

23-42-471  
JUL 25 1973  
CLERK OF COURT  
LEXINGTON COUNTY  
WAS. R. SHEALY

23-42-471

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION made on the date hereinafter set forth by Gray Construction Company, Inc., a South Carolina corporation, hereinafter referred to as Declarant.

W I T N E S S E T H:

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

All that piece, parcel or tract of land, situate, lying and being in the County of Lexington, State of South Carolina, being more particularly shown on Plot Plan of The Oaks Townhouses, dated August 10, 1972, revised June 26, 1973, prepared by Palmetto Engineering Company, for Gray Construction Company, Inc., recorded in Plat Book 131-G at page 6 in the Office of the Clerk of Court for Lexington County.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Oaks Homes Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including

For Amendment to Declaration of Restrictions relative to within 23-42-471

contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All that piece, parcel or tract of land, being more particularly shown on Plot Plan of The Oaks Townhouses, dated August 10, 1972, revised June 26, 1973, by Palmetto Engineering Company, recorded in Plat Book 131-G at page 6 in the Office of the Clerk of Court for Lexington County, as the shaded areas.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Gray Construction Company, Inc., a South Carolina corporation, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.

## ARTICLE II

### 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) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

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

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be effective unless an instrument signed by at least two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) the right of individual owners to the exclusive use of parking spaces as provided in this Article.

(e) the right of the Association, with the assent of two-thirds (2/3) of each class of members, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided, however, that the rights of any such mortgagee shall be subordinate to the rights of the Owners.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and

convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign one (1) vehicle parking space for each dwelling. No junk-type cars will be allowed on the premises.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

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

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

Class "A": Class "A" members shall be all Owners, with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class "B": The Class "B" member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The 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 equal the total votes outstanding in the Class "B" membership, or;

(b) on December 31, 1974.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, 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 delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvements and maintenance of properties, services and facilities devoted to the purpose and related to the exterior maintenance of the homes situated upon the Properties, or for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes

assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Fifteen and No/100ths Dollars (\$15.00) per month.

(a) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner 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 three (3%) per cent of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvements upon the Common Area, including 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 the 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 Section 3 or 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 of proxies entitled to cast sixty per cent (60%) of all the votes in each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $1/2$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except as hereinafter provided in Section 7, all annual assessments shall be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the 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 period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge,

furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

Section 8. Effect of Nonpayment of Assessments:

Remedies for the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six per cent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property; interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien provided for herein shall be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

Section 11. Exempt Property. All property dedicated to,

and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of South Carolina, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior additions 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 surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) 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 that nothing therein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by the FHA.

#### ARTICLE VI

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not

inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

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

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each lot at all reasonable times to perform maintenance as provided in this Article.

In the event that the need for maintenance, repair, or replacement is caused through the willful, or negligent act of the Owner, his family, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles and smoke, as the foregoing are defined and explained in South Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling, not to exceed two and one-half stories in height.

Section 2. Dwelling Specifications. No dwelling shall be permitted costing less than Twelve Thousand Dollars (\$12,000.00) based on current building costs and having a ground area of the

main structure, exclusive of one-story open porches, of less than 900 square feet for a one-story dwelling, nor less than 450 square feet for a dwelling of more than one story.

Section 3. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained, provided they are not kept or maintained for commercial purpose.

Section 5. Outside Antennas. No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 6. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot within the Properties other than between the hours of 8:00 o'clock A. M. and 5:00 o'clock P. M. on Monday through Friday, and 8:00 o'clock and 1:00 o'clock P. M. on Saturdays (except when any such day shall fall upon a holiday) and clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored out of sight, other than during the times aforementioned.

#### ARTICLE IX

##### EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material

shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of a twenty (20) year period from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

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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 Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned GRAY CONSTRUCTION COMPANY, INC. has caused this instrument to be executed by its President, William Charles Gray, this 24th day of July, 1973.

WITNESS:

Forrest K. Abbott

GRAY CONSTRUCTION COMPANY, INC.

Barbara P. Harmon

By: William Charles Gray (L.S.)  
William Charles Gray,  
President

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

PERSONALLY APPEARED before me BARBARA P. Harmon who being duly sworn, deposes and says that she saw the within-named Gray Construction Company, Inc. by William Charles Gray, its President, sign, seal and as his act and deed deliver the within-written instrument for the uses and purposes therein mentioned, and that she with FORREST K. ABBOTT witnessed the execution thereof.

SWORN to before me this  
24th day of July, 1973.

Forrest K. Abbott (L.S.)  
Notary Public for South Carolina

Barbara P. Harmon

My Commission expires: 7-7-74

Recorded this 25th day of July A.D. 1973 at 1:30 PM  
CHARLES R. SHEALY, C.C.P. & D.S.

FILED

OCT 26 10 53 AM '73

STATE OF SOUTH CAROLINA )  
LEXINGTON COUNTY )  
COUNTY OF LEXINGTON )  
AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS RECORDED IN DEED BOOK 23-L AT PAGE 471 IN THE OFFICE OF THE CLERK OF COURT FOR LEXINGTON COUNTY.

WHEREAS, on the 24th day of July, 1973, Gray Construction Company, Inc. imposed restrictive covenants and conditions on certain lots of land as shown on Plat recorded in Plat Book 131-L at page 6 in the Office of the Clerk of Court for Lexington County by Declaration of Covenants, Conditions and Restrictions recorded in Deed Book 23-L at page 471 in the Office of the Clerk of Court for Lexington County, and;

WHEREAS, according to Article X, Section 4 of said Declaration of Covenants, Conditions and Restrictions, the Federal Housing Administration has approved and recommended that said Declaration of Covenants, Conditions and Restrictions be amended to Article X, Section 3, thereof, and;

WHEREAS, Article X, Section 3 of said restrictive covenants and conditions provides that said instrument may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) per cent of the Lot Owners, and;

WHEREAS, Delmar Bruce Dorman and Gray Construction Company, Inc. represent ninety (90%) per cent of the Lot Owners, now therefore:

KNOW ALL MEN BY THESE PRESENTS, that Delmar Bruce Dorman and Gray Construction Company, Inc. do hereby amend the above mentioned Declaration of Covenants, Conditions and Restrictions by amending Article X, Section 3 to read as follows:

"The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date of the recording of the above-mentioned Declaration of Covenants, Conditions and Restrictions (July 25, 1973), after

which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety (90%) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded."

IN WITNESS WHEREOF, the parties have affixed their Hands and Seals this 25th day of September, 1973.

WITNESS:

Grace E. Hamilton

Delmar Bruce Dorman  
Delmar Bruce Dorman

Larry M. Sipes

GRAY CONSTRUCTION COMPANY, INC.  
By: William Charles Gray  
William Charles Gray,  
President

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

PERSONALLY APPEARED before me Larry M. Sipes

who being duly sworn, deposes and says that she saw the within-named Delmar Bruce Dorman and Gray Construction Company, Inc. by William Charles Gray, its President, sign, seal and as their acts and deeds deliver the within written instrument for the uses and purposes therein mentioned, and that she with Grace E. Hamilton witnessed the execution thereof.

SWORN to before me this )

25 day of September, 1973. )

Henry Paul Munn (L.S.) )  
Notary Public for South Carolina )

My Commission expires: 11-20-1982 )

Larry M. Sipes

Recorded this 26th day of October A.D. 1973 at 10:53 AM  
CHARLES R. SHEALY, C. C. P. & Q. S.