

ABRIES ON THE BAY  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth  
by ABRIES ON THE BAY, INC., a Virginia corporation, referred to as  
"Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in  
the City of Virginia Beach in the State of Virginia which is more  
particularly described as follows:

ALL THOSE numbered lots shown on that certain  
plat entitled "Abries on the Bay, Phase Two,  
Part 'B', and Resubdivision of Lots 35-43, Block  
'B', Phase Two, Part 'A'", duly recorded in the  
Clerk's Office of the Circuit Court of the City  
of Virginia Beach, Virginia in Map Book 181,  
at page 39, et seq.; and

WHEREAS, Declarant intends to develop said lots shown on  
the plat, according to a common scheme of development, and it is  
the purpose of this Declaration to declare and make known the  
easements, covenants, restrictions, conditions and reservations to  
which said lots shall be subject;

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

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean and refer to Abries  
on the Bay, Inc., its successors and assigns, if such successors  
or assigns should acquire more than one undeveloped lot from Declarant  
for the purposes of development.  
Section 2. "Declaration" shall mean the covenants,  
conditions and restrictions and all other provisions herein set  
forth in this entire document, as same may from time to time be  
amended and supplemented.  
Section 3. "General Plan of Development" shall mean  
that plan encompassing the whole of the intended community and  
setting forth that the portion of the property described as Phase

Two, Part 'A' on page 1 hereof will be used for the construction of townhouses, in such plan as may ultimately be approved by the City of Virginia Beach, Virginia, Federal Housing Administration ("FHA") and the Veterans Administration ("VA"), together with any and all supplemental declarations which may be recorded by Declarant from time to time relating to all or part of the community of Aeries on the Bay. Reference is made to Article III, Section Two hereof for reference to further development.

Section 4. "Aeries on the Bay" shall mean all real property located in the City of Virginia Beach, State of Virginia, which becomes subject to this Declaration, together with such other real property as may from time to time be annexed thereto.

Section 5. "Living Unit" shall mean and refer to any portion of a multi-family structure situated upon the properties designed and intended for use and occupancy as a residence by a single family.

Section 6. "Lot" shall mean any parcel of real property designated as a lot on any recorded subdivision plat within Aeries on the Bay.

Section 7. "Multi-Family Structure" shall refer to a structure with two or more living units under one roof except when such living unit is situated upon its own individual lot as defined herein.

Section 8. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities of any lot. The foregoing does not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any property or a lessee or tenant, of any townhouse. The term "Owner" shall not include a developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity who purchases a lot in Aeries on the Bay for the purpose of resale thereof to a public purchaser, or for the purpose of constructing improvements thereon for resale to a public purchaser. For the purposes of Article IV only, unless the context otherwise requires, "Owner" shall also include the family invitees, licensees and lessees of any owner, together with any other person or parties holding any possessory interest granted by such owner in any lot.

Section 9. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 10. "Public Purchaser" shall mean any person or other legal entity who becomes an owner of any lot within Aeries on the Bay.

Section 11. "Section" shall mean all that land area containing lots recorded by subdivision plat for residential purposes encompassed in a specific stage of development as set forth more particularly in the general plan of development as approved by the City of Virginia Beach and as amended from time to time.

Section 12. "Subdivision Plat" shall mean a recorded plat covering any or all of the property referred to in this Declaration.

Section 13. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 14. "RHA" and "VA" shall mean the Federal Housing Administration and the Veterans Administration, respectively.

B. Townhouses Residential use. All property in this classification shall be used, improved and devoted exclusively

Declaration, shall be as follows:  
The permitted uses, easements and restrictions for all property in this classification within Aeries on the Bay covered by this  
Section 2. Permitted Uses and Restrictions - Townhouses.

Section 1. Land Use Classifications. As each tract or portion thereof within Aeries on the Bay is developed and annexed, the use classifications, restrictions, easements, rights of way, and other matters including new or different uses and restrictions therefor, including any number of subclassifications thereof for any special uses, shall be fixed by declarant in any supplemental declaration which may be recorded for that tract, subject to the approval of the RHA and VA. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which are not generally in consonance with existing uses and restrictions applicable to Aeries on the Bay. When property is annexed to Aeries on the Bay the use of classifications thereof shall be established by the supplemental declaration covering said property. No restrictive covenants set forth herein nor any other provisions hereof shall in any way apply to land of Declarant not described herein nor annexed by following the procedures set forth herein.

LAND USE CLASSIFICATIONS,  
PERMITTED USES AND RESTRICTIONS

ARTICLE III

Section 2. Staged Developments. Additional land excluding the area heretofore described may be annexed by the Declarant within eight (8) years of the date of this Declaration in accord with the general plan heretofore approved by them. Such annexed land may, but shall not necessarily include, additional land for single family residential use and townhouses.

Section 1. General Declaration Creating Aeries on the Bay. Declarant shall develop Aeries on the Bay by subdivision into various lots. As each is developed, Declarant intends, with respect to particular property, to record one or more supplemental declarations which will incorporate this declaration therein by reference, and which may supplement or modify this declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the RHA and VA. Thereafter, Declarant intends to sell and convey, to public purchasers, lots in the property so developed subject to both this declaration and the supplemental declarations, if any. Declarant hereby declares that all of the real property within Aeries on the Bay is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this declaration and any recorded supplemental declarations, as amended or modified from time to time. This declaration and said supplemental declarations are declared, and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, all owners and their successors in interest.

PROPERTY SUBJECT TO  
AERIES ON THE BAY RESTRICTIONS

ARTICLE II



## I. Maintenance of Lawns and Plantings.

be placed on the lot only in accordance with the plans and specifications so approved. Refusal of approval of plans and specifications by Declarant may be based upon any ground, including purely esthetic grounds, which in the sole discretion of Declarant shall be deemed sufficient. (Without in any way limiting the foregoing, plans and specifications providing for cylinder block or asbestos siding will be disapproved.) No alteration to the exterior appearance of any structure shall be made without like approval. Declarant reserves the right to designate from time to time one or more individual(s), association(s) or corporation(s) to act in the approval or rejection of such plans and specifications and for the enforcement of the provisions of this Declaration, and each such designee shall have the powers and authority as are reserved to Declarant for the enforcement, and carrying out of the provisions of this Declaration. Authority shall continue and remain vested in each such designee until such time as Declarant shall cancel and terminate the designation by an instrument under seal.

O. Right of Way. During reasonable daylight hours, Declarant, or its authorized representative, shall have the right to enter upon and inspect any property within Aeries on the Bay and the improvements thereon, except for the interior portions of any residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with,

N. Encroachments. No tree, shrub, or planting of any kind on any property devoted to townhouses within Aeries on the Bay shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet, without the prior approval of the Declarant.

M. Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained in front of the rear foundation line on any property within Aeries on the Bay unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property. On corner lots they shall not be located closer to the side street than the line of the foundation facing said side street.

L. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within Aeries on the Bay except in covered containers of a type, size and style which are approved by the Declarant. In no event shall such containers be maintained in the front or side yard of any lot so as to be visible from neighboring property except to make the same available for collection and then, only the shortest time reasonably necessary to effect such collection. The Declarant shall have the right, in its sole discretion, to require all owners to subscribe to a specific location for trash service. All rubbish, trash and garbage shall be removed from the lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

K. Repair of Buildings. No building or structure upon any property within Aeries on the Bay shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

J. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within Aeries on the Bay and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereon unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Declarant in its sole discretion shall have the right to determine the existence of any such nuisance.

Declarant having first been obtained. The Declarant or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing. Anything herein to the contrary notwithstanding, the Declarant or its authorized agents shall enter upon any owner's lot for the purposes set forth in this subsection only when owner has failed to maintain the shrubs, trees, grass and plantings as required by this Declaration.

DUY, CHOMWELL, BETZ  
PLANNING, P.C.  
ATTORNEYS AT LAW

Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event, the residence is partially or totally destroyed, and then rebuilt, the owner agrees that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any encroachment shall not exceed two (2) feet.

Utility Easements. There is hereby created in favor of Declarant a blanket easement upon, across, over and under the above-described premises for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, television, cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially programmed and approved by the Declarant. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

5. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, identification, or sale of property within Aeries on the Bay.

R. Signs. No signs of any kind shall be displayed to the public view on any lot except a sign of not more than ten (10) square feet advertising the property for sale or rent or signs used by the Declarant to advertise the property during the construction or sale period.

Q. Restriction of Further Subdivision. No lot within Aeries on the Bay shall be further subdivided or separated into smaller lots or parcels by any owner. This provision shall not, in any way, limit Declarant from subdividing or separating into smaller lots or parcels any property owned by Declarant and not yet platted or subdivided into lots. It shall also not limit or prohibit Declarant from subdividing any lots for duplex or cluster-type homes, in accordance with the zoning and subdivision requirements of the City of Virginia Beach. Declarant shall also have the right to re-subdivide lots to accomplish minor adjustments. No portion of a lot but for the entire lot, together with the improvements thereon, may be rented, and only to a single family.

P. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within Aeries on the Bay except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, apartment structure, or other improvements, which Declarant may require for the operation and maintenance of Aeries on the Bay.

and such persons shall not be deemed guilty of trespassing by reason of such entry. However, reasonable written notice of the time of such on-site inspection shall be given to owner.

U. Party Walls. The rights and duties of owners with respect to party walls or party fences shall be as follows:

(1) Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damages due to negligence or willful acts or omissions shall apply thereto.

(2) The owners of contiguous lots who have a party wall or party 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.

(3) In the event that any party wall or party fence is damaged or destroyed through the intentional or negligent act of an owner or any person for whom he is legally responsible, it shall be the obligation of such owner to rebuild and repair the party wall or fence without cost to the other adjoining lot owner or owners.

(4) In the event any such party wall or party fence is destroyed (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining owner, his agents, guests or family, it shall be the obligation of all owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(5) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all owners of any interest therein, whether by way of easement or in fee.

(6) In the event of a dispute between owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining owners shall submit the dispute to the Declarant, the decision of which shall be binding.

V. Driveways. No driveway shall be constructed or maintained to or on any of said lots in such manner as to obstruct the normal drainage of the street on which said lot fronts, and to that end, such driveway shall have either an apron of proper design or an adequate drain pipe installed under the driveway for the purpose. No driveway to be altered without approval with site plan submitted.

#### ARTICLE IV

#### GENERAL PROVISIONS

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

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



Section 3. Amendment. Except as otherwise provided herein, the aforesaid covenants, restrictions, conditions and reservations shall run with title to each of said lots and shall be binding upon all parties and all persons claiming under or through owner for a period of thirty (30) years from the date this declaration is recorded, after which time said covenants, restrictions, conditions and reservations shall be automatically extended for successive periods of ten (10) years each, unless and until an instrument executed by the then majority of the owners of said lots, agreeing to modify and/or amend such covenants, restrictions, conditions or reservations, in whole or in part, has been duly recorded in the Clerk's Office of the City of Virginia Beach.

Section 4. FHA/VA Approval. The following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: amendments of this declaration of covenants, conditions and restrictions.

Section 5. Violations and Nuisance. Every act or omission whereby any provision of this declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, or any owner or owners of lots within Aeries on the Bay.

Section 6. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within Aeries on the Bay is hereby declared to be a violation of the Aeries on the Bay restrictions and subject to any or all of the enforcement procedures set forth in said restrictions.

Section 7. Remedies Cumulative. Each remedy provided by the Aeries on the Bay restrictions is cumulative and not exclusive.

Section 8. Delivery of Notices and Documents. Any written notice or other documents relating to or required by the Aeries on the Bay restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows: If to an owner, to the address of any lot within Aeries on the Bay owned, in whole or in part, by him or to any other address last furnished by an owner to the Declarant; and if to Declarant, at Suite 225, Holland Office Park, 4480 Holland Road, Virginia Beach, Virginia 23452; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Declarant. Each owner of a lot shall file the correct mailing address of such owner with the Declarant, and shall promptly notify the Declarant in writing of any subsequent change of address.

Section 9. The Declaration. By acceptance of a deed or by acquiring an ownership interest in any of the real property included within this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, covenants, agrees, and understands that the title is subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvements and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be

MC

JAY, CROWHILL, BETZ  
ATTORNEYS AT LAW  
AUSTIN, TEXAS

IN WITNESS WHEREOF, the said Aeries on the Bay, Inc. has caused these presents to be executed in its name and behalf by its president duly authorized, this 29th day of August, 1984.

DECLARANT reserves unto itself the right to assign, alter, release or waive the requirements of any of the covenants, restrictions, conditions and reservations contained herein by an appropriate written instrument executed solely by declarant without notice to, or the requirement of the joinder in the execution thereof by any owner of any of said lots) duly recorded in the aforesaid Clerk's Office.

mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

DECLARANT reserves unto itself the right to assign, alter, release or waive the requirements of any of the covenants, restrictions, conditions and reservations contained herein by an appropriate written instrument executed solely by declarant without notice to, or the requirement of the joinder in the execution thereof by any owner of any of said lots) duly recorded in the aforesaid Clerk's Office.

IN WITNESS WHEREOF, the said Aeries on the Bay, Inc. has caused these presents to be executed in its name and behalf by its president duly authorized, this 29th day of August, 1984.

AERIES ON THE BAY, INC.

By: Donald L. Moore, President

STATE OF VIRGINIA,  
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 29th day of August, 1984, by Donald L. Moore, President of Aeries on the Bay, Inc., on behalf of said corporation.

My term of office expires: 10/13/85

James A. [Signature]  
Notary Public

IN WITNESS WHEREOF, the said Aeries on the Bay, Inc. has caused these presents to be executed in its name and behalf by its president duly authorized, this 29th day of August, 1984.

DECLARANT reserves unto itself the right to assign, alter, release or waive the requirements of any of the covenants, restrictions, conditions and reservations contained herein by an appropriate written instrument executed solely by declarant without notice to, or the requirement of the joinder in the execution thereof by any owner of any of said lots) duly recorded in the aforesaid Clerk's Office.

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