

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS BS 5
OF
SOUTH BLUFFS HOMEOWNERS ASSOCIATION, INC.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SOUTH BLUFFS HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made on this 4th day of June, 1990 by South Bluffs Development Associates, a Tennessee general partnership, consisting of H T Devco, Inc., a Tennessee corporation, R & D Properties, Inc., a Tennessee corporation, and Belz Investment Company, Inc., a Tennessee corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the developer of certain Property in Shelby County, Tennessee, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

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

WHEREAS, Declarant has deemed it desirable to create an association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created for the efficient preservation and maintenance of the values and amenities of the Property; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Tennessee as a non-profit, non-stock corporation, South Bluffs Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the following

easements, restrictions, covenants, reservations, liens and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions, reservations, liens and conditions shall run with the Property and 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. "Apartment Owner" shall mean and refer to the owner of the apartments to be constructed within the area marked "Future Multi-family Residential" on Sheet 1 of the Final Plan of South Bluffs attached hereto as Exhibit "B", ("Final Plan") which Final Plan is of record as instrument No. BR 9260 and filed in Plat Book 131, Page 12 in the Register's Office of Shelby County, Tennessee (the "Register's Office").

Section 2. "Assessments" shall mean those levies and assessments which each Owner of a Lot agrees to pay to the Association pursuant to Articles VI and IX hereof.

Section 3. "Association" shall mean and refer to South Bluffs Homeowners Association, Inc., its successors and assigns. Bylaws of the Association are attached hereto as Exhibit "C" and made a part thereof, as amended from time to time.

Section 4. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 5. "Common Area" shall mean all real property (including the

Improvements thereto) owned by the Association (or by Declarant prior to conveyance of the Common Area pursuant to Article IV, Section 4) for the common use and enjoyment of the Members of the Association and the Apartment Owner and its respective tenants, guests and invitees or the guests and invitees of such tenants. The Common Area to be owned by the Association originally shall be all of the Property (including any additions thereto) not included in the legal description of the Lots and not defined as Limited Common Area hereinbelow.

Section 6. "Declarant" shall mean and refer to South Bluffs Development Associates, a Tennessee general partnership, consisting of H T Devco, Inc., a Tennessee corporation, R & D Properties, Inc., a Tennessee corporation and Belz Investment Company, Inc., a Tennessee corporation, or the duly appointed agent or representative, successors and assigns of Declarant.

Section 7. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, together with any supplement or amendment hereto recorded in the Register's Office.

Section 8. "Improvements" shall mean the structures, walls, pavements, plantings, and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event that by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lies outside that Lot, then an easement of use shall apply thereto in favor of the Lot on which the Improvements were intended.

Section 9. "Limited Common Area" shall mean all real property upon

which are constructed the streets and lanes marked by cross-hatching on Exhibit "D" attached hereto. Use of Limited Common Area shall be restricted to Owners and their guests and invitees.

Section 10. "Lot" shall mean and refer to one of Lots 1 -58 as shown on Sheet 2 of the Final Plan and to the Lots on any additions to the Property and the Improvements on said Lots, reference being made to the Warranty Deeds conveying individual Lots for an exact description of said Lots.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association and shall include the Declarant so long as it retains ownership of any Lots in the Property.

Section 12. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of a fee simple title to any Lot, including Declarant to the extent it owns any Lots but excluding those having such interest merely as security for the performance of an obligation ("the Mortgagee"), provided that if the Mortgagee shall succeed to title to a Lot, then the Mortgagee shall be an Owner for purposes hereof.

Section 13. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 14. "Property" shall mean and refer to that certain real property described on Exhibit "A" attached hereto. Hereafter, at the election of the Declarant exercised on or before seven (7) years from the date hereof, which shall be evidenced by an appropriate written certificate signed by Declarant and filed of record in the Register's

Office, the tracts described on Sheet 1 of the Final Plan as "Future Residential" and "Area A" and "Area B" ("Additional Property"), may be brought within the jurisdiction of the Association and subjected to this Declaration, provided that no Additional Property can be subjected to this Declaration and the jurisdiction of the Association if the result thereof is to materially increase an Owner's Assessment unless the inclusion of such Additional Property has been previously approved in writing by at least fifty-one (51%) percent of all Owners, such consent not to be unreasonably withheld. In the event Additional Property is subjected to this Declaration as provided above, the amount of the Assessment for each Lot contained within the Additional Property shall be initially determined by Declarant, and thereafter Assessments for all such Lots and the voting rights attributable to such Lots shall be governed in accordance with the provisions of this Declaration. Anything to the contrary notwithstanding, no Additional Property shall be subjected to this Declaration by Declarant until all Improvements to be constructed thereon shall have been substantially completed. All such Improvements to be constructed within the Additional Property shall be consistent with the Improvements on the Property in terms of architectural design and quality of construction. The Owners of any Lots located within the Additional Property shall be entitled to the same rights with regard to the Common Area and Limited Common Area as are afforded to all Lot Owners.

ARTICLE II

MEMBERSHIP

Every Owner of a Lot which is subject to assessment by the

Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an ownership 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.

Declarant shall become and remain a member of the Association upon the recording of this Declaration in the Register's Office. At such time as Declarant has conveyed all of the Lots on the Property, Declarant shall cease to be a member of the Association, thus relieving the Declarant of any liability or obligation to the Association. Upon the withdrawal from membership by Declarant, the covenants, conditions and restrictions of this Declaration shall no longer apply as to the Declarant; however, they shall continue to govern and control the Association and its Members.

ARTICLE III

VOTING RIGHTS

Section 1. Voting. A Member of the Association shall be entitled to one (1) vote for each Lot owned by the Member. When more than one person holds an interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as the Owners of such Lot shall determine, but in no event shall there be more than one (1) voter with respect to any Lot. To the contrary notwithstanding, any condominium unit owners voting through their Condominium Association Chairman or his designated representative shall be entitled and limited to the total number of votes attributable to the Lots upon which the

Condominium is built.

Declarant shall be entitled to twice the number of votes for each Lot owned by it until the earlier of (i) the expiration of four (4) months after seventy-five (75%) percent of all Lots included in the Property (including any Lots within Additional Property subjected to the provisions hereof) shall have been initially conveyed by Declarant or (ii) seven (7) years after the first Lot is conveyed by Declarant, after which time Declarant shall be entitled to one (1) vote per Lot for each Lot which Declarant then still owns.

At every meeting of the Association, the Members shall have the right to cast their votes as specified herein on each question. The votes representing a fifty-one percent (51%) majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of any statute or ordinance or of the corporate Charter or this Declaration or the Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors of the Association, whose Lot is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or more than fifteen (15) days in default under any of the terms, covenants, conditions, restrictions or any other provisions contained herein.

Section 2. Proxies. A Member may appoint any other Member or any other person permitted by law or by the Bylaws as his proxy. Any proxy

must be writing and must comply with all requirements imposed by law or by the Association's Bylaws.

Section 3. Quorum. Subject to the provisions of Article IX, Section 8 set forth hereinbelow, the presence, either in person or by proxy, of at least fifty-one percent (51%) of the total votes of the Property entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Association. If the number of votes eligible to be cast drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment of Limited Common Area.

Every Owner shall have a right and easement of enjoyment in and to the Limited 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 in the use of the Limited Common Area.
- (b) The right of the Association to borrow money for the purpose of improving the Limited Common Area and facilities, and in aid thereof to mortgage said Limited

