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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR
SUNSET BAY**

THIS DECLARATION made this 22 day of Feb., ²⁰⁰⁰~~1998~~, by SUMMIT ONE, L.L.C., an Arkansas Limited Corporation (herein "Developer").

WITNESSETH:

WHEREAS, Developer, as owner of certain real property located in Benton County, Arkansas, desires to create thereon a development known as Sunset Bay (sometimes herein "Development"), the first phase of which shall be constructed upon a portion of the real property located in Benton County, Arkansas, as more particularly described on the recorded Plat of said subdivision attached hereto (herein "Property"), and subsequent phases of which may be constructed upon portions of contiguous real property; and

WHEREAS, Developer desires to provide for the preservation and enhancement of value when and as the Property is improved and desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties (as hereinafter defined) and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter.

NOW, THEREFORE, the Developer subjects the real property described in Article III and such additions thereto as may hereafter be made, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as the "Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the Property and each Lot thereof.

110 S. 20th St.
Rogers AR. 72756
936-7200

**ARTICLE I
DEFINITIONS**

FILED FOR RECORD
At 12:57 O'Clock PM

FEB 22 2000

SUE HODGES
Clerk and Recorder
BENTON COUNTY, ARK

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01 Architectural Control Committee: "Architectural Control Committee" shall mean and refer to that Committee formed and operated in the manner described in Article III hereof.

1.02 Association: "Association" shall mean SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., an Arkansas nonprofit corporation.

1.03 Board of Directors or Board: "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.04 Boat Slip or Boat Slips: "Boat Slip" or "Boat Slips" shall mean and refer to an individual Boat Slip or multiple Boat Slips within the Community Boat Docks.

1.05 Bylaws: "Bylaws" shall mean the Bylaws of the Association.

1.06 Common Expense: "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.07 Common Properties: "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as a "Common Property". All Common Properties are intended for and are to be devoted to the common use and enjoyment of the Owners and their guests. The Common Properties shall include but not be limited to the entryway, including all roads in the Development, street lights, recreation and conservation areas, island areas bounded by streets, easement areas and signs.

1.08 Community Boat Docks: "Community Boat Docks" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Boat Docks". The term "Community Boat Docks" shall also include the boat docks acquired by the Association. The Community Boat Docks are intended for and are to be devoted to the exclusive use and enjoyment of the Owners who desire to use this amenity of the Development.

1.09 Community Sewer System: "Community Sewer System" shall mean and refer to the sewer collection system (s) and the sewage treatment systems and those tracts of land and any

improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Sewer System".

The Community Sewer System and improvements thereon are intended for and are to be developed to the exclusive use of the owners whose lots are to be served by this system.

1.10 Covenants: "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.11 Declaration: "Declaration" shall mean this Declaration of Covenants and Restrictions for SUNSET BAY and any Supplemental Declaration filed pursuant to the terms hereof.

1.12 Developer: "Developer" shall mean SUMMIT ONE, LLC, an Arkansas Limited Liability Corporation, and its successors and assigns.

1.13 Improved Lot: "Improved Lot" shall mean and refer to any Lot upon which a legally habitable residence exists.

1.14 Lot: "Lot" shall mean and refer to any parcel of land located within the Property which is used or intended for use as a site for a legally habitable dwelling as shown upon any recorded final subdivision plat of any part of the Property.

1.15 Master Plan: "Master Plan" shall mean and refer to the conceptual land plan for the future development of SUNSET BAY. Since the concept of the future development of the undeveloped portions of SUNSET BAY is subject to continuing revision and change at the discretion of the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to future development. THIS DECLARATION DOES NOT DESIGNATE ANY PROPERTY FOR ANY PARTICULAR USE, SUCH DESIGNATION TO BE MADE BY SEPARATE SUBSEQUENT DECLARATION OR BY RECORDED PLAT WITH SUCH DESIGNATION CLEARLY AND UNEQUIVOCALLY SHOWN THEREON. THE DEVELOPER SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN.

1.16 Member or Members: "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.17 Owner: "Owner" shall mean and refer to the Owner as shown by the real estate records in the office of the Recorder, whether it be one or more persons, firms associations, corporations, or other legal entities, of fee simple title to any Lot or Unsubdivided Land.

1.18 Property or Properties: "Property" or "Properties" shall mean and refer to the Property described in Section 2.01 hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions hereof and may include: (1) Residential Lots; (2) Unsubdivided Land owned by the Developer or other Owners; and (3) Common Properties.

1.19 Record or To Record: "Record" or "To Record" shall mean to record pursuant to the laws of the State of Arkansas conveying or affecting title to real property.

1.20 Recorder: "Recorder" shall mean and refer to the Clerk of the Superior Court of Benton County, Arkansas and the successor to that office.

1.21 Undeveloped Land: "Undeveloped Land" shall be land owned by the Developer which is not improved and which has not been designated as Common Property whether subdivided or Unsubdivided.

1.22 Unimproved Lot: "Unimproved Lot" shall mean and refer to any Lot that is not an Improved Lot.

1.23 Unsubdivided Land: "Unsubdivided Land" shall mean and refer to all land in the Property described in Section 3.01 hereof, and additions thereto as are subjected to this Declaration or any supplemental declaration under the provisions hereof, which has not been subdivided.

ARTICLE II **PROPERTY AND ASSOCIATIONS**

2.01 Property: The real property which is subject to these covenants, is located in Benton County, Arkansas and is more particularly described on the recorded Plat of said subdivision.

2.02 Additions to Property: The Developer, its successors, and assigns, shall have the right to bring within the plan and operation of this Declaration additional properties in future stages of the Development so long as they are contiguous with the Development. The additions authorized under this Section shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth. The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modifications shall have no effect on the Property as described in Section 1.01 above.

2.03 Separate Associations: For any property subjected to this Declaration pursuant to the provisions of this Section, there may be established by the Developer an additional Association limited to the Owners and/or residents of such additional property to make and enforce rules and regulations of supplementary covenants and restrictions, if any, applicable to such additional lands.

ARTICLE III
ARCHITECTURAL CONTROL

3.01 Architectural and Design Review:

(a) In order to preserve, to the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Development and to protect and enhance the value of the Property, the Developer (SUMMIT ONE) or the SUNSET BAY ARCHITECTURAL CONTROL COMMITTEE (herein SBACC) shall approve the details of construction plans including dwelling placements. The Developer shall have sole architectural and design reviewing authority for the Development until SBACC has been established. SBACC shall be established and the Developer shall transfer reviewing authority to it when 75% of the Lots in the Development have been sold. The SBACC shall be composed of three (3) persons who are either owners of lots in SUNSET BAY or are officers of SUMMIT ONE (Developer). Each member shall serve a four-year term. The Secretary of the SBACC shall mail a notice, by regular mail, to all lot owners of SUNSET BAY advising the need to elect one (1) member to the SBACC and giving the name of the incumbent member. Any lot owner may nominate another lot owner or an official of SUMMIT ONE or its successors and assigns, to serve on the SBACC at least thirty (30) days prior to the date for an election of such member, by notifying the secretary of the SBACC, in writing. Votes shall be cast (one lot, one vote) on or before November 1st of the year in which the election is taking place. Election shall result for the candidate receiving the majority of the votes cast.

Three members shall be required for any meeting of the SBACC. A member other than an official of SUMMIT ONE may be replaced or removed by a vote of two-thirds majority of the lot owners at any time and a replacement member shall be elected in the same manner as an incumbent member.

(b) The Developer shall have sole architectural and design reviewing authority for the Development until the Board has established the SUNSET BAY Architectural Control Committee in accordance with the Bylaws. When such Committee has been established, the Developer shall transfer reviewing authority to it.

(c) No building, fences, exterior lighting, walls, swimming pools, children's play areas, decorative appurtenances, or structures of any type, shall be erected, placed, added to, or altered and no trees or shrubs shall be cut or removed and no grading shall be commenced until the name of the Building Contractor (general contractor, building contractor, construction consultant, architect, design builder or the Owner if acting as own contractor), proposed building plans and specifications (including height, and composition of roofing, siding, or other exterior materials and finish), plot plan (showing the proposed location of such building or structure, drives and parking areas), drainage plan, landscape plan or construction schedule, as the case

may be, shall have been submitted to the Developer or the SBACC for approval at least thirty (30) days prior to the proposed date of construction. In addition, any repainting of a substantial portion of the exterior of any structure in a manner not previously approved by the Developer or SBACC shall be subject to prior approval of the Developer or SBACC provided in the preceding sentence. The Developer or SBACC shall give written approval or disapproval of the plans within thirty (30) days of submission. However, if written approval or disapproval is not given within thirty (30) days of submission, the plans shall be deemed to have been approved. Developer or SBACC may, by written notice given from time to time to the Owners of Lots, exempt certain matters of a non-essential nature from the review requirements subject to the terms and conditions and for the time periods established by Developer or SBACC. In the event of the completion of any dwelling house on any Lot, without proceedings having been instituted to enjoin the construction thereof, the said dwelling shall be conclusively presumed to have had such approval.

(d) The architectural and design review shall be directed toward preventing excessive or unsightly grading, indiscriminate clearing of property, removal of trees and vegetation which could cause disruption of natural water courses, insuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the surrounding property and improvements thereon, and insuring that plans for landscaping provide visually pleasing settings for structures on the same Lot and on adjoining or nearby Lots.

3.02 Approval Requirements. No building, fence, exterior lighting, wall, swimming pool, or structure of any type, shall be erected, placed, added to, or altered and no grading shall be commenced until the name of the Building Contractor, proposed building plans and specifications, plot plan and construction schedule shall have been approved by the Developer or SBACC. In addition, any repainting of a substantial portion of the exterior of any structure in a manner not previously approved by the Developer or SBACC shall be subject to prior approval of the Developer or SBACC as provided in the preceding sentence. The Developer or SBACC shall give written approval or disapproval of the plans within eighteen (30) days of submission. However, if written approval or disapproval is not given within eighteen (30) of submission, the plans shall be deemed to have been approved.

3.03 Approval Guidelines and Limitations: Approval of any proposed building plan, location, specifications or construction schedule submitted under this Article will be withheld unless such plans, location and specifications comply with the applicable Covenants. Approval of the plans and specifications by the Developer or SBACC is for the mutual benefit of all Owners and is not intended to be, and shall not be, construed as an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint.

ARTICLE IV **COVENANTS, USES AND RESTRICTIONS**

4.01 Applications: It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article IV apply solely to the Property described on the recorded Plat

of said subdivision, which Property is intended for use as Single-Family Residential Lots only. These Restrictive Covenants and Conditions are not intended to apply to any other lots, tracts or parcels of land. Specifically, the Developer, its successors or assigns, reserve the right to use or convey such other lots, tracts and parcels with different restrictions.

4.02 Residential Use:

(a) All of the Lots in the Development shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than as provided in these Covenants and Restrictions and in supplements hereto.

(b) "Residential" refers to a mode of occupancy, as used in contradistinction to business or commercial or mercantile activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots as well as to buildings constructed thereon.

4.03 Multi-Family Residences: No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and no residence shall be used as a multiple-family dwelling at any time.

4.04 Business Use.

(a) No residence or other structure shall be designed, patterned, constructed or maintained upon any Lot for use in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial or tractor trucks shall be parked in driveways or on streets.

(b) Neither the foregoing nor any other section of this Declaration shall prevent any Owner from maintaining a home office within their residence for any business purpose that does not involve any activity that would be offensive, distracting or a nuisance to other Owners. Home businesses are expressly prohibited.

(c) Neither the foregoing nor any other sections of this Declaration shall prevent the Developer or any builder from constructing a house for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that house or other houses within the Development, nor shall the foregoing or any other section of this Declaration prevent the Developer from designating a Lot or Lots from time to time for the temporary placement of a trailer or other suitable structure for use as an office and/or sales center by the Developer, a realtor or builders at the sole discretion of the Developer.

4.05 Rearrangement of Lot Lines: Not more than one dwelling house shall be erected or maintained on any one lot. Contiguous Lots may be combined if the Lots have the same Owner, for the purpose of erecting an single approved dwelling house thereon; the assessments provided for herein will continue to be based upon the number of original Lots

purchased. Splitting of a lot into two (2) or more lots if prohibited by these covenants.

4.06 Completion of Construction. Any residence being erected on a Lot shall be completed within 12 months from the date of the pouring of the footings for said residence. During the construction of a residence upon a Lot, The builder shall keep all debris cleared from the street or streets bounding the Lot; and, before any residence is occupied, all debris must be removed from the entire Lot. Without the prior written approval of the Developer or SBACC, no construction or any building, or other improvements on the premises shall be commenced prior to construction of the dwelling house. No debris or unsightly objects shall be moved onto any Lot in the Development at any time, including the period of construction of the residence thereon. The exterior of every dwelling shall be completed before occupancy. The yard of every completed dwelling shall be graded and landscaped within 90 days after occupancy.

4.07 Utility Easements. Perpetual easements have been reserved, as shown on the recorded plat, for the construction, and maintenance of utilities such as electricity, gas, water, sanitary sewer, phone, TV cable, drainage, etc., and no permanent structure shall be erected or maintained upon or over said easement.

4.08 Set-Backs. No building shall be erected on any Lot nearer than the minimum building setback line as shown on the development plat. For the purposes of this covenant, open porches, screened porches, decks, garages (attached and detached), swimming pools and pool houses shall be considered as a part of the building. Steps, walkways and driveways shall not be considered as a part of the building, providing, however, this shall not construed to permit any portion of the building on the Lot to encroach upon another Lot. No provision of this paragraph shall be construed to permit any structure to be constructed and erected upon any Lot that does not conform to the zoning laws and regulations applicable thereto.

4.09 Building Requirements. The building codes of the City of Rogers, Arkansas, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in SUNSET BAY. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Protective Covenants shall be resolved in favor of more restrictive provisions. Building, architectural and design specifications shall be in accordance with those regulations set forth in the Rogers Building Codes.

4.10 Minimum Square Footage. No dwelling shall be erected or permitted to remain in the Development unless it has the minimum number of square feet of finished and heated living area contained within the residence, exclusive of porches, garages and basements, as specified herein. The minimum number of square feet required is as follows:

(a) Patio Homes (homesites identified on Development Plat as Lots 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98) shall be restricted to single-story residences with a minimum of 1200 square foot and two-story residences with a minimum of 1800 square feet.

(b) Luxury Homes (homesites identified on Development Plat as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9a, 9b, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51) shall be restricted to single-story residences with a minimum of 1500 square feet and two-story residences with a minimum of 2000 square feet.

(c) Estate Homes (homesites identified on Development Plat as Lots 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141) shall be restricted to single-story residences with a minimum of 2400 square feet and two-story residences with a minimum of 2800 square feet.

4.11 Building Materials. The following building material guidelines will be used by the Developer or the SBACC when evaluating proposed building plans:

(a) Roofs shall be tile, architectural shingles or other material approved by the Developer or the SBACC. No wood shingles shall be allowed.

(b) Building exteriors shall be at least 70% brick, stone or stucco with the balance being wood or other material specifically approved by the Developer or the SBACC.

(c) Windows shall be wood, wood clad or other material specifically approved by the Developer or the SBACC.

Variations and waivers of these guidelines may be made only if the Developer or the SBACC conclude that the best interest of the Development will be served by allowing a variation or waiver.

4.12 Swimming Pools. Swimming pools may be constructed upon any Lot with the prior written approval of the Developer or SBACC. The location of any swimming pool must comply with the setback requirements set forth above. The design of any swimming pool and its screening or fencing must conform to all City of Rogers, Arkansas Code requirements.

4.13 Fences. No fences will be allowed on a Lot without the prior written consent of the Developer or SBACC. Fencing of front yards is prohibited. Fencing on corner lots must not infringe on neighboring lots front yard setbacks. No fences shall exceed six feet in height. All fencing materials must be approved by the Developer or SBACC. Chain link fences and other forms of wire fencing are specifically prohibited. All proposed fences must be submitted to the Developer or SBACC showing materials, design, height and location. No fencing will be allowed around any propane/natural gas storage tanks.

4.14 Damage to Streets and Curbs. Any damage done to streets, curbs, gates, fences, or any Common Properties by the Owner of any Lot, or by a contractor, subcontractor, laborer or material and/or service supplier employed by an Owner to construct a dwelling or other

improvement on a Lot, will be repaired immediately at the expense of the Owner.

4.15 Signs. No signs shall be erected or maintained on the Property without the prior written consent of the Developer or SBACC except:

(a) Signs erected by the Developer or Benton County for identification of streets, Common Properties, traffic control and directional purposes;

(b) Signs of a temporary nature advertising real property for sale and construction signs, which signs shall not exceed 6 square feet in area;

(c) Signs erected by the Developer advertising the Development; and

(d) Signs erected by an Owner or realtor advertising a house for sale, which signs shall not exceed 9 square feet in area.

4.16 Service Area. Each dwelling shall provide an area or areas on the rear or side yard of the Lot to accommodate air conditioner compressors, garbage containers, an electrical service entrance, or other ancillary residential functions that by nature may present an unsightly appearance. Service areas shall be screened from view by an enclosure that is an integral part of the site development plan, using materials and colors that are harmonious with the dwelling it serves.

4.17 Garages and Driveways. Each dwelling shall have an attached or detached garage for not less than two (2) cars with a concrete driveway at least twelve (12) feet wide from street to garage. Detached garages shall be designed to be compatible with the architecture of the dwelling. The Developer and SBACC shall exercise a strong bias toward side-entry garages, but will consider front-entry garages when supplied with information that a front-entry garage is the best alternative for the Lot and proposed dwelling.

4.18 Landscaping. A landscaping plan shall accompany every new home application to the Developer or the SBACC. No landscaping will be allowed around fire hydrants that will obstruct view or access from street.

4.19 Sight Distance at Intersection. No fence, wall, hedge or shrub which obstructs sight lines at intersections in the Development shall be permitted.

4.20 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they are not kept bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. All household pets must be maintained indoors and shall not be allowed to roam outdoors unless on leash and attended by a person. No reptiles shall be kept as pets.

4.21 Unsightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when

needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). In the event an Owner of a Lot in the Development fails to maintain their Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner.

4.22 Offensive Activity. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development.

4.23 Detached Buildings. No detached garages, outbuildings or storage buildings shall be permanently erected upon any Lot without the prior written consent of the Developer or SBACC.

4.24 Tree Removal. No live trees 6 inches or greater in diameter shall be removed prior to obtaining approval of the Development or SBACC. The majority of the trees may not be removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed.

4.25 Antennas. No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure on the Property of any Lot within the Development without the prior written consent of the Developer or SBACC; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. **EXCEPTION: Digital satellite system receivers not more than 18" in diameter shall be allowed without specific approval provided they are not visible from the street.**

4.26 Sewage Disposal. All dwellings shall have sewage disposal systems of the type and quality approved by the State of Arkansas Department of Health.

4.27 Laundry. No Owner, guest, or tenant shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view.

4.28 Utilities. All utilities in this subdivision shall be placed underground.

4.29 Street Lights/Mail Boxes. The owner of each lot in SUNSET BAY shall install, at owner's expense, a street light and mail box conforming with specifications to be determined by the SBACC and purchased from SUMMIT ONE, or approved supplier to ensure uniformity of design and quality construction. The light and mail box will be competitively priced. The location of the street light and mail box shall be designated on a plot plan to be submitted to the SBACC prior to construction of a residential dwelling. The street light and mail box must be installed and operating at the time a certificate of occupant is issued. The street light is to be controlled by a photoelectric cell and the street light is to be equipped with an external electric outlet. It shall be the responsibility of the owner of each lot to maintain the street light to be installed on each lot and to keep the street light and mail box in a reasonable state of repair at all

times. The street access number shall be placed on both sides of the mailbox. Numbers shall be a minimum of four inches.

4.30 Excavation. No owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the Developer or SBACC is obtained.

4.31 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Lots within the Development. The playing of loud music from any porches or decks shall be offensive, obnoxious activity constituting a nuisance.

4.32 Obligation to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of the Restrictive Covenants would be best effected by allowing such a variation.

4.33 Vehicle Parking. All vehicles, except recreational vehicles and equipment, owned by Lot Owners shall be parked only in the Owner's garage or driveway. Recreational vehicles and equipment, including but not limited to motor homes, travel trailers, campers, boats and the like, shall not be parked on the driveway or street for a period of time exceeding three (3) days. No vehicle, operative or inoperative, shall be stored outside on the premises at any time, even if not visible from the street.

4.34 Maintenance. Each Lot Owner shall, at all times, maintain in good repair all structures located on such Lot, including driveways and permitted fences, and shall keep all vegetation and landscaping in good and presentable condition.

4.35 Hunting. There shall be no hunting, trapping, unnatural harm to animals, game or water species, nor shall there be any target or trap shooting or discharge of firearms upon any Lot or Common Properties.

4.36 Security Lights. No Owner shall place exterior security lights (whether in trees, on poles, or otherwise) higher than the roof line of the structure being protected.

4.37 Private Boat Docks. Private boat docks shall not be permitted by Lot Owners inasmuch as the Community Boat Docks best serve the interest of all Lot Owners in the Development.

4.38 Propane/Natural Gas Tanks. All tanks shall be buried or completely out of view of all lots. No fencing is allowed around propane tanks that would screen tank from emergency/fire personnel.

4.39 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereinafter becoming Owners of any one or more of the Lots to which provisions of these Restrictive Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. The Developer or the Board may grant variances of the restrictions set forth in these Restrictive Covenants if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby and do not violate any of the restrictions appearing on the recorded plat.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots subject to rights of variances reserved by the Developer and the Board), it shall not be incumbent upon the Developer or the Board to enforce the provisions of these Restrictive Covenants or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these Restrictive Covenants by any person other than itself.

ARTICLE V
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY BOAT DOCKS AND ACCESS THERETO

5.01 Application. It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article V apply solely to the Owners who choose to use the Community Boat Docks and the access thereto.

5.02 Construction. SBPOA shall arrange construction of Community Boat Docks in accordance with the rules and regulations of the U. S. Army Corps of Engineers for the Lot Owners who want a Community Boat Dock Slip(s) and agree to abide by the terms and conditions established by SBPOA. Lot Owners shall pay SBPOA the then prevailing cost of the Boat Slip(s) they desire, retain title to same and have the right to sell their Boat Slip(s) to another Lot Owner.

5.03 Maintenance and Repair. SBPOA shall have sole responsibility for the maintenance and repair of the Community Boat Docks.

5.04 Authorized Use. Access to the Community Boat Docks and parking area therefor shall be strictly controlled by SBPOA and limited to the Owners who choose to use the Community Boat Docks and agree to abide by the rules, regulations, terms and conditions established by SBPOA. Guests of Owners shall be allowed use of the Community Boat Docks only when accompanied by an Owner.

5.05 Risk. All usage of the Community Boat Docks and the access thereto by Owners and their guests shall be at the sole risk of the Owner

ARTICLE VI
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY SEWER SYSTEM

6.01 Application. It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article VI apply solely to the owners of those lots served by the "Community Sewer System". More specifically the owners of lots 1 through 93.

6.02 Construction. SBPOA shall arrange construction of the Community Sewer System in accordance with the rules and regulations of the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology to provide sewer service for the Lots to be served by the Community Sewer System. All waste water equipment standards will be based on the original design of the system. In no case shall a homeowner alter repair or redesign any portion of the system. It is the homeowners responsibility to install the septic and effluent pumps and lines from house to main line. The licensed contractor installing this system must be approved by the SBPOA

6.03 Ownership, Operation, Maintenance and Repair. Homeowner shall own and be responsible for operation and maintenance of all septic tanks and effluent pumps connected to the collection system. The collection system and the Community Sewer System is the responsibility of the SBPOA. The SBPOA will contract annually with an operator and/or company holding all necessary licenses and permits to operate and maintain the Community Sewer System as required by the State of Arkansas, the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology, to operate and maintain the system.

6.04 Access. Entrance for access to the Community Sewer System are indicated on the plat of subdivision. It is to be expressly understood that the SBPOA shall have access to all components of the Community Sewer System for the purpose of installation, operation, and maintenance for all components of the Community Sewer System. The POA or its designated operator shall have an easement to enter upon private property for the purpose of inspections, service, and or repair of all individual septic tanks, effluent pumps, pressure sewers and control panels, and related equipment utilize the Community sewer system.

6.05 Use. The community sewer system is only for the use of homes connected to the system. Only domestic wastewater generated on site is allowed in to the sewer system.

ARTICLE VII
COMMON PROPERTIES

7.01 Common Properties Defined. Common Properties shall mean and refer to those tracts of land and any improvements thereon which are deeded to SBPOA and designated in said deed as Common Properties and any personal property acquired by SBPOA if said property is designated as Common Property. Common Property shall include but not be limited to the entryway to the Development (including landscaping, lighting and sprinkler system), recreation area, island areas bounded by streets and the street lights within the Development. Community Boat Docks shall mean and refer to those tracts of land and any improvements thereon which are deeded to SBPOA and designated in said deed as Common Properties/Community Boat Docks and any personal property acquired by SBPOA if said property is designated as Common Property which shall include but not be limited to the access area, parking area and lighting for the Community Boat Docks.

ARTICLE VIII
ASSESSMENTS

8.01 Purpose of Assessments. The general assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Properties.

8.02 Amount of Annual General Assessments.

(a) On or before the first day of December of each year, the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described in the Bylaws) will adopt a budget for the upcoming year. The budget will establish the total amount of annual general assessments on all Lots in the Development.

(b) Changes in Annual General Assessments. The amount of the annual general assessments on all Lots may be increased or decreased by the affirmative vote of at least 75% of the Lot Owners in attendance or represented by proxy at any annual or special meeting of SBPOA duly called for such purpose.

(c) Commencement of Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement.

(d) Pro Rata Assessments. The amount of the first annual assessments shall be prorated upon the balance of the calendar year and shall become due and payable on the closing on the Lot, commencement of home construction or completion of Boat Slip construction. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

(e) Whenever additional land is added to the Development pursuant to Section 3.02 hereof or whenever new Lots are created by resubdivision pursuant to Section 4.05 hereof, the Lot Assessment Table will be amended to add the new Lots and their numerical values as

assigned by the Board or Developer. Such amendment will be made automatically, without the necessity of a vote of the Owners. The numerical values of existing Lots will not change as a result of such amendment, but the total sum of the numerical value of all Lots will increase. Therefore, each existing Lot's proportionate share of the total annual general assessments will decrease as new Lots are added to the Developer.

(f) Developer shall not be assessed for any lot left unsold after the subdivision is turned over to the SBPOA.

8.03 Assessments for Community Boat Docks. In addition to the annual general assessments, the Association shall levy to those Lot Owners who choose to use the Community Boat Docks assessments for the cost of same.

8.04 Amount of Assessments for Community Boat Docks.

(a) On or before the first day of December of each year, the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described in the Bylaws) will adopt a capital budget and an expense budget for the upcoming year. The Budgets will establish the total amount of annual assessments on all Owners using the Community Boat Docks.

(b) Changes in Community Boat Docks/Common Property Assessments. The amount of the annual assessments on all Boat Slips may be increased or decreased by the affirmative vote of at least 75% of the Boat Slip Owners who are in attendance or represented by proxy at any annual or special meeting of the SBPOA duly called for such purpose.

(c) Amount of Annual Assessments for Community Boat Docks/Common Property. On or before the first day of December of each year, the Board for the Developer (if the transfer of governing authority from the Developer to the Board has not yet taken place) will establish a budget for the upcoming year. The budget will establish the total annual Community Boat Docks/Common Property assessment.

(d) Whenever an additional Boat Slip is added to the Community Boat Docks, the Lot and Boat Slip Assessment Table will be amended to add the new Boat Slip and its numerical values as assigned by the Board or Developer. Such amendment will be made automatically, without the necessity of a vote of the Owners. The numerical values of existing Boat Slips for the expense budget assessments will not change as a result of such amendment, but the total sum of the numerical value of all Boat Slips will increase. Therefore, each existing Boat Slip's proportionate share of the total annual assessments will decrease as new Boat Slips are added.

8.05 Assessments for Community Sewer System. In addition to the annual general assessments, the Association shall levy to those Lot Owners who are served by the Community Sewer System for the cost of same.

8.06 Amount of Assessments for Community Sewer System.

(a) On or before the first day of December of each year the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described by the Bylaws) will adopt a capital budget and an expense budget for the upcoming year. The Budgets will establish the total amount of annual assessment on all Owners of Lots to be served by the Community Sewer System. Included in the budget will be an amount sufficient to contract with a company holding all necessary licenses and permits to operate and maintain the Community Sewer System as regulated by the State of Arkansas, the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology. The operation and maintenance contract and budget will provide emergency, less than 24 hours, response to the failure of any component of the system.

(b) Changes in Community Sewer System/ Common Property Assessments. The amount of the annual assessments on all Lots served by the Community Sewer System may be increased or decreased by the affirmative vote of at least 75% of the Owners of Lots served by the system who are in attendance or represented by proxy at any annual or special meeting of the SBPOA duly called for such purpose.

8.07 Special Assessments for Improvements and Additions.

(a) In addition to the annual general, and special community boat docks assessments authorized by Sections 8.2 and 8.3 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or the cost of any addition to the Common Properties, provided that any such assessment shall have the assent of seventy-five percent (75%) of the vote of the Members who are in attendance or represented at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. At any such meeting, the Developer shall have one vote for each Lot then owned by the Developer.

(b) Except as modified in subsection (a) of this Section, the per-Lot amount of Special Assessments shall be determined in accordance with the same procedure and proportions described in Section 8.02 hereof..

8.08 Property Subject to Assessment. Only land within the Properties which has been subdivided into Lots, and the plats thereof filed for public record, shall constitute a Lot for purposes of these assessments.

8.09 Exempt Property. No Owner may exempt himself or herself from liability for any assessment levied against his or her Lot by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his or her Lot in any other way. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All Common Properties as defined in Article I hereof.
- (d) All Properties exempted from taxation by the laws of the State of Arkansas, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the owners.

8.10 Date of Commencement of Annual Assessments.

- (a) The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement.
- (b) The amount of the first annual assessment on a Lot or Boat Dock Slip shall be based pro rata upon the balance of the calendar year and shall become due and payable on the closing of the Lot or completion of Boat Dock Slip construction. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

8.11 Statements. As soon as practicable after the Board or the Developer adopts the budget for the upcoming year, the Board or Developer shall mail to each Lot Owner a statement of their annual assessments and the due date for payment thereof.

8.12 Late Fees. The Developer or SBPOA shall be authorized to charge a late fee to any Lot or Boat Slip Owner who fails to pay any assessment on or before the due date thereof.

8.13 Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien shall become effective on a Lot immediately upon the closing of that Lot. the lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Arkansas. Notwithstanding the Association's right to charge a late fee, the failure by an Owner to pay any assessment, annual or special on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

8.14 Creation of Lien and Personal Obligation for Assessments. Each Owner, by acceptance of a deed conveying a Lot whether or not it shall be so expressed in any such deed or conveyance shall be deemed to covenant and agree to all of the terms and provisions of these Covenants and pay to the association annual assessments and special assessments for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more Owners to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot. The annual and special assessments, together with such interests thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that two or more Lots are combined into a single Lot by an Owner, the assessments will continue to be based upon the number of original Lots purchased.

The liens herein created or retained for unpaid assessments or dues to the association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of Owners of any of the Lots in the Development up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time Association dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but to all successive mortgages, deeds of trust and vendor's liens given by property owners to secure obligations, together with all extensions and renewals thereof.

8.15 Sale or Mortgage of Lot. Whenever any Lot may be sold or mortgaged by the Owner thereof, which sale or Mortgage shall be concluded only upon compliance with other provisions of this declaration, the association, upon written request of the owner of such Lot, shall furnish to the proposed purchaser or Mortgage, a statement verifying the status of payment of any assessment which shall be due and payable to the association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the association under this Declaration. Such statement shall be executed by any officer of the association, and any purchaser or Mortgagee may rely upon such statement in concluding the proposed purchase or Mortgage transaction, and the Association shall be bound by such statement.

In the event that a Lot is to be sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the proceeds of such purchase or mortgage shall be applied by the purchaser or Mortgagee first to payment of any then-delinquent assessment or installments thereof due to the Association before payment of any proceeds of purchase or Mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

If any voluntary conveyance of a Lot, the grantee(s) shall be jointly and severally liable with the grantor(s) and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefor.

ARTICLE IX **REMEDIES ON DEFAULT**

9.01 Scope. Each Owner shall comply with the provisions of the Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, guests, occupants, invitee or agents.

9.02 Grounds for and Form or Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the developer or the Association to seek relief which may include, without limitations, an action to recover any unpaid assessment, annual or special, together with interest and expenses as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Developer or the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

9.03 Judgment Interest and Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Developer or the Association, if successful, shall, in addition to the relief provided for in Section 8.02 be entitled (1) to charge and collect pre and post-judgment interest upon the amount of the judgment (including any awarded expenses) at the highest rate allowed by law, and (2) to recover the costs of the proceeding and such reasonable attorney's fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

9.04 Waiver. The failure of the Developer, the Association or an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

9.05 Election of Remedies. All rights, remedies and privileges granted to the Developer, the Association, or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

ARTICLE X
GENERAL PROVISIONS

10.01 Duration of Covenants. These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by SBPOA, the Developer or Owners, their respective legal representatives, heirs, successors and assigns, and shall be effective for a period of 20 years following the Effective Date hereof, and may be continued thereafter as provided by Arkansas law.

10.02 General Amendments. These Covenants (excepting those which apply specifically to the Community Boat Docks) may be amended upon the affirmative vote of 75% of the Lot Owners in attendance or represented by proxy at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or count regulation.

10.03 Amendments Applying Specifically to Community Boat Docks. Covenants applying specifically to the Community Boat Docks may be amended upon the affirmative vote of 75% of the Boat Slip Owners in attendance or represented at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

10.04 Severability. Invalidation of any restriction set forth herein, or any part thereof, by any order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

10.05 VIOLATIONS. In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons or entity owning any Lots or Boat Slips in SUNSET BAY including the Developer and SBPOA, to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violation. Provided further, however, that the Developer or SBPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or SBPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

EXECUTED this 22 day of Feb. 2000
~~1998.~~

Summit One , LLC

00 15666

by Red Dan
(name, manager)

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00 50487

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR
SUNSET BAY**

THIS DECLARATION made this 23rd day of May, ²⁰⁰⁰ ~~1998~~, by SUMMIT ONE, L.L.C., an Arkansas Limited Corporation (herein "Developer").

WITNESSETH:

WHEREAS, Developer, as owner of certain real property located in Benton County, Arkansas, desires to create thereon a development known as Sunset Bay (sometimes herein "Development"), the first phase of which shall be constructed upon a portion of the real property located in Benton County, Arkansas, as more particularly described on the recorded Plat of said subdivision attached hereto (herein "Property"), and subsequent phases of which may be constructed upon portions of contiguous real property; and

WHEREAS, Developer desires to provide for the preservation and enhancement of value when and as the Property is improved and desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties (as hereinafter defined) and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter.

NOW, THEREFORE, the Developer subjects the real property described in Article III and such additions thereto as may hereafter be made, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as the "Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the Property and each Lot thereof.

FILED FOR RECORD
At 1:04 O'Clock P M

MAY 23 2000

SUE HODGES
Clerk and Recorder
BENTON COUNTY, ARK

9414

ARTICLE I
DEFINITIONS

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.01 Architectural Control Committee: "Architectural Control Committee" shall mean and refer to that Committee formed and operated in the manner described in Article III hereof.

1.02 Association: "Association" shall mean SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., an Arkansas nonprofit corporation.

1.03 Board of Directors or Board: "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.04 Boat Slip or Boat Slips: "Boat Slip" or "Boat Slips" shall mean and refer to an individual Boat Slip or multiple Boat Slips within the Community Boat Docks.

1.05 Bylaws: "Bylaws" shall mean the Bylaws of the Association.

1.06 Common Expense: "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

1.07 Common Properties: "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as a "Common Property". All Common Properties are intended for and are to be devoted to the common use and enjoyment of the Owners and their guests. The Common Properties shall include but not be limited to the entryway, including all roads in the Development, street lights, recreation and conservation areas, island areas bounded by streets, easement areas and signs.

1.08 Community Boat Docks: "Community Boat Docks" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Boat Docks". The term "Community Boat Docks" shall also include the boat docks acquired by the Association. The Community Boat Docks are intended for and are to be devoted to the exclusive use and enjoyment of the Owners who desire to use this amenity of the Development.

1.09 Community Sewer System: "Community Sewer System" shall mean and refer to the sewer collection system (s) and the sewage treatment systems and those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Sewer System".

The Community Sewer System and improvements thereon are intended for and are to be developed for the exclusive use of the owners whose lots are to be served by this system.

1.10 Covenants: "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.11 Declaration: "Declaration" shall mean this Declaration of Covenants and Restrictions for SUNSET BAY and any Supplemental Declaration filed pursuant to the terms hereof.

1.12 Developer: "Developer" shall mean SUMMIT ONE, LLC, an Arkansas Limited Liability Corporation, and its successors and assigns.

1.13 Improved Lot: "Improved Lot" shall mean and refer to any Lot upon which a legally habitable residence exists.

1.14 Lot: "Lot" shall mean and refer to any parcel of land located within the Property which is used or intended for use as a site for a legally habitable dwelling as shown upon any recorded final subdivision plat of any part of the Property.

1.15 Master Plan: "Master Plan" shall mean and refer to the conceptual land plan for the future development of SUNSET BAY. Since the concept of the future development of the undeveloped portions of SUNSET BAY is subject to continuing revision and change at the discretion of the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to future development. THIS DECLARATION DOES NOT DESIGNATE ANY PROPERTY FOR ANY PARTICULAR USE, SUCH DESIGNATION TO BE MADE BY SEPARATE SUBSEQUENT DECLARATION OR BY RECORDED PLAT WITH SUCH DESIGNATION CLEARLY AND UNEQUIVOCALLY SHOWN THEREON. THE DEVELOPER SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN.

1.16 Member or Members: "Member" or "Members" shall mean any or all Owner or Owners who are Members of the Association.

1.17 Owner: "Owner" shall mean and refer to the Owner as shown by the real estate records in the office of the Recorder, whether it be one or more persons, firms associations, corporations, or other legal entities, of fee simple title to any Lot or Unsubdivided Land.

1.18 Property or Properties: "Property" or "Properties" shall mean and refer to the Property described in Section 2.01 hereof, and additions thereto, as are subjected to this

Declaration or any supplemental declaration under the provisions hereof and may include: (1) Residential Lots; (2) Unsubdivided Land owned by the Developer or other Owners; and (3) Common Properties.

1.19 Record or To Record: "Record" or "To Record" shall mean to record pursuant to the laws of the State of Arkansas conveying or affecting title to real property.

1.20 Recorder: "Recorder" shall mean and refer to the Clerk of the Circuit Court of Benton County, Arkansas and the successor to that office.

1.21 Undeveloped Land: "Undeveloped Land" shall be land owned by the Developer, which is not improved, and which has not been designated as Common Property whether subdivided or unsubdivided.

1.22 Unimproved Lot: "Unimproved Lot" shall mean and refer to any Lot that is not an Improved Lot.

1.23 Unsubdivided Land: "Unsubdivided Land" shall mean and refer to all land in the Property described in Section 7.01 hereof, and additions thereto as are subjected to this Declaration or any supplemental declaration under the provisions hereof, which has not been subdivided.

ARTICLE II
PROPERTY AND ASSOCIATIONS

2.01 Property: The real property which is subject to these covenants, is located in Benton County, Arkansas and is more particularly described on the recorded Plat of said subdivision. Said Plat is recorded in Plat Record 22 at page 788 in the office of the Recorder and is hereby specifically incorporated herein by reference.

2.02 Additions to Property: The Developer, its successors, and assigns, shall have the right to bring within the plan and operation of this Declaration additional properties in future stages of the Development so long as they are contiguous with the Development. The additions authorized under this Section shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth. The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modifications shall have no effect on the Property as described in Section 1.01 above.

2.03 Separate Associations: For any property subjected to this Declaration pursuant to the provisions of this Section, there may be established by the Developer an additional

Association limited to the Owners and/or residents of such additional property to make and enforce rules and regulations of supplementary covenants and restrictions, if any, applicable to such additional lands.

ARTICLE III
ARCHITECTURAL CONTROL

3.01 Architectural and Design Review:

(a) In order to preserve, to the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Development and to protect and enhance the value of the Property, the Developer (SUMMIT ONE) or the SUNSET BAY ARCHITECTURAL CONTROL COMMITTEE (herein SBACC) shall approve the details of construction plans including dwelling placements. The Developer shall have sole architectural and design reviewing authority for the Development until SBACC has been established. SBACC shall be established and the Developer shall transfer reviewing authority to it when 75% of the Lots in the Development have been sold. The SBACC shall be composed of three (3) persons who are either owners of lots in SUNSET BAY or are officers of SUMMIT ONE (Developer). Each member shall serve a four-year term. The Secretary of the SBACC shall mail a notice, by regular mail, to all lot owners of SUNSET BAY advising the need to elect one (1) member to the SBACC and giving the name of the incumbent member. Any lot owner may nominate another lot owner or an official of SUMMIT ONE or its successors and assigns, to serve on the SBACC at least thirty (30) days prior to the date for an election of such member, by notifying the secretary of the SBACC, in writing. Votes shall be cast (one lot, one vote) on or before November 1st of the year in which the election is taking place. Election shall result for the candidate receiving the majority of the votes cast.

Three members shall be required for any meeting of the SBACC. A member other than an official of SUMMIT ONE may be replaced or removed by a vote of two-thirds majority of the lot owners at any time and a replacement member shall be elected in the same manner as an incumbent member.

(b) The Developer shall have sole architectural and design reviewing authority for the Development until the Board has established the SUNSET BAY Architectural Control Committee in accordance with the Bylaws. When such Committee has been established, the Developer shall transfer reviewing authority to it.

3.02 Approval Requirments. No building, fences, exterior lighting, walls, swimming pools, children's play areas, decorative appurtenances, or structures of any type, shall be erected, placed, added to, or altered and no trees or shrubs shall be cut or removed and no grading shall be commenced until the name of the Building Contractor (general contractor, building contractor, construction consultant, architect, design builder or the Owner if acting as

own contractor), proposed building plans and specifications (including height, and composition of roofing, siding, or other exterior materials and finish), plot plan (showing the proposed location of such building or structure, drives and parking areas), drainage plan, landscape plan or construction schedule, as the case may be, shall have been submitted to the Developer or the SBACC for approval at least thirty (30) days prior to the proposed date of construction. In addition, any repainting of a substantial portion of the exterior of any structure in a manner not previously approved by the Developer or SBACC shall be subject to prior approval of the Developer or SBACC provided in the preceding sentence. The Developer or SBACC shall give written approval or disapproval of the plans within thirty (30) days of submission. However, if written approval or disapproval is not given within thirty (30) days of submission, the plans shall be deemed to have been approved. Developer or SBACC may, by written notice given from time to time to the Owners of Lots, exempt certain matters of a non-essential nature from the review requirements subject to the terms and conditions and for the time periods established by Developer or SBACC. In the event of the completion of any dwelling house on any Lot, without proceedings having been instituted to enjoin the construction thereof, the said dwelling shall be conclusively presumed to have had such approval.

(a) The architectural and design review shall be directed toward preventing excessive or unsightly grading, indiscriminate clearing of property, removal of trees and vegetation which could cause disruption of natural water courses, insuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the surrounding property and improvements thereon, and insuring that plans for landscaping provide visually pleasing settings for structures on the same Lot and on adjoining or nearby Lots.

3.03 Approval Guidelines and Limitations: Approval of any proposed building plan, location, specifications or construction schedule submitted under this Article will be withheld unless such plans, location and specifications comply with the applicable Covenants. Approval of the plans and specifications by the Developer or SBACC is for the mutual benefit of all Owners and is not intended to be, and shall not be, construed as an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint.

ARTICLE IV **COVENANTS, USES AND RESTRICTIONS**

4.01 Applications: It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article IV apply solely to the Property described on the recorded Plat of said subdivision, which Property is intended for use as Single-Family Residential Lots only. These Restrictive Covenants and Conditions are not intended to apply to any other lots, tracts or parcels of land. Specifically, the Developer, its successors or assigns, reserves the right to use or convey such other lots, tracts, and parcels with different restrictions.

4.02 Residential Use:

(a) All of the Lots in the Development shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than as provided in these Covenants and Restrictions and in supplements hereto.

(b) "Residential" refers to a mode of occupancy, as used in contradistinction to business or commercial or mercantile activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots as well as to buildings constructed thereon.

4.03 Multi-Family Residences: No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and no residence shall be used as a multiple-family dwelling at any time.

4.04 Business Use.

(a) No residence or other structure shall be designed, patterned, constructed or maintained upon any Lot for use in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial or tractor trucks shall be parked in driveways or on streets.

(b) Neither the foregoing nor any other section of this Declaration shall prevent any Owner from maintaining a home office within their residence for any business purpose that does not involve any activity that would be offensive, distracting or a nuisance to other Owners. Home businesses are expressly prohibited.

(c) Neither the foregoing nor any other sections of this Declaration shall prevent the Developer or any builder from constructing a house for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that house or other houses within the Development, nor shall the foregoing or any other section of this Declaration prevent the Developer from designating a Lot or Lots from time to time for the temporary placement of a trailer or other suitable structure for use as an office and/or sales Center by the Developer, a realtor or builders at the sole discretion of the Developer.

4.05 Rearrangement of Lot Lines: Not more than one dwelling house shall be erected or maintained on any one lot. Contiguous Lots may be combined if the Lots have the same Owner, for the purpose of erecting an single approved dwelling house thereon; the assessments provided for herein will continue to be based upon the number of original Lots purchased. Splitting of a lot into two (2) or more lots is prohibited by these covenants.

4.06 Completion of Construction. Any residence being erected on a Lot shall be completed within 12 months from the date of the pouring of the footings for said residence. During the construction of a residence upon a Lot, The builder shall keep all debris cleared from

the street or streets bounding the Lot; and, before any residence is occupied, all debris must be removed from the entire Lot. Without the prior written approval of the Developer or SBACC, no construction or any building, or other improvements on the premises shall be commenced prior to construction of the dwelling house. No debris or unsightly objects shall be moved onto any Lot in the Development at any time, including the period of construction of the residence thereon. The exterior of every dwelling shall be completed before occupancy. The yard of every completed dwelling shall be graded and landscaped within 90 days after occupancy.

4.07 Utility Easements. Perpetual easements have been reserved, as shown on the recorded plat, for the construction, and maintenance of utilities such as electricity, gas, water, sanitary sewer, phone, TV cable, drainage, etc., and no permanent structure shall be erected or maintained upon or over said easement.

4.08 SetBacks. No building shall be erected on any Lot nearer than the minimum building setback line as shown on the development plat. For the purposes of this covenant, open porches, screened porches, decks, garages (attached and detached), swimming pools and pool houses shall be considered as a part of the building. Steps, walkways and driveways shall not be considered as a part of the building, providing, however, this shall not construed to permit any portion of the building on the Lot to encroach upon another Lot. No provision of this paragraph shall be construed to permit any structure to be constructed and erected upon any Lot that does not conform to the zoning laws and regulations applicable thereto.

4.09 Building Requirements. The building codes of the City of Rogers, Arkansas, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in SUNSET BAY. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Protective Covenants shall be resolved in favor of more restrictive provisions. Building, architectural and design specifications shall be in accordance with those regulations set forth in the Rogers Building Codes.

4.10 Minimum Square Footage. No dwelling shall be erected or permitted to remain in the Development unless it has the minimum number of square feet of finished and heated living area contained within the residence, exclusive of porches, garages and basements, as specified herein. The minimum number of square feet required is as follows:

(a) Patio Homes (homesites identified on Development Plat as Lots 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98) shall be restricted to single-story residences with a minimum of 1200 square foot and two-story residences with a minimum of 1800 square feet.

(b) Luxury Homes (homesites identified on Development Plat as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9a, 9b, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52) shall be restricted to single-story residences with a minimum of 1500 square feet and two-story residences with a minimum of 2000 square feet.

(c) Estate Homes (homesites identified on Development Plat as Lots 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141) shall be restricted to single-story residences with a minimum of 2400 square feet and two-story residences with a minimum of 2800 square feet.

4.11 Building Materials. The Developer or the SBACC will use the following building material guidelines when evaluating proposed building plans:

(a) Roofs shall be tile, architectural shingles or other material approved by the Developer or the SBACC. No wood shingles shall be allowed.

(b) Building exteriors shall be at least 70% brick, stone, or stucco with the balance being wood or other material specifically approved by the Developer or the SBACC.

(c) Windows shall be wood, wood clad or other material specifically approved by the Developer or the SBACC.

Variations and waivers of these guidelines may be made only if the Developer or the SBACC conclude that the best interest of the Development will be served by allowing a variation or waiver.

4.12 Swimming Pools. Swimming pools may be constructed upon any Lot with the prior written approval of the Developer or SBACC. The location of any swimming pool must comply with the setback requirements set forth above. The design of any swimming pool and its screening or fencing must conform to all City of Rogers, Arkansas Code requirements.

4.13 Fences. No fences will be allowed on a Lot without the prior written consent of the Developer or SBACC. Fencing of front yards is prohibited. Fencing on corner lots must not infringe on neighboring lots front yard setbacks. No fences shall exceed six feet in height. The Developer or SBACC must approve all fencing materials. Chain link fences and other forms of wire fencing are specifically prohibited. All proposed fences must be submitted to the Developer or SBACC showing materials, design, height and location. No fencing will be allowed around any propane/natural gas storage tanks.

4.14 Damage to Streets and Curbs. Any damage done to streets, curbs, gates, fences, or any Common Properties by the Owner of any Lot, or by a contractor, subcontractor, laborer or material and/or service supplier employed by an Owner to construct a dwelling or other improvement on a Lot, will be repaired immediately at the expense of the Owner.

4.15 Signs. No signs shall be erected or maintained on the Property without the prior written consent of the Developer or SBACC except:

- (a) Signs erected by the Developer or Benton County for identification of streets, Common Properties, traffic control and directional purposes.
- (b) Signs of a temporary nature advertising real property for sale and construction signs, which signs shall not exceed 6 square feet in area.
- (c) Signs erected by the Developer advertising the Development; and
- (d) Signs erected by an Owner or realtor advertising a house for sale, which signs shall not exceed 9 square feet in area.

4.16 Service Area. Each dwelling shall provide an area or areas on the rear or side yard of the Lot to accommodate air conditioner compressors, garbage containers, an electrical service entrance, or other ancillary residential functions that by nature may present an unsightly appearance. Service areas shall be screened from view by an enclosure that is an integral part of the site development plan, using materials and colors that are harmonious with the dwelling it serves.

4.17 Garages and Driveways. Each dwelling shall have an attached or detached garage for not less than two (2) cars with a concrete driveway at least twelve (12) feet wide from street to garage. Detached garages shall be designed to be compatible with the architecture of the dwelling. The Developer and SBACC shall exercise a strong bias toward side-entry garages, but will consider front-entry garages when supplied with information that a front-entry garage is the best alternative for the Lot and proposed dwelling.

4.18 Landscaping. A landscaping plan shall accompany every new home application to the Developer or the SBACC. No landscaping will be allowed around fire hydrants that will obstruct view or access from street.

4.19 Sight Distance at Intersection. No fence, wall, hedge or shrub that obstructs sight lines at intersections in the Development shall be permitted.

4.20 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they are not kept bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. All household pets must be maintained indoors and shall not be allowed to roam outdoors unless on leash and attended by a person. No reptiles shall be kept as pets.

4.21 Unsightly Conditions. All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). In the event an Owner of a Lot in the Development fails to maintain their Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner.

4.22 Offensive Activity. Noxious or offensive activities shall not be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development.

4.23 Detached Buildings. No detached garages, outbuildings or storage buildings shall be permanently erected upon any Lot without the prior written consent of the Developer or SBACC.

4.24 Tree Removal. No live trees 6 inches or greater in diameter shall be removed prior to obtaining approval of the Development or SBACC. The majority of the trees may not be removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed.

4.25 Antennas. No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure on the Property of any Lot within the Development without the prior written consent of the Developer or SBACC; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. **EXCEPTION: Digital satellite system receivers not more than 18" in diameter shall be allowed without specific approval provided they are not visible from the street.**

4.26 Sewage Disposal. All dwellings shall have sewage disposal systems of the type and quality approved by the State of Arkansas Department of Health.

4.27 Laundry. No Owner, guest, or tenant shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view.

4.28 Utilities. All utilities in this subdivision shall be placed underground.

4.29 Street Lights/Mail Boxes. The owner of each lot in SUNSET BAY shall install, at owner's expense, a mail box conforming with specifications to be determined by the SBACC and purchased from SUMMIT ONE, or approved supplier to ensure uniformity of design and quality construction. If the owner of a lot wishes to erect a street light it will need to conform to the existing street lights erected by SUMMIT ONE. The light can be purchased from SUMMIT ONE or an approved supplier. The light and mailbox will be competitively priced. The location

of the street light and mailbox shall be designated on a plot plan to be submitted to the SBACC prior to construction of a residential dwelling. The street light and mailbox must be installed and operating at the time a certificate of occupant is issued. The streetlight is to be controlled by a photoelectric cell and the street light is to be equipped with an external electric outlet. It shall be the responsibility of the owner of each lot to maintain the street light to be installed on each lot and to keep the street light and mail box in a reasonable state of repair at all times. The street access number shall be placed on both sides of the mailbox. Numbers shall be a minimum of four inches.

4.30 Excavation. No owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the Developer or SBACC is obtained.

4.31 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device that is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Lots within the Development. The playing of loud music from any porches or decks shall be offensive, obnoxious activity constituting a nuisance.

4.32 Obligation to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of the Restrictive Covenants would be best effected by allowing such a variation.

4.33 Vehicle Parking. All vehicles, except recreational vehicles and equipment, owned by Lot Owners shall be parked only in the Owner's garage or driveway. Recreational vehicles and equipment, including but not limited to motor homes, travel trailers, campers, boats and the like, shall not be parked on the driveway or street for a period of time exceeding three (3) days. No vehicle, operative or inoperative, shall be stored outside on the premises at any time, even if not visible from the street.

4.34 Maintenance. Each Lot Owner shall, at all times, maintain in good repair all structures located on such Lot, including driveways and permitted fences, and shall keep all vegetation and landscaping in good and presentable condition.

4.35 Hunting. There shall be no hunting, trapping, unnatural harm to animals, game or water species, nor shall there be any target or trap shooting or discharge of firearms upon any Lot or Common Properties.

4.36 Security Lights. No Owner shall place exterior security lights (whether in trees, on poles, or otherwise) higher than the roofline of the structure being protected.

4.37 Private Boat Docks. Private boat docks shall not be permitted by Lot Owners inasmuch as the Community Boat Docks best serve the interest of all Lot Owners in the Development.

4.38 Propane/Natural Gas Tanks. All tanks shall be buried or completely out of view of all lots. No fencing is allowed around propane tanks that would screen tank from emergency/fire personnel.

4.39 Violations and Enforcement. In the event of the violation, or attempted violation, of any one or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereinafter becoming Owners of any one or more of the Lots to which provisions of these Restrictive Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. The Developer or the Board may grant variances of the restrictions set forth in these Restrictive Covenants if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby and do not violate any of the restrictions appearing on the recorded plat.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots subject to rights of variances reserved by the Developer and the Board), it shall not be incumbent upon the Developer or the Board to enforce the provisions of these Restrictive Covenants or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these Restrictive Covenants by any person other than itself.

ARTICLE V
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY BOAT DOCKS AND ACCESS THERETO

5.01 Application. It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article V apply solely to the Owners who choose to use the Community Boat Docks and the access thereto.

5.02 Construction. SBPOA shall arrange construction of Community Boat Docks in accordance with the rules and regulations of the U.S. Army Corps of Engineers for the Lot Owners who want a Community Boat Dock Slip(s) and agree to abide by the terms and conditions established by SBPOA. Lot Owners shall pay SBPOA the then prevailing cost of the Boat Slip(s) they desire, retain title to same and have the right to sell their Boat Slip(s) to another Lot Owner. Construction cannot begin until The U.S. Army Corps of Engineers rezone the

proposed site to "Limited Development". The request for rezoning was submitted in April of 1998. Title 36, Code of Federal Regulations, Part 327.30-Shoreline Management on Civil Works Projects states: "Shoreline Management Plans will be reviewed periodically, but no less often than every five years, by the District Commander, to determine the need for an update. When changes to the SMP are needed, the plan will be formally updated through the public participation process."

5.03 Maintenance and Repair. SBPOA shall have sole responsibility for the maintenance and repair of the Community Boat Docks.

5.04 Authorized Use. Access to the Community Boat Docks and parking area therefor shall be strictly controlled by SBPOA and limited to the Owners who choose to use the Community Boat Docks and agree to abide by the rules, regulations, terms and conditions established by SBPOA. Guests of Owners shall be allowed use of the Community Boat Docks only when accompanied by an Owner.

5.05 Risk. All usage of the Community Boat Docks and the access thereto by Owners and their guests shall be at the sole risk of the Owner

ARTICLE VI
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY SEWER SYSTEM

6.01 Application. It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article VI applies solely to the owners of those lots served by the "Community Sewer System". More specifically the owners of lots 1 through 98. Owners of those lots served by said system shall be liable for the payment of assessments to offset the cost of operation, maintenance, and repair of said system which shall become a lien upon any lot for which said assessments remain unpaid as provided for all other Property Owners Association assessments.

6.02 Construction. SBPOA shall arrange construction of the Community Sewer System in accordance with the rules and regulations of the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology to provide sewer service for the Lots to be served by the Community Sewer System. All wastewater equipment standards will be based on the original design of the system. In no case shall a homeowner alter repair or redesign any portion of the system. It is the homeowner's responsibility to install the septic and effluent pumps and lines from house to main line. The licensed contractor installing this system must be approved by the SBPOA

6.03 Ownership, Operation, Maintenance and Repair.

(a). Homeowner shall own and be responsible for operation and maintenance of all septic tanks and effluent pumps connected to the collection system. Installation of septic tanks, related required equipment, lines and connection to the system shall be at the individual property owner's expense. Repairs, service, or maintenance to such equipment owned by the individual property owner shall be at said property owner's expense and shall be billed to said property owner either by the POA or its designated contractor. Unpaid bills for maintenance and/or repair to equipment of individual property owners shall become a lien upon said property as provided for any other unpaid property owner assessment.

(b). The collection system and the Community Sewer System shall be owned, operated and controlled by the SBPOA. The SBPOA will contract annually with an operator and/or company holding all necessary licenses and permits to operate and maintain the Community Sewer System as required by the State of Arkansas, the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology, to operate and maintain the system as set forth in the By Laws.

6.04 Access. Entrance for access to the Community Sewer System are indicated on the plat of subdivision. It is to be expressly understood that the SBPOA shall have access to all components of the Community Sewer System for the purpose of installation, operation, and maintenance for all components of the Community Sewer System. The POA or its designated operator shall have an easement to enter upon private property for the purpose of inspections, service, and or repair of all individual septic tanks, effluent pumps, pressure sewers and control panels, and related equipment utilize the Community sewer system.

6.04 Use. The community sewer system is only for the use of homes connected to the system. Only domestic wastewater generated on site is allowed in to the sewer system.

ARTICLE VII
COMMON PROPERTIES

7.01 Common Properties Defined. Common Properties shall mean and refer to those tracts of land and any improvements thereon which are deeded to SBPOA and designated in said deed as Common Properties and any personal property acquired by SBPOA if said property is designated as Common Property. Common Property shall include but not be limited to the entryway to the Development (including landscaping, lighting and sprinkler system), recreation area, land necessary for the sewer system, all streets, island areas bounded by streets and the street lights within the Development. Community Boat Docks shall mean and refer to those tracts of land and any improvements thereon which are deeded to SBPOA and designated in said deed as Common Properties/Community Boat Docks and any personal property acquired by SBPOA if said property is designated as Common Property which shall include but not be limited to the access area, parking area and lighting for the Community Boat Docks.

ARTICLE VIII
ASSESSMENTS

8.01 Purpose of Assessments. The general assessments levied by the Association shall be used for street maintenance and the improvement and maintenance of the Common Properties.

8.02 Amount of Annual General Assessments.

(a) On or before the first day of December of each year, the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described in the Bylaws) will adopt a budget for the upcoming year. The budget will establish the total amount of annual general assessments on all Lots in the Development.

(b) Changes in Annual General Assessments. The amount of the annual general assessments on all Lots may be increased or decreased by the affirmative vote of at least 75% of the Lot Owners in attendance or represented by proxy at any annual or special meeting of SBPOA duly called for such purpose.

(c) Commencement of Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement.

(d) Pro Rata Assessments. The amount of the first annual assessments shall be prorated upon the balance of the calendar year and shall become due and payable on the closing on the Lot, commencement of home construction or completion of Boat Slip construction. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

(e) Whenever additional land is added to the Development pursuant to Section 3.02 hereof or whenever new Lots are created by resubdivision pursuant to Section 4.05 hereof, the Lot Assessment Table will be amended to add the new Lots and their numerical values as assigned by the Board or Developer. Such amendment will be made automatically, without the necessity of a vote of the Owners. The numerical values of existing Lots will not change as a result of such amendment, but the total sum of the numerical value of all Lots will increase. Therefore, each existing Lot's proportionate share of the total annual general assessments will decrease as new Lots are added to the Developer.

(f) Developer shall not be assessed for any lot left unsold after the subdivision is turned over to the SBPOA.

8.03 Assessments for Community Boat Docks. In addition to the annual general assessments, the Association shall levy to those Lot Owners who choose to use the Community Boat Docks assessments for the cost of same.

8.04 Amount of Assessments for Community Boat Docks.

(a) On or before the first day of December of each year, the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described in the Bylaws) will adopt a capital budget and an expense budget for the upcoming year. The Budgets will establish the total amount of annual assessments on all Owners using the Community Boat Docks.

(b) Changes in Community Boat Docks/Common Property Assessments. The amount of the annual assessments on all Boat Slips may be increased or decreased by the affirmative vote of at least 75% of the Boat Slip Owners who are in attendance or represented by proxy at any annual or special meeting of the SBPOA duly called for such purpose.

(c) Amount of Annual Assessments for Community Boat Docks/Common Property. On or before the first day of December of each year, the Board for the Developer (if the transfer of governing authority from the Developer to the Board has not yet taken place) will establish a budget for the upcoming year. The budget will establish the total annual Community Boat Docks/Common Property assessment.

(d) Whenever an additional Boat Slip is added to the Community Boat Docks, the Lot and Boat Slip Assessment Table will be amended to add the new Boat Slip and its numerical values as assigned by the Board or Developer. Such amendment will be made automatically, without the necessity of a vote of the Owners. The numerical values of existing Boat Slips for the expense budget assessments will not change as a result of such amendment, but the total sum of the numerical value of all Boat Slips will increase. Therefore, each existing Boat Slip's proportionate share of the total annual assessments will decrease as new Boat Slips are added.

8.05 Assessments for Community Sewer System. In addition to the annual general assessments, the Association shall levy to those Lot Owners who are served by the Community Sewer System for the cost of same.

8.06 Amount of Assessments for Community Sewer System.

(a) On or before the first day of December of each year the Board (or the Developer if the transfer of governing authority from the Developer to the Board has not yet taken place as described by the Bylaws) will adopt a capital budget and an expense budget for the upcoming year. The Budgets will establish the total amount of annual assessment on all Owners of Lots to be served by the Community Sewer System. Included in the budget will be an amount sufficient to contract with a company holding all necessary licenses and permits to operate and maintain the Community Sewer System as regulated by the State of Arkansas, the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology. The operation and maintenance contract and budget will provide emergency, less than 24 hours, response to the failure of any component of the system.

(b) Changes in Community Sewer System/ Common Property Assessments.

The amount of the annual assessments on all Lots served by the Community Sewer System may be increased or decreased by the affirmative vote of at least 75% of the Owners of Lots served by the system who are in attendance or represented by proxy at any annual or special meeting of the SBPOA duly called for such purpose.

8.07 Special Assessments for Improvements and Additions.

(a) In addition to the annual general, and special community boat docks assessments authorized by Sections 8.2 and 8.3 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or the cost of any addition to the Common Properties, provided that any such assessment shall have the assent of seventy-five percent (75%) of the vote of the Members who are in attendance or represented at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. At any such meeting, the Developer shall have one vote for each Lot then owned by the Developer.

(b) Except as modified in subsection (a) of this Section, the per-Lot amount of Special Assessments shall be determined in accordance with the same procedure and proportions described in Section 8.02 hereof.

8.08 Property Subject to Assessment. Only land within the Properties, which has been subdivided into Lots and the plats thereof, filed for public record, shall constitute a Lot for purposes of these assessments.

8.09 Exempt Property. No Owner may exempt himself or herself from liability for any assessment levied against his or her Lot by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his or her Lot in any other way. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee of a utility easement.
- (b) All properties dedicated and accepted by a local public authority and devoted to public use.
- (c) All Common Properties as defined in Article I hereof.

(c) All Properties exempted from taxation by the laws of the State of Arkansas, upon the terms and to the extent of such legal exemptions. This exemption shall not include special exemptions, now in force or enacted hereinafter, based upon age, sex, income levels or similar classification of the owners.

8.10 Date of Commencement of Annual Assessments.

(a) The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement.

(b) The amount of the first annual assessment on a Lot or Boat Dock Slip shall be based pro rata upon the balance of the calendar year and shall become due and payable on the closing of the Lot or completion of Boat Dock Slip construction. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

8.11 Statements. As soon as practicable after the Board or the Developer adopts the budget for the upcoming year, the Board or Developer shall mail to each Lot Owner a statement of their annual assessments and the due date for payment thereof.

8.12 Late Fees. The Developer or SBPOA shall be authorized to charge a late fee to any Lot or Boat Slip Owner who fails to pay any assessment on or before the due date thereof.

8.13 Lien. Recognizing that the necessity for providing proper operation and management of the Properties entails the continuing payment of costs and expenses therefor, the Association is hereby granted a lien upon each Lot and the improvements thereon as security for the payment of all assessments against said Lot, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees, which may be incurred by the Association in enforcing the lien upon said Lot. The lien shall become effective on a Lot immediately upon the closing of that Lot. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Arkansas. Notwithstanding the Association's right to charge a late fee, the failure by an Owner to pay any assessment, annual or special on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

8.14 Creation of Lien and Personal Obligation for Assessments. Each Owner, by acceptance of a deed conveying a Lot whether or not it shall be so expressed in any such deed or conveyance shall be deemed to covenant and agree to all of the terms and provisions of these Covenants and pay to the association annual assessments and special assessments for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Owner of each Lot shall be personally liable, such liability to be joint and several if there are two or more Owners to the Association for the payment of all assessments, whether annual or special, which may be levied while such party or parties are Owners of a Lot. The annual and special assessments, together with such interests thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing

lien on the Lot and all of the improvements thereon against which each such assessment is made. Unpaid assessments shall bear interest from due date to date of payment at the rate set by the Board, and said rate can be changed from time to time so that the rate is reasonably related to the economic situation. In the event that an Owner combines two or more Lots into a single Lot, the assessments will continue to be based upon the number of original Lots purchased.

The liens herein created or retained for unpaid assessments or dues to the association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of Owners of any of the Lots in the Development up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time Association dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but also to all successive mortgages, deeds of trust and vendor's liens given by property owners to secure obligations, together with all extensions and renewals thereof.

8.15 Sale or Mortgage of Lot. Whenever any Lot may be sold or mortgaged by the Owner thereof, which sale or Mortgage shall be concluded only upon compliance with other provisions of this declaration, the association, upon written request of the owner of such Lot, shall furnish to the proposed purchaser or Mortgage, a statement verifying the status of payment of any assessment which shall be due and payable to the association by the Owner of such Lot; and such statement shall also include, if requested, whether there exists any matter in dispute between the Owners of such Lot and the association under this Declaration. Any officer of the association and any purchaser shall execute such statement or Mortgagee may rely upon such statement in concluding the proposed purchase or Mortgage transaction, and such statement shall bind the Association.

In the event that a Lot is to be sold or mortgaged at the time when payment of any assessment against said Lot shall be in default, then the proceeds of such purchase or mortgage shall be applied by the purchaser or Mortgagee first to payment of any then-delinquent assessment or installments thereof due to the Association before payment of any proceeds of purchase or Mortgage to the Owner of any Lot who is responsible for payment of such delinquent assessment.

If any voluntary conveyance of a Lot, the grantee(s) shall be jointly and severally liable with the grantor(s) and the Lot made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee(s) to recover from the grantor(s) the amounts paid by the grantee(s) therefor.

ARTICLE IX
REMEDIES ON DEFAULT

9.01 Scope. Each Owner shall comply with the provisions of the Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, guests, occupants, invitee or agents.

9.02 Grounds for and Form of Relief. Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the developer or the Association to seek relief which may include, without limitations, an action to recover any unpaid assessment, annual or special, together with interest and expenses as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Developer or the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

9.03 Judgment Interest and Recovery of Expenses. In any proceeding arising because of an alleged default by an Owner, the Developer or the Association, if successful, shall, in addition to the relief provided for in Section 8.02 be entitled (1) to charge and collect pre and post-judgment interest upon the amount of the judgment (including any awarded expenses) at the highest rate allowed by law, and (2) to recover the costs of the proceeding and such reasonable attorney's fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

9.04 Waiver. The failure of the Developer, the Association or an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

9.05 Election of Remedies. All rights, remedies and privileges granted to the Developer, the Association, or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

ARTICLE X
GENERAL PROVISIONS

10.01 Duration of Covenants. These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by SBPOA, the Developer or Owners, their respective legal representatives, heirs, successors and assigns, and shall be effective for a period of 20 years following the Effective Date hereof, and may be continued thereafter as provided by Arkansas law.

10.02 General Amendments. These Covenants (excepting those which apply specifically to the Community Boat Docks and Community Sewer System) may be amended upon the affirmative vote of 75% of the Lot Owners in attendance or represented by proxy at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

10.03 Amendments Applying Specifically to Community Boat Docks. Covenants applying specifically to the Community Boat Docks may be amended upon the affirmative vote of 75% of the Boat Slip Owners in attendance or represented at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

10.04 Amendments Applying Specifically to Community Sewer System. Covenants applying specifically to the Community Sewer System may be amended upon the affirmative vote of 75% of lot owners 1 thru 98 in attendance or represented at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

10.05 Severability. Invalidation of any restriction set forth herein, or any part thereof, by any order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

10.05 VIOLATIONS. In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons or entity owning any Lots or Boat Slips in SUNSET BAY including the Developer and SBPOA, to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violation. Provided further, however, that the Developer or SBPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or SBPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

00 50509

EXECUTED this 23 day of May ²⁰⁰⁰
1998.

Summit One, LLC

by Wesley Kent Huff
(name, manager)

Summit One, LLC.
110 S. 20th
Flagstaff, AZ
72758

used in
error

00 50510

DECLARATION OF COVENANTS AND RESTRICTIONS FOR
SUNSET BAY

00093098

THIS DECLARATION made this 11th day of September, 2000, by SUMMIT ONE, L.L.C., an Arkansas Limited Corporation (herein "Developer").

WITNESSETH:

WHEREAS, Developer, as owner of certain real property located in Benton County, Arkansas, desires to create thereon a development known as Sunset Bay (sometimes herein "Development"), the first phase of which shall be constructed upon a portion of the real property located in Benton County, Arkansas, as more particularly described on the recorded Plat of said subdivision attached hereto (herein "Property"), and subsequent phases of which may be constructed upon portions of contiguous real property; and

WHEREAS, Developer desires to provide for the preservation and enhancement of value when and as the Property is improved and desires to subject the Development to certain covenants, restrictions, easements, affirmative obligations, charges and liens, as hereinafter set forth, each and all of which are hereby declared to be for the **benefit of the Development and each and every owner** of any and all parts thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Development, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering the Common Properties (as hereinafter defined) and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter.

NOW, THEREFORE, the Developer subjects the real property described in Article III and such additions thereto as may hereafter be made, to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as the "Covenants") hereinafter set forth. This Declaration shall run with the land and shall be binding upon all persons having or acquiring any rights, title or interest in the property, or any portions thereof and shall insure to the benefit of each owner thereof.

FILED FOR RECORD
At 3.04 O'Clock P M

Return to:
110 S. 20th
Rogers, AR 72758

SEP 12 2000
SUE HODGES
Clerk and Recorder
Benton County, ARK.

16851

ARTICLE I
PURPOSE

00093099

Said Association was formed for the general purpose of providing for maintenance, preservation and architectural control of the Property of the owners and the association, and promoting the health, safety and welfare of the Owners. And shall be responsible for the:

- (a) Exercise and performance of the rights, powers, and duties assigned to it by Developer and granted to it by the Articles of Incorporation of the Association.
- (b) Maintenance, repair and replacement of all private streets and roadways located within the Property.
- (c) Operation, maintenance (including landscaping where appropriate), repair and replacement of all entry gates, street signs, monuments, fences and walls and all other improvements, whether constructed by Developer or the Association, located in or on the road rights-of-way, the easements or on other portions of the Property conveyed to the Association.
- (d) Operation, maintenance, repair and replacement of centralized security/fire protection system (if any) installed on the Property.
- (e) Acquisition of appropriate amounts and coverage of casualty insurance on property owned or operated by the Association and on structures placed in or on road right-of-way or the easements.
- (f) Acquisition of such liability insurance as the Association deems necessary to protect the members and the Board of Directors of the Association from any liability from occurrences or happenings on or about those portions of the Property maintained by the Association (including, but not limited to errors and omissions insurance) for the Board of Directors of the Association.
- (g) Payment for all utilities and all real estate taxes and assessments on property owned or operated by the Association.
- (h) Hiring, firing, supervising and paying necessary employees and personnel, including but not limited to security guards, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein.
- (i) Assessments and collections of the funds required to accomplish the objectives and perform the duties and obligations of the Association set forth herein.
- (j) Granting of deeds and/or easements on, over, across or under Common Areas, private streets and roadways and those easements depicted on the Plat, to such persons or entities, public agencies, public authorities and/or public or private utilities for such purposes as Developer shall deem necessary or prudent.

In carrying out the foregoing, the Association shall have the right and power to adopt reasonable rules and regulations.

ARTICLE II
DEFINITIONS

00093100

The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the content shall clearly indicate otherwise) shall have the following meanings:

2.01 Architectural Review Committee: "Architectural Review Committee" (SBARC) shall mean and refer to that Committee formed and operated in the manner described in Article III hereof.

2.02 Association: "Association" shall mean SUNSET BAY PROPERTY OWNERS' ASSOCIATION, INC., (SBPOA) an Arkansas nonprofit corporation, its successors and assigns.

2.03 Board of Directors or Board: "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

2.04 Boat Slip or Boat Slips: "Boat Slip" or "Boat Slips" shall mean and refer to an individual Boat Slip or multiple Boat Slips within the Community Boat Docks.

2.05 Bylaws: "Bylaws" shall mean the Bylaws of the Association.

2.06 Common Expense: "Common Expense" shall mean and include (a) expenses of administration, maintenance, repair or replacement of the Common Properties; (b) expenses agreed upon as Common Expenses by the Association; (c) expenses declared Common Expenses by the provisions of this Declaration; and (d) all other sums assessed by the Board of Directors pursuant to the provisions of this Declaration.

2.07 Common Properties: "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as a "Common Property". All Common Properties are intended for and are to be devoted to the common use and enjoyment of the Owners and their guests. The Common Properties shall include but not be limited to the entryway, all monumentation and equipment related to the electronic controlled access gate, any staffed or unstaffed gate house, entry signage and monumentation, any water features and other decorative monumentation, including certain walls installed by the Developer, including all roads in the Development, street lights, recreation and conservation areas, landscaping, lighting and sprinkler system, island areas bounded by streets, easement areas, signs, and all areas designated on the plat as Common Areas.

2.08 Common Elements/Common Element Easements: shall mean all landscaping along roadways and/or related improvements located on adjacent property, any center island of a street or cul-de-sac, any private driveways, and improvements located on any related easements which shall be maintained by the Association.

2.09 Community Boat Docks: "Community Boat Docks" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Boat Docks". The term "Community Boat Docks" shall also include the boat docks acquired by the Association. The Community Boat Docks are intended for and are to be devoted to the exclusive use and enjoyment of the Owners who desire to use this amenity of the Development.

2.10 Community Sewer System: "Community Sewer System" shall mean and refer to the sewer collection system (s) and the sewage treatment systems and those tracts of land and any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties/Community Sewer System". The Community Sewer System and improvements thereon are intended for and are to be developed for the exclusive use of the owners whose lots are to be served by this system.

2.11 Covenants: "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

2.12 Declaration: "Declaration" shall mean this Declaration of Covenants and Restrictions for SUNSET BAY and any Supplemental Declaration filed pursuant to the terms hereof.

2.13 Developer: "Developer" shall mean SUMMIT ONE, LLC, an Arkansas Limited Liability Corporation, and its successors and assigns, designated in a recorded writing.

2.14 Development Period: "Development Period" shall terminate upon conveyance of the last Lot from the Developer to an Owner or such earlier date as the Developer shall state by written notice to the Association.

2.15 Improved Lot: "Improved Lot" shall mean and refer to any Lot upon which a legally habitable residence exists.

2.16 Lot: "Lot" shall mean and refer to any parcel of land located within the Property which is used or intended for use as a site for a legally habitable dwelling as shown upon any recorded final subdivision plat of any part of the Property.

2.17 Master Plan: "Master Plan" shall mean and refer to the conceptual land plan for the future development of SUNSET BAY. Since the concept of the future development of the undeveloped portions of SUNSET BAY is subject to continuing revision and change at the discretion of the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants shall arise with respect to future development. THIS DECLARATION DOES NOT DESIGNATE ANY PROPERTY FOR ANY PARTICULAR USE, SUCH DESIGNATION TO BE MADE BY SEPARATE SUBSEQUENT DECLARATION OR BY RECORDED PLAT WITH SUCH DESIGNATION CLEARLY AND UNEQUIVOCALLY SHOWN THEREON. THE DEVELOPER SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN.

2.18 Member or Members: "Member" or "Members" shall mean and refer to every person or entity who holds membership in the Association by virtue of being a record Owner of fee simple title to any portion of the property.

2.19 Owner: "Owner" shall mean and refer to the Owner as shown by the real estate records in the office of the Recorder, whether it be one or more persons, firms associations, corporations, or other legal entities, of fee simple title to any Lot or Unsubdivided Land. But excluding those having such interest merely as security for the performance of an obligation.

2.20 Plate: "Plate" shall mean the plat of Sun Set Bay ,Lots 1 through 141 inclusive, recorded in the office of Recorder in Benton County Arkansas in Book P2788 on page 4.

2.21 Property or Properties: "Property" or "Properties" shall mean and refer to the Property described in Section 2.01 hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions hereof and may include: (1) Residential Lots; (2) Unsubdivided Land owned by the Developer or other Owners; and (3) Common Properties.

2.22 Record or To Record: "Record" or "To Record" shall mean to record pursuant to the laws of the State of Arkansas conveying or affecting title to real property.

2.23 Recorder: "Recorder" shall mean and refer to the Clerk of the Circuit Court of Benton County, Arkansas and the successor to that office.

2.24 Streets: "Streets" shall mean those private streets and any private driveways designated as streets or driveways of the Property as shown on the Plat.

2.25 Undeveloped Land: "Undeveloped Land" shall be land owned by the Developer, which is not improved, and which has not been designated as Common Property whether subdivided or unsubdivided.

2.26 Unimproved Lot: "Unimproved Lot" shall mean and refer to any Lot that is not an Improved Lot.

2.27 Unsubdivided Land: "Unsubdivided Land" shall mean and refer to all land in The Property described in Section 1.07 hereof, and additions thereto as are subjected to this Declaration or any supplemental declaration under the provisions hereof, which has not been subdivided.

2.28 Visible from Neighboring Properties: shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring Properties.

ARTICLE III
PROPERTY AND ASSOCIATIONS

3.01 Property: The real property which is subject to these covenants, is located in Benton County, Arkansas and is more particularly described on the recorded Plat of said subdivision. Said Plat is recorded in Plat Record P2788 on page 4 in the office of the Recorder and is hereby specifically incorporated herein by reference.

3.02 Additions to Property: The Developer, its successors, and assigns, shall have the right to bring within the plan and operation of this Declaration additional properties in future stages of the Development so long as they are contiguous with the Development. The additions authorized under this Section shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth. The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modifications shall have no effect on the Property as described in Section 2.01 above.

3.03 Associations: The affairs of the Association shall be conducted by the Sunset Bay Property Owners' Association, a non-profit corporation.

3.04 Separate Associations: For any property subjected to this Declaration pursuant to the provisions of this Section, there may be established by the Developer an additional Association limited to the Owners and/or residents of such additional property to make and enforce rules and regulations of supplementary covenants and restrictions, if any, applicable to such additional lands.

3.05 Right of Inspection: Members of the Association and the First Mortgagee of any Lot shall have the right at reasonable times, by appointment, to inspect the books and records of the Association

3.06 Right of Notice: Each First Mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Member/Owner of a Unit encumbered by the Mortgage in favor of such Mortgagee of any obligation under this Declaration or under the Articles of Incorporation, Bylaws, ARC Design Guidelines, or Rules and Regulations of the Association which is not cured within sixty (60) days.

3.07 Management and Service Contracts: Any agreement with the Association for professional management or other services of the Association shall not exceed three (3) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

3.08 Maintenance by Association: Except as otherwise stated herein, the Association shall be responsible for the maintenance, repair and replacement of Common Areas, Common Elements and Common Element Easements.

3.09 Taxes/Insurance: The Association shall be responsible for any appropriate ad valorem taxes, and for such liability and property damage insurance on Common Areas, Common Elements and Common Element Easements as approved by the Board of Directors of the Association.

3.10 Liability: No Member of the Board of Directors of the Association, the Architectural Review Committee, or any other committee of the Association, no officer, and no manager or employee of the Association shall be personally liable to any Member or Lot Owner or to any other person, or the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, Board of Directors (or any Director), Architectural Review Committee or other committee (or Member thereof), managing agent (or employee thereof), any representative or employee of the Association or any committee, committee Member or officer; provided however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith and has engaged in willful or intentional misconduct.

3.11 Membership and Voting Rights:

(a) **Membership:** Every Owner of a Lot numbered 1 through 141 shall be a Member of the Association and such Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

(b) **Voting Rights:** The Association shall have two (2) classes of voting Membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Membership, and each Class A Member shall be entitled to one (1) vote for each Lot in which he holds the interest required for Membership. When more than one (1) person holds the interest required for Membership, all such persons shall be Members, but 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 Lot. Notwithstanding the above, Class A Members shall be entitled to vote only on the annual budget until termination of the Development Period, at which time full voting rights shall accrue to all Class A Members.

Class B: The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds a fee interest. The Class B Membership shall cease and be converted to Class A Membership upon the earlier to occur of (a) termination of the Development Period, or (b) written notice of termination from Developer.

ARTICLE IV
ARCHITECTURAL CONTROL

4.01 Architectural and Design Review: In order to preserve, to the extent possible, the natural beauty of the Property and its setting, to maintain a pleasant and desirable environment, to establish and preserve a harmonious design for the Development and to protect and enhance the value of the Property, the Developer (SUMMIT ONE) or the SUNSET BAY ARCHITECTURAL REVIEW COMMITTEE (herein SBARC) shall approve the details of construction plans including dwelling placements. Except for improvements and dwelling Units constructed by Developer, no dwelling Unit, building, swimming pools, fence, wall or other exterior structure or improvement of any kind, including landscaping that will change the topography of the Lot, shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration of any improvement be made upon a Lot until the detailed plans and specifications showing the nature, kind, shape, style, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. No trees or shrubs shall be cut or removed and no grading shall be commenced until the name of the Building Contractor (general contractor, building contractor, construction consultant, architect, design builder or the Owner if acting as own contractor), proposed building plans and specifications (including height, and composition of roofing, siding, or other exterior materials and finish), plot plan (showing the proposed location of such building or structure, drives and parking areas), **drainage plan**, landscape plan or construction schedule, as the case may be, shall have been submitted to the Developer or the SBARC for approval at least thirty (30) days prior to the proposed date of construction. The Developer or agent designated by Developer shall act as the initial Architectural Review Committee. The Architectural Review Committee may, at its sole discretion, hire the services of experts of its choice who need not be members of the Association. After (1) termination of the Development Period, or (2) resignation of Developer as Architectural Review Committee, the Board of Directors of the Association shall act as the Architectural Review Committee, or may appoint an Architectural Review Committee composed of three or more representatives. The Architectural Review Committee shall have the exclusive right, exercisable in its sole discretion, to promulgate written guidelines, rules, regulations and restrictions (hereinafter "SBARC Design Guidelines") concerning any construction, change or alteration to be made on or concerning any improvement, including landscaping, on Lots. The Architectural Review Committee shall have the right to amend such SBARC Design Guidelines so promulgated, or waive any SBARC Design Guidelines, provided that in no event shall any waiver be effective unless in writing and signed on behalf of the Architectural Review Committee by a person duly authorized to sign such waiver. Further, no such waiver shall be deemed a waiver of the right to enforce the covenants and restrictions contained in this Declaration, or the right to enforce the SBARC Design Guidelines promulgated by the Architectural Review Committee in the future as to others. The SBARC Design Guidelines shall carry the same force and effect as this recorded Declaration, and may be enforced through the same procedures as set forth in this Declaration.

4.02 Approval Process: Any Owner or potential purchaser of a Lot may, prior to submitting any plans to the Architectural Review Committee for approval, request in writing of the Committee a copy of the current SBARC Design Guidelines. In the event the Board or its designated Architectural Review Committee fails to approve or disapprove such plans within thirty (30) days after the plans have been submitted, it shall be presumed that the Board disapproves said plans, and no construction, change or alteration shall be permitted. The plans submitted to the Architectural Review Committee shall be submitted in duplicate and shall be sealed by a registered architect. Application for approval of plans shall be accompanied by the payment of a fee as designated in the SBARC Design Guidelines. Approval of plans and specifications for any Lot shall be in the sole discretion of the Architectural Review Committee.

The architectural and design review shall be directed toward preventing excessive or unsightly grading, indiscriminate clearing of property, removal of trees and vegetation which could cause disruption of natural water courses, insuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the surrounding property and improvements thereon, and insuring that plans for landscaping provide visually pleasing settings for structures on the same Lot and on adjoining or nearby Lots.

4.03 Occupancy: No dwelling Unit shall be occupied until construction has been completed pursuant to plans approved by the Architectural Review Committee.

4.04 Completion of Construction: All construction shall be completed within twelve (12) months from "start" thereof unless a waiver and extension of time is issued by the Architectural Review Committee. For the purposes of this paragraph "start" shall mean the date of issuance of a building permit for an improvement on a Lot.

4.05 SBARC Design Guidelines: Each Lot and dwelling Unit to be constructed thereon shall be subject to the SBARC Design Guidelines regarding building heights, number of stories, setbacks, building envelopes, exterior color, compatibility with natural topography of Lot, impact on neighboring Lots, and other criteria. The Architectural Review Committee shall also have the right to approve the building site, orientation, and location of dwelling Unit thereon.

4.06 SBARC Fees: The Architectural Review Committee shall have the right and privilege to require a fee equal to its actual cost of administration for review of plans, and expenses of expert advice in connection with said review.

4.07 SBARC Refundable Deposit: The Architectural Review Committee shall have the right to require a refundable deposit, in an amount to be determined by the Board, at the time plans are submitted for review, to be used to repair any construction damage caused to improvements built by the Developer, or to other Lots or areas of the Property, including Common Areas, Common Elements, and Common Element Easements.

4.08 Liability: The Architectural Review Committee and agents and experts employed by the Architectural Review Committee shall not be liable in damages to anyone or to any Owner or Owners of Property subject to this Declaration by reason of mistaken judgment,

negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans. Anyone submitting plans to the Architectural Review Committee, and any person acquiring Ownership in any portion of the Property waives his claim for any such damages.

4.09 Right to Grant Variances: The Architectural Review Committee or its duly appointed agent for such purpose shall have the right to grant variances as to any of the provisions of the SEARC Design Guidelines, or to waive any such provisions as it shall, in its sole discretion, determine upon good cause shown. Any such variance or waiver so granted shall be in writing and shall be made prior to the time that the subject matter set forth in the written variance or waiver is acted upon or implemented unless otherwise expressly stated in such written variance or waiver. Any such variance or waiver so granted as to any particular subject matter shall not constitute a similar or dissimilar variance or waiver as to any other matter affecting the same Lot or any other Lot. Any such variance or waiver set forth in writing by the Architectural Review Committee, or its duly appointed agent, shall be specific to that Lot only, and shall not be applied to any other Lot.

4.10 Right of Entry: During reasonable hours and upon reasonable notice to the owner or other occupant of a Lot, any member of the Architectural Review Committee, any member of the Board, or any authorized representative of either of them, shall have the right in their official capacity to enter upon and inspect any Lot and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining compliance with the provisions of this Declaration and Design Guidelines, and such persons shall not be deemed guilty of trespass by reason of such entry.

ARTICLE V **COVENANTS, USES AND RESTRICTIONS**

5.01 Applications: It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article IV apply solely to the Property described on the recorded Plat of said subdivision, which Property is intended for use as Single-Family Residential Lots only. These Restrictive Covenants and Conditions are not intended to apply to any other lots, tracts or parcels of land. Specifically, the Developer, its successors or assigns, reserves the right to use or convey such other lots, tracts, and parcels with different restrictions.

5.02 Residential Use:

(a) All of the Lots in the Development (with the exception of Lots 129,130,131, and 141) shall be, and be known and described as, residential lots, and no structure shall be erected, altered, placed or permitted to remain on any Lot other than as provided in these Covenants and Restrictions and in supplements hereto.

(b) "Residential" refers to a mode of occupancy, as used in contradistinction to business or commercial or mercantile activity and, except where otherwise expressly provided, "residential" shall apply to temporary as well as permanent uses, and shall apply to vacant Lots

as well as to buildings constructed thereon. However the Developer shall have the right to erect and maintain such sales and construction models, signs, office areas and related facilities as they deem appropriate for sales on the Property, and the Developer may assign this right as they deem appropriate.

5.03 Commercial Use: The Developer shall reserve the right to use Lots 129,130,131, and 141 for commercial use.

5.04 Multi-Family Residences: No residence shall be designed, patterned, constructed or maintained to serve, or for the use of more than one single family, and no residence shall be used as a multiple-family dwelling at any time.

5.05 Single Family Use: All Lots are hereby restricted to single family residential use and customary accessory improvements, including patio walls, swimming pool, recreation court, and such other related improvements as the Architectural Review Committee shall deem appropriate. All buildings or structures erected upon said premises shall be of new construction, and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than single family residential Units shall be build on any Lot. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building or storage shed shall be placed on any portion of the premises at any time as a residence or for any other purpose either temporary or permanently, except upon prior written consent of the Architectural Review Committee. No structure of a temporary nature shall be used for living purposes during construction before it is completed. No prefabricated residences shall be placed on the Property.

5.06 Business Use:

(a) No residence or other structure shall be designed, patterned, constructed or maintained upon any Lot for use in whole or in part for any business service or activity, or for any commercial purpose; nor shall any Lot be used for business purposes, or for trucks or other equipment inconsistent with ordinary residential uses. No panel, commercial or tractor trucks shall be parked in driveways or on streets.

(b) Neither the foregoing nor any other section of this Declaration shall prevent any Owner from maintaining a home office within their residence for any business purpose that does not involve any activity that would be offensive, distracting or a nuisance to other Owners. Home businesses are expressly prohibited.

(c) Neither the foregoing nor any other sections of this Declaration shall prevent the Developer or any builder from constructing a house for use as a model home that may contain office-type furniture and be used for conducting the business of either selling that house or other houses within the Development, nor shall the foregoing or any other section of this Declaration prevent the Developer from designating a Lot or Lots from time to time for the temporary placement of a trailer or other suitable structure for use as an office and/or sales Center by the Developer, a realtor or builders at the sole discretion of the Developer.

5.07 Sign Easement: Any areas on the Property owned by the Developer may be designated by the Developer as a "sign easement" and shall be used for purposes of erecting and maintaining such signs as The Developer shall determine and a valid easement for such purposes is hereby declared to exist for the benefit of the Developer during the Development Period.

5.08 Rearrangement of Lot Lines: Not more than one dwelling house shall be erected or maintained on any one Lot. Contiguous Lots may be combined if the Lots have the same Owner, for the purpose of erecting an single approved dwelling house thereon; the assessments provided for herein will continue to be based upon the number of original Lots purchased. Splitting of a lot into two (2) or more lots is prohibited by these covenants.

5.09 Completion of Construction: Any residence being erected on a Lot shall be completed within 12 months from the date of issuance of a building permit for said residence. During the construction of a residence upon a Lot, The builder shall keep all debris cleared from the street or streets bounding the Lot; and, before any residence is occupied, all debris must be removed from the entire Lot. Without the prior written approval of the Developer or SBARC, no construction or any building, or other improvements on the premises shall be commenced prior to construction of the dwelling house. No debris or unsightly objects shall be moved onto any Lot in the Development at any time, including the period of construction of the residence thereon. The exterior of every dwelling shall be completed before occupancy. The yard of every completed dwelling shall be graded and landscaped within 90 days after occupancy.

5.10 Utility Easements: Perpetual easements have been reserved, as shown on the recorded plat, for the construction, and maintenance of utilities such as electricity, gas, water, sanitary sewer, phone, TV cable, drainage, etc., and no permanent structure shall be erected or maintained upon or over said easement.

5.11 Setbacks: No building shall be erected on any Lot nearer than the minimum building setback line as shown on the development plat. For the purposes of this covenant, open porches, screened porches, decks, garages (attached and detached), swimming pools and pool houses shall be considered as a part of the building. Steps, walkways and driveways shall not be considered as a part of the building, providing, however, this shall not be construed to permit any portion of the building on the Lot to encroach upon another Lot. No provision of this paragraph shall be construed to permit any structure to be constructed and erected upon any Lot that does not conform to the zoning laws and regulations applicable thereto.

5.12 Building Requirements: The building codes of the City of Rogers, Arkansas, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to all lots in SUNSET BAY. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Protective Covenants shall be resolved in favor of more restrictive provisions. Building, architectural and design specifications shall be in accordance with those regulations set forth in the Rogers Building Codes.

5.13 Minimum Square Footage: No dwelling shall be erected or permitted to remain in the Development unless it has the minimum number of square feet of finished and heated living area contained within the residence, exclusive of porches, garages and basements, as specified herein. The minimum number of square feet required is as follows:

(a) Patio Homes (homesites identified on Development Plat as Lots 53, 54, 55, 56, 57, 58, 59, 60, 61, 52, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98) shall be restricted to single-story residences with a minimum of 1200 square foot and two-story residences with a minimum of 1800 square feet.

(b) Luxury Homes (homesites identified on Development Plat as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9a, 9b, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52) shall be restricted to single-story residences with a minimum of 1500 square feet and two-story residences with a minimum of 2000 square feet.

(c) Estate Homes (homesites identified on Development Plat as Lots 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141) shall be restricted to single-story residences with a minimum of 2400 square feet and two-story residences with a minimum of 2800 square feet.

5.14 Building Materials: The Developer or the SBARC will use the following building material guidelines when evaluating proposed building plans:

(a) Roofs shall be tile, architectural shingles or other material approved by the Developer or the SBARC. No wood shingles shall be allowed.

(b) Building exteriors shall be at least 70% brick, stone, or stucco with the balance being wood or other material specifically approved by the Developer or the SBARC.

(c) Windows shall be wood, wood clad or other material specifically approved by the Developer or the SBARC.

Variations and waivers of these guidelines may be made only if the Developer or the SBARC conclude that the best interest of the Development will be served by allowing a variation or waiver.

5.15 Swimming Pools: Swimming pools may be constructed upon any Lot with the prior written approval of the Developer or SBARC. The location of any swimming pool must comply with the setback requirements set forth above. The design of any swimming pool and its screening or fencing must conform to all City of Rogers, Arkansas Code requirements.

5.16 Fences: No fences will be allowed on a Lot without the prior written consent of the Developer or SBARC. Fencing of front yards is prohibited. Fencing on corner lots must not infringe on neighboring lots front yard setbacks. No fences shall exceed six feet in height. The Developer or SBARC must approve all fencing materials. Chain link fences and other forms of wire fencing are specifically prohibited. All proposed fences must be submitted to the Developer or SBARC showing materials, design, height and location. No fencing will be allowed around any propane/natural gas storage tanks.

5.17 Damage to Streets and Curbs: Any damage done to streets, curbs, gates, fences, or any Common Properties by the Owner of any Lot, or by a contractor, subcontractor, laborer or material and/or service supplier employed by an Owner to construct a dwelling or other improvement on a Lot, will be repaired immediately at the expense of the Owner.

5.18 Signs: No signs shall be erected or maintained on the Property without the prior written consent of the Developer or SBARC except:

- (a) Signs erected by the Developer or Benton County for identification of streets, Common Properties, traffic control and directional purposes.
- (b) Signs of a temporary nature such as construction signs, which shall not exceed 6 square feet in area.
- (c) Signs erected by the Developer advertising the Development.

5.19 Service Area: Each dwelling shall provide an area or areas on the rear or side yard of the Lot to accommodate air conditioner compressors, garbage containers, an electrical service entrance, or other ancillary residential functions that by nature may present an unsightly appearance. Service areas shall be screened from view by an enclosure that is an integral part of the site development plan, using materials and colors that are harmonious with the dwelling it serves.

5.20 Garages and Driveways: Each dwelling shall have an attached or detached garage for not less than two (2) cars with a concrete (or other approved material other than blacktop) driveway at least twelve (12) feet wide from street to garage. Detached garages shall be designed to be compatible with the architecture of the dwelling. The Developer and SBARC shall exercise a strong bias toward side-entry garages, but will consider front-entry garages when supplied with information that a front-entry garage is the best alternative for the Lot and proposed dwelling.

5.21 Landscaping. A landscaping plan shall accompany every new home application to the Developer or the SBARC. A general scheme and type of landscaping shall be provided in the SBARC Design Guidelines. The SBARC Guidelines shall be available to all Owners through the Association. Lot Owners shall provide and maintain all landscaping on their individual Lots, and shall maintain all landscaping on their individual Lots, and shall maintain their Lots free of

weeds, debris, or other materials which are not in keeping with the SBARC Design Guidelines. The Association shall be responsible for maintenance of any landscaping on Common Areas, Common Elements, and Common Element Easements. The native growth on the Property, including native trees, shall not be destroyed or removed from any portion of the Property except as may be necessary for permitted and approved improvements. No landscaping will be allowed around fire hydrants that will obstruct view or access from street.

5.22 Sight Distance at Intersection: No fence, wall, hedge or shrub that obstructs sight lines at intersections in the Development shall be permitted.

5.23 Animals: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets (in a reasonable number as determined by the board) may be kept and maintained provided that they are not kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. All household pets must be maintained indoors and shall not be allowed to roam outdoors unless on leash and attended by a person. No reptiles shall be kept as pets.

5.24 Unightly Conditions: All of the Lots in the Development must, from the date of purchase, be maintained by the Owner in a neat and orderly condition (grass being cut when needed, as well as leaves, broken limbs, dead trees, and other debris being removed when needed). In the event an Owner of a Lot in the Development fails to maintain their Lot in a neat and orderly condition, Developer, or its duly appointed agent, or the Board, or its duly appointed agent, may enter upon said Lot without liability and proceed to put said Lot into an orderly condition, billing the cost of such work to the Owner. The cost of such action by the Association may be added to the assessment obligation at the discretion of the Board of Directors, and such cost shall be calculated by adding actual cost of maintenance and repair, plus an additional one-third of such actual cost for administrative costs of the Association.

5.25 Offensive Activity: Noxious or offensive activities shall not be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance, discomfort, embarrassment or nuisance to the Development. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the Property or to the occupants of such other Lots. Woodpiles or other material shall be stored in a manner so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the Property or to its occupants.

5.26 Detached Buildings: No detached garages, outbuildings or storage buildings shall be permanently erected upon any Lot without the prior written consent of the Developer or SBARC.

5.27 Tree Removal: No live trees 6 inches or greater in diameter shall be removed prior to obtaining approval of the Development or SBARC. The majority of the trees may not be

removed from any Lot except in the area of the Lot upon which the house and driveway are to be constructed.

5.28 Antennas: No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure on the Property of any Lot within the Development without the prior written consent of the Developer or SBARC; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. **EXCEPTION: Digital satellite system receivers not more than 18" in diameter shall be allowed without specific approval provided they are not visible from the street.**

5.29 Sewage Disposal: All dwellings shall have sewage disposal systems of the type and quality approved by the State of Arkansas Department of Health.

5.30 Laundry: No Owner, guest, or tenant shall hang laundry from any area within or outside a dwelling residence if such laundry is within the public view.

5.31 Utilities: All utilities in this subdivision shall be placed underground.

5.32 Street Lights/Mail Boxes: The owner of each lot in SUNSET BAY shall install, at owner's expense, a mail box conforming with specifications to be determined by the SBARC and purchased from SUMMIT ONE, or approved supplier to ensure uniformity of design and quality construction. If the owner of a lot wishes to erect a street light it will need to conform to the existing street lights erected by SUMMIT ONE. The light can be purchased from SUMMIT ONE or an approved supplier. The light and mailbox will be competitively priced. The location of the street light and mailbox shall be designated on a plot plan to be submitted to the SBARC prior to construction of a residential dwelling. The street light and mailbox must be installed and operating at the time a certificate of occupant is issued. The streetlight is to be controlled by a photoelectric cell and the street light is to be equipped with an external electric outlet. It shall be the responsibility of the owner of each lot to maintain the street light to be installed on each lot and to keep the street light and mail box in a reasonable state of repair at all times. The street access number shall be placed on both sides of the mailbox. Numbers shall be a minimum of four inches.

5.33 Excavation: No owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the Developer or SBARC is obtained.

5.34 Sound Devices: No exterior speaker, horn, whistle, bell or other sound device that is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon Lots within the Development. The playing of loud music from any porches or decks shall be offensive, obnoxious activity constituting a nuisance.

5.35 Obligation to Rebuild or Clear and Landscape Upon Casualty or Destruction: In order to preserve the aesthetic and economical value of all Lots within the Development, each Owner shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building, structure, and improvement or significant vegetation which shall be damaged or destroyed by fire, or other casualty. Variations and waivers of this provision may be made only upon Developer or the Board establishing that the overall purpose of the Restrictive Covenants would be best effected by allowing such a variation.

5.36 Vehicle Parking: All vehicles, except recreational vehicles and equipment, owned by Lot Owners shall be parked only in the Owner's garage or driveway. Recreational vehicles and equipment, including but not limited to motor homes, travel trailers, campers, boats and the like, shall not be parked on the driveway or street for a period of time exceeding three (3) days. No vehicle, operative or inoperative, shall be stored outside on the premises at any time, even if not visible from the street.

5.37 Maintenance: Each Lot Owner shall, at all times, maintain in good repair all structures located on such Lot, including driveways and permitted fences, and shall keep all vegetation and landscaping in good and presentable condition.

5.38 Construction: Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and adjacent areas of the property shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Review Committee. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

5.39 Insects: No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

5.40 Hunting: There shall be no hunting, trapping, unnatural harm to animals, game or water species, nor shall there be any target or trap shooting or discharge of firearms upon any Lot or Common Properties.

5.41 Security Lights: No Owner shall place exterior security lights (whether in trees, on poles, or otherwise) higher than the roofline of the structure being protected.

5.42 Private Boat Docks Private boat docks shall not be permitted by Lot Owners inasmuch as the Community Boat Docks best serve the interest of all Lot Owners in the Development.

5.43 Propane/Natural Gas Tanks: All tanks shall be buried or completely out of view of all lots. No fencing is allowed around propane tanks that would screen tank from emergency/fire personnel.

5.44 Exterior Maintenance: All maintenance and repair of dwelling Units and other improvements upon any Lot, together with any erosion protection originally required by the Architectural Review Committee or installed by Developer on any Lot, shall be the responsibility of the Owner of such Lot, and shall be performed so as to maintain the improvements on each Lot in a manner which reflects a well maintained quality neighborhood. The Owner of any Lot upon which the Developer has erected a wall shall maintain said wall and any gate on Owner's Property in good condition. The Owner of any Lot on which Developer has planted buffer landscaping shall maintain such landscaping in good condition and shall replace dead, dying, or diseased plants with like kinds of plants. If any dwelling Unit or wall is destroyed or otherwise damaged by any cause, the Owner shall complete rebuilding or repair on or before six (6) months from date of the damage. If any Owner fails to comply with this Section, the Association may, at its option, enter upon the Lot and perform such maintenance as it shall deem appropriate and the actual cost of such performance, plus an additional one-third of actual cost for administrative cost of the Association, shall be added to the Owner's current assessment.

5.45 Trash Pickup: The Board of Directors may require all Owners to subscribe to a trash pick-up service if public trash pick-up service is not available. Each Owner shall be solely responsible for the fees in connection with the service to each such Owner's Lot. Such trash pick-up fees may be included in the Association assessment, at the discretion of the Board. In no event shall trash or trash containers be maintained so as to be visible from the street or from any other Lot, except to make such available for trash pick-up, and then only for the shortest reasonable time necessary to accomplish collection.

5.46 Rules and Regulations: The Board of Directors of the Association may make reasonable Rules and Regulations to be included as part of the ARC Design Guidelines for the purpose of ensuring the health, safety, and welfare of Owners and residents, and the protection of Property values.

5.47 Right of Developer: Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Developer, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within Sunset Bay.

5.48 Blanket Easement: There is hereby created a blanket easement upon, across, over and under the Property for installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electric, and cable television. By virtue of this easement, it shall be expressly permissible for each individual Owner or public service utility company or municipality to erect and maintain the necessary facilities, sewer connections and other necessary equipment or lines in said Property, and to affix and maintain

electrical and/or telephone or cable wires, circuits and conduits or other connections above, across and under the Units, including the roof and exterior walls of each Unit. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer during the Development Period and approved by the Architectural Review Committee. This easement shall in no way affect any other recorded easements on said premises.

5.49 Encroachment Easement: All Lots shall be, and are hereby declared to be, subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by Developer, and also by any other original builder which has caused the construction in accord with plans approved by the Architectural Review Committee, and such action, in the sole opinion of Developer, was not willful and is deminimus in nature. A valid easement for said encroachments and for the maintenance of the same, so long as they stand, shall and does exist. Developer shall have the right to record any notice of such easement as Developer shall determine.

5.50 Party Walls: Except as hereinafter provided, the rights and duties of Owners with respect to party walls or fences between Lots or between Lots and Common Areas, Common Elements, or Common Element Easements shall be as follows:

- (1) The Owners of contiguous Lots who have a party wall or fence shall both equally have the right to use such wall or fence provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- (2) In the event that any party wall or fence is damaged or destroyed through the act of an Owner or any of his tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (5) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefore from the persons causing such damage.
- (3) In the event any party wall or fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or fence.
- (4) Notwithstanding anything to the contrary herein contained, there shall be no

impairment of the structural integrity of any party wall or fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

- (5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding, anything in the foregoing to the contrary notwithstanding.
- (6) In the case of party walls or fence (1) between Common Areas, Common Elements, or Common Element Easements and Lots, or (2) constructed by the Developer or the Association on Common Areas, Common Elements or Common Element Easements, the Association shall be responsible for all maintenance thereof except that each Owner of a Lot shall be responsible for maintaining the portion of the party wall or fence facing his Lot or the portion thereof which is not facing the Common Element, or Common Element Easement.

5.51 Violations and Enforcement: In the event of the violation, or attempted violation, of any one or more of the provisions of these Restrictive Covenants, the Developer, its successors or assigns, or the Association, its successors or assigns, including all parties hereinafter becoming Owners of any one or more of the Lots to which provisions of these Restrictive Covenants apply, may bring an action or actions against the Owner in violation, or attempting violation, and the said Owner shall be further liable for such damages as may accrue, including any court costs and reasonable attorneys' fees incident to any such proceeding, which costs and fees shall constitute liquidated damages. The Developer or the Board may grant variances of the restrictions set forth in these Restrictive Covenants if such variances do not, in the sole discretion of the Developer or the Board, adversely affect the purposes sought to be obtained hereby and do not violate any of the restrictions appearing on the recorded plat.

By reason of the rights of enforcement of the provisions of this section being given unto Owners of Lots subject to rights of variances reserved by the Developer and the Board), it shall not be incumbent upon the Developer or the Board to enforce the provisions of these Restrictive Covenants or to prosecute any violation thereof. Developer shall not be responsible or liable for any violation of these Restrictive Covenants by any person other than itself.

ARTICLE VI
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY BOAT DOCKS AND ACCESS THERETO

6.01 Application: It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article VI apply solely to the Owners who choose to use the Community Boat Docks and the access thereto.

6.02 Construction: SBPOA shall arrange construction of Community Boat Docks in accordance with the rules and regulations of the U.S. Army Corps of Engineers for the Lot Owners who want a Community Boat Dock Slip(s) and agree to abide by the terms and conditions established by SBPOA. Lot Owners shall pay SBPOA the then prevailing cost of the Boat Slip(s) they desire, retain title to same and have the right to sell their Boat Slip(s) to another Lot Owner. Construction cannot begin until The U.S. Army Corps of Engineers rezone the proposed site to "Limited Development". The request for rezoning was submitted in April of 1998. Title 36, Code of Federal Regulations, Part 327.30-Shoreline Management on Civil Works Projects states: "Shoreline Management Plans will be reviewed periodically, but no less often than every five years, by the District Commander, to determine the need for an update. When changes to the SMP are needed, the plan will be formally updated through the public participation process."

6.03 Maintenance and Repair: SBPOA shall have sole responsibility for the maintenance and repair of the Community Boat Docks.

6.04 Authorized Use: Access to the Community Boat Docks and parking area therefor shall be strictly controlled by SBPOA and limited to the Owners who choose to use the Community Boat Docks and agree to abide by the rules, regulations, terms and conditions established by SBPOA. Guests of Owners shall be allowed use of the Community Boat Docks only when accompanied by an Owner.

6.05 Risk: All usage of the Community Boat Docks and the access thereto by Owners and their guests shall be at the sole risk of the Owner

ARTICLE VII
SPECIAL RESTRICTIONS AFFECTING
COMMUNITY SEWER SYSTEM

7.01 Application: It is expressly stipulated that the Restrictive Covenants and conditions set forth in this Article VII applies solely to the owners of those lots served by the "Community Sewer System". More specifically the owners of lots 1 through 98. Owners of those lots served by said system shall be liable for the payment of assessments to offset the cost of operation, maintenance, and repair of said system which shall become a lien upon any lot for which said assessments remain unpaid as provided for all other Property Owners Association assessments.

7.02 Construction: SBPOA shall arrange construction of the Community Sewer System in accordance with the rules and regulations of the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology to provide sewer service for the Lots to be served by the Community Sewer System. All wastewater equipment standards will be based on the original design of the system. In no case shall a homeowner alter, repair or redesign any portion of the system. It is the homeowner's responsibility to install the septic and effluent pumps and lines from house to main line. The licensed contractor installing this system must be approved by the SBPOA.

7.03 Ownership, Operation, Maintenance and Repair:

(a) Homeowner shall own and be responsible for operation and maintenance of all septic tanks and effluent pumps connected to the collection system. Installation of septic tanks, related required equipment, lines and connection to the system shall be at the individual property owner's expense. Repairs, service, or maintenance to such equipment owned by the individual property owner shall be at said property owner's expense and shall be billed to said property owner either by the POA or its designated contractor. Unpaid bills for maintenance and/or repair to equipment of individual property owners shall become a lien upon said property as provided for any other unpaid property owner assessment.

(b) The collection system and the Community Sewer System shall be owned, operated and controlled by the SBPOA. The SBPOA will contract annually with an operator and/or company holding all necessary licenses and permits to operate and maintain the Community Sewer System as required by the State of Arkansas, the Arkansas Department of Health and the Arkansas Department of Pollution Control and Ecology, to operate and maintain the system as set forth in the By Laws.

7.04 Access: Entrance for access to the Community Sewer System are indicated on the plat of subdivision. It is to be expressly understood that the SBPOA shall have access to all components of the Community Sewer System for the purpose of installation, operation, and maintenance for all components of the Community Sewer System. The POA or its designated operator shall have an easement to enter upon private property for the purpose of inspections, service, and or repair of all individual septic tanks, effluent pumps, pressure sewers and control panels, and related equipment utilize the Community sewer system.

7.05 Use: The community sewer system is only for the use of homes connected to the system. Only domestic wastewater generated on site is allowed in to the sewer system.

ARTICLE VIII
COMMUNITY SWIMMING POOL

8.01 Construction: At such time that seventy-five (75) Lots are sold, if such sales occur within five (5) years the Developer will arrange construction of a community swimming pool for use by all members of SBPOA. If seventy-five (75) Lots are not sold within five (5)

years the Developer reserves the right not to construct a community swimming pool. At the time that seventy-five (75) Lots are sold the Developer will present the SBPOA with a budget for maintaining the community swimming pool. The SBPOA will then need to adjust the assessments to cover the costs of annual maintenance of the community swimming pool and surrounding structures. The community swimming pool will then be built by the Developer unless disapproved by ninety (90) percent of the voting members of the SBPOA.

8.02 Maintenance and Repair: SBPOA shall have sole responsibility for the maintenance and repair of the community swimming pool.

ARTICLE IX **COMMUNITY TENNIS COURTS**

9.01 Construction: At such time that twenty-five (25) Lots are sold the Developer will arrange the construction of a community tennis court for use by all members of the SBPOA. After the community tennis courts are built it will become the property of the SBPOA.

9.02 Maintenance and Repair: All maintenance and repair of the community tennis courts will become the responsibility of the SBPOA.

ARTICLE X **COVENANT FOR ASSESSMENTS**

10.01 Creation of Lien and Personal Obligation of Assessments.

The owner of each 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.
- (2) Special assessments.

Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, reasonable late fees as determined by the Board, costs and reasonable attorney fees, 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 interest, late fees, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

10.02 Purpose of Assessments: The assessments levied by the Association shall be used exclusively to perform all obligations of the Association or reasonably related thereto, including street maintenance, maintenance of Common Areas, Common Elements and Common Element Easements or other easements serving the Association. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments as the Board of Directors shall determine.

10.03 Annual Assessment: All assessments may be from time to time specifically determined and authorized by the Board of Directors. The Association is Specifically authorized and encouraged to seek public and private funds to help defray, in whole or in part, the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the annual budget.

10.04 Computation of Assessment: It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Association during the coming year and a reserve fund for deferred expenditures or deferred maintenance as the Board shall determine. A copy of the budget showing the amount of the assessment to be levied against Lots for the following year shall be delivered to each Member at the annual meeting. The budget and any assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the total Association votes. In the event the Membership disapproves the proposed budget or, if the Board fails for any reason, to determine the budget for the succeeding year, then and until such time as the budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. At no time should the assessment increase more than ten (10%) percent.

Notwithstanding anything to the contrary stated herein, the provisions of this Declaration regarding payment of assessments shall not apply to any unoccupied Lot owned by the Developer. As used herein, "unoccupied" shall mean a Lot which is not occupied as a residence.

In consideration of the foregoing, the Developer agrees that if during its Class B Membership, the total of the Association, the Developer shall pay the deficiency. After the Developers Class B Membership ceases, the developer shall not be required to pay a deficiency nor pay on any unoccupied Lots.

Whenever additional land is added to the Development or whenever new Lots are created by resubdivision the Lot Assessment Table will be amended to add the new Lots and their numerical values as assigned by the Board or Developer. Such amendment will be made automatically, without the necessity of a vote of the Owners. The numerical values of existing Lots will not change as result of such amendment, but the total sum of the numerical value of all Lots will increase. Therefore, each existing Lot's proportionate share of the total annual general assessments will decrease as new Lots are added to the Development.

In addition to the annual general assessments, the Association shall levy to those Lot Owners who choose to use the Community Boat Dock assessments for the cost of same.

In addition to the annual general assessments, the Association shall levy to those Lot Owners who are served by the Community Sewer System for the cost of same.

10.05 Special Assessments: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, and non-periodic repair or replacement of a capital improvement, or other necessary expense incidental to the purposes of the Association as determined by the Board of Directors, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose.

10.06 One-Time Membership Fee: At the close of escrow of each purchase of a new Lot from the Developer, and for all subsequent resales, the Owner shall pay to the Association a one-time membership fee. This will be a non-refundable fee in an amount to be determined by the Board, but not to exceed \$500.00. This fee will be used to establish an operating fund and reserve account for the benefit of the Association. The one-time membership fee shall be payable in addition to the annual assessment amount to be paid by such owner as provided in Article VII Section 1. Notwithstanding anything to the contrary, herein, the Developer shall not be required to pay the One-time membership fee.

10.07 Notice and Quorum for Any Action Authorized Under Section 5: Written notice of any meeting called for the purpose of taking any action authorized under Section 5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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.

10.08 Uniform Rate of Assessment: Except as otherwise stated in Section 4 of this Article, both annual and special assessments must be fixed at a uniform rate for all Lots subject to assessment. And may be collected on a monthly basis or prepaid on a quarterly, semi-annual or annual basis, as determined by the Board.

10.09 Date of Commencement of Assessment: The assessments provided for herein shall commence as to each Lot on the day following the conveyance of a Lot, on a prorate basis for the month, and collected quarterly, semi-annually or annually in advance, as determined by the Board, at close of escrow.

10.10 Effect of Nonpayment of Assessments: Remedies of 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 eighteen percent (18%) per annum, or the maximum rate allowed by Arkansas Law. And other reasonable monthly late fees as determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay any assessment, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of or abandonment of his or her Lot.

10.11 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. A violation of these restrictive covenants, or any one or more of them, shall not affect the lien of any Mortgage now of record, or which may hereafter be placed of record upon Lots or any part thereof.

ARTICLE XI
REMEDIES ON DEFAULT

11.01 Scope: Each Owner shall comply with the provisions of the Declaration, the Bylaws and the Rules and Regulations of the Association as they presently exist or as they may be amended from time to time, and each Owner shall be responsible for the actions of his or her family members, guests, occupants, invitee or agents.

11.02 Grounds for and Form of Relief: Failure to comply with any of the Covenants of this Declaration, the Bylaws, or the Rules and Regulations promulgated by the Board which may be adopted pursuant thereto shall constitute a default and shall entitle the Developer or the Association to seek relief which may include, without limitations, an action to recover any unpaid assessment, annual or special, together with interest and expenses as provided for herein, any sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Developer or the Association or, if appropriate and not in conflict with the provisions of this Declaration or the Bylaws, by an aggrieved Owner.

11.03 Judgment Interest and Recovery of Expenses: In any proceeding arising because of an alleged default by an Owner, the Developer or the Association, if successful, shall, in addition to the relief provided for in Section 8.02 be entitled (1) to charge and collect pre and post-judgment interest upon the amount of the judgment (including any awarded expenses) at the highest rate allowed by law, and (2) to recover the costs of the proceeding and such reasonable attorney's fees as may be allowed by the court, but in no event shall the Owner be entitled to such attorneys' fees.

11.04 Waiver: The failure of the Developer, the Association or an Owner to enforce any right, provision, covenant or condition which may be granted herein or the receipt or acceptance by the Association of any part payment of an assessment shall not constitute a waiver of any breach of a Covenant, nor shall same constitute a waiver to enforce such Covenant(s) in the future.

11.05 Election of Remedies. All rights, remedies and privileges granted to the Developer, the Association, or an Owner or Owners pursuant to any term, provision, covenant or condition of this Declaration or the Bylaws shall be deemed to be cumulative and in addition to any and every other remedy given herein or otherwise existing, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to any such party at law or in equity.

ARTICLE XII
GENERAL PROVISIONS

12.01 Duration of Covenants: These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by SBPOA, the Developer or Owners, their respective legal representatives, heirs, successors and assigns, and shall be effective for a period of 20 years following the Effective Date hereof, and may be continued thereafter as provided by Arkansas law.

12.02 General Amendments: These Covenants (excepting those which apply specifically to the Community Boat Docks and Community Sewer System) may be amended upon the affirmative vote of 75% of the Lot Owners in attendance or represented by proxy at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

Notwithstanding the foregoing amendment procedure, (a) the Developer expressly reserves the right to amend this Declaration at any time prior to the termination of the Development Period and any such amendment shall be effective whether it applies uniformly or non-uniformly to the Property or any Lot, (b) no amendment shall be effective during the Development Period unless signed by Developer, and (c) any such amendment signed by Developer shall be effective whether or not such amendment shall impact any prior vested right of interest, whether resulting from Ownership of any portion of the Property or otherwise.

12.03 Amendments Applying Specifically to Community Boat Docks: Covenants applying specifically to the Community Boat Docks may be amended upon the affirmative vote of 75% of the Boat Slip Owners in attendance or represented at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

12.04 Amendments Applying Specifically to Community Sewer System: Covenants applying specifically to the Community Sewer System may be amended upon the affirmative vote of 75% of lot owners 1 thru 98 in attendance or represented at any annual or special meeting of SBPOA duly called for such purpose provided that no amendments shall be allowed which would be in violation of any federal, state or county regulation.

12.05 Severability: Invalidation of any restriction set forth herein, or any part thereof, by any order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

12.06 Interpretation: If there is any conflict among or between this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the SBARC Design Guidelines, or the Rules and Regulations of the Association, the provisions of this Declaration shall prevail; therefore, priority shall be given first to such Articles of Incorporation, then to such Bylaws, then to the SBARC Design Guidelines, and then to such Rules and Regulations.

12.07 **VIOLATIONS:** In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons or entity owning any Lots or Boat Slips in SUNSET BAY including the Developer and SBPOA, to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from so doing and/or to recover damages for such violation. Provided further, however, that the Developer or SBPOA shall first advise any violator of said violations prior to legal action being taken. The Developer or SBPOA shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

EXECUTED this 11th day of SEPTEMBER 2000.

Summit One, LLC

by Wesley Kent Neff
(name, manager)

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF BENTON

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within and for the state and county aforesaid, duly commissioned and acting, WESLEY KENT NEFF, who stated that he was Manager of SUMMIT ONE, LLC, and was duly authorized in said capacity to execute the foregoing instrument for and in the name of said corporation, and further stated that he had signed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 11 day of Sept., 2000.

My Commission expires:

Robin Appleton
Notary Public

