

DECLARATION OF COVENANTS AND RESTRICTIONS

made by

HIGHGATE ASSOCIATES LIMITED PARTNERSHIP

a Virginia limited partnership

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HIGHGATE

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## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made effective for all intents and purposes as of the 6th day of August, 1990, by HIGHGATE ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership (hereinafter the "Developer") and HIGHGATE OWNERS ASSOCIATION (hereinafter the "Association").

### WITNESSETH:

WHEREAS, the Developer is the owner of real property located in Arlington County, Virginia, as more particularly described on Exhibit A which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Developer desires to create on the Property a residential community with permanent open spaces and other common facilities for the benefit of the community, including, but not limited to, certain private streets and such other areas as may be subjected to this Declaration of Covenants and Restrictions; and

WHEREAS, in order to provide for the preservation and enhancement of the property values, amenities, and opportunities in the community which will contribute to the personal and general health, safety, and welfare of residents and for the maintenance of the land and improvements thereon, the Developer desires to subject the Property to the covenants, restrictions, conditions, easements, charges, and liens of this Declaration of Covenants and Restrictions, said covenants, restrictions, easements, conditions, and charges running with said Property and binding all persons or entities having or acquiring any right, title, or interest in the Property or any part thereof, and inuring to the benefit of each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Developer has incorporated the Association as a non-stock, non-profit corporation under the laws of the Commonwealth of Virginia.

NOW, THEREFORE, the Developer does hereby grant, establish, and convey to each Owner mutual non-exclusive rights, privileges, and easements of enjoyment on equal terms in common with all other Owners in and to the use of the Common Areas and facilities; and does hereby declare the Property to be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens (hereinafter referred to as "Covenants and Restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title, or interest in the herein described real property or any portions thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

AND FURTHER, the Developer hereby delegates and assigns to the Association the powers of owning, maintaining, and administering the Common Areas, administering and enforcing the Covenants and Restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates to the contrary, the terms listed below shall be construed in accordance with the following definitions:

Section 1. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights, or a formal letter stating "No objection."

Section 2. "Assessable Unit" shall mean and refer to any real property within the Property which is subject to assessments, as provided in Article V hereof.

Section 3. "Association" shall mean and refer to Highgate Owners Association, its successors and assigns.

Section 4. "Book of Resolutions" shall mean and refer to the document containing the rules and regulations and policies of the Association, as amended from time to time.

Section 5. "Common Areas" shall mean and refer to all portions of the Property and all interests therein, including easements and improvements thereon, owned or leased by the Association for the use and enjoyment of the Members.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions, as the same may from time to time be amended by one or more Supplementary Declarations.

Section 7. "Developer" shall mean and refer to Highgate Associates Limited Partnership, a Virginia limited partnership, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically assigned by Highgate Associates Limited Partnership by a document recorded among the land records of Arlington County, Virginia, or unless said rights and obligations of the Developer inure to the successor of Highgate Associates Limited Partnership by operation of law. The rights and obligations of the Developer set forth herein, as Developer, shall cease five (5) years after the date of recordation of the last Supplementary Declaration among the land records of Arlington County, Virginia.

Section 8. "Federal Mortgage Agencies" shall mean and refer to those Federally related agencies, if any, which may from time to time have an interest in the Property, or any portion thereof, including, but not limited to, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Association, and successors to their interests.

Section 9. "First Mortgagee" shall mean and refer to an Institutional Lender which holds the first lien deed of trust on a Lot and which has notified the Association in writing of its interest in the Lot.

Section 10. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, any Supplementary Declarations or amendments to this Declaration, and the Bylaws of the Association, all as initially drawn by the Developer and filed or recorded as the case may be, and all as may be duly amended from time to time.

Section 11. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 12. "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, mortgage companies, pension funds, Federal Mortgage Agencies, or business trusts, including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured a loan of such a lender, or any combination of any of the foregoing entities.

Section 13. "Living Unit" shall mean and refer to any structure or portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a Single Family.

Section 14. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property, with the exception of Common Areas, as heretofore defined, and areas dedicated as public streets.

Section 15. "Members" shall mean and refer to members of the Association, each of whom shall be the Owner of a Lot.

Section 16. "Notice" shall mean and refer to (i) written notice delivered personally or mailed to the last known address of the intended recipient; or (ii) notices published at least once a week for two consecutive weeks in a newspaper having general circulation in Arlington County; or (iii) notice published in two consecutive issues of the newsletter of the Association, if any, which is delivered personally or mailed to the address of each occupied Living Unit.

Section 17. "Occupant" shall mean and refer to a resident of a Living Unit, who is the lessee or sublessee. There shall be only one Occupant per Living Unit for the purposes of this Declaration, although the Living Unit may house several individuals.

Section 18. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether referring to one person or entity or collectively to more than one person or entity who have joint ownership of a Lot. The term "Owner" shall not include those having an interest merely as security for the performance of an obligation.

Section 19. "Property" shall mean and refer to all real property which is hereby subjected to the Declaration, together with such other real property as may from time to time be annexed thereto in accordance with Article II hereof. At this time, the Property consists of the real property described on Exhibit A attached hereto.

Section 20. "Quorum of Members" shall mean and refer to the representation at a duly called meeting of the Members by presence or proxy of Members who hold at least twenty-five percent (25%) of the outstanding Class A votes, and the representation by presence or proxy of the Class B Member, so long as it shall exist. In the event a "Quorum of Members" is not present at a duly called meeting of the Members, no action may be taken which requires the vote of a Quorum of Members. At the next duly called meeting of the Members after failure of the attending Members at the previous meeting to constitute a quorum, the quorum requirement shall be at least fifteen percent (15%) of the outstanding Class A votes and the representation by presence or proxy of the Class B Member, so long as the Class B membership shall exist, provided that in order for the reduced quorum requirement to apply, the purpose

of the meeting as recited in the notice given to all Members is the same as the purpose recited in the notice of the preceding meeting at which no quorum was present.

Section 21. "Registered Notice" shall mean and refer to any Notice which has been sent by registered United States mail, return receipt requested, postage paid, to the last known address of the intended recipient and which has been signed for or has been certified by the United States Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

Section 22. "Single Family" shall mean and refer to a single housekeeping unit which includes not more than three adults who are legally unrelated.

Section 23. "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions which may be recorded by the Developer, which expands the Property beyond the land which is initially subjected to this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The "Property." The Property is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration and all covenants, restrictions, conditions, easements, charges and liens set forth herein.

Section 2. Additions to The Property. So long as the Class B Member is still a Member of the Association, the Developer shall have the unilateral right, without the consent of the Class A Members, to subject to this Declaration any additional property which the Developer acquires and lies adjacent to the initial Property, provided that not more than five (5) years have lapsed since the recordation of the last Supplementary Declaration among the Land Records of Arlington County, Virginia.

The Supplementary Declaration which subjects additional property to this Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration. The Supplementary Declaration may contain such complementary additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches to which the annexed land or parts thereof may be subject, all of which may be significantly at variance with other portions of the Property, but all of which shall be consistent in quality with the improvements constructed on the Property. The additions authorized under this Section 2 shall be made by complying with the requirements of the applicable Arlington County Zoning Ordinances; by securing the Approval of the Federal Mortgage Agencies, if required; by recording on these land records one or more Supplementary Declarations of covenants and restrictions with respect to the additional property; and by filing with the Association the preliminary plat for such additions.

Section 3. Merger. In accordance with its Articles of Incorporation, the real estate, personalty, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes. Similarly, the real estate, personalty,



rights, and obligations of an association similar in corporate nature and purposes to the Association may, by operation of law, be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration upon any other properties as one scheme. No such merger or consolidation shall, however, effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided. Such merger or consolidation shall require the affirmative vote of at least sixty-seven (67%) percent of the Class A Members and the approval of the Class B Member, so long as the Class B membership still exists.

### ARTICLE III

#### THE ASSOCIATION

Section 1. Organization. The Association is a non-profit, non-stock corporation organized and existing under the laws of Virginia and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as the same may be amended from time to time; provided, however, that no other Governing Documents shall be amended for any reason, or otherwise changed or interpreted, so as to be inconsistent {with} the provisions of ~~with~~ this Declaration.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except as provided in the Governing Documents. Each person or entity which is a record Owner of a Lot shall be a member of the Association.

(b) Member's Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

(c) Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners (as defined in Article I), except the Class B Member. Class A Members shall be entitled to one vote for each Lot owned.

Class B. *The Class B Member shall be the Developer, or any successor or assignee (i) to whom the Developer assigns any or all of its rights as Developer pursuant to this Declaration by assignment recorded in the Land Records of Arlington, County, Virginia or (ii) who is a purchaser at foreclosure or a grantee in a deed in lieu of foreclosure from the Developer, provided that such purchaser or grantee is an Institutional Lender and is the mortgagee, creditor or beneficiary under the instrument being foreclosed or giving rise to the deed in lieu of foreclosure. Such assignment shall only operate as to the land which is owned by such successor or assignee and which is referenced specifically in the instrument of assignment. The Class B Member shall have three (3) votes for each Lot in which it owns a fee or undivided fee interest.*

*The Class B membership and Class B voting rights shall cease, and be converted to a Class A membership with Class A voting rights, upon the earlier to occur of the following events: (i) when at least seventy-five percent (75%) of the Lots at the Property have been conveyed by the Developer to individuals or entities other than the Developer or an assignee or successor to the Developer as described in the foregoing paragraph, or (ii) five (5) years after settlement on the sale of the first Lot to*

*an Owner other than the Developer: provided, however, that in the event of the annexation of additional properties pursuant to Article II hereof, Class B membership shall be revived with respect to those Lots contained in the annexed property, which Class B membership shall cease and be converted to Class A membership with Class A voting rights upon the earlier to occur of the following events: (i) when at least seventy-five percent (75%) of the Lots in such annexed property have been conveyed by the Developer to individuals or entities other than the Developer or an assignee or successor to the Developer as described in the foregoing paragraph, or (ii) five (5) years after the date of recordation of the Supplementary Declaration subjecting such annexed property to the provisions of this Declaration.*

(d) Exercise of Vote. The vote for any membership which is held by more than one person may be exercised by any one of them, provided that no objection or protest by any other holder of such membership is made prior to the completion of a vote. If such protest is lodged prior to the completion of the vote, the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. Except in the case of the Class B voting rights, in no event shall more than one vote be cast with respect to any Lot.

### Section 3. Board of Directors.

(a) Composition. The number of Directors and method of selection of Directors shall be as provided in the Bylaws; provided, however, that the Developer, until its rights as a Class B Member cease, shall be entitled to appoint at least four (4) Directors.

(b) Extent of Power.

(1) The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Founding Documents and which are not specifically reserved to Members or the Developer by said Documents.

(2) The Board of Directors shall exercise its powers in accordance with the Governing Documents.

(c) Powers and Duties. By way of example and without limiting the generality thereof, the Board of Directors shall have the power and obligation to perform the following duties:

(1) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging, or disposal of Common Areas which shall be subject to the provisions of Article II and Article IV of this Declaration.

(2) Rule Making. To establish rules and regulations for the use of property as provided in Articles IV and VI and to review, modify, and approve architectural standards adopted by the Architectural Review Board.

(3) Assessments. To fix, levy, and collect assessments as provided in Article V.

(4) Easements. To grant and convey easements over and across the Common Areas as may become necessary and as provided in Article VII.

(5) Employment of Agents. To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association.

(6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II.

(7) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or foreclosed, and suspending membership rights, for enforcing or effectuating any of the provisions of the Governing Documents.

#### Section 4. The Architectural Review Board.

(a) Composition. Until the Developer's Class B membership rights cease, the Architectural Review Board shall be composed of three (3) members appointed by the Developer. When the Developer's Class B membership rights cease, the Architectural Review Board shall consist of three (3) or more persons who shall be appointed by the Board of Directors as provided in the Bylaws.

(b) Powers and Duties. The Architectural Review Board shall regulate the external design, appearance, and location of improvements located on the Property in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among the structures and the natural vegetation and topography. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Developer concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural Review Board) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural Review Board. In furtherance of its purposes, the Architectural Review Board shall:

(1) Review and approve, modify, or disapprove written applications of Owners and of the Association, for improvements or additions to Lots, Living Units, or Common Areas. Notice of any disapprovals of applications shall be by Registered Notice. Approvals shall be sent by regular mail. A copy of the plans and specifications, as approved by the Architectural Review Board, shall be deposited among the permanent records of such Architectural Review Board.

(2) Monitor Lots for compliance with architectural standards and approved plans for alteration in accordance with the Bylaws and Book of Resolutions.

(3) Adopt architectural standards subject to the confirmation of the Board of Directors.

(4) Adopt procedures for the exercise of its duties and enter them in the Book of Resolutions.

(c) Failure to Act. In the event that the Architectural Review Board fails to approve, modify, or disapprove, in writing, a correctly filed application within forty-five (45) days after the plans and

specifications (and all other materials and information required by the Architectural Review Board) have been submitted to it in writing, approval by the Architectural Review Board will be deemed granted. Notification of total or partial disapproval shall include the reasons for such disapproval. Failure of the Architectural Review Board or the Board of Directors to enforce the architectural standards or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of the enforcement of this Declaration at any later date.

(d) Appeal. An applicant may appeal an adverse decision of the Architectural Review Board, within sixty (60) days after such adverse decision is rendered, to the Board of Directors, which may reverse or modify such decision.

(e) Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural Review Board pursuant to the provisions of this Article III, Section 4 shall be commenced within sixty (60) days following the date upon which the same are approved by the Architectural Review Board (whether by affirmative action or by forbearance from action, as in paragraph (c) of this Section 4 provided), and shall be substantially completed within six (6) months following the date of commencement, or within such other period as the Architectural Review Board shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Board shall be conclusively deemed to have lapsed and compliance with the provisions of this Section 4 shall again be required. There shall be no deviation from the plans and specifications approved by the Architectural Review Board without the prior consent in writing of the Architectural Review Board. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Board to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 5. Fidelity Bonds. The Association shall obtain fidelity coverage against dishonest acts on the part of Directors, officers, managers, employees, or agents responsible for handling funds collected and held for the benefit of the Association, whether or not such person receives compensation. The amount of the fidelity bond shall cover the greater of the maximum funds that will be in the Association's custody or the amount of three (3) months' Annual Assessments on all Lots plus the Association's reserve funds.

Section 6. Insurance. The Association shall maintain insurance against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage and all risk endorsements for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering all Common Areas. The policy shall provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence. Flood insurance shall also be obtained, if applicable. All insurance policies shall provide for at least ten (10) days written notice to the Association before material modification or cancellation of any policy. All premiums shall be paid as a common expense by the Association. In the event that the Association shall fail to maintain insurance for the Common Areas or allow insurance coverage to lapse, one or more of the First Mortgagees shall have the right, upon reasonable notice to the Association, to obtain such insurance and to advance premiums on behalf of the Association. The Association shall reimburse such First Mortgagees for premiums advanced.

## ARTICLE IV

### COMMON AREAS

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members of the Common Areas conveyed to it, including private streets and the sidewalks adjacent thereto, and all improvements thereon (including street lights, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order and repair in compliance with standards contained in the Book of Resolutions, which shall include snow removal from streets owned by the Association. The Association shall further be responsible for the maintenance of grass areas and street lights within the Common Areas and within public rights-of-way, for the recreational areas and facilities, including furnishings and equipment thereon, and for garbage removal from the Property.

Section 2. Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to the Common Areas and the facilities thereon.

Section 3. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to regulate the use of the Common Areas for the benefit of the Members, to reasonably limit the number of guests of Members who may use any facilities which are developed on the Common Areas, and to establish rules and regulations and fees for the use of the Common Areas.
- (b) The right of the Association to suspend the right of a Member to use the Common Areas and recreational facilities for any period during which any assessment against his Lot or Living Unit remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Association to suspend the right of a Member to use the recreational facilities for a period not to exceed sixty (60) days for each other infraction of the Governing Documents.
- (c) The right of the Association to borrow money for the purpose of improving the Common Areas and improvements thereon and in connection therewith, to mortgage any or all of the Common Areas with the consent of at least sixty-seven percent (67%) of the Class A Members, the approval of the Class B Member, so long as the Class B membership rights shall exist, and the consent of at least fifty-one percent (51%) of the First Mortgagees, if required by the First Mortgagees. In the event of a default upon any mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge reasonable admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored.
- (d) The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure, provided that such steps are consistent with the other provisions of this Declaration.
- (e) The right of the Association to convey, transfer or dedicate all or any part of the Common Areas or

recreational facilities to any public or municipal agency, authority, utility or other entity for appropriate purposes, subject to the then existing laws and ordinances, with the consent of at least sixty-seven percent (67%) of the Class A Members, the approval of the Class B Member, and the consent of at least fifty-one percent (51%) of the First Mortgagees.

(f) The right of the Association to license portions of the Common Areas to Members on a uniform, non-preferential basis.

(g) The right of the Association, acting by and through its Board of Directors, to enter onto a Lot or into a Living Unit or other improvements on a Lot to perform emergency repairs.

(h) The right of the Association, at any time or times, consistent with the then existing zoning ordinances of Arlington County, and pursuant to a recorded subdivision or resubdivision plat, to transfer part of the Common Areas to or at the direction of the Developer for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Property, provided that: (i) such transfer shall not reduce the portion of the Property required by Arlington County to be set aside for open space at the time of the transfer, (ii) all Lots which were adjacent to Common Areas prior to such transfer remain adjacent to Common Areas after such transfer, and (iii) the adjustment shall not materially alter the Common Areas.

Section 4. Delegation of Use. Any Member may delegate his right of enjoyment to the Common Areas and facilities to the members of his family and to his guests subject to such general regulations as may be established from time to time by the Board of Directors and as are included within the Book of Resolutions.

Section 5. Title to Common Areas. The Developer hereby covenants that areas designated as open space, which the developer conveys to the Association as Common Areas, shall be free and clear of liens and financial encumbrances at the time of conveyance. In the event that a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the First Mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid to discharge the lien or encumbrance.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association such Annual and Special Assessments as are established herein and to pay same in the manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass as a personal obligation to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Living Unit or Lot.

Section 2. Method of Assessment. All assessments shall be levied by the Association against

Assessable Units and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments as provided hereinafter and set the dates on which such assessments shall become due.

Section 3. Annual Assessments.

(a) Purpose. The Annual Assessments shall be used exclusively to promote the health, safety, and welfare of the Members of the Association as a whole and in particular to improve, maintain, and operate the Common Areas and facilities, and shall include the following:

- (i) The cost of all operating expenses of the Common Areas and facilities, including the recreational facilities and the services furnished to or in connection with the Common Areas and charges by the Association for any services furnished by it.
- (ii) The cost of necessary management and administration of the Common Areas and facilities, including fees paid to any management agent.
- (iii) The amount of all taxes and assessments levied against the Common Areas and facilities.
- (iv) The cost of liability insurance on the Common Areas and facilities and the cost of such other insurance as the Association may effect with respect to the Common Areas.
- (v) The cost of utilities and other services which may be provided by the Association, including snow removal on the Common Areas and facilities, site security and trash removal.
- (vi) The cost of maintaining, replacing, repairing and landscaping all exterior areas, except the enclosed rear yards which are the responsibility of the Owners, whether designated as "Common Areas" or not, including, without limitation, lawn maintenance, maintenance of any storm water detention basins or the like located upon the Common Areas and the cost of the maintenance of all walkways, wood fencing and any retaining, perimeter and entrance walls upon the Property, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith, and also including all front yard areas from the exterior wall to the sidewalk.
- (vii) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for repair and replacements.
- (viii) The implementation, administration, and enforcement of this Declaration, including, but not limited to, court costs and attorney's fees.

(b) Basis for Assessment. There shall be two (2) classes of Assessable Units, all of which shall be assessed at a uniform rate within each class:

Class I: All Lots on which Living Units have been constructed and which are or have been occupied by a Single Family shall be assessed at one hundred percent (100%) of the Annual Assessment rate.

Class II: All Lots owned by the Class B Member on which Living Units have been constructed but which have not been initially occupied by a Single Family, and all Lots owned by the Class B Member on which Living Units have not been constructed or construction has not been

*completed shall not be required to pay the Annual Assessment which would otherwise be assessed against it were it owned by a Class A Member. In consideration of the Developer's exemption from assessments, the Developer hereby covenants and agrees to maintain (exclusive of real estate taxes, insurance premiums, utility bills, trash collection and snow removal) the Common Areas within the Property or any other properties subsequently annexed hereto, including any budget deficits, without cost to the Association, until such time as the Class B membership shall cease to exist. The Class B Member shall remain exempt from payment of Annual Assessments even after conversion to Class A membership, until the occupancy of the Living Unit located on each Lot.*

- (c) Maximum. Until the first day of the fiscal year following commencement of assessments, the maximum Annual Assessment rate for one year shall be Five Hundred Forty Dollars (\$540).
- (d) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum Annual Assessment rate each year by the greater of: (1) a factor of not more than ten percent (10%) of the maximum for the current fiscal year; or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the United States Department of Labor. Such increase shall become effective the first day of the next fiscal year. As used herein, the term "Consumer Price Index" means the index now known as the "United States Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)," all items, for the Washington, D.C. SMSA (1982-84-100). From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board of Directors with the affirmative vote of at least sixty-seven percent (67%) of the Class A Members who are present and voting in person or by proxy at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if Class B membership has not ceased in accordance with the provisions of this Declaration.
- (e) Method of Assessment. The Board of Directors shall prepare, or cause to be prepared, an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of all Common Areas and other areas for which the Association is responsible. By a vote of at least two-thirds of the Board of Directors, the Directors shall fix the Annual Assessments to be collected annually at an amount not in excess of the current maximum for Annual Assessments; provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and any Supplementary Declarations. The Board of Directors shall make reasonable efforts to fix the amount of the Annual Assessments against each Lot for each assessment period at least thirty (30) days in advance of the commencement of such period. The Board of Directors shall prepare a roster of the Lots and the Annual Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board of Directors. Written notice of the Annual Assessments shall thereupon be sent to the Members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessments hereunder for that or the next period shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Member from the obligation to pay Annual Assessments, or any installment thereof, for that or any subsequent assessment period, but the Annual Assessments fixed for the preceding period shall continue until a new Annual Assessment is fixed. No Member may exempt himself from liability for Annual Assessments by abandonment of any Living Unit or Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas and facilities.
- (f) Date of Commencement of Annual Assessments. The first Annual Assessments provided for herein



shall commence as to all Lots on the first day of the month following the conveyance to the Association of the Common Areas.

(g) Payment of Annual Assessments. The Annual Assessments, when assessed for each year, shall become a lien on the Assessable Unit for the entire Annual Assessment, but shall be payable in quarterly installments equal to one-fourth (1/4) of the Member's proportionate share of the Annual Assessment payable by such Member. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, semi-annual or annual basis, rather than on a quarterly basis.

#### Section 4. Special Assessments.

(a) Capital Improvement Assessment. The Association may levy in any assessment year a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or other specified purpose, provided that any such assessment shall require the affirmative vote of at least two-thirds (2/3) of the Class A Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if the Class B membership has not ceased to exist.

(b) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, Section 2, or who fails to provide such maintenance funds as may be required by any Supplementary Declaration. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

(c) Restricted Use Areas; Utility Assessments. The steps at the rear of Lots 75, 78, 80, 82 and 83 provide access to the Lots adjacent thereto as follows: The steps at the rear of Lot 75 provide access to Lots 75 and 76; the steps at the rear of Lot 78 provide access to Lots 78 and 77; the steps at the rear of Lot 80 provide access to Lots 79 and 80; the steps at the rear of Lot 82 provide access to Lots 81 and 82; and the steps at the rear of Lot 83 provide access to Lots 83 and 84. Although such steps are part of the Common Areas, they shall be reserved for the exclusive use of the Lots to which they provide access as described herein. Notwithstanding the provisions of Section 3(a)(vi) of this Article V, the cost of maintaining, replacing and repairing such steps shall be a Special Assessment levied against those Lots which have the exclusive use of such steps and for whose benefit the maintenance, replacement or repair is made by the Association. In addition, the water service to Lots 87 through 110, inclusive, may be serviced by a common meter, in which event the cost of water service to such Lots shall be shared equally among the Owners of said Lots 87 through 110 and shall be assessed by the Association against each of such Lots as a Special Assessment, due and payable to the Association within ten (10) days after the date Notice of assessment is sent to the Owners of the affected Lots.

#### Section 5. Effect of Nonpayment of Assessments: Remedies of the Association.

(a) Notice of Default: Remedies. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide Notice of such delinquency and may, at its option, (i) declare the entire balance of such Annual or Special Assessment due and payable in full; (ii) charge interest from the due date at a percentage rate no greater than is permissible by law, such rate to be set by the Board of Directors for each assessment period; (iii) charge a penalty in an amount to be set by Board of Directors; (iv) give Notice to the Owner that in the event payment with accrued

interest and penalties is not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed or foreclosed, or both; and (v) upon Registered Notice to the Owner of the Lot, suspend the right of such Owner to vote and such Owner's right (and the right of any Occupant of the Living Unit) to use the recreational facilities until the assessment, accrued interest, penalties and costs of collection are paid in full. Once perfected, the lien for assessments provided for herein shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of this Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The lien evidenced hereby shall bind the Lot(s) or Living Unit(s) herein described in the hands of the then Owner or Occupant thereof, his heirs, devisees, personal representatives, and the personal obligation of the Member to pay such assessment shall, in addition, remain his personal obligation for the statutory period.

(b) Remedies Cumulative. No remedy reserved to the Association herein is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(c) Collection Costs. If default is made in the payment of any assessment payable hereunder, then the Owner who is so delinquent shall pay to the Association, upon demand, all costs of collection, including the Association's attorney's fees, whether suit is brought or not.

(d) Prepayment. Any member may prepay one or more installments on any Annual Assessments levied by the Association, without penalty or interest.

Section 6. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all properties exempted from taxation by the Commonwealth of Virginia, Arlington County, Virginia or any other political subdivision having jurisdiction over the Property upon the terms and to the extent of such legal exemption, provided that no property utilized for residential purposes shall be exempt.

## ARTICLE VI

### USE OF PROPERTY

#### Section 1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist or operate upon the Property, or any portion thereof, so as to jeopardize property values or be detrimental to the well-being of the Members.

(b) Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, and easements to public agencies or authorities or for utilities.

(c) Residential Use - Leasing. All Living Units shall be used for private residential purposes exclusively. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Developer from the use of any Lots or Living Units for promotional or display purposes, or

as "model homes", a sales office, construction office or the like.

Any lease or rental agreement for the lease of a Lot and the improvements thereon shall be in writing and shall be subject to the conditions, restrictions and requirements of this Declaration. No Lot or Living Unit shall be leased for a period of less than thirty (30) days and the initial term of such lease shall be for a minimum period of one (1) year.

(d) Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or Common Areas or the improvements located thereon from its natural or improved state, existing on the date such property was first subject to this Declaration, shall be made or done without the prior approval of the Architectural Review Board. No building, residence, or other structure, fence, wall, or landscaping in lieu thereof, shall be commenced, erected, maintained, improved, altered, made, or done on such property without the prior written approval of the Architectural Review Board.

(e) Fences. No fences shall be constructed upon the Property other than those provided by the Developer or those approved by the Architectural Review Board.

(f) Parking. Parking upon the Common Areas and private streets may be regulated by the Board of Directors and parking spaces may initially be assigned by the Developer and thereafter by the Board of Directors of the Association or by such committee as the Board of Directors may designate for that purpose. In the event parking spaces upon the Common Areas are assigned as aforesaid, then no Member shall make use of any parking space other than the space or spaces assigned to his Lot or Living Unit by the Board of Directors without the express written consent of (i) the Owner of the Lot (or Occupant of the Living Unit) to which such other space has been assigned and (ii) the Board of Directors, nor shall any Member invite, encourage or permit the use by his guests of parking spaces assigned to Lots other than his own. No vehicle belonging to any Member, or to any guest or employee of any Member, shall be parked in a manner which unreasonably interferes with or impedes ready vehicular access to any other parking space upon the Common Areas. No commercial vehicle, truck, boat, recreational vehicle or trailer, whether owned by the Owner or any other person, shall be permitted to remain on or be parked on the Common Areas overnight. Nothing shall be stored upon any of the parking areas nor shall the same be permitted to accumulate trash or debris. In the event the Board of Directors elects to assign parking spaces upon the Common Areas as herein provided for, then the Board of Directors may make reasonable efforts to assign parking spaces in a manner calculated to make reasonable adjustments to accommodate the elderly and the handicapped.

(g) Pets. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. Any Owner or Occupant who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each of the other Owners, Occupants, the Developer and managing agent free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet at the Property. All pets shall be registered, innoculated and tagged as required by law. The Board of Directors shall have the right to order any person whose pet is a nuisance to remove such pet from the Property and the Board of Directors, after affording the right to a hearing to the Owner or Occupant affected, shall have the exclusive authority to declare any pet a nuisance.

(h) Refuse. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used materials, or trash of any other kind shall be permitted on any Lot or upon any of the Common Areas. All refuse shall be deposited with care in containers for such purpose.

(i) Temporary Structure. No structure of a temporary character shall be maintained upon any Lot or upon the Common Areas at any time. Outdoor clothes dryers or clotheslines shall not be maintained upon any of the Lots or the Common Areas at any time. No clothing, laundry or the like shall be hung from any part of any Living Unit which may be visible from the exterior of the Living Unit or upon any of the Common Areas or from or upon any deck, balcony or patio.

(j) Outdoor Antennas. No outside television or radio aerial or antenna, satellite dish or solar panel(s) {probably panel(s)}, or other aerial or antenna, for reception or transmission, or other equipment which protrudes through the walls or the roofs of the Living Unit, shall be maintained upon the exterior of any Unit or upon any of the Common Areas without the prior written consent of the Board of Directors.

(k) Compliance with Laws. No unlawful or improper use shall be made of any Living Unit, Lot, or any portion of the Common Areas and all laws, zoning and other ordinances, regulations of governmental and other municipal bodies and the like shall be observed at all times.

(l) Rules. From time to time the Board of Directors shall adopt additional general rules, including, but not limited to, rules to regulate potential problems relating to the use of property and well-being of the Members, such as storage and use of machinery, signs, maintenance and removal of vegetation on the Property, and the type and manner of application of fertilizers or other chemical treatments to the Property in accord with non-point source pollution control standards. Ninety (90) days after conveyance of the first Lot to an Owner, such general rules may only be adopted or amended by a vote of at least two-thirds (2/3) of the Board of Directors, following a hearing for which due notice has been provided to all Members. All such general rules and any subsequent amendments thereto shall be placed in the Book of Resolutions and shall be binding on all Members, except where expressly provided otherwise in such rule.

(m) Exceptions. The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board of Directors can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Developer is engaged in developing or improving any portion of the Property, the Developer shall be exempted from Rules affecting movement, disposition, and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Living Units. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Property.

## Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in a Supplementary Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is consistent with good property management.

(b) Failure to Maintain - Right to Remove or Correct Violations. In the event that any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any Lot or Living Unit, or in the event of any other conduct in violation of any of the provisions or requirements of this Article or the Book of Resolutions, then the same shall be considered to have been undertaken in violation of this Article and without the approval of the Architectural Review Board or the Board of Directors required herein, and, upon written notice from the Architectural Review Board or the Board of Directors, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or

such shorter period as may be required in any such Notice) after Notice of such violation is delivered to the Owner of the Lot upon which such violation exists, or to the Member responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such Member, then the Association shall have the right, through its agents and employees, to enter upon such Lot and Living Unit and take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed as a Restoration Assessment against the Lot upon or in which such violation occurred. When so assessed, a statement for the amount thereof shall be rendered to the Owner of said Lot, at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot, in all respects as provided in Article V of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions or requirements of this Declaration exists on such Lot or in such Living Unit, and neither the Association nor any such agent, employee or committee member shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Notwithstanding anything else contained in this paragraph to the contrary, the Association shall initiate judicial proceedings before any item of construction can be altered or demolished.

### Section 3. Party Walls.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Living Unit upon the Property and placed on the dividing line between the Lots, each wall dividing the front entrance stairs and stoops between the Lots, and each fence dividing the rear yards 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 damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the Owners or Occupants, or the agents or family of any Owner or Occupant (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as was formerly existing and they shall share equally the costs of repairing or rebuilding the party wall.

(c) Damage Caused by One Owner. If any such party wall is damaged or destroyed through the act of one adjoining Owner or Occupant or any of the agents, guests, or members of the family such Owner or Occupant (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner or Occupant of the full use and enjoyment of the wall, then the Owner who is at fault (or the Owner of the Lot whose Occupant is at fault) shall forthwith proceed to rebuild and repair the same to as good condition as formerly existed at its sole cost and expense, without cost to the adjoining Owner or Occupant.

(d) Other Changes. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner or Occupant proposing to modify, make additions to or rebuild a residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(e) Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section 3 shall be appurtenant to the land and shall pass to the successors in title to the Owner entitled to such contribution.

(f) Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of anyone of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

#### Section 4. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the Covenants and Restrictions set forth in this Declaration and in any applicable Supplementary Declaration.

(b) Notification. The contract seller of a Lot shall notify the Board of Directors of the contract purchaser and the scheduled date and place conveyance will be accomplished.

(c) Estoppel Certificate. Upon receipt of the notification described in Section 4(b) of this Article VI, the Board of Directors shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such Lot at the time of conveyance and shall certify as to whether there are any violations of the Governing Documents remaining on the Lot as of the date of preparation of such certificate. This certificate shall be delivered to the place of closing, and outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

## ARTICLE VII

### EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across, over, through, and under the Property for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems, including, but not limited to, water, sanitary sewers, storm water drainage, gas, telephones, electricity, television cable, and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company, with the consent of the Developer, to install and maintain facilities and equipment on the Property, to excavate for such purposes, and to affix and maintain wires, circuits, and conduits on, in, and under the roofs and exterior walls of Living Units, provided that such company restores as nearly as is practicable all disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph: (1) no sanitary sewers, storm water drainage facilities, electrical lines, water lines, gas lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Developer prior to the conveyance of the first Lot to an Owner or by the Association thereafter, and (2) this Section 1 of Article VII shall not be construed to apply to the relocation, installation or removal of utility lines within a Living Unit which serve only that unit. This easement shall in no way affect any other recorded easements on the Property.

Section 2. Developer's Easements to Correct Drainage. *For a period of five years (5) from the date of submission of each Lot to this Declaration, the Developer reserves an easement and right on, over, and under the ground within each Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, perform any grading of the land, and to take any other similar action which may be reasonably necessary, following which the Developer shall restore the affected*

*property to its original condition as nearly as practicable. The Developer shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.*

*Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer is engaged in developing or improving any portion of the Property, the Developer and its employees, agents, and assigns shall have a non-exclusive easement and right-of-way of ingress, egress, and use over any portion of the Property not conveyed as a Lot to an Owner for occupancy for (a) the movement and storage of building materials and equipment, (b) the installation, construction, maintenance, reconstruction and repair of sanitary sewer lines, cables, storm drains and appurtenances and any of same, (c) the erection and maintenance of directional and promotional signs, (d) the conduct of sales activities, including, but not limited to, the maintenance of model Living Units, and (e) all other purposes reasonably related to the completion of development and construction of the Property. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Property.*

*Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress over any Lot (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, for compliance with architectural standards and approved plans for alterations and improvements and (b) to perform such maintenance as is required by this Declaration or the Supplementary Declaration for such Lot, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.*

*Section 5. Easement for Governmental Personnel. A right of entry on any Lot or Common Areas is hereby granted to the Association, its Directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all law enforcement officers, fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.*

*Section 6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to the Developer for so long as it retains its rights as Developer, a non-exclusive easement over all Lots and Common Areas for a distance of ten (10) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features, related landscaping, or any combination of the foregoing. Exercise of this easement will be with the consent of the Owner of the affected Lot, or the Architectural Review Board if the said Owner does not consent.*

*Section 7. Buffer Easement. The Association shall have the right to inspect and maintain any area which lies within a buffer easement conveyed to the Association, and to remove any improvements or other items which are constructed or located within the buffer easement in contravention of the terms of said easement. Where the buffer easement lies within any Lot, any cost incurred by the Association in maintaining the easement or removing any improvements or other items shall be chargeable to the Lot Owner as a Restoration Assessment, as is set forth in Article V, Section 4(b) above.*

## ARTICLE VIII

### RIGHTS OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

Section 1. Consents. Subject to the right of the Developer to annex additional properties and subject them to this Declaration, as provided in Section 2(a) of Article II, the Association shall not, without the consent of at least sixty-seven percent (67%) of the Class A Members and the Class B Member, so long as the Class B membership exists, and, subject to the provisions of Article IX, Section 2 hereof, at least fifty-one percent (51%) of the First Mortgagees, take any of the following actions unless the action is required by one or more of the Federal Mortgage Agencies or Arlington County, in which case none of these consents shall be required:

(a) By act or omission seek to abandon, partition, encumber, sell, or transfer the Common Areas or other property owned by the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Property, or in accordance with Article VII, shall not be deemed a transfer within the meaning of this clause.

(b) Fail to maintain fire and extended coverage insurance on insurable parts of the Common Areas or other Association property on a current replacement-cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value.

(c) Use hazard insurance proceeds for other than the repair, replacement, or reconstruction of such property.

(d) Add or amend any material provisions of this Declaration or related Association documents concerning the following:

(i) voting rights of any Member:

(ii) assessments, assessment liens, collection of assessments or subordination of such liens for assessments:

(iii) reserves for maintenance, repair, and replacement of those parts of the Common Areas that may be replaced or require maintenance on a periodic basis:

(iv) insurance or fidelity bond coverages:

(v) responsibility for maintenance and repair of the Property:

(vi) architectural controls:

(vii) annexation or withdrawal of property to or from the Property, subject to the provisions of Article II;

(viii) leasing of Living Units;

(ix) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his property;

(x) a decision by the Association to establish self-management when professional management



had been required previously by a First Mortgagee:

- (xi) restoration or repair of the Common Areas or any improvements thereon after a hazard, damage, or partial condemnation:
- (xii) termination of this Declaration after substantial destruction or condemnation occurs; or
- (xiii) any provisions that are for the express benefit of First Mortgagees.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A First Mortgagee who receives a written request to approve material additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 2. Notice and Other Rights. The Association shall maintain a file of all First Mortgagees of which it receives notice that the First Mortgagee holds an interest in any Lot, with a proper designation of the property in which they have an interest; and shall send a copy of such list to any First Mortgagee who makes a written request for such list at least once every twelve months. If requested in writing by a First Mortgagee, the Association shall provide to such First Mortgagee:

- (a) Written notification of any default in the performance of any obligation under the Governing Documents by the owner of a Lot which is the security for the indebtedness due the First Mortgagee, which is not cured within thirty (30) days; and
- (b) Written notice of any condemnation or eminent domain proceeding or other proposed acquisition by a condemning authority of any portion of the Common Areas or of a Lot which is the security for the indebtedness due to the First Mortgagee; and
- (c) Written notice of, with the right to attend, all meetings of the Association; and
- (d) Any casualty loss that affects a material portion of the Lot that is the security for the indebtedness due to the First Mortgagee; and
- (e) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 3. Books and Records. All Institutional Lenders who have an interest in the Property or any portion thereof shall have the right to examine the books and records of the Association during normal business hours. The Association shall provide an unaudited financial statement for the preceding fiscal year to any Institutional Lender requesting such statement in writing.

Section 4. Notice of Actions. The Board shall give to such First Mortgagees as may request it, expeditious notice of any civil action or liens lodged against the Association or officers or Directors regarding their conduct in administering the affairs of the Association.

Section 5. Payment of Taxes and Charges. A First Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy for such Common Areas. The First Mortgagee or First Mortgagees making such

payments shall be owed, upon demand, reimbursement therefor by the Association.

*Section 6. Approvals. As long as the Developer has Class B voting rights, the following actions shall require the prior approval of the Federal Mortgage Agencies:*

- (a) annexation of additional properties not within the initial Property;*
- (b) dedication of the Common Areas;*
- (c) mergers and consolidations;*
- (d) mortgaging of the Common Areas; and*
- (e) amendment of this Declaration and any Supplementary Declaration.*

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless the covenants and restrictions are expressly terminated by an instrument signed by not less than seventy-five percent (75%) of the Class A Members, the Class B Member, if Class B membership still exists, and sixty-seven percent (67%) of the First Mortgagees. A termination must be approved by the appropriate authorities of Arlington County, Virginia and be recorded among the Land Records of Arlington County, Virginia in order to become effective.

Section 2. Amendment. For a period of three (3) years after the recordation of this Declaration, the Developer may unilaterally make any amendment which is required by any of the Federal Mortgage Agencies or Arlington County, Virginia, as a condition of approval of the Founding Documents. Any such amendment shall be made by the execution and recordation of such amendment following Registered Notice to all Owners. After such three (3) year period, or to make any amendment which is not one required by the Federal Mortgage Agencies or Arlington County, Virginia, any amendment shall be accompanied by a document signed by not less than sixty-seven percent (67%) of the Class A Members, the Class B Member, if Class B membership still exists, and the Association, and evidence of the approval required in Article VIII above. Any amendment must be recorded in the Land Records of Arlington County, Virginia in order to become effective.

Section 3. Enforcement. The Association, the Developer, any Owner, and any First Mortgagee, as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration and any Supplementary Declarations. Failure to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Developer. For such time as the Developer (or an assignee or successor to the Developer as described in Article III, Section 2(c) hereof) shall own Lots, its rights and interests shall not be prejudiced by any amendment to the Founding Documents which results in any of the following actions unless it shall, in writing, join in such actions:

- (a) *Discriminates or tends to discriminate against its rights as an Owner;*
- (b) *Changes Article I, Definitions, in a manner which alters its rights or status;*
- (c) *Alters its rights under Article II with respect to the annexation of additional properties;*
- (d) *Alters the character and rights of membership or the rights of the Developer as set forth in Article III;*
- (e) *Alters previously recorded or written agreements with public or quasi-public agencies with respect to easements and rights-of-way;*
- (f) *Denies the right to convey Common Areas to the Association so long as such Common Areas lie within the land area represented in the Property;*
- (g) *Alters its rights as set forth in Article III relating to design controls;*
- (h) *Alters the basis for assessments;*
- (i) *Alters the provisions of the protective covenants as set forth in Article VI;*
- (j) *Alters the number or selection of Directors as established in the Bylaws; or*
- (k) *Alters the Developer's rights as they appear under this Article.*

Section 5. Management Contracts. *Until such time as the Class B membership expires, the Developer shall have the right to enter into professional management contracts for the management of the Property; provided, however, that such contracts shall not be for more than three (3) years, and the Association shall have the right to terminate such contracts, with or without cause, upon ninety (90) days written notice given to the other party, or upon the expiration of the rights of the Developer as set forth in Article I, Section 7.*

Section 6. Limitations. *As long as the Developer has an interest in developing the Property as defined in Article I hereof, the Association may not use its financial resources to defray any costs of opposing the development activities of the developer. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.*

Section 7. Limitation of Liability. *The Association shall not be liable to any Member for loss or damage, by theft of otherwise, of articles which may be stored upon the Common Areas or community facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.*

Section 8. Severability. *Invalidation of anyone of the Covenants or Restrictions set forth in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.*

Section 9. Conflict. *In the event of conflict among the Governing Documents, this Declaration shall*

control, then any Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws, and then the Book of Resolutions; provided, however, that in all cases where the Governing Documents are found to be in conflict with any statute, the statute shall control.

Section 10. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

## ARTICLE X

### DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved with the written consent of at least seventy-five percent (75%) of the Class A Members and the consent of the Class B Member, if any, and the consent of at least sixty-seven percent (67%) of the First Mortgagees. Prior to the dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to Arlington County, Virginia. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to similar purposes.

IN WITNESS WHEREOF, the Developer, Highgate Associates Limited Partnership, has caused this Declaration to be duly executed this 18<sup>th</sup> day of July, 1990.

HIGHGATE ASSOCIATES LIMITED PARTNERSHIP  
a Virginia limited partnership

ATTEST:

[Corporate Seal]

[Signature]  
Its Secretary

By: HOLLADAY PARTNERS, INC.  
a Virginia corporation  
General Partner

By: [Signature]  
Its Senior Vice President

DISTRICT OF COLUMBIA) ss:

I, Denise M. Norman the undersigned Notary Public, in and for the District of Columbia, do hereby certify that LeRoy Eakin, III, Donald M. Wolf of Holladay Partners, Inc., a Virginia corporation, said Holladay Partners, Inc. being the General Partner of Highgate Associates Limited Partnership, a Virginia limited partnership, whose name is signed to the foregoing Declaration of Covenants and Restrictions, personally appeared before me and acknowledged that he executed said instrument as the act and deed of said corporation on behalf of the partnership.

GIVEN under my hand and seal this 18<sup>th</sup> day of July, 1990.

[Signature]  
Notary Public

[Notarial Seal]

My commission expires: My Commission expires May 14, 1991