

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

This DECLARATION, made on the 1st day of March, 1982, by BILL J. KAUDIS, INC., a Virginia corporation.

WITNESSETH:

WHEREAS, BILL J. KAUDIS, INC., is the owner of certain property in the City of Poquoson, Virginia, which is shown on that certain plat entitled, "TOWNE VILLAS, City of Poquoson, Virginia", made by C.K. Tudor, Engineer, dated the 1st day of March, 1982, and recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 9, page 474, and more particularly described with reference to said plat as follows:

All those certain lots, pieces or parcels of land situate, lying and being in the City of Poquoson, County of York, State of Virginia, known and designated as SECTION ONE, as shown on that certain plat entitled, "TOWNE VILLAS, CITY OF POQUOSON, VIRGINIA", made by C.K. Tudor, Engineers, Inc., dated March 1, 1982, and recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 9, page 474, to which reference is here made.

WHEREAS, Declarant, as hereinafter defined, will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all the property described above 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 thereof.

These easements, covenants, restrictions and conditions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein, 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 Towne Villas Homes Association, a non-stock Virginia 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 seller, but excluding those having such interest merely as security for the preference of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property herein described, including but not limited to the "common areas", the rights-of-way areas, and all the respective lots shown thereon, and such additions thereto as may be hereinafter be brought within the jurisdiction of the association.

Section 4. "Common Areas" shall mean all real property owned by the association for the common use and enjoyment of the owners. The common area shall be described as the entire properties, save and except the fifty-two Lots, all inclusive, as shown on the aforesaid

recorded plat.

Section 5. "Lot" shall mean and refer to any lettered or plot of land shown upon the aforesaid plat, and which is a part of the Properties, and does not include any of the common area.

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

Section 7. "Declarant" shall mean and refer to Southern Developers, Ltd., its successors and assigns.

## ARTICLE II

### Membership

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by this Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one (1) membership. 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.

## ARTICLE III

### Voting Right

The Association shall have two (2) classes of voting membership: 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 (1) vote for each lot in which they hold the interest required for membership by Article II. When more than one (1) person holds such interest in any lot, all such persons shall be members and the vote of such lots shall be exercised as the majority of such persons among themselves determine (at any meeting of the members, a representation by any such persons that a majority of such persons have agreed as to the vote for such Lot shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote). In no event will more than one (1) vote be cast with respect to any lot.

Class B members 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 II, provided that the Class B membership shall cease and be converted to Class A membership with the happening of either of the following events, whichever occurs first:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) On the 1st day of January , 1986.

#### ARTICLE IV

##### Property Rights

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

subject to the following provisions:

(a) Each owner shall for himself, his immediate family, and his invitees have an easement, right and privilege to use the entire Common Area for pedestrian traffic, recreation and (in such parking areas and vehicular entranceways as may now or hereafter be established) vehicular traffic and parking. The Association shall have the right to promulgate rules and regulations and uniformly limiting the use of such easements to the end that no Owner, in the exercise of his right of easement, shall unreasonably infringe on the right of other Owners.

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage (which terms shall include a deed of trust) the Common Area, and the rights of such mortgagee (which term shall include the beneficiary of a deed of trust) in the Common Area shall be subordinate to the rights of the Members hereunder.

(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 Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3rds) of the votes of the Class A Membership, and two-thirds (2/3rds) of the votes of the Class B Membership, if any, has been recorded, agreeing to such dedication or transfer, and unless a certificate of the Secretary of the Association be also recorded stating that written notice of the proposed action was sent to every Member not less than thirty (30) days

in advance of such effective date of such dedication or transfer.

(d) Suspension of Voting Rights: The right of the Association to suspend the voting rights and rights to use the recreational facilities by an Owner for any period in 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.

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

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 to the Association, free and clear of all liens and encumbrances, except drainage and utility easements, and such easements as may be granted in Article VI, Section 3 hereof, and Article VII hereof.

## ARTICLE V

### Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessment for capital improvements, such assessments to be fixed,

established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the Lot against which each such assessment is made. Sale or transfer of any Lot shall not affect the assessment lien. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties through the ownership, improvements, operation and maintenance of the Common Area and the improvements thereon and the maintenance and improvements of the lawns and landscaping on the Lots, and that easement is hereby established across the exterior of all Lots during reasonable hours for this purpose.

Section 3. Basis and Maximum of Annual Assessments. 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 and 00/100ths DOLLARS (\$300.00) per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner for occupancy, the maximum annual assessment may be increased effective January 1 of each year without a vote of the Membership in conformance with the rise, if any of the Consumer Price Index

(published by the Department of Labor, Washington, D.C.) for the preceding twelve (12) month period. 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 that established by the Consumer Price Index formula by a vote of the Members for the next succeeding three (3) years and at the end of each such period of three (3) years, for each succeeding period of three (3) years, provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, 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. After consideration of current operating and maintenance costs and future needs of the Association, 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 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 described capital improvements 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 (2/3rds) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, 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.

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

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 of this Article the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in said Sections 3 and 4 and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; but in the absence of such action by the Board of Directors, the annual assessment shall be in the amount last

fixed. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, 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 reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date at the rate of ten percent (10%) per annum, plus such penalty as may be established by the Association, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, and in either case interest, costs and reasonable attorney's fees incurred shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on any Lot. Foreclosure of any first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosure (and such lien shall attach to any excess proceeds of the foreclosure) but no such

foreclosure shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Owner agrees that he will maintain the exterior of his building and will maintain his lot in such state of repair as will conform to the general appearance of the surrounding buildings and in accordance with the maintenance rules adopted by the Towne Villas Homes Association.

In the event any owner fails to maintain his premises in accordance with this section, the Towne Villas Homes Associates, after ten (10) days notice to the owner by certified mail, may enter on the lot and make the necessary repairs and charge same to the owner. In the event the owner shall fail to pay the charges within thirty (30) days, the Association shall be entitled to all rights and remedies set forth in Article V hereof.

Section 12. The Declarant shall convey to the Association the title to all streets, street lights, water lines, sewer lines, drainage easements, drainage improvements, including the drainage pond and all related improvements. The Association shall be responsible for the upkeep and maintenance of the herein enumerated improvements and shall

upkeep and maintenance of the herein enumerated improvements and shall make the appropriate assessments to fund the required upkeep and maintenance. The Association shall be responsible for the maintenance of the drainage ditches throughout the project, drainage pond including all the ditches around the perimeter of the parcel.

The Declarant and the Association expressly grant to the City of Poquoson the authority to maintain the culverts and concrete headers serving the development and located under Wythe Creek Road, including any portion thereof located outside the public right-of-way.

## ARTICLE VI

### Use Restrictions

Section 1. Each lot shall be used exclusively for residential purposes and no building shall be erected, altered, placed or permitted to remain thereon other than one (1) single-family dwelling of townhouse type construction not to exceed 2-1/2 stories in height (hereinafter referred to collectively as "DWELLINGS" or severally as "DWELLING"). No garage, carport, or any structure other than a DWELLING shall be erected, altered, placed or permitted to remain on any Lot.

Section 2. No DWELLING shall be permitted on any Lot at a cost of less than THIRTY FIVE THOUSAND AND NO/100THS DOLLARS (\$35,000.00) based on cost of construction prevailing on the date this Declaration is recorded, it being the intention and purpose of this restriction to insure that all DWELLINGS shall be of a quality of workmanship and materials substantially the same or better than that which can be

produced on the date this Declaration is recorded, at the minimum cost stated herein, for the minimum permitted size of a DWELLING. The floor area of any DWELLING, exclusive of one-story open porches, shall not be less than One Thousand Two Hundred (1,200) square feet.

Section 3. Declarant reserves for the benefit of itself and its successors and assigns, the right to use the interior streets, driveways and parking areas hereinafter developed within the property for ingress and egress, in connection with the installation, maintenance, repair and/or replacement of utility lines of every kind and description within said streets and for any other lawful purposes. Declarant further reserves for the benefit of itself and its successors and assigns easements for the installation, repair, maintenance and/or replacement of utility drainage facilities in the areas reserved for and designated "Easement" on the aforementioned plat of any property which may be annexed hereunder, together with the right to use said area for ingress and egress in connection therewith. Declarant reserves unto itself the right to grant easements over, along and through the streets, driveways and parking area for police and fire protection, garbage pickup, mail delivery and any such related services and activities. Declarant further reserves the right before or after the sale of any of the Lots, to transfer and assign any of the rights and easements herein described. Declarant covenants that it shall assign and convey unto the Association any and all remaining rights and easements reserved hereunder upon the sale by Declarant of the last remaining Lot which is hereinafter developed by Declarant.

Section 4. No obnoxious or offensive activity shall be

conducted or permitted on any of the Lots, and nothing shall be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No business or profession of any kind or nature shall be carried on or practiced in any DWELLING without the express written consent of the Declarant.

Section 5. No structure, trailer, tent, shack, barn, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 6. Pets and Domestic Animals. No pet or domestic animal shall be tied or housed outside of the residence or enclosed patio of any Owner and no Owner shall permit any pet or domestic animal to run loose on the Properties or to otherwise constitute a nuisance, including but not limited to, barking, or in creating an unsanitary condition upon any front yard or Common Area. The Board of Directors shall from time to time, as necessary, promulgate additional rules and regulations regarding the size, number, activities and control of pets and domestic animals upon the properties.

Section 7. No sign of any kind shall be displayed to the public view on any Lot, except one (1) professional real estate sign of not more than six square feet, advertising a Lot, in any DWELLING constructed thereon, for sale or for rent.

Section 8. No Lot shall be used or maintained as a dumping ground for rubbish or scrap. Trash, garbage or other waste shall not be kept on any Lot except in covered sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 9. Recreation Facilities. The Board of Directors shall promulgate Rules and Regulations for the use, security, maintenance, cleaning and operation of the swimming pool, tennis courts and other recreation areas and facilities in Towne Villas or in any annexed areas.

Section 10. Anything in Sections 1 and 7 hereof to the contrary notwithstanding, during the period of time while Declarant, or any builder to whom Declarant has sold any Lots, is conducting the business of constructing and selling DWELLINGS, Declarant, or such builder with the consent of Declarant, may maintain such model DWELLINGS, sales offices, signs and other offices and activities as Declarant or such builder shall deem advisable in connection with such business.

Section 11. The side wall of each DWELLING constructed along the side line of any Lot abutting the side line of another Lot shall be a party wall, and the owners of each such abutting Lot shall have an easement to use such wall as support for the DWELLING constructed or to be constructed on his respective Lot. Declarant, and any assignee to whom such easement of support is expressly assigned, reserves the right, whether or not such easement is expressly reserved in any deed of conveyance of any Lot, to grant such easement of support to the purchaser of any Lot. The cost of maintaining any such party wall shall be borne equally between the abutting Lot owners using such party wall for support and so long as such wall is so used.

Section 12. The Association shall have an easement to maintain all areas not enclosed by a fence or included in a privacy area, however, this Section does not impose a duty to maintain such area.

Section\_13. All easements, right and other benefits reserved by Declarant shall inure to the benefit of Declarant's successors and assigns.

Section\_14. No inoperable, unlicensed or abandoned motor vehicle of any type shall be parked or stored upon the Properties and no portion of the Properties shall be used for the repairs, overhauling, painting, or work of similar nature of any motor vehicle.

All recreational equipment, including boats, trailers and campers shall be parked in the area designated for such recreational equipment or parked behind the dwelling out of general view if permitted by the Association.

Section\_15. All garbage shall be kept in covered containers out of public view unless such containers are set out for collection. Such containers shall be returned to their usual place of storage promptly after the garbage has been collected.

Section\_16. No outside clothes line or drying line shall be erected where it is exposed to public view. All such lines must be located inside a privacy fence out of public view.



## ARTICLE VII

### Easements

Southern Developers, Ltd., and any assignee to whom such right is expressly assigned, reserves the right, whether or not such right is expressly reserved in any deed of conveyance of any part of the Common Area to the Association, to grant easements over, along, under and through the Common Area to the City of Poquoson, or any utility company for drainage or utility purposes. This includes all types of service easements, including police, fire, postal, ambulance and school bus pickup.

## ARTICLE VIII

### General Provisions

Section 1. Enforcement. 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 hereinafter imposed by the provisions of this Declaration. Failure by any Member 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 statute, ordinance 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 and shall inure to the

benefit of, and be enforceable by, the Association, or any Member, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first thirty (30) year period by instrument signed by not less than ninety percent (90%) of the Lot Owners. Any amendment must be recorded in the Circuit Court for the County of York, Virginia.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administrator and/or the Veterans Administration: Annexation of additional properties, dedication of any Common Area to public authority, and amendment of this Declaration of covenants, Conditions and Restrictions.

Section 5. Public and Emergency Vehicles. The Association shall permit access to paved interior streets and parking areas comprising a part of its Common Area by public service type vehicles, including without limitation, police and fire department vehicles, other municipal vehicles of rescue squads, ambulance companies and utility companies, and the Association shall not promulgate any rules or regulations which will materially interfere with the utilization of the said interior streets and parking areas by such vehicles.

## ARTICLE IX

### Architectural Control

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, including changing the color scheme of the exterior, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or by an architectural committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, that notwithstanding anything contained in this Article to the contrary, the provisions of this Article shall not apply to the initial development of any of the Lots.

## ARTICLE X

### Annexation of Additional Properties

The Association may, at any time, annex additional residential properties and Common Areas to the Property described in the Preamble of the Declaration, and so add to its membership under the provisions

of the Articles herein, provided that any such annexation shall have the assent of two-thirds (2/3rds) of the Class B membership, if any.

If within five (5) years of the date of incorporation of the Association, the Declarant shall develop additional lands within the boundaries of that parcel more particularly described as:

Sections One, Two and Three, Towne Villas, City of Poquoson, Virginia, then all or a part of such additional lands may be annexed to said properties without the consent of the Class A members, provided, however, that the development of the additional lands described in this Section as are annexed shall be in accordance with a general plan submitted to the FHA and the VA with the processing papers for the first Section. Detail plans for the development of additional lands must be submitted to the FHA and the VA prior to such development. If either the FHA or the VA determines that such detailed plans are not in accordance with the general plan on file and such agency or agencies so advises the Declarant, the development of the additional lands must have the assent of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy 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.

At this meeting the presence of members or of proxies entitles to cast sixty percent (60%) of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum at any such

subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

IN WITNESS WHEREOF, BILL J. KAUDIS, INC. has caused this Declaration to be signed in its name and behalf by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, thereunto duly authorized, this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

ATTEST:

BILL J. KAUDIS, INC.

By \_\_\_\_\_

Secretary

President

STATE OF VIRGINIA

City of Newport News, to-wit:

The foregoing instrument was duly acknowledged by \_\_\_\_\_

\_\_\_\_\_, President and \_\_\_\_\_

Secretary, of BILL J. KAUDIS, INC., this the \_\_\_\_\_ day of \_\_\_\_\_

1982.

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_