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PADGETT'S ORDINARY CONDOMINIUM  
DECLARATION OF CONDOMINIUM  
AND  
SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONDOMINIUM AND SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS, made this 19th day of March, 1984, by Busch Properties, Inc., a Delaware corporation, with its home office located at One Busch Place, St. Louis, Missouri 63118.

W I T N E S S E T H :

WHEREAS, by Declaration of Covenants and Restrictions dated September 18, 1973, (the "Declaration"), Declarant declared certain real property in James City County, Virginia, as described on Exhibit "A" attached thereto, subject to certain covenants, restrictions, easements, charges and liens; and

WHEREAS, pursuant to the Declaration, the Declarant was empowered to establish parcels (as therein defined) by Supplemental Declaration and to subject such parcels to complimentary covenants, restrictions, easements, charges and liens; and

WHEREAS, Busch Properties, Inc., (the "Declarant") is the fee simple owner of the hereinafter described real property; and

WHEREAS, the Declarant, in compliance with the Virginia Condominium Act, Sections 55-79.39, et seq., of the Code of Virginia (1950), as amended, (the "Act"), wishes to submit the real property, (the "Property"), and the improvements thereon, to the provisions of the Act;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto, herein referred to as "the Property", shall constitute a parcel as contemplated by the Declaration and the Declarant does hereby submit the hereinafter described property, with all improvements thereon, whether heretofore or hereafter;

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby submit the hereinafter described Property, with all improvements thereon, whether heretofore or hereafter constructed, and all appurtenances thereto, to the provisions of the Act, and does hereby establish a condominium with respect to said Property, to be known as Padgett's Ordinary Condominium, (Padgett's Ordinary). All of said Property (including appurtenances and improvements) shall be held, conveyed, divided or subdivided, leased, rented, and occupied, improved, hypothecated or encumbered subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth or incorporated by reference herein, and shall be deemed to run with and bind the land, and which shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

I. DESCRIPTION

A. Original: The Declarant has constructed on the Property situated in James City County, Virginia, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, residential buildings containing a total of twenty-four (24) condominium units as the term "Unit" is defined in Section 55-75.41 of the Act, (hereinafter "Unit"); located in accordance with the Unit Location Map attached hereto and incorporated herein by reference as part of Exhibit "A" and in accord with the unit floor plans attached hereto and incorporated herein by reference and also included in Exhibit "B".

Each Unit Owner, as that term is defined in Section 55-79.41 of the Act, by acceptance of a deed therefore, agrees that he has had full opportunity to inspect and examine the Unit thus acquired by him and waives any claim or demand which he might otherwise have had against the Declarant or any other person

whomsoever as a result of any discrepancy between the unit as it then exists and as it is described in this Declaration, the exhibits attached hereto, and the architectural plans and specifications. The ownership of each unit shall include, but not be limited to an undivided interest in the Common Elements, membership in the Padgett's Ordinary Condominium Unit Owners Association (herein Unit Owners Association) and an undivided interest in the funds and assets of the Unit Owners Association.

**B. Expansion:**

(1) The Declarant hereby specifically reserves the option to expand this condominium to a total of no more than forty eight (48) units.

(2) There are no limitations on the option so reserved, except for the provisions in regard to total number of units and in regard to the density of units, as hereinafter set out. The consent of unit owners shall not be required.

(3) The option to expand the condominium, if not sooner exercised, shall expire seven (7) years from the date of recordation of this Declaration in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City. Except for such time limitation, the reserved option shall remain open to Declarant until exercised or until a written agreement is recorded by the Declarant in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, specifically waiving and relinquishing such options.

(4) The land which may be added to the condominium, henceforth referred to as "additional land", shall be that designated as additional land on the plat attached as Exhibit "A" hereto.

(5) The Declarant may at its option add additional phases to the condominium in any number and in any order provided that any phase added must adjoin either another added phase and/or the original land contained in the condominium, (Phase I as described in Exhibit "A" hereto).

(6) Different portions, (Phases), of the additional land may be added to the condominium at different times. Additional Phases may be added in any order so long as the entire condominium is contained within one contiguous piece of real estate.

(7) There are no limitations on the location of any improvements on any parcel of additional land.

(8) No more than twenty-four (24) units may be constructed on the additional land. The maximum number of additional units per acre of additional land at any time shall not exceed twenty (20).

(9) All units located on such additional land shall be restricted exclusively to residential use provided that two (2) residential units may be used as models by Declarant. Residential use shall include the rental of the unit by the unit owner, residential use shall include accessory uses such as parking areas, paths and storage areas.

(10) Any structures erected on the additional land added to the condominium will be comparable in terms of quality of construction with the structures on the submitted land, but there is no assurance that such structures will have the same principal materials or architectural style.

(11) There shall be no limitations on what other improvements other than the condominium units, shall be made on the additional land, except that no improvements shall be placed thereon for commercial or other than residential purposes and any such improvements shall be complimentary to and for the use of the owners and residents of the units.

(12) Any units constructed on any portion of the additional land will be residential units, but there is no assurance that they will be substantially identical to the units on the submitted land nor is there any limitation of the type of unit except to the extent affected by Paragraph (10) above.

(13) Declarant reserves the right to create limited common elements within the additional land such as balconies, patios or other appurtenances to an individual unit which are designed for the exclusive use of that unit. Such area shall be designated as limited common elements at the time the additional land is added to the condominium, but there shall be no area designated therein as common element which may subsequently be assigned as limited common elements. No assurances are made as to the types, size and maximum number of any limited common elements.

II. TYPES, AREA AND CONTENT OF UNITS: Each of the units of the Padgett's Ordinary Condominium shall be composed of the rooms and contain the square footage of interior space as described and depicted in Exhibit "B" to this Declaration, subject only to possible minor variations as may occur in the course of construction.

III. HORIZONTAL AND VERTICAL BOUNDARIES: All units of the Padgett's Ordinary Condominium shall be as shown on Exhibit "B" and, excepting the items stated in Paragraph IV.B. below, shall include that part of the structure which lies within the following boundaries together with any separate heat pump or air-conditioning equipment not within such boundaries but serving only such unit.

A. Upper and Lower Boundaries: The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

(1) Upper Boundary. The plane(s) of the exterior side of the sheetrock or other finished ceiling surface at the top of the unit.

(2) Lower Boundary. The plane(s) of the interior side of the subflooring located at the bottom of the unit.

B. Vertical Boundaries: The vertical boundaries of the unit shall be the vertical plane which includes the outermost surface of the sheetrock or other finished wall surface of all walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.

These definitions setting forth the unit boundaries shall be governed by the provisions of Sub-Sections 55-79 (b) and (c) of the Act.

All boundaries of units shall be physical, as-built boundaries. The boundaries of the units shall not be relocated nor shall the units be subdivided.

IV. COMMON ELEMENTS

A. The Common Elements of the Padgett's Ordinary Condominium shall consist of all portions of the condominium not included within the boundaries of any units; and

B. All items set forth in Section 55-79.50(c) of the Act which are located within a unit and which serve more than one unit or any portion of the common elements.

C. Any deck(s) and balcony as well as the exterior closet associated with a unit on Exhibit "B" shall be deemed a limited common element appertaining to such unit only.

V. INTEREST IN COMMON ELEMENTS

A. Ownership of the common elements as described herein shall be by the Unit Owners as tenants in common. The undivided interest of each Unit Owner in and to the common elements at any particular time and the share of each Unit Owner in the expense of operating and maintaining the common elements shall be a fraction in which the numerator is one and the denominator the total number of units in the Condominium. The undivided interest of each Unit Owner in the common elements is appurtenant to the unit owned by him and no such interest shall be deemed to be conveyed or encumbered or to otherwise pass without the unit or be portioned from the unit. Each Unit Owner and the Unit Owners Association may use the common elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Unit Owners.

B. The interests assigned herein do not necessarily reflect or represent the relative selling price or actual value of any unit and no opinion, appraisal, sale or market value transaction of one unit at a greater or lesser price than another unit shall be interpreted as requiring or permitting any change in the undivided interest assigned herein.

C. The use of the common elements shall be governed by the By-Laws and rules and regulations adopted by the Unit Owners Association as provided for in Section 55-79.73 of the Act. The common expenses, as defined in Section 55-79.41(b) of the Act shall be borne among the Unit Owners in direct proportion to their interest in the common elements as defined in Article V.A.

D. The common elements shall remain undivided and no Unit Owner may bring any action for partition or division of these common elements.

E. In the event Declarant exercises its option to add additional land as set forth in Article I.B. of this Declaration, the common elements shall be apportioned evenly between all the units, both the original units submitted hereby and the units contained on the additional land, such that, when the additional land is added, each unit in the original plan and on the additional land shall have an undivided interest in the common elements which is determined by a fraction in which the numerator is one and the denominator is the total number of units contained in the expanded Condominium. Upon exercise of the option to add additional land, the Declarant shall cause the recording of such plats and plans as required by the Virginia Condominium Act, Section 55-79.39, et seq., Code of Virginia, 1950, as amended, and simultaneously therewith shall execute and record an amendment to this Declaration reallocating the undivided interest in the common elements on the basis hereinabove set out.

VI. ADMINISTRATION

The Administration of the Padgett's Ordinary Condominium shall be conducted in accord with the provisions of this Declaration and the By-Laws of the Unit Owners Association attached hereto as Exhibit "C".

VII. EASEMENTS

A. Enjoyment of Common Elements: Every Unit Owner shall have a right to use an easement of enjoyment in and to the common elements and such easement shall be appurtenant to and shall pass with the title to every unit. Any Unit Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common elements to the members of his family, his guests or to his tenants who reside in his unit. This easement shall be subject to the right of the Unit Owners Association to suspend such easement as to a Unit Owner and assigns for as long as any assessment of the Unit Owners Association shall remain unpaid or for a period not to exceed thirty (30) days and/or for violation of any rules and regulations established by the Unit Owners Association governing the use of common elements.

B. Encroachment and Support: Each unit and the property included in the common elements shall be subject to an easement for encroachments as set forth in Section 55-79.60 of the Act.

C. Utilities, etc.: There is hereby granted a blanket easement upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing and maintaining a master television antenna/cable system and all utilities including but not limited to, water, sewers, telephones and electricity.

D. Easements to Busch Properties, Inc.: The Declarant does hereby reserve unto itself, its successors and assigns, the easements and rights-of-way as hereinafter provided:

(1) An easement to facilitate sales and to maintain a sales office and Model Unit within the Condominium. Under this easement, the Declarant, its duly authorized agents, representatives and employees shall have the right to use two (2) condominium units as Model Units and/or sales offices to show to prospective purchasers and otherwise use in the course of the sale and management of the condominium units. Such units may be either retained by the Declarant or sold or leased back by the Declarant. The Owner of the Model Units shall have the same rights, obligations and responsibilities with respect to such units as any other Unit Owner provided, however, that such Model Units shall be the only units which may be used for commercial purposes. Declarant shall have the right to designate any condominium units as the Model Units provided either that the Declarant has retained its ownership of such units or that the Declarant has leased such units from its owner under a lease providing that such units shall be the Model Units.

(2) The easements and rights-of-way granted herein may be exercised by any licensee of the Declarant, but the granting of the aforesaid easements and rights-of-way shall not be considered an obligation of the Declarant to provide or maintain any of the aforesaid utilities or services.

E. Repairs: The Unit Owners Association, or its designee, shall have the right to enter any unit when necessary to carry out any repair, maintenance, landscaping or construction for which the Unit Owners Association or for which any Unit Owner is responsible and has not completed after written notice to the Unit Owner from the Unit Owners Association. The entry by the Unit Owners Association shall be made with as little inconvenience to the Unit Owner as practicable and any damage caused shall be repaired at the expense of the Unit Owners Association unless the entry is made to perform any obligation for which the Unit Owner is responsible, in which event the entry and all work shall be done at the risk and expense of the Unit Owner.

F. Emergency Services: There is hereby granted a blanket easement to the Unit Owners Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Unit Owners Association and to all policemen, firemen, ambulance personnel and all similar persons without prior written notice to go upon the property subject to this Declaration, By-Laws and Rules of the Unit Owners Association, in the event of emergencies or immediate danger to the unit, to other units or the common elements.

G. Exercise of Easements, Notice: Except when an emergency situation arises or in furnishing (but not installing), or in repairing utility services, the rights accompanying the easements provided by this Article VII, shall be exercised only during reasonable daylight hours and then whenever practicable only after advance notice, to and with the permission of, the Unit Owner or tenant directly affected thereby unless otherwise provided in Paragraph E. of this Article.

VII. RESTRICTIVE AND AFFIRMATIVE COVENANTS:

A. Every person who is the record owner of a whole or partial interest in any unit which is a part of the Padgett's Ordinary Condominium and which is subject to this Declaration or any amendments thereto, shall be both a member of the Padgett's Ordinary Condominium Unit Owners Association and a member of the

Kingsmill Community Services Association, with all the rights and privileges of such membership and subject to all corresponding obligations including the payment of regular and special assessments. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation.

B. Noxious or Offensive Activity: No noxious or offensive activity shall be carried on in any unit or in the Limited Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners or their lessees.

C. Pets: Subject to such limitations as may from time to time be set by the EPB, generally recognized house or yard pets, in reasonable numbers, may be kept and maintained at an occupant's unit, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their owner when they are outside the occupant's premises and must not become a nuisance to other residents, and if any such pets are declared a nuisance by the EPB they shall be removed from the unit within thirty (30) days after written request from the EPB.

D. Signs: No signs of any type shall be displayed to public view on any unit, limited common element or common element, except customary name and address signs and such lawn signs as are approved by the EPB advertising the unit for sale or rent.

E. Mailboxes and Newspaper Tubes: Only mailboxes and newspaper tubes meeting the design standards of the EPB shall be permitted, except for mail depositories which are the property of the U.S. Post Office Department.

F. Trash Receptacles: All trash receptacles shall be concealed in a manner approved by the EPB.

G. Boats, Trailers, etc.: Overnight parking or storage of boats, trailers, and all vehicles other than licensed, operable private passenger vehicles, shall be in areas designated by the EPB for such parking or storage. Except for emergency repairs, no owner shall repair or restore or permit others to repair or restore any vehicle, boat or trailer upon any portion of the unit except in areas approved by the EPB.

H. Antennas: Exterior television or other antennae, except as approved by the EPB, are prohibited.

I. Power Boats: The use of gasoline powered motorboats is prohibited on lakes and ponds within Kingsmill; except that the Unit Owners Association or appropriate governmental authority may operate a power boat to provide for public safety.

J. Clothes Drying Equipment: Clothes lines or other clothes drying apparatus shall be screened from public view in a manner approved by the EPB.

K. Trash Burning: Trash, leaves and other similar material shall not be burned without the written consent of the EPB and all appropriate governmental authorities.

L. Model House or Exhibits: No owner except the Declarant shall permit any structure on his unit to be used as a model house or exhibit without the written consent of the Declarant.

M. Wells: No well shall be dug or maintained on any unit except by the Unit Owners Association or the Declarant.

N. In addition to the provisions of this Declaration and any amendments hereto, the property comprising the Padgett's Ordinary Condominium is expressly subject to the provisions of the Declaration of Covenants and Restrictions of Kingsmill recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, in Deed Book 147, page 642, as amended.

IX. CHANGES BY DECLARANT

Nothing contained in this Declaration shall be deemed to affect in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation or any part or feature of a unit prior to the contracting for the conveyance of the unit to a purchaser, or to impose upon the Declarant, its successors or assigns any obligation of any nature to build, construct or provide any portion of the Padgett's Ordinary Condominium prior to entering into a contract for the purchase and sale of a condominium unit.

X. MANAGEMENT

A. Establishment of Assessments: The Unit Owners Association shall establish and collect an equal assessment for each unit from the owners of such unit to provide for the payment of common expenses as defined in Section 55-79.41(b) of the Act. Assessments made by the Unit Owners Association shall be in amounts sufficient to meet the Unit Owners Association's estimate of expenses set forth in an operating budget. The determination of common expenses and assessments shall be as set forth in the By-Laws of the Unit Owners Association attached hereto as Exhibit "C".

B. Liability for Assessments: The assessments imposed by the Unit Owners Association in accord with the provision of the By-Laws for the maintenance and operation of the common elements shall constitute a lien upon each unit superior to all other liens, other than liens for real estate taxes and liens for first mortgage or first trust financing securing institutional lenders recorded prior to the perfection of the lien for the assessments of the Unit Owners Association. In addition, each Unit Owner shall be personally liable for all such assessments imposed by the Unit Owners Association which may be due but unpaid at the time he acquires a unit or which may become due and payable during anytime while he owns his unit.

No Unit Owner may exempt himself from liability for assessments to his unit for the cost of the maintenance and operation of the common elements by the abandonment of his unit.

XI. MAINTENANCE, REPAIR AND INTERNAL CHANGES OF UNITS

A. Every Unit Owner must promptly perform all maintenance and repair work within his unit excluding, however, the common elements described in Article IV.(b) hereof which if omitted would affect Padgett's Ordinary in its entirety, or other units which shall specifically include, but not be limited to, maintaining heat within the unit to protect against freezing pipes.

B. Every Unit Owner shall be responsible for the repairs and/or replacement of internal installations within a unit and serving only such unit, such as water, electricity, gas, power, sewerage, telephones, air-conditioners, sanitary installations, doors, windows, screens, lamps and of all other accessories belonging to a unit. The maintenance and repair of outside portions of the heat pump/air-conditioner furnishing service to the unit shall be at the Unit Owner's individual expense.

C. A Unit Owner shall reimburse the Unit Owners Association for any expenditures incurred in repairing or replacing any Common Element damaged through the Unit Owner's negligence or failure to promptly perform all maintenance and repair work within his unit. Such amounts shall provide for the same lien as is provided for assessments levied by the Unit Owners Association.

D. A Unit Owner shall not make structural modifications or alterations to his unit or its equipment without previously notifying the Unit Owners Association in writing through the President of the Unit Owners Association, and

obtaining the Unit Owners Association's written consent. The Unit Owners Association shall have the obligation to answer within thirty (30) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration, which may then be completed in accordance with the submitted proposals as if the Unit Owners Association's consent had been given.

XII CONDEMNATION

The rights of Declarant, the Unit Owners Association, all Unit Owners and any institutional first lien creditors shall be determined by the provision of Section 55-79.44 of the Code of Virginia, 1950, as amended, in the case of any exercise of the right of eminent domain against Padgett's Ordinary.

XIII. TERMINATION

This Declaration and the Padgett's Ordinary Condominium may be terminated and the Property removed from the provisions of the Act, or this Declaration and/or the By-Laws may be amended, pursuant to the provisions of Section 55-79.72 of the Act.

XIV. GENERAL

A. Definition: All terms used in this Declaration shall be as defined in the Declaration of Covenants and Restrictions for Kingsmill.

B. Duration: The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2004.

C. Amendment: This Declaration may be amended at any time by an instrument of record after the written consent thereto by the Declarant and not less than seventy-five percent (75%) of the Unit Owners of units covered by this Declaration.

D. Severability: Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Busch Properties, Inc., has caused its name to be signed and its corporate seal to be affixed and attested by its duly authorized officers, all as of the day and year first above written.

BUSCH PROPERTIES, INC.

By Henry D. King  
Vice President

ATTEST:

By James L. King  
Assistant Secretary



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STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me by Harry D. Knight and James R. Geiger, as Vice President and Assistant Secretary, respectively, of Busch Properties, Inc., on behalf of the corporation.

Given under my hand and seal this 23<sup>rd</sup> day of March, 1984.

My Commission Expires: Feb. 13, 1988.

*Nancy A. Kelly*  
Notary Public



UPLOADED  
5/4/2021