(h) The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the residences, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws.

Section 3. Docks and Piers. No dock or pier shall be constructed over any part of the Common Area unless the same shall have been approved in writing by the Board of Directors.

Section 4. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which is or may be or become a nuisance or annoyance to residents within the Properties.

Section 5. Animals. No animals, livestock or poultry of any kind shall be maintained on any Lot or in any dwelling, except that not more than three (3) household pets (including no more than two (2) dogs) may be kept or maintained, provided they are not kept for commercial purposes, and, provided, further, they shall not constitute a nuisance or cause any unsanitary conditions. Dogs, cats and other household pets shall be permitted on the Common

Area, subject to the rules and regulations of the Association, only if control of such pets is maintained by leashes.

Section 6. Resubdivision. No Lot shall be subdivided or reduced in size without the written consent of the Board of Directors of the Association.

Section 7. Outside Antennas. No outside radio or television antennas shall be erected on the Properties, or dwelling units within the Properties, unless and until permissions for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 8. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on the Properties.

Section 9. Parking. All vehicles shall be parked in garages, carports or the driveway area provided on each Lot. No vehicles shall be parked on any street on the Properties except on a temporary basis.

Section 10. Trucks and Similar Vehicles. Parking of trucks, boats, buses, trailers, camping trailers, motor homes and recreational vehicles is prohibited on the Properties or rights-of-way of any public or private street in or adjacent to the Properties.

Section 11. Plants and Trees. Plants and trees now or hereafter located on the Common Area shall be maintained by the Association, may not be removed except by permission of the Board of Directors. No additional plants, trees or shrubs may be planted upon the Common Area without the written approval of the Board of Directors.

ARTICLE VII

Easements

Section 1. Reservation. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats for use by Declarant, utility companies and public agencies in connection with this development, including that