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# **ORIGINAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on this 10th day of January, 1985, by TABB LAKES. LTD., a Virginia corporation, hereinafter referred to as "Declarant;"

WITNESSETH:

WHEREAS, Declarant is the owner of a certain residential subdivision (the "Property") situate in the County of York, Virginia, which is more particularly described in Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant desires to provide for the orderly development of the Property and to provide a general plan therefor to insure the preservation of values and the aesthetic character of the Property; and

WHEREAS, Declarant will convey the Property, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the property shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restriction, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements restrictions, reservations, covenants and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property 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 Tabb Lakes Homes Association Inc., its successors and assigns.

**Section 2.** "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the conunon use and enjoyment of the Members of the Association. The Common Area to be owned by the Association before the conveyance of the first Lot to an Owner occupant is described as the entire Property as shown on plat of "Tabb Lakes Section One, County qf York, Virginia," by C. K. Tudor, Engineers, and as stated in Exhibit A less and except those portions shown as numbered lots and streets.

**Section 3.** "Lot" shall mean and refer to any numbered lot on a recorded subdivision plat of the Property and does not include the Common Area.

**Section 4.** "Member" shall mean and refer to every person or entity who holds membership in the Association.

**Section 5.** "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 Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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## **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. 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 a Lot shall be the sole qualification for membership.

## **ARTICLE III**

### **VOTING RIGHTS**

The Association shall have one class of voting membership; which shall be all those Owners as defined in Article II with the exception of the Declarant. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article II hereof. When more than one person holds such interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as the majority of such persons among themselves determine. Where multiple ownership of a single lot occurs and no majority can be asserted to vote, there will be no vote allowed as to that lot or lots.

## **ARTICLE IV**

### **PROPERTY RIGHTS**

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

- a. the right of the Association to limit the number of guests of Members;
- b. (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- c. the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area.
- d. the right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member 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 rules and regulations;
- e. 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 an instrument signed by Members entitled to cast more than two-thirds (2/3) of the votes of the Membership 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.

**Section 2. Delegation of Use.** Any Member may delegate, in accordance with the Association's

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Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. No Alienation of Common Area. The Common Area shall always remain the property of the Association and no vote or other action of the Association shall be deemed sufficient to alienate, transfer or assign all or part of the Common Area to any third party.

### ARTICLE V

#### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, and is hereby obligated, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorneys fees, shall be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due and 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 the purpose of promoting the recreation, health, safety, welfare and for the ownership. Improvements, operation and maintenance of the Common Area and the improvements thereon.

Section 3. Basis and Maximum of Annual Assessments. \*\*\* DELETED under 30 January 1990 amendment \*\*\*

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of Members who are voting in person 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.

Notwithstanding the above, the Association shall be required without approval of the Association or its members to effect certain capital repairs or improvements under the provisions of a certain Preservation of Common Area and Maintenance Agreement, dated January 10, 1985, between the Association and County of York, Virginia, copy of which is attached hereto.

Section 5. 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 V, the presence in person of Members entitled to cast a majority 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 Sections 3 and 4, 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.

Section 6. 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

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conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period 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 assessment on a specified Lot has been paid. A reasonable charge may be made by the Board for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment which is not paid when due shall be deemed delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment may bear interest from the due date at a rate not to exceed ten percent (10), and the Association may bring an action at law against the Owner personally obligated to pay, when it was incurred, the same 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 8. 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. Sale or transfer of any Lot shall not affect the assessment lien. Foreclosure of any such first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosures (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 9. Exempt Property.** The following property, subject to the Declaration, shall be exempt from the assessment created therein: (a) all Property dedicated to and accepted by a local public authority and (b) the Common Area.

### **ARTICLE VI**

#### **PROHIBITED USE RESTRICTIONS**

The Declarant does hereby declare, covenant and agree for itself and its successors and assigns that all said Lots are shown on the said plat to be hereafter held and sold subject to the following conditions and restrictions, to wit:

1. All of said numbered lots shall be residential sites, and used solely for residential purposes and no structure shall be erected upon any one residential site other than one detached single family dwelling with the usual outbuildings.
2. No noxious, or offensive trade or activity shall be carried on upon any lots, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
3. None of said lots shall be resubdivided for the purpose of making additional building sites.
4. No trailer, basement, tent, shack, garage, barn, or outbuilding erected on the tract shall be used at any time as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
5. Any building, the construction of which is commenced on any such lots, shall be completed and

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finished in a completely finished condition within one year of such construction and the completion thereof shall include all appropriate construction and completion so that it is consonant with a residential subdivision.

6. No animals, livestock, or poultry of any kind may be raised, bred or kept on any lot, except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

7. Any and all dwellings constructed on such lots shall be required to have a minimum square foot area, exclusive of porches and garages, in accordance with the following:

- a. The lots mentioned in Paragraph B below shall have a minimum of 1,500 square feet for a one story dwelling and minimum of 1,700 square feet for any dwelling of more than one story.
- b. All other lots shall have a minimum of 1,400 square feet for a one story dwelling and a minimum of 1,600 square feet for any dwelling of more than one story.

8. As to those lots which border on the lake as shown on the plat, Lots 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, there is to be conveyed as a right appurtenant to each said lot, the right to use said lake in common, the said land subject to the following limitations and conditions.

- a. That the use thereof be such as to not create any nuisance or excessive noise and the use of any gasoline or any other motor creating similar noise is expressly prohibited.
- b. That the construction or use of any pier, dock or float is limited so that any such pier, dock or float shall not be constructed or used at any point where it would extend more than five (5) feet out from the shore line.
- c. That the right to use subject lake in common with other owners is limited to such portions of the lake as are not within 20 feet of the shore line, these portions of the lake which are within 20 feet of the shore are specifically reserved unto each individual lot owner.
- d. That the common right is granted to the owners jointly to raise subject lake over and above its original level a maximum of twenty-four (24) inches.
- e. That the right conveyed herein contemplates that the use of the property shall be subject to actions that may be necessary to maintain the lake esthetically.
- f. Any bulkhead constructed by any lot owner shall not extend more than 12' in height above the surface of subject lake.

9. No dwelling constructed on any lots in said subdivision shall be constructed without a central heating system.

10. No sign of any kind shall be displayed to the public view of any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

11. All lots shall, at all time, be maintained in a clean neat condition with all growing materials, including grass, weeds, etc., but not including shrubbery, trees, etc., to be kept not more than five (5) inches high at any time.

12. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the

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storage or disposal of such material shall be kept in a clean and sanitary condition, and all such equipment together with all garbage containers shall be enclosed in a structure or shall be installed underground.

13. Yard enclosures. No fence shall be erected, placed or permitted to remain on any lot nearer to any street than the front of the residential structure built thereon.

14. No carport or structure of similar design shall be constructed on any of subject lots.

15. All residences constructed on such lots shall have a minimum side set back line of ten (10) feet on each side thereof.

16. Any and all residences constructed thereon shall have a pitch roof with a minimum pitch of four (4) to twelve (12) feet.

17. Any and all driveways located on any of such lots shall be of asphalt or concrete construction.

18. Use and enjoyment of the lake, which is hereby deemed to be a Common Area and other Common Areas as shown on the aforesaid plat, are governed by this Declaration and it is understood that the Tabb Lake Homes Association has the right to promulgate reasonable rules and regulations controlling the use and enjoyment thereof, to be controlling on all Lot Owners, their tenants, successors and assigns. That as to the lake or lakes embodied within the boundaries of the property shown on said plat. they are to be considered Common Areas, however, only those Lot Owners whose Lots abut the lake and are contiguous thereto have the right to maintain on or place into the lake boats and other watercraft.

19. All buildings constructed on subject lots shall be serviced with underground utility service including electric and telephone, and shall be served by a minimum of 150 amp electric service.

20. It is further provided that prior to any construction on any of the lots shown on subject subdivision plan, the plat, plans, building drawings and building specifications must be first approved by Tabb Lakes, Ltd., its successors and assigns, or designees.

21. Invalidation of any one of the covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

### **ARTICLE VII**

#### **EASEMENTS**

**Section 1.** An easement is hereby granted within the Common Area to the Members for pedestrian ingress and egress, and to the Associations the County of York and the Declarant for emergency vehicle ingress and egress, scenic easements as shown on recorded plats, and for installation, repair, and maintenance of utilities, sidewalks and landscaping. In addition, the Declarant shall have the right (but not the obligation) during the period of development, to install any utilities, landscaping and sidewalks, which it deems necessary within the Common Area and the Association shall be obligated to repair and maintain any utilities, sidewalks, and landscaping so installed.

### **ARTICLE VIII**

#### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Association, and the Owner

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of any Lot included in the Property. their respective heirs, legal representatives, successors and assigns.

**Section 2. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall automatically be 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 percent (90%) of the Owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be recorded.

**Section 3. Remedies.** 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 hereinafter imposed by the provisions of this Declaration.

**Section 4. Non-waiver.** The failure of the Association, or the Owner of any Lot, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5. Damages Not Adequate.** Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as other available relief at law or in equity.

**Section 6. Intent.** The Association to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation, and enforcement of the provisions of this Declaration. In adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules and regulations, the Association shall take into consideration the best interests of the Owners of the Lots to the end that the Property shall be preserved and maintained as a high quality community.

**Section 7. Severability.** Invalidation of any one of these covenants or restrictions by statute, ordinance or court order shall in no wise affect any other provision which shall remain in full force and effect.

### **Section 8. Miscellaneous.**

- a. The headings of the Articles herein are for convenience only and shall not affect the meanings or interpretation of the content thereof.
- b. No violation of any of these restrictions shall defeat or render invalid the lien of any mortgage or deed of trust which is a lien upon any portion of the Property; provided, however, that any mortgage (or beneficiary under a deed of trust) in actual possession, or any purchaser at any mortgagee's or foreclosure sales shall be bound by and subject to these restrictions as fully as any other Owner of any Lot.
- c. Each Grantee accepting a deed, lease or other instrument conveying any interest in their Lot, whether or not the same incorporates or refers to those restrictions, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by those restrictions.
- d. No restrictions herein are intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

IN WITNESS WHEREOF, Tabb Lakes, Ltd. has caused this Instrument to be signed, this 10th day of

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December, 1984.

TABB LAKES, LTD

**EXHIBIT "A"  
LEGAL DESCRIPTION OF TABB LAKES SECTION ONE**

All that certain piece or parcel of land situate, lying and being in the County of York, Virginia, known and designated as TABB LAKES SECTION ONE, on that certain plat entitled, "TABB LAKES SECTION ONE COUNTY OF YORK, VIRGINIA,?" dated December 10, 1984, and made by C. K. Tudor Engineers, Inc., Newport News, Virginia, and recorded on March 6, 1985 in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 10, pages 95 and 92, to which reference is here made.

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