

Phase I

2001008094 FILED, RECORDED, INDEXED  
02/23/2001 15:28:52:890  
Rec Fee:\$26.00 St Fee:\$0.00  
Co Fee:\$0.00 Pages:20  
Lexington County ROD Debra H. Gunter  
✓RESTRICTIONS Bk:Pg 6204:132

SUMMERLAND SUBDIVISION  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

THIS DECLARATION made this 22nd day of February, 2001, by Southern Comfort Homes, Inc., a South Carolina corporation, hereinafter sometimes called "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the Property (as hereinafter defined).

WHEREAS, Declarant is developing a residential subdivision on the Property to be known as Summerland, Phase I; and

WHEREAS, Declarant desires to provide for the preservation of the value of the Property and to assure the best use and most appropriate development and improvement of the Property; and

WHEREAS, to this end, Declarant desires to subject the Property to the covenants, conditions, restrictions and easements hereinafter set forth (sometimes referred to herein collectively as "covenants and restrictions"), all of which are for the benefit of the Property and each owner thereof;

NOW, THEREFORE, in consideration of said benefits to be derived by Declarant and subsequent owners of lots within the Property, the undersigned does hereby establish, publish and declare that the covenants and restrictions hereinafter set forth shall apply to the Property, becoming effective immediately and running with the land, to be binding upon all persons now claiming or hereafter owning or claiming an interest in any portion of the Property.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Review Committee" shall mean as follows: The Declarant until the Declarant, in its sole discretion, terminates its rights and obligations as the Architectural Review Committee. Upon termination by the Declarant, the Architectural Review Committee shall consist of the Board of Directors of the Association or such other members as the Board of Directors may appoint. Declarant may terminate his rights and obligations as the Architectural Review Committee upon notice to the Owner(s).

Section 2. "Association" means Summerland Homeowners Association, Inc., a South Carolina corporation, and its successors and assigns.

Section 3. "Summerland, Phase I (hereinafter "Summerland")" means that certain residential community known as Summerland which is being developed on the Property by Declarant in Lexington County, South Carolina, together with such additions thereto as may from time to time be designated by Declarant.

Section 4. "Board" means the Board of Directors of the Association.

Section 5. "Common Areas" means such real property (including any improvements thereon) as may from time to time be designated by Declarant at its sole option for the common use and enjoyment of the Owners or conveyed to the Association in fee simple or by easement. The conveyance of the Common Areas to the Association shall be determined by the Declarant in its sole discretion. Nothing herein shall obligate Declarant to establish any Common Areas.

The design and quality of any improvements and landscaping within the Common Areas shall be determined by Declarant in its sole discretion. The Association shall maintain, repair and replace, as it deems desirable, all improvements and landscaping within the Common Areas. The Common Areas shall be subject to a general easement reserved to Declarant for the installation of utility lines within the Common Areas. Streets, utility lines and storm drainage facilities shall not be part of the Common Areas, but shall be dedicated to the public, subject to a nonexclusive easement to all Owners for ingress and egress over such streets until they are dedicated to the public.

Section 6. "Declarant" means Southern Comfort Homes, Inc., a South Carolina corporation, or such successor-in-title to Southern Comfort Homes, Inc. to all or some portion of the property then subjected to this Declaration, provided that in the instrument of conveyance to any successor-in-title, such successor-in-title is expressly designated as the "Declarant" hereunder at the time of such conveyance.

Section 7. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

Section 8. "Lot" means any numbered plot or lot of land comprising a single dwelling site as shown on the Plat or as shown on any plat of land hereafter made subject to this Declaration.

Section 9. "Mortgage" means a mortgage, deed to secure debt, deed of trust or any other similar instrument given to secure the payment of indebtedness.

Section 10. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the property.

Section 11. "Persons" means an individual, corporation, partnership, trust or any other legal entity.

Section 12. "Plat" means the final Plat of Summerland, Phase I, prepared by Arthur J. Weed, PLS, dated September 6, 2000, last revised January 11, 2001, recorded in the office of the Register of Deeds for Lexington County in Plat Book 6204 at Page 152\*, together with all future recorded plats, if any, describing parcels of land annexed to Summerland and made subject to this Declaration by amendment hereto. \* Also see slide 602 pg 6

Section 13. "Property" means Lots 1 through 20 as shown on the Plat.

Section 14. "Structure" means:

(a) Any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation any building or part thereof, garage, porch, shed, greenhouse, bathhouse, dock, covered or uncovered patio, swimming pool, fence, driveway, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters or any other temporary or permanent improvements to such Lot;

(b) Any excavation, grading, fill, ditch, diversion, dam, or other thing or device which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel to, from, upon or across any Lot.

## ARTICLE II

### ARCHITECTURAL REVIEW

Section 1. Review and Approval of Plans. No Structures shall be commenced, erected or maintained on any Lot, nor shall any exterior addition to or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to the Architectural Review Committee for written approval (i) as to conformity and harmony of external design and general quality with the standards of Summerland and (ii) as to the location and height of Structures in relation to surrounding Structures and topography and finished ground elevation. Submission of plans, specifications, etc. to the Architectural Review Committee need to be acknowledged in the form of a signed receipt specifying the applicant's name, date and description of request. In the event the Architectural Review Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted in writing, approval by the Architectural Review committee will not be required.

To achieve continuity of the neighborhood, the Architectural Review Committee shall establish minimum standards and suggestions for architectural designs of all dwellings and outbuildings. Unless otherwise approved by the Architectural Review Committee, all Structures and landscaping shall comply with the following general standards:

(a) Site location and height of Structures will be subject to consideration of topography, tree cover, elevations visible from street and other Lots, and similar factors in order to ensure, to the extent practical, harmonious development of all Lots.

(b) Construction materials such as aluminum siding, pastel brick, "Miami Stone" or similar material, Jalousie windows and plywood siding will not be allowed, subject to review by the Architectural Review Committee on a case-by-case basis.

(c) Artwork, sculpture and other decorative yard fixtures, excepting seasonal decorations such as Christmas decorations, will not be allowed except upon approval by the Architectural Review Committee on a case-by-case basis.

(d) Dead trees which pose a hazard to a Structure or a road must be removed during construction. After occupancy, trees that die and pose a hazard to a Structure or a road must be removed within a reasonable time period.

(e) All landscaping, whether naturalized or more formal, must be maintained in an attractive condition. Terracing with timbers and excessive plantings in front and side yards is prohibited.

(f) Removal of trees more than eight (8) inches in width at diameter breast height and more than ten (10) feet outside the footprint of the approved house plan shall be subject to approval of the Architectural Review Committee.

Section 2. Plans and Specifications. Plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Review Committee including, without being limited to:

(a) a site plan showing the location of all proposed and existing structures on the Lot including building setbacks, location of front of structure, open space, driveways, walkways and parking spaces including the number thereof.

(b) a floor plan;

(c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all backfilling and landscaping are completed;

(d) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(e) plans for landscaping (to be submitted not less than 60 days before anticipated completion of the dwelling).

Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the Architectural Review Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if

such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications as approved, and any conditions attached to any such approval.

The Declarant, the Architectural Review Committee and its members shall not be responsible or liable in any way for any defect in any plans or specifications approved by the Architectural Review Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Review Committee. Further, the Declarant, the Architectural Review Committee and its members shall not be liable in damages to anyone submitting plans or specifications for approval under this Article, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, gross negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Review Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Review Committee to recover for any such damages.

Any employee or agent of the Architectural Review Committee may, after reasonable notice, at any reasonable time enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration, and neither the Architectural Review Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 3. Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Review Committee, such violation shall have occurred, the Architectural Review Committee shall, within its discretion, (a) execute a written waiver or variance with respect to the violation, or (b) provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial Action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Architectural Review Committee or Declarant shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both. The Architectural Review Committee may assess a fine against an Owner for each event of non-compliance or violation, which assessment shall be a lien on the Owner's Lot with the lien having the same priority and the Board having the same powers of enforcement as are provided for assessments under Article VI hereof.

## ARTICLE III

### RESTRICTIONS AND COVENANTS

The following covenants, conditions, restrictions and easements are hereby imposed on the Property:

Section 1. Residential Use of Property. All Lots shall be used for single family residential purposes only and no business or business activity of any nature shall be carried on upon any Lot at any time; provided, however, that nothing herein shall prevent Declarant or any builder of homes in Summerland from using any Lot Owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Summerland.

#### Section 2. Setbacks and Building Lines.

(a) The location of all Structures on each Lot shall be subject to the approval of the Architectural Review Committee and shall also comply with the then applicable setback requirements of the Town of Batesburg-Leesville. The building setbacks for Summerland are as follows: (i) front yard 30 foot setback , (ii) road right of way 30 foot setback. The developer reserves the right to waive the minimum setback requirements but shall not impose building setback lines that are less than the Town of Batesburg-Leesville minimum. No Structure shall encroach upon any easement areas reserved by Declarant as set forth herein without the prior written approval of the Architectural Review committee.

(b) Walls and Fences. All fences and walls shall be erected, placed, or altered on a Lot only as approved by the Architectural Review Committee. There shall be no wire or cyclone fences. Any fences approved by the Declarant shall be backyard fences which are not located beyond the back two corners of the main dwelling. Fences are to be constructed in keeping with continuity of the traditional concept of the neighborhood.

(c) Subdivision of Lots. One or more Lots or parts thereof may be subdivided or combined to form one single building Lot when approved, in writing, by the Architectural Review Committee, and, in such event, the requirements provided herein shall apply to such Lots are subdivided or combined.

(d) Terraces, Eaves and Detached Garages. For the purpose of determining compliance or non-compliance with the building setback requirements set forth in subparagraph (a) above, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a dwelling shall not be considered as a part of the dwelling. A detached garage or accessory outbuilding must be to the rear of the main dwelling unless otherwise approved by the Architectural Review Committee, must not encroach upon the property of an adjacent Owner, must be set back from property lines as approved by the Architectural Review Committee, and must be in compliance with applicable zoning regulations.

Section 3. Building and Landscaping Requirements. Not more than one single-family dwelling shall be erected on any Lot unless otherwise approved, in writing, by the Architectural Review Committee.

The enclosed existing heated living space of the main structure, exclusive of unfinished space, open porches, porte-cochères, garages, carports and breezeways, shall not be less than 1400 square feet for all dwellings. Finished rooms over a garage shall be included in determining whether the square footage requirement has been met with respect to non-lakefront Lots, but shall be excluded in determining whether the square footage requirement has been met with respect to lakefront Lots.

All dwellings are to have fully enclosed side entrance attached garages with doors of not less than 360 square feet. No plans with front entrance garages shall be approved. All dwellings are to have a minimum 50 square foot front porch.

Detached Garages. All garages are subject to Architectural Review Committee approval and must be built of the same material as the main dwelling and fully enclosed. They must be located to the rear (behind) the main dwelling and may not contain more than 720 square feet. Front entrance garage doors must be concealed behind a fence and remain closed.

Landscaping. There shall be a minimum of 2500 square feet of sod placed in the front yard with ample underground irrigation installed to the sodded area. The remainder of the entire lot to be hydroseeded. Irrigation heads are not to be installed and timers set where they water the sidewalk areas one hour prior to sunrise to one hour past sunset. The front and sides of the main dwelling are to be landscaped. All landscaping must be completed within 30 days from the final approval of the dwelling.

Section 4. Obstructions to View at Intersections. The lower branches of trees or other vegetation shall not be permitted to obstruct the view at intersections.

Section 5. Delivery Receptacles and Property Identification Markers. The Architectural Review Committee shall approve the location and design, including color, size, lettering, and other particulars, for receptacles for the receipt of mail, newspapers or similarly delivered materials. The Architectural Review Committee may at its option require a uniform design for some or all Lots. All delivery receptacles are to be uniform in design and are to be purchased from the Architectural Review Committee. No alterations, modifications or structures shall be permitted. In the event the Declarant should elect to construct a structure for the delivery and receipt of mail, the owner shall within 60 days remove roadside receptacles and utilize the new facility.

Property identification markers are also subject to approval of the Architectural Review Committee.

Section 6. Use of Outbuildings and Similar Structures. No structure of a temporary nature, unless approved in writing by the Architectural Review Committee, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, modular home, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently,

provided, this paragraph shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

Section 7. Animals and Pets. No animals, livestock or poultry, of any kind may be raised, bred, kept or permitted on an Owner's Lot, with the exception of dogs, cats or other usual and common household pets; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any property located adjacent to the property may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose in residential Lots. Dogs which are household pets shall, at all times whenever they are outside an Owner's Lot, be confined on a leash held by a responsible person.

Section 8. Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the Owners of other Lots including the leaving of clutter in the yard such as toys, equipment, etc. The pursuit of hobbies or other activities, including specifically without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of the Property, unless such disassembly and assembly is confined to an enclosed garage with doors closed and noxious and offensive noise is not present.

Section 9. Signs. No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot. Notwithstanding the foregoing, Declarant, and realtors retained by Declarant shall be entitled to place "For Sale" signs on Lots, whether or not improved, owned by Declarant. Declarant, may also in its discretion authorize contractors constructing speculative homes to post "For Sale" signs. At a such time as Declarant has sold all lots in Summerland, or earlier at the election of Declarant, the approval of signage shall be turned over to the Architectural Review Board. Thereafter, the, Architectural Review Board shall determine whether "For Sale" signs shall be permitted and the size and design of any permitted signs.

Section 10. Screening. Clotheslines, garbage cans and equipment shall be screened to conceal them from view of streets. Whenever possible, HVAC units should be located on the rear of the dwelling.

Section 11. Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair.

Section 12. Antennae. No radio or television transmission or reception towers or similar equipment shall be erected on the Property without the prior written consent of the Architectural Review Committee in its sole discretion. No television transmission disk may be located in the front and side yards of the dwelling or mounted to the front or side of the dwelling.

Section 13. Vehicles. All vehicles must be parked either in a garage or in the driveway serving a Lot, or in other appropriate space on a Lot approved for parking by the Architectural Review Committee. (Nothing herein shall be construed as requiring construction of garages). Provisions must be made by each Owner of a Lot for paved parking for at least two automobiles belonging to occupants and guests. The parking of automobiles on streets for long periods of time during the day and night, except for social gatherings and functions, is prohibited. All commercial vehicles (i.e. those having lettering or logos), tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers and any unregistered vehicles must be parked entirely within a garage unless otherwise permitted by the Board. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been parked in the garage as originally constructed. Unless otherwise permitted by the Architectural Review Committee in writing, any such vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the rules and regulations now or hereafter adopted by the Association may be towed by the Association at the sole expense of the Owner of such vehicle or recreation equipment if it remains in violation for a period of twenty-four (24) hours. The Association shall not be liable to the Owner of such vehicle or recreational equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing and neither its removal or failure of the Owner to receive any notice of said violation shall be, grounds for relief of any kind.

Section 14. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If litter or other materials are found on any Lot, the same will be removed by the Owner of such Lot, at the Owner's expense.

Section 15. Changing Elevations. No Owner shall excavate or extract earth for any business or commercial purpose. No elevation change shall be permitted which materially affect surface grade of surrounding Lots or water run-off to other Lots, unless, approved in writing by the Architectural Review Committee.

Section 16. Sewage System. Sewage disposal shall be through the Town of Batesburg-Leesville public sewage system.

Section 17. Water System. Water shall be supplied through the Town of Batesburg-Leesville public water system. Notwithstanding the above, lot owner can establish a well on this property to irrigate his yard as long as in compliance with applicable governmental entity.

Section 18. Utility Facilities. Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone, gas, electricity and sewerage systems, in variance with the provisions of this Declaration. All residential utility service lines to residences shall be underground.

Section 19. Model Homes. Declarant, as well as any builder of homes in Summerland, shall have the right to construct and maintain model homes on any of the Lots approved by the architectural review committee.

Section 20. Driveways and Entrances to Garages. All driveways and entrances to garages shall be concrete or a substance approved in writing by the Architectural Review Committee and of a uniform quality.

Section 21. Exterior Lighting. Exterior lights shall be subject to written approval in advance by the Architectural Review Committee.

Section 22. Swimming Pools and Tennis Courts. Swimming pools must be in-ground and both swimming pools and tennis courts must be located to the rear of the residence on a Lot, unless a different location is authorized in writing by the Architectural Review Committee. All swimming pools and tennis court installations must conform to the same setback lines and building requirements as dwellings and other buildings.

Section 23. Additions to Lots. In the event any Owner purchases land adjoining his Lot, but not presently within the boundaries of Summerland, such added land shall be deemed annexed into Summerland and subject to the terms and provisions hereof.

Section 24. Guns. The use of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

Section 25. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other waterways within the Property shall be installed, constructed or operated within the Property, unless approved by the Architectural Review Committee.

Section 26. Drainage. No owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Architectural Review Committee and except for rights reserved to Declarant to alter or change the drainage pattern.

Section 27. Construction Regulations of the Architectural Guidelines. All Owners and contractors shall comply with construction guidelines promulgated by the Architectural Review Committee. Such guidelines may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners representatives on the Property at any time; the conservation of landscape materials; and fire protection.

Section 28. Continuity of Construction. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within twelve (12) months of commencement, unless an exception is granted in writing by the Architectural Review

Committee. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required 12-month period, then after notice and hearing before the Board, the Association may in its discretion impose a fine on the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board that such abandonment is for circumstances beyond the Owner's control. Such fines shall be a lien upon the Lot with the same priority as the lien set forth in Article VI of these Restrictions and Covenants and with the Board having the same powers of enforcement as provided for assessments under Article VI hereof. Landscaping shall be completed within thirty (30) days after final approval of dwelling on a Lot or a fine may be levied by the Board against the Lot owner.

Section 29. No Overhead Wires. All telephone, security lights, electric and other utility lines and connections between the main utility lines and the residence or other buildings located on each Lot shall be concealed and located underground, unless necessary to maintain existing electrical service by South Carolina Electric & Gas Company. Each Owner requiring an original or additional electric serve shall be responsible to complete, at his expense, the secondary electric service, conduits, wires, conductors and other electric facilities from the point of the applicable transformer to the Owner's improvements, and all of the same shall be underground and remain the property of the owner of each such Lot.

## ARTICLE IV

### WATERFRONT AREAS AND WATERWAYS

Section 1. Restrictions on Lakes and Lake Front Areas. Any Lot which shall abut upon a lake, stream, pond, wetland or other waterway shall be subject to the following additional restrictions:

(a) No pier, dock or other structure or obstruction or any wall, revetment, rip-rap or any other material shall be built, placed or maintained upon any waterfront Lot or into or upon any waterway on the Property or adjacent thereto except with the specific written approval of Southern Comfort Homes, Inc. or its successors and assigns or any such other private or governmental agency as may be now hereafter required.

(b) Except with the prior written approval of the Association or the Architectural Review Committee, no device or material may be constructed, placed or installed upon any Lot which shall in any way alter the course of natural boundaries of any water way or which shall involve or result in the removal of water from any waterway.

(c) The owner of each Lot abutting the water's edge releases and discharges the Declarant, the Association and the Town of Batesburg-Leesville from any and all claims for damages to the Owner's property or person heretofore or hereafter sustained or to accrue by reason or account of the operation and maintenance of said lakes, ponds, wetlands or other waterways by Southern Comfort Homes, Inc. or any other party.

Section 2. Joint Docks. The Owners of two contiguous waterfront Lots may agree to construct a jointly owned dock to serve both Lots. Nothing herein shall be construed to prohibit such an arrangement, but design and location of the dock shall be subject to the approval of the Architectural Review Committee. Such Owners must record an agreement in the Office of the Register of Deeds for Lexington County establishing the joint ownership of the dock and the obligations of the joint Owners with respect to expenses and maintenance for the dock.

## ARTICLE V

### EASEMENTS

Section 1. Utility Easements. Declarant hereby reserves non-exclusive easements Twenty (20') feet in width along the front (roadside) property line for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, cable television and master communication system. By virtue of the non-exclusive utility easement it shall be expressly permissible and proper for the companies providing electricity, telephone, cable television, and other communication services to install and maintain necessary equipment on the Property and to affix and maintain electricity, communications, cable television, and telephone wires, conduits and circuits under the Property. No water, sewer, gas, telephone, electricity, cable television, communication lines, systems, or facilities may be installed or relocated on the surface of the Property unless approved by the Architectural Review Committee. Such utilities temporarily may be installed above ground during construction if approved by the Architectural Review Committee. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant shall have the right and authority to grant such easement on, across, over or under any part or all of the Property over which said easement has been created and reserved without conflicting with the terms of this Declaration.

Declarant hereby reserves a non-exclusive Twelve (12') foot sanitary sewer easement on the rear side of Lots 2 through 19 on said plat with said rear property line being the center line of said sanitary sewer easement. There shall be no encroachments on said sanitary sewer easement for improvements.

Declarant reserves a non-exclusive Twelve (12') foot water line easement between Lots 2 and 3 on said plat with the property line between Lots 2 and 3 being the center line of said water line easement.

Declarant reserves a landscape easement on Lot 13 on said plat.

These general easements shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. The easements set forth herein are reserved solely for Declarant and such utility companies and authorities as Declarant may permit to use such easements. Such easement rights may be waived in full or in part or terminated by Declarant at

its sole discretion. Such easement rights shall automatically be transferred to the Association when Declarant conveys the last lot in Summerland.

Section 2. Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or person to enter upon all streets and upon the Property in the proper performance of their duties.

Section 3. Maintenance Easement. An easement is hereby reserved to the Association and any member of the Board and their respective officers, agents, employees and assigns, upon, across, over, in and under the Lots, and a right to make such use of the Lots, as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of improvements on such Lot as required by this Declaration.

Section 4. Drainage Easement. Drainage easements are reserved to the Declarant or to the Association or an applicable governmental authority as shown on the Plat.

Section 5. Pedestrian Easement. Declarant reserves a pedestrian easement Four (4') feet wide (sidewalk area) on Lots 1 through 12, Lots 14 through 20, and a pedestrian easement of Four (4') feet between Lots 2 and 3, and a pedestrian easement of Four (4') feet in width on Lot 13, all shown on said plat.

## ARTICLE VI

### HOMEOWNERS ASSOCIATION AND MAINTENANCE CHARGES

Section 1. Membership. Every Owner of a Lot in Summerland shall be a member of the Association, subject to such voting rights as are provided in the Articles of Incorporation and By-Laws thereof provided; however, any person or entity who holds such an interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and shall not be separated from, any Lot. In the event a Lot is owned by more than one person, all persons owning one Lot shall have one vote on Association matters.

Section 2. Maintenance and other Charges. The Board of Directors of the Association shall decide if there shall be an annual assessment for maintenance and other charges and shall decide the assessment rate. All Lots shall be subject to an annual assessment at a rate to be determined by the Board of Directors of the Association. Said assessment shall be due and payable on the first day of each year and maybe adjusted, either by decreasing the same or increasing the same by the board of directors of the Association, provided that no increase in excess of ten (10%) percent of the previous year's assessment shall be made unless the same shall be approved by a two-thirds vote of all members of the Association. Notwithstanding the foregoing, no assessment shall be due from Declarant with respect to any unimproved Lot owned by Declarant. The annual assessment shall be prorated if the owner first becomes obligated to

pay the assessment other than on the first day of the year. The Declarant may voluntarily agree to pay assessments it is not obligated to pay hereunder, and in such event the Declarant may at any time thereafter elect to discontinue such payments. All sums are payable to the Association and shall be administered by the officers, members and directors of the Association and, may be used for the functions hereinafter set out, it being expressly stipulated that the Association is empowered to perform any and all of said functions, but that it shall be under no duty to perform, or to continue to perform, any of said functions, to-wit:

- (a) Payment of the necessary charges and expenses of the operation of the Association.
- (b) Maintenance of all Common Areas including structures, irrigation systems, landscaping, lighting and utility lines and any other improvements, if any, located within any Common Areas.
- (c) Maintenance of any entrance sign area, including any related irrigation systems, landscaping and lighting, whether located within the Common Areas or within the right-of-way of a public road.
- (d) Payment of any expenses incident to the enforcement of this Declaration and restrictions, or the exercise of, any powers conferred upon the Association by the terms and conditions of this declaration and restrictions.
- (e) Establishment of a maintenance and replacement reserve.
- (f) Such other purposes and functions as, in the opinion of the directors of the Association, are necessary for the general benefit of the Owners of Lots in Summerland.
- (g) Notice and Quorum Meetings shall be called by the Board of Directors at such time as they elect and, in addition, upon petition to the Board of Directors by Owner(s) owning at least three (3) Lots in the aggregate. In addition after Declarant is no longer entitled to appoint the sole director under Section 3 below, the Board of Directors shall call an annual meeting in October of each year. Written notice of any meeting shall be delivered personally or mailed to all members at their respective Lot addresses not less than 10 days nor more than 50 days in advance of the meeting. The purpose of the meeting shall be stated in the notice, and action at such meeting shall be limited to the matters disclosed in the notice. At the first such meeting of members called, the presence of members or of proxies entitled to cast sixty (60%) percent of all their votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. At the second such meeting of members called, the presence of members or of proxies entitled to cast thirty-three and one-third (33 1/3%) percent of all the votes of membership shall constitute a quorum.

Section 3. Board of Directors. The administration of the Association shall be vested in a Board of Directors. Until eighty (80%) percent of all lots have been sold to permanent residents the Board of Directors shall consist of one (1) director, which shall be Declarant or its designee. Thereafter, the Board of Directors shall consist of not less than three (3) nor more than five (5)

members as elected by majority vote at an Owner's meeting at which a quorum is present. After Declarant is, no longer entitled to appoint the sole director, election of the Board of Directors shall take place in October of each year at a duly called meeting of the Association. The Declarant may at any time, in its discretion, elect to waive the right to designate the director. The provisions of this section shall not be amended without the consent of the Declarant.

Section 4. Liens. The annual assessment against an Owner shall constitute a lien and encumbrance upon the Lot of such Owner, and acceptance of a deed of a Lot shall constitute a covenant by the Owner to pay said assessments and charges, which covenant shall be for the benefit of the Association, the Declarant and the Owners of Lots in Summerland and which covenants shall run with the land and be binding upon any Owner its heirs, successors and assigns. The Association shall have the exclusive right to take and prosecute all actions or suits, legal or otherwise, which may be necessary for the collection of said assessments and charges.

Section 5. Foreclosure. In the event that it is necessary to foreclose the lien herein created as to any property, the procedure for foreclosure shall be the same as for the foreclosure of a Mortgage in the State of South Carolina.

Section 6. Limitations on Liens. The lien hereby reserved, however, shall be subject to the following limitations and exceptions, to-wit:

(a) Such lien shall be at all times subordinate to the lien of any recorded Mortgage on any Lot, to the end and intent that the lien of any mortgagee, legal or equitable, shall be paramount to the lien for the charges and assessments herein, provided, further, that such subordination shall apply only to the charges that shall become payable prior to the passing of title by foreclosure sale or by deed in lieu of foreclosure, and nothing herein contained shall be held to affect the rights herein given to enforce the collection of such charges and assessments accruing after such foreclosure sale or deed in lieu of foreclosure.

(b) Notices of liens shall be filed in the Office of the Register of Deeds. As to subsequent bona fide purchasers for value the lien herein reserved for charges and assessments due and payable shall be effective only from the time of the filing of such notice of lien; provided, however, that nothing herein contained shall affect the right of the Association to enforce the collection of any charges and assessments that shall become payable after the acquisition of title by such subsequent bona fide purchaser for value.

(c) The lien herein created shall be subordinate to the liens of laborers, contractors or materialmen furnishing labor, services or materials in connection with the construction or alteration of any improvements located on any numbered lot except that nothing herein contained shall be held to affect the rights herein given to enforce the collection of such charges or assessments accruing after foreclosure of any such lien or deed in lieu thereof.

Section 7. Future Additions. In the event Declarant subjects additional property to this Declaration pursuant to the provisions hereof, all Owners of Lots within such property shall be

members of the Association subject to all provisions of this Declaration and restrictions and to the rights and powers of the Association.

Section 8. Withdrawal. The Declarant shall have the exclusive right at any time to withdraw from the Association, and to transfer to the Association all of the rights, powers, privileges and authorities granted to it as contained herein and elsewhere in this Declaration by giving written notice to the Association. Declarant shall also have the exclusive right to transfer and assign all of its rights, powers, privileges and authorities to, and to withdraw the same from, such other person, firm or corporation as the Declarant may select. In the event of such transfer and assignment all maintenance funds then on hand shall be forthwith paid over and delivered to the transferee or assignee so selected by the Declarant to be held for the purposes specified herein, and such transferee or assignee so elected by the Declarant shall hold the same for the purposes specified herein. Such transferee or assignee by accepting such funds shall assume all obligations of the Declarant hereunder, and Declarant shall have no further responsibility or liability with respect thereto.

Section 9. Uniform Assessment. All liens, charges and assessments created hereunder must be uniformly fixed, assessed, charged and collected on all Lots, each Owner to be charged equally without regard to the relative size or value of the Lots, provided; however, that notwithstanding anything herein to the contrary, Declarant shall not be obligated to pay assessments.

Section 10. Limitation of Liability and Indemnification. The Association shall indemnify every Board member and committee member against any and all expenses, including trial and appellate attorneys' fees and costs reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding, if approved by the Board, to which he or she may a party by reason of being or having been a Board member or committee member. The Board members and committee members shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful malfeasance, misconduct or bad faith. The Board members and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such Board member or committee member may also be members of the Association), and the Association shall indemnify and forever hold each such Board member or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Board member or committee member may be entitled.

## ARTICLE VII

### ENFORCEMENT

Section 1. Enforcement. Each Owner shall comply strictly with the covenants, conditions, restrictions and easements set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Declarant, the Architectural

Review Committee or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both. Failure by the Declarant, the Architectural Review Committee or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Abatement. In addition to the above rights, the Architectural Review Committee shall have the right to abatement if the Owner fails to take reasonable steps to remedy any violation or breach within thirty (30) days after written notice sent by certified mail. The right of Abatement, as used in this Article, means the right of the Architectural Review Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provision hereof, without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Article.

Section 3. Expenses. All expenses incurred by the Architectural Review Committee or the Association in enforcing this Declaration and restrictions, including costs of collection and reasonable attorney's, fees, together with interest thereon at twelve (12%) percent per annum, shall be a binding personal obligation of the Owner violating this Declaration and restrictions.

## ARTICLE VIII

### LOAN REQUIREMENTS

If any of this Declaration and restrictions shall be found to be contrary to the recommendations or policies of the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other recognized institution, agency, public or private, granting or insuring loans or purchasing loans on the secondary market, and shall render any Lot in Summerland unacceptable for any such loan, the Declarant shall have the authority in its discretion to alter, amend or annul any such covenants and restrictions as may be necessary to make Lots in Summerland acceptable and eligible for such loans.

## ARTICLE IX

### ANNEXATION

Without further assent or permit from any Owner or holder of a Mortgage on any Lot, Declarant, at its sole discretion, for itself, its successors and assigns, hereby reserves, the right, exercisable from time to time, to extend the scheme of this Declaration to any other property

contiguous to the Property that may be acquired by Declarant by filing for record a supplemental declaration in respect to the property to be then subjected to this Declaration. ("Contiguous" property includes property across a road and includes property contiguous to property previously annexed pursuant to this Article.) Any property so added may be designated as additional Lots, added to existing Lots, or any combination of the foregoing. Declarant may impose different minimum square footage requirements, setback lines and other building requirements on lots within such additional property while otherwise subjecting them to this Declaration. Any provision hereof to the contrary notwithstanding, Declarant may expand existing Lots and redesign the dimensions of existing Lots in connection with the annexation of adjoining property. Nothing herein shall be construed as obligating Declarant to subject or any other property to this Declaration.

## ARTICLE X

### DURATION AND AMENDMENT

Section 1. Duration. The covenants, restrictions and other provisions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Owner of any land subject to this Declaration, their respective heirs, legal representatives, successors and assigns, for a term of twenty (20) years from the date this Declaration is filed for record in the office of the Register of Deeds for Lexington County, South Carolina, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then record Owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to abandon or change this Declaration and restrictions in whole or in part .

Section 2. Amendment. Subject to Declarant's rights to amend this Declaration set forth herein, this Declaration may be amended at any time and from time to time only by an agreement signed by the Declarant, if the Declarant still owns one or more Lots, or thereafter by agreement of the Owners of at least seventy-five percent (75%) of the Lots in Summerland. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Register of Deeds for Lexington County, South Carolina. The written consent thereto of any Mortgage holder shall also be filed with such amendment. Every purchaser or grantee of any interest in real property now or hereafter subjected to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section.

## ARTICLE XI

### MISCELLANEOUS

Section 1. Applicable Law. The law of the State of South Carolina shall govern the terms and conditions of this Declaration.

Section 2. Severability. If any term or provision of this Declaration or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Declaration and the applications thereof shall not be affected and shall remain in full force and effect and to such extent shall be severable.

Section 3. Definitions. Whenever used herein and appropriate, the singular shall include the plural, the plural shall include the singular, and any gender shall include the other.

Section 4. Captions. The captions in this Declaration are for convenience only and shall not be deemed to be part of this Declaration or construed as in any manner limiting the terms and provisions of this Declaration to which they relate.

Section 5. Notice. Any notice to an Owner required or permitted to be given pursuant to this Declaration shall be in writing and hand delivered or sent by prepaid mail to the owner at the Owner's Lot address, or to such other address as the Owner may designate to the Declarant and the Association, unless the form of notice is required in a different manner as set forth in a specific section of this Declaration. Any such notice shall be effective upon hand delivery or mailing in conformity with this paragraph. If any Owner consists of more than one Person, notice to one Person as provided herein shall be notice to all.

Section 6. Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to, all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned, shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in written instrument duly recorded in the Office of the Register of Deeds for Lexington County, South Carolina.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed in its corporate name by its officer thereunto duly authorized and its corporate seal properly affixed hereto on the day and year first above written.

WITNESSES:

Clifford E. Ross  
Andi Bryan

SOUTHERN COMFORT HOMES, INC.

By: John P. Bryan  
Its: President

STATE OF SOUTH CAROLINA )  
 )  
 ) PROBATE  
COUNTY OF LEXINGTON )

Candi Bayan  
Witness

SWORN to before me this day 22<sup>nd</sup>  
day of February, 2001.

Laurie M. Rickard (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 7/25/01

**FIRST AMENDMENT TO SUMMERLAND SUBDIVISION DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

WHEREAS, Southern Comfort Homes, Inc., as "Declarant," filed a Declaration of Covenants, Conditions, Restrictions and Easements in the Register of Deeds Office for Lexington County on February 23, 2001, in Book 6204, page 132; and

WHEREAS, pursuant to Article X, Section 2, Declarant has the right to amend the Restrictions as long as it owns one or more lots in said subdivision; and *mu 1-28-03*

WHEREAS, Declarant still owns Lots 6, 13, 17 and 18 as of the date of this Amendment; and

WHEREAS, Declarant wishes to amend the Declaration of Covenants, Conditions, Restrictions and Easements to impose a one time Fifteen Hundred (\$1,500.00) Dollar assessment on each lot in Phase One and each Phase of Summerland Subdivision established hereafter. This financial obligation shall be treated as an assessment against each lot and shall be paid at the time of the commencement of the construction of a swimming facility for the subdivision, excluding any lots owned by Declarant at the time of the commencement of the construction of the swimming facility. Declarant will give the lot owner thirty (30) days written notice of the request for payment of the assessment.

In all other particulars the Declaration of Covenants, Conditions, Restrictions and Easements remain the same as previously filed.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its corporate name by its officer thereunto duly authorized and its corporate seal properly affixed this 28 day of January, 2003.

WITNESSES:

*Beth M. Shug*

*Laurie M. Ricard*

SOUTHERN COMFORT HOMES, INC.

Declarant

BY:

*U. b. Ricard*

Its President

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within-named Southern Comfort Homes, Inc., by Michael N. Shunk, its President, sign, seal and as its act and deed deliver the within Amendment to Declaration, and that (s)he together with the other witness whose signature appears above witnessed the execution thereof.

  
(Witness)

SWORN to before me this 28<sup>th</sup>  
day of January, 2003.

Laurie M. Richard (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 7/25/07

# Phase I - Amendment

2003006230 FILED, RETURNED, INDEXED  
01/29/2003 15:30:16:373  
Rec Fee:\$10.00 St Fee:\$0.00  
Co Fee:\$0.00 Pages:2  
Lexington County ROD Debra H. Gunter  
RESTRICTION MODIFICATION Bk:Pg 7868:148

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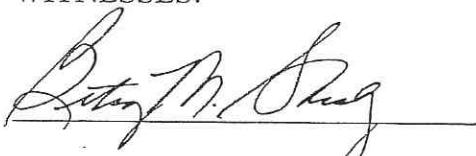
WHEREAS, Declarant still owns Lots 6, 13, 17 and 18 as of the date of this Amendment; and

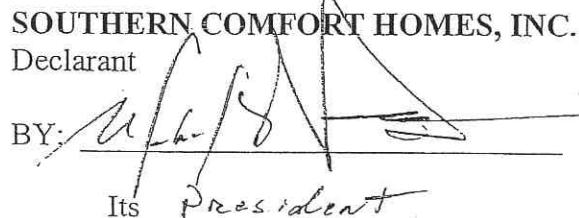
WHEREAS, Declarant wishes to amend the Declaration of Covenants, Conditions, Restrictions and Easements to impose a one time Fifteen Hundred (\$1,500.00) Dollar assessment on each lot in Phase One and each Phase of Summerland Subdivision established hereafter. This financial obligation shall be treated as an assessment against each lot and shall be paid at the time of the commencement of the construction of a swimming facility for the subdivision, excluding any lots owned by Declarant at the time of the commencement of the construction of the swimming facility. Declarant will give the lot owner thirty (30) days written notice of the request for payment of the assessment.

In all other particulars the Declaration of Covenants, Conditions, Restrictions and Easements remain the same as previously filed.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its corporate name by its officer thereunto duly authorized and its corporate seal properly affixed this 28 day of January, 2003.

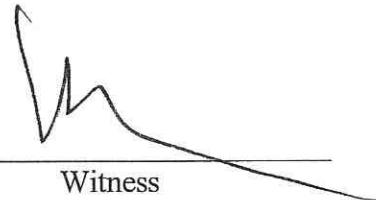
WITNESSES:



SOUTHERN COMFORT HOMES, INC.  
Declarant  
BY:   
Its Laurin M. Richard President

STATE OF SOUTH CAROLINA      )  
                                    )  
COUNTY OF LEXINGTON      )

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named Grantor sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.



\_\_\_\_\_  
Witness

SWORN to before me this 13

day of February, 2004.

Brenda Y. Berry (L.S.)  
Notary Public of South Carolina

Brenda Y. Berry  
My Comm. Exp.  
My Commission Expires: \_\_\_\_\_ June 30, 2010

EXHIBIT "A"

All that certain piece, parcel or tract of land situate, lying, and being in the Town of Batesburg-Leesville, County of Lexington, State of South Carolina, consisting of 19 lots, common areas, and future development in an Neighborhood known as The Orchards, which is part of the Summerland Subdivision and being more particularly shown and delineated as Phase IV on a plat prepared for Southern Comfort Homes, Inc., by Weeds Surveying, dated September 16, 2003, and recorded in Record Book 9019, page 254, in the Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as will more fully appear by reference to said plat.