

**AMENDED AND RESTATED**  
**DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**DEED OF AMENDMENT TO DECLARATION**

THE FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_ day of \_\_\_\_\_, 2000, by Stephen Boveri, President and principal officer of Prosperity Heights Homeowners Association, Inc. (the "Association").

**WITNESSETH:**

WHEREAS, the Declarant, Richlynn Development, Inc. caused a Declaration to be recorded among the land records of Fairfax County, Virginia, in Deed Book 5003 at Page 411, et seq., and again at Deed Book 5358 at Page 543, et seq. (hereinafter, the "Declaration") thereby creating a residential community with permanent open spaces and facilities for recreational purposes and the benefit of such community; and

WHEREAS, the property described in said Declaration (the "Property") was subjected to certain covenants, conditions, restrictions, easements, charges and liens, established for the benefit of the Property and each Owner thereof for the preservation of the value of the Property, the amenities in said community and the maintenance of said common lands and facilities; and

WHEREAS, the requisite percentage of the Members of Prosperity Heights Homeowners Association, Inc., the non-stock corporation established for the purpose of exercising the powers of maintaining and administering the common facilities, administering and enforcing the Covenants and Restrictions and authorized by said Declaration, desire to further amend the Declaration, as evidenced by the Certification attached hereto and incorporated herein.

NOW, THEREFORE, Stephen Boveri, President and principal officer of Prosperity Heights Homeowners Association, Inc., for and on behalf of the Association, hereby amends the text of the Declaration and its amendments in total and substitutes therefore the following provisions as the Amended and Restated Declaration of Covenants, Conditions and Restrictions:

When used in this Declaration, the following words shall (unless the context clearly indicates otherwise) have the following meanings:

Section 1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Prosperity Heights Homeowners Association, Inc., as amended, said Articles of Incorporation being incorporated herein as if fully set forth in this Declaration.

Section 2. "Association" shall mean and refer to Prosperity Heights Homeowners Association, Inc., its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Prosperity Heights Homeowners Association, Inc., said Bylaws being incorporated herein if fully set forth in this Declaration.

Section 5. "Common Area" shall mean all real property owned, leased, operated or maintained by the Association for the Common use and enjoyment of the Members of the Association.

Section 6. "Declarant" shall mean and refer to Richlynn Development, Inc.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for Prosperity Heights, as amended, which is recorded in the land records of Fairfax County, Virginia, said Declaration being incorporated herein as if fully set forth in these Bylaws.

Section 8. "Development Plan" shall mean the general plan of the community including the Property and the potential additions thereto as described on the plat attached to the Deed of Dedication, Subdivision, Conveyance, Easements and Release to which the original Declaration was attached, as approved and amended from time to time.

Section 9. "Director" shall mean and refer to a member of the Board of Directors.

Section 10. "Dwelling" shall mean and refer to any building or portion of a building situated upon a Lot and designed and intended for use and occupancy as a residence.

Section 11. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties designated for separate ownership with the exception of the Common Area and areas dedicated as public streets.

Section 12. "Member" shall mean and refer to each person entitled to membership in the Association.

Section 13. "Mortgagee" as used herein, means the holder of any recorded first Mortgage, or the parties secured by or beneficiaries of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage" as used herein, shall mean a mortgage with priority over other mortgages. As used herein, the term "Mortgagee" shall mean any Mortgagee and shall not be limited to Institutional Mortgagees. As used herein, the term "Institutional Mortgagees" or "Institutional Holder" shall include Mortgagees which are banks, trust companies, insurance companies, mortgage insurance companies, savings

and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government.

Section 14. "Owner" shall mean and refer to the record owner as reflected in the land records of Fairfax County, Virginia, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15. "Parcel" shall mean a portion of the Property or additions thereto within which it is contemplated that one or more Lots and Common Area, if any, are to be created by one or more recorded subdivision plats.

Section 16. "Property" shall mean and refer to that certain real property described in the original Declaration, and such additions thereto as may have been or that may be thereafter be brought within the jurisdiction of the Association.

## **ARTICLE II** **PROPERTY RIGHTS**

Section 1. Members' Rights of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Board of Directors to take such steps as are reasonably necessary to protect the Property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration; and

(b) the right of the Board of Directors to adopt, publish and enforce reasonable rules respecting, among other things, the use of the Lots and Common Area and payment of assessments, and to reasonably limit the number of guests of Members to the use of any facilities which are developed upon the Property; and

(c) the right of the Association to suspend the voting rights and the rights to use of the Common Area for any period during which any assessment remains unpaid for any period in excess of thirty (30) days or if the Member has been found to be in violation of any of the published Rules and Regulations, Declaration, Bylaws, or the Code of Virginia following notice and a hearing, if appropriate; and

(d) the right of the Association, acting by and through its Board of Directors, to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration; and

(e) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, a builder or any other person; provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the Members to use and enjoyment of the Common Area; and

(f) the right of the Association, acting by and through its Board of Directors, to enter into agreement whereby the Association acquires a leasehold, membership or other possessory or use interest in real or personal property for the purpose of promoting the enjoyment, recreation or welfare of the Members of the Association and to declare expenses incurred in connection therewith to be common expenses of the Association; and

(g) Such other rights as are necessary for the Board of Directors to conduct the efficient operation of the Association and the Property.

Section 2. Delegation of Right of Use. Any Member of the Association may delegate his/her rights to the use and enjoyment of the Common Area to the members of his/her family who reside permanently with him and to his/her tenants, contract purchasers and guests, all subject to such reasonable Rules and Regulations as the Board of Directors may adopt and uniformly apply and enforce. The Member is responsible to advise the delegee of the Rules and Regulations of the Association and will be responsible for the breaches of the delegee of any provisions of this Declaration, the Articles, the Bylaws, or the Rules and Regulations of the Association.

Section 3. Notwithstanding the other provisions of this Declaration, all right, title and interest in and to the Common Area shall be subject to the provisions and requirements of the lawful ordinances of the County of Fairfax, Virginia, existing on the date of this Declaration.

Section 4. Limitation of Liability. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be left or stored upon the Common Area. 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 Area 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.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Every person or entity who is a record Owner as identified in the land records of Fairfax County of a fee simple interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons who hold an interest in any Lot to secure the performance of an obligation. No Owner shall have more than one membership for each Lot owned and no Lot shall have more than one membership no matter how many persons or entities comprise the record Owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership and the sale of the Lot terminates the Owner's membership. Foreclosure of a Lot does not divest the Owner of his/her ownership in the Lot for purposes of the obligations of membership until such time as a deed is recorded in the land records of Fairfax County evidencing a change in ownership. Moreover, an Owner may not avoid the obligations of membership by abandoning his/her Lot or by non-use of the Common Area.

The Association shall have a single class of voting membership. All Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

**ARTICLE IV**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Annual Maintenance Assessments. Each person, group of persons, corporation, partnership, limited liability company, trust or other legal entity, or any combination thereof, who becomes an Owner of a Lot within the Property by acceptance of and recordation of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association annual maintenance assessments as hereinafter defined, as estimated by its Board of Directors, to meet its annual expenses (hereinafter sometimes referred to as "Annual Maintenance Assessments"), including but in no way limited to the following:

- (a) the cost of all operating expenses of the Common Area and the services furnished to or in connection with the Common Area and community facilities, including charges by the Association for any services furnished by it; and
- (b) the cost of necessary employment of an independent contractor or other such agents as it deems necessary and prescribe their duties; and
- (c) the amount of all taxes and assessments levied against the Common Area; and

(d) the cost of hazard and liability insurance on the Common Area and the costs of fidelity and liability insurance for the Board of Directors and committees or such other insurance as the Association may deem necessary with respect to the Common Area and/or operation of the Association; and

(e) the cost of utilities and other services which may be provided by the Association, whether for the Common Area or for the Lots, or both, including, without limitation, snow removal on private or public streets and sidewalks, basic cable services, and street lights, if any; and

(f) the cost of maintaining, replacing, repairing, caring for, preserving and landscaping the Common Area including, without limitation, maintenance of any storm water management ponds or the like located upon the Common Area and maintenance, for their intended use, all private streets, any recreational facilities, tot lots, pathways, entrance monuments and any retaining walls located within the Property, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(g) the cost of private trash and recycling removal for all Lots; and

(h) the cost of funding all replacement reserves established by the Board of Directors; and

(i) the cost of any leasehold, membership or other possessory or use interest in real or personal property arranged by the Association for the purpose of promoting the enjoyment, recreation or welfare of the Members of the Association; and

(j) such other costs and expenses as may be determined by the Board of Directors in order to promote the enjoyment, recreation, health, safety and welfare of the residents in the Property and the improvements and maintenance of the Common Area and/or Lots, as appropriate.

The Board of Directors shall determine the amount of the Annual Maintenance Assessments annually, but may do so at more frequent intervals should the Board, in its reasonable discretion, determine it necessary. Upon the resolution of the Board of Directors, installments of Annual Maintenance Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any Member may prepay one or more installments on any Annual Maintenance Assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of, an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of the Common Area. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the Annual Maintenance Assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and the

Annual Maintenance Assessments applicable thereto which shall be kept in the office of the Association with a copy of the annual budget so adopted. Written notice of the Annual Maintenance 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 Maintenance Assessments hereunder for that or the next period, or to transmit to the Members the written notice contemplated by the previous sentence, 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 the Annual Maintenance Assessments, or any installment thereof, for that or any subsequent assessment period, but the Annual Maintenance Assessment fixed for the preceding period shall remain in effect until new Annual Maintenance Assessments are fixed. No Member may exempt himself from liability for the Annual Maintenance Assessments by abandonment of any Lot belonging to him or by the abandonment of his/her right to use and enjoyment of the Common Area or his/her election not to use and enjoy the Common Area.

Except as may be specifically provided for herein, this Declaration does not contemplate that the Association shall have the responsibility for the maintenance or repair of any Dwelling, Lot or its appurtenances and the responsibilities and duties of the Association for maintenance and repair are intended to be limited solely to the Common Area. The Owner of any Lot shall, at his/her own expense, maintain his/her Lot and Dwelling, and any and all appurtenances thereto, in good order, condition and repair and in clean, sightly and sanitary condition at all times.

Section 2. Special Assessments. In addition to the Annual Maintenance Assessments authorized by this Article, the Association may levy in any assessment period a special assessment or assessments (the "Special Assessment"), applicable to that year only, for the construction or reconstruction, inordinate repair or replacement of a described capital improvement located upon, or forming a part of the Common Area, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate.

Section 3. Reserves for Replacements. The Association shall establish and maintain by useful life expectancy method a reserve fund for replacement of the Common Area by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors or as may be required by law. Such funds shall be conclusively deemed to be common expense of the Members and may be deposited with any banking institution, the accounts of which are insured by any State or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations, fully guaranteed as to principal by the United States of America. The reserve fund for replacement of the Common Area may be expended only for the purpose of effecting the major repairs or replacement of the Common Area, equipment replacement, and for start up expenses and operating contingencies of a non-recurring nature relating to the Common Area. The Association may establish such other reserve funds for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The potential interest of any Member in any such reserve fund shall be considered an appurtenance of his/her Lot and shall not be separately

withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot. In furtherance of establishing such reserve fund, the Board may employ the services of qualified personnel to determine the proper funding of such reserves.

Section 4. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis or such other installment periods as set by the Board.

Section 5. Non-Payment of Assessments - Remedies of the Association. Any assessment levied pursuant to this Declaration, and any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon, all attorney's fees incurred and the costs of collection thereof, as hereinafter provided, become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied. Upon notice of such delinquency, the Association may accelerate the remaining installments and declare the entire balance of such annual or special assessment due and payable in full and, after thirty (30) days notice mailed by certified mail, return receipt requested, to the Owner of the Lot advising him or her of the Association's intent to file a lien, the Association may file a Memorandum of Lien or similar instrument among the land records or other appropriate office, recording the Association's continuing contractual lien against the Lot for assessments.

The lien evidenced hereby shall bind the Lot or Lots herein described in the hands of the then Owner thereof, his/her heirs, devisees, personal representatives, and the personal obligation of the Member to pay such assessments shall, in addition, remain his/her personal obligation for the statutory period and a suit to recover a monetary judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without establishing, perfecting, foreclosing or waiving the lien provided for herein to secure the same.

The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments up to the time of recordation of the transferring deed, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor.

No suit or other proceeding may be brought to enforce or foreclose the lien except after ten (10) days written notice to the Member, given by registered or certified mail, return receipt requested, postage prepaid, to the address of the Lot or such other address as provided to the Association in writing by the Member.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall be assessed a late charge in an amount as determined by resolution of the Board of Directors, and shall bear interest at fifteen percent (15%) per annum and the Association may bring an action at law against the Member personally obligated to pay the same, and/or foreclose the lien against the Lot then belonging to said Member in the manner now or hereafter provided by law or, if no



separate provision is made by law, then in a manner now or hereafter provided by law for the foreclosure of mortgages, deeds of trust or other liens on real property in the Commonwealth of Virginia containing a power of sale or consent to a decree, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events, interest, costs and all attorney's fees of the Association incurred in such action (or if such action is not actually brought, in preparation for such action) shall be added to the amount of each assessment. Suit for any deficiency may be maintained in the same manner.

If such Mortgagee so requests in writing, the Association shall notify the Mortgagee on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of thirty (30) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article. Furthermore, it shall be the obligation of each Member to notify the Association in writing of any change in such Member's Mortgagee.

Section 6. Assessment Certificates. The Association shall, upon written demand at any time and receipt of the applicable fee, submitted by registered or certified mail, furnish to any Member liable for any assessment levied pursuant to the Declaration (or any other party legitimately interested in the same) a certificate in writing and in form sufficient for recordation signed by an officer or agent of the Association, setting forth the status of said assessments, i.e., whether the same is paid or unpaid as to a particular Lot. Such certificate shall be conclusive evidence of the payment of any assessments therein stated to have been paid. Failure of the Board of Directors to furnish or make available such certificate within fourteen (14) days following the receipt of such a written request and the applicable fee shall extinguish the right of the Association to claim the lien for such assessments provided by law and provided for in this Declaration. A charge not to exceed One Hundred Dollars (\$100.00), or such greater sum as authorized by any applicable law, may be levied in advance by the Association for each certificate so delivered.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust securing an obligation made in good faith and for value received recorded prior to the date of recordation of the Memoranda of Lien by the Association. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, except as otherwise provided by law. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all properties dedicated to and accepted by a local public authority;
- (b) the Common Area; and
- (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 9. Dissolution of the Association. In the event of dissolution of the Association, in accordance with the terms of its Articles of Incorporation, each Lot shall continue to be subject to the Annual Maintenance Assessments specified in Section 1 of this Article, and each Owner shall continue to be personally obligated for such Annual Maintenance Assessments as are required to enable the grantee of the Property owned by the Association to properly maintain it. In no event, however, shall the Annual Maintenance Assessments exceed the amount that would otherwise be payable to the Association in accordance with the provisions of Section 4 of this Article.

## **ARTICLE V** **COVENANTS OVERSIGHT**

Section 1. Covenants Committee. Except for the activities of the Declarant during original construction of the project, no building, fence, wall or other structure shall be commenced, erected or maintained upon or removed from the Property, nor shall any exterior addition, color change, or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by a covenants committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Notwithstanding the Covenants Committee's obligations set forth herein, no modification shall be made to any Lot which shall defeat the spirit of the protective covenants or any guidelines which may be promulgated from time to time. The Covenants Committee may propose rules or guidelines for adoption by the Board of Directors.

Section 2. Limitations. Construction or alterations in accordance with plans and specifications approved by the Covenants Committee pursuant to the provisions of this Article shall be commenced within six (6) months (or in accordance with County Code) following the date upon which the same are approved by the Covenants Committee (whether by affirmative action of the Covenants Committee or by failure to act, as provided in Section 1 of this Article), and shall be substantially completed within six (6)

months following the date of commencement, or within such other period as the Covenants Committee shall specify in its approval. In the event construction is not commenced or substantially completed within the respective periods aforesaid, then approval of the plans and specifications approved by the Covenants Committee shall be conclusively deemed to have been lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviation from the plans and specifications approved by the Covenants Committee without prior written consent of the Covenants Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Covenants Committee 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 3. Rules and Regulations, Etc. The Covenants Committee, subject to approval of the Board of Directors, may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and record such statements of policy, standards, and guidelines and establish such criteria relative to architectural styles or details, fences, colors, setbacks, materials, or other matters relative to exterior modifications and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decisions of the Covenants Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Covenants Committee (or by any policy, standard or guidelines established by the Covenants Committee) may appeal the decision of the Covenants Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors of the Association in accordance with such procedures which may be promulgated from time to time by the Board of Directors.

## **ARTICLE VI.** **PROHIBITED USES AND NUISANCES**

Section 1. Prohibited Uses and Nuisances. Except with the prior written approval of the Board of Directors of the Association or the Covenants Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance of any Dwelling or the Common Area:

(a) No changes to the exterior color, to include roof, siding, trim, etc., may be made without prior approval and expressed authorization of the Architectural Control Committee. No exterior addition, change to or alteration may be made without the prior approval and expressed authorization of the Architectural Control Committee. All alteration, other than replacements of an existing component on the lot and house with same or similar materials, must be approved by the Architectural Control Committee and shall be compatible in design, scale, height, site footprint, materials, and exterior house materials expressly limited to exterior brick and/or siding as exists within the community.

(b) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling situated upon the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or to the other Owners or occupants of any Lot. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or improvement. Any such device expressly permitted above must be located in an unobtrusive location.

(c) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling situated upon the Property, except that this shall not prohibit the keeping of dogs, cats and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes, and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Members are responsible for cleaning up after their pets. Pets shall not be permitted upon the Common Area unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional Rules and Regulations regarding pets as it may from time to time consider necessary or appropriate.

(d) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted on any Lots or Common Areas.

(e) No inoperable or junk vehicle, commercial vehicle, large or heavy truck, recreational vehicles, trailers, or the like, shall be kept upon the Property except within a garage nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

(f) Trash, garbage and recycling containers shall not be permitted to remain in public view except as otherwise permitted by the Board of Directors. The Association reserves the right to remove and dispose of such containers left in violation of this provision. No incinerator may be kept or maintained upon any Lot.

(g) No hardwood trees measuring in excess of six inches (6") in diameter as measured two feet (2') above the ground, shall be removed from any Lot without written approval of the Fairfax County. The Covenant Committee may from time to time adopt and promulgate such additional Rules and Regulations regarding the preservation of trees and other natural resources and wildlife as it may consider appropriate.

(h) No trailer, shack, barn, pen, kennel, run, stable, or other like structure shall be erected, maintained or used on any Lot at any time.

(i) No signs of any permanent character shall be erected, posted or displayed upon, in or about any Lot or Dwelling situated upon the Properties; provided, however,

that one temporary real estate sign not exceeding six (6) square feet in area, may be erected upon any Lot or attached to any Dwelling placed upon the market for sale or rent.

(j) No structure, planting, or other material (other than driveways, sidewalks, fences and other structures erected as part of the development by the Declarant) shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

(k) **Antenna Size and Type.** DBS antennas that are one meter or less in diameter may be installed. DBS antennas larger than one meter are prohibited. MDS antennas that are one meter or less in diameter may be installed. MDS antennas larger than one meter are prohibited. Antennas designed to receive television broadcast signals, regardless of size, may be installed. Installation of transmission-only antennas are prohibited. All antennas not covered by the FCC Rule are prohibited.

1. **Location:** Antennas shall be installed solely within such Owner's Lot; and shall not be installed on Common Property. If acceptable quality signals can be received by placing antennas inside the house, without unreasonable delay or unreasonable cost increase, then outdoor installation may be prohibited. Antennas shall not encroach upon Common Property or any other Owner's Lot. To the maximum extent possible, antennas shall be located in a place shielded from public view and from the view of other Owners; provided, however, that nothing in these Rules would require installation in a location from which an acceptable quality signal cannot be received. This section does not permit installation on Common Property, even if an acceptable quality signal cannot be received from the Owner's Lot. (The Board of Directors may expand this rule to state which locations are the most preferred for antenna installation, followed by less favorable, and so on.)

2. **Installation:** Antennas shall be no larger nor installed higher than is absolutely necessary for reception of an acceptable quality signal. All installations shall be completed so that they do not damage the Common Property or the Lot of any other Owner, or void any warranties of the Association or other Owner, or in any way impair the integrity of buildings on Common Property or on Lots. Antennas must be secured so that they do not jeopardize the soundness or safety of any other Owner's Lot or the safety of any person at or near the antennas, including damage from wind velocity based upon a unique location.

3. **Safety:** Antennas shall be installed and secured in a manner that complies with all applicable county and state laws and regulations, and manufacturer's instructions. The Owner, prior to installation, shall provide the Association with a copy of any applicable governmental permit. Unless the above-cited laws and regulations, or any guidelines promulgated by the electric company require a greater separation, antennas shall not be placed within 10 feet of power lines (above-ground or buried) and in no event shall antennas be placed where they may come into contact with any electrical power lines. The purpose of this requirement is to prevent injury or damage resulting

from contact with power lines. All installations must comply with all applicable codes. In order to prevent electrical and fire damage, the antennas shall be permanently and effectively grounded. Antennas are required to withstand wind gusts up to 90 mph, and shall be designed to withstand the pressure of snow and ice.

Antenna Camouflaging: Antennas or masts may not extend beyond a railing or fence unless no acceptable quality signal may be received from such location. Antennas situated on the ground and visible from the street or from other Lots must be camouflaged by existing landscaping or fencing, if an acceptable quality signal may be received from such placement. If no such existing landscaping or screening exists, the Association may require antennas to be screened by new landscaping or screening of reasonable cost. (Camouflaging antennas may not be unreasonably expensive. The Association may require more expensive screening, if the Association chooses to fund part of the cost.) Antennas, masts, and any visible wiring must be painted to match the color of the structure to which it is installed, unless such paint will degrade the signal. Antennas may not obstruct a driver's view of an intersection or street.

5. Number of Antennas: As a direct result of the safety concerns of the Association, and because of the increased risk of injury and damages resulting from multiple installations of dishes and antennas, no more than one antenna for each type of service may be installed by an Owner.

6. Mast Installation: Mast height may be no higher than absolutely necessary to receive acceptable quality signals. Masts that extend 12 feet or less beyond the roofline may be installed subject to the regular notification process. Masts that extend more than 12 feet above the roofline must be approved by the Covenants Committee before installation due to safety concerns posed by wind loads and the risk of falling antennas and masts. Any application for a mast longer than 12 feet must include a detailed description of the structure and anchorage of the antenna and the mast, as well as an explanation of the necessity for a mast higher than 12 feet. If this installation will pose a safety hazard to Owners, tenants or guests of the Association, then the Association may prohibit such installation. The notice of rejection shall specify these safety risks. (This 12-foot baseline may change, if the BOCA Code is amended.) Masts must be installed by licensed and insured contractors. Masts must be painted the appropriate color to match their surroundings. Masts installed on a roof shall not be installed nearer to the Lot line than the total height of the mast and antenna structure above the roof. The purpose of this regulation is to protect persons and property that would be damaged if the mast were to fall during a storm or from other causes. Masts shall not be installed nearer to electric power lines than the total height of the mast and antenna structure above the roof. The purpose of this regulation is to avoid damage to electric power lines if the mast should fall in a storm. Masts shall not encroach upon another Owner's Lot or the Common Property. Masts installed on the ground are required to withstand wind gusts up to 90 mph. Masts must be designed to withstand the weight of ice and snow.

(1) There shall be no violation of any rules for the use of the Common Area or community facilities which may from time to time be adopted by the Board of Directors

and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration and the Bylaws authorized to adopt such rules.

(m) No Member shall make any private or exclusive or proprietary use of any of the Common Area, except with the specific approval of the Board of Directors, and then only on a temporary basis, and no Member shall engage any employee or agent of the Association on any private business of the Member during the hours such employee or agent is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee or agent of the Association.

(n) Boats, trailers, campers and motor homes shall not be parked on any private Lot or Common Area within the Property. Boats, trailer campers and motor homes may be parked wholly within a garage. The use of mini-bikes, motorcycles or other recreational motorized vehicles shall be prohibited in the Common Area.

(o) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not be construed to prohibit the granting of any easement or right of way to any municipality, political subdivision, public utility or other public body or authority, or to the Association or any other person for any purpose.

(p) No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, earth or other substance.

(q) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance or water drainage, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained on any Lot above the surface of the ground.

Section 1.1. Compliance with Fairfax County Zoning Ordinance. These covenants, conditions, restrictions, and easements shall be subject to the regulations set forth in the Fairfax County Zoning Manual, as periodically amended.

Section 1.2. Compliance with Fairfax County Ordinances. These covenants, conditions, restrictions and easements shall be subject to the regulations set forth in the Fairfax County Code, as periodically amended.

Section 2. Residential Use - Leasing. All Dwellings shall be used for private residential purposes exclusively. Any Owner who leases his/her Dwelling must do so on a written lease and shall provide a copy of such lease to the Association if requested. Any and all lessees shall acknowledge within their applicable leases the receipt of a copy of this Declaration and of the Articles of Incorporation, Bylaws and any Rules and Regulations of the Association, and their intention to comply with all provisions of said Declaration, Articles of Incorporation, Bylaws and Rules and Regulations. Each Owner,

by the act of leasing his/her Lot, consents to an automatic assignment of rents in favor of the Association if any assessment is not paid within fifteen (15) days from the date due.

Section 3. Rules. The Board of Directors shall have the authority to promulgate Rules and Regulations for the use of the Lots, Common Area and community facilities, which Rules and Regulations may be adopted or amended from time to time. The Board of Directors shall further have the right to enforce such Rules and Regulations.

Section 3.1. Failure to enforce any covenants shall not constitute a waiver of any provision of the covenants contained within the governing documents of the Association. Failure by the Association or by an Owner or by any Mortgagee of any Lot to enforce any covenant or restriction herein contained or any provision of the Bylaws or Articles of Incorporation shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the governing documents cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 3.2. The Board, upon the notice of a violation of the covenants contained herein, or of covenants contained within the governing documents, or of the duly promulgated Rules and Regulations, may, after full discussion and a simple majority vote, agree to modify or waive a specific covenant, if it is determined, after full disclosure and frank discussion, that it is proper to grant such waiver, and is in the best business judgment, as exercised by the Board, proper to do so. Any granted waiver under these provisions shall not grant a waiver to any other lot in the future, and the Board, upon its motion, may rescind the granting of a waiver of the provisions of the governing documents at any time.

Section 4. PODS & MEDCottages. The Common Areas shall not be used for the storage of PODS, short or long term medical-use temporary housing (MEDCottages or such similar use structures).

Section 4.1. PODS may be placed on individual Lots on the condition that they only be placed in the driveway (not to exceed the boundaries of the driveway), for a period no greater than ten (10) consecutive days within a thirty (30) day period and no more than thirty (30) consecutive days within a twelve (12) month period or within each calendar year. The placement of PODS on individual driveways shall only be for the sole and limited purpose of storage of household goods prior to moving in or out of housing, or for repairs or renovations to the dwelling within the Association. Placement of PODS in the front, side or rear yards of individual Lots is prohibited.

Section 4.2. MEDCottages may be permitted by the Architectural Control Committee on a temporary, limited basis, and must be removed within 12 months of original construction. MEDCottages and all events shall be placed to the rear of the front plane of any dwelling located on the lot. Adequate landscape installations to screen the



MED Cottages from the view of the neighbors and from street may be required by the Architectural Control Committee.

Section 5. Replacement Structure & Additions. No replacement structures of any kind or character including additions are permitted that exceed the existing footprint of the original structure by more than 20%. No replacement structure shall be smaller in footprint size than the original structure. All restrictions and provisions of Article VI, Section 1 (a) apply to any replacement structure or to any additions to the existing, original structure built upon a lot.

Section 6. Enforcement-Right To Remove Or Correct Violations & Right to Pursue Legal Actions. In the event any restrictions contained in this Article shall occur or be maintained upon any lot, or in the event of any other conduct in violation of the provisions or requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article without the approval of the Board of Directors or the covenants committee required herein, and, upon written notice from the applicable Covenants Committee or Board, such violation shall be promptly removed or abated.

Section 6.1. Self-Help. In the event the violation is not correct or is not removed, or the violation is not otherwise terminated or abated, within the time period set forth in such notice, and after notice of such violation is delivered to the owner of the lot upon which said violation exists or to the member responsible for such violation committed or attempted upon 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 land to take such steps as may be necessary to remove or otherwise terminate or abate such violation. Before the exercise of self-help, the Owner or member shall be provided with a notice of the exercise of Self-Help at least 24 hours prior to the exercise of self-help in non-emergency matters. The cost thereof shall be assessed against the lot upon which such violation occurred, or against the Member's lot who committed the violations. Whenever a Lot is so assessed, a statement for the amount assessed shall be rendered to the owner of said lot, at which time the assessed cost shall become due and payable and shall constitute a lien upon such lot and a binding personal obligation of the owner of such lot in all respects as provided in this Declaration.

Section 6.2. Right to Inspect. 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; and neither the Association or any such Agent or Employee shall be deemed to have committed a trespass or other wrongful act by reason of entry or inspection.

Section 6.3. Right To Assess Charges. In addition to all remedies hereinabove provided, the Board of Directors shall have the power to assess monetary charges or penalties, in such amounts as provided by Virginia law or as set by the Board by formal Rule, against a member for any violation of this Declaration, the Bylaws, or any Rules and Regulations of the Association.

Section 6.3.1. In addition to all remedies hereinabove provided, the Board of Directors shall have the power to assess monetary charges against a member for any violation of this Declaration, Bylaws or Rules and Regulations of the Association as provided by applicable law or as set by the Board by formal Rule. The Board reserves the right and power to suspend membership privileges for violations of this Declaration. Any monetary charges so imposed may be secured by a lien against the lot owner's title in accordance with the provisions of Virginia Code Section 55-513 or the Declaration. The Association reserves the right to exercise all other powers and remedies provided by the Association's governing documents or the laws of Virginia and Fairfax County. Nothing contained herein shall preclude the Board of Directors from seeking injunctive relief or any other remedy available to it in a court of equity or law. In the event the Association must enforce these restrictions through any form of legal action, the offending Owner shall be responsible for all expenses and/or attorneys' fees incurred by the Association in enforcing the provisions of these restrictions

## **ARTICLE VII.** **EASEMENTS**

Section 1. Easements for Utilities and Related Purposes. The Association, by and through its Board of Directors, is authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and rights of way over the Common Area for sanitary and storm sewer purposes, street lights, water lines, electrical cables, television cables, gas lines, storm drains, cables, underground conduits and such other purposes related to the provision of the utility services to the community as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Area and for the preservation of the health, safety, convenience and welfare of the Owners.

Section 2. Easement for Governmental Personnel and Ingress-Egress. A right of entry on, over and across any Lot or Common Area is hereby granted to law enforcement officers, animal control officers, and fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access. An easement of ingress and egress is hereby granted in favor of all Members, their invitees, guests and tenants on, over and across the private streets within the Common Area as indicated on any recorded subdivision plat for the Property.

## **ARTICLE VIII** **PARTY FENCES**

Section 1. General Rules of Law to Apply. Each fence which is built as a part of the original or subsequent construction of the Dwelling upon the Property and placed on the dividing line between the Lots shall constitute a party fence respectively, and, to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party fence shall be shared by the Members who make use of the fence in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party fence is destroyed or damaged by fire or other casualty, any Member who has used the party fence or benefited from the presence of the party fence may restore it, or cause it to be restored and if the other Members thereafter make use of or benefit from the presence of the party fence, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Member to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing . Notwithstanding any other provisions of this Article, a Member who, by his/her negligence, carelessness, willful act or failure to act, causes the party fence to be exposed to the elements for which it is not intended shall bear the entire costs of furnishing the necessary protection against the elements.

Section 5. Right to Contribution Runs With the Land. The right of any Member to contribution from any other Member under this Article shall be appurtenant to the land and shall pass to such Member's successor in title.

## **ARTICLE IX.** **INSURANCE AND CASUALTY LOSSES**

Section 1. Individual Coverage. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket, special form property insurance on the Dwelling and all structures located upon the Lot. At a minimum, such coverage shall provide coverage against loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement costs (less a reasonable deductible) of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board of Directors, or its duly authorized agent, shall have the authority to obtain insurance for all or any of the Dwellings located upon the Property, unless the Owners thereof have supplied proof of adequate coverage to the Board's satisfaction. In the event the Association obtains insurance for any Lot or Dwelling situated thereon pursuant to the authority of this Article, the costs thereof may be assessed against the Owner of such Lot and collected in the same manner as any other assessment under this Declaration.

Each Owner further covenants and agrees that in the event of partial loss or damage and destruction resulting in less than total destruction of the Dwelling and other structures constructed upon the Lot, the Owner shall proceed promptly to repair or to reconstruct the Dwelling and other damaged structures in a manner consistent with the original construction. In the event that a detached Dwelling located upon a Lot is totally

destroyed and the Owner determines not to re-build or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction of the Dwelling on such Lot. The Board of Directors may impose stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct. Any such determination not to rebuild or reconstruct shall be made within ninety (90) days from the date of the casualty.

## Section 2. Insurance.

(a) The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements owned, leased, or maintained by the Association, including the Common Area and/or the community facilities against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a general liability policy covering the Common Area and the community facilities, the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and if reasonably available directors' and officers' liability insurance, and fidelity bond coverage in an amount equal to not less than three (3) months Annual Maintenance Assessments plus the Association's reserves for all officers, employees, agents, or volunteers of the Association having fiscal responsibility for and direct access to Association funds, whether or not they receive compensation for their services. The general liability policy shall have at least a One Million Dollar (\$1,000,000) limit per occurrence as respects to bodily injury, and property damage, with a Two Million Dollar (\$2,000,000) general aggregate. Premiums for all such insurance shall be common expenses of the Association and shall be included in the Annual Maintenance Assessment. The policy(s) may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy(s) in determining whether the insurance at least equals the full replacement cost.

(b) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as the insured. Such insurance shall be governed by the provisions hereinafter set forth:

(1) All policies shall be written with a company licensed to do business in the State of Virginia and holding a rating of A-VII or better, in the Financial Category as established by A.M. Best Company, Inc., if available and, if not available, the most nearly equivalent rating.

(2) All policies shall be for the benefit of the Association, the Owners and their mortgagees as their interests may appear.

(3) Exclusive authority to negotiate with the insurance carrier(s) in order to adjust losses under policies in force on the Common Area and the community facilities obtained by the Association shall be vested in the Board of Directors, provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(4) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees and the insurance carried by the Association shall be primary.

(5) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its Management Agent, the Owner and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair, and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized Management Agent without prior demand in writing delivered to the Association stating the nature of the defect and providing for a reasonable time thereafter within which the defect may be cured by the Association, its Management Agent, any Owner or Mortgagee; and

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration.

Section 4. Repair and Reconstruction of Common Area After Fire and other Casualty. In the event of damage to or destruction of any portion of the Common Area covered by insurance payable to the Association as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration thereof, and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair or restoration. If repair or reconstruction is determined unnecessary by the Board of Directors or if the proceeds of insurance exceed such costs, any excess shall be contributed to the Association's reserve accounts.

Section 5. Notice to Mortgagees. In the event of substantial damage or destruction to any of the Common Area and/or the common facilities, the Board of Directors shall give prompt written notice of such damage or destruction to the holders of all first Mortgages of record on the Lots who have previously requested such notice to be given in writing.

## **ARTICLE X.**

## GENERAL PROVISION

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 2. Amendment. Subject to the other limitations set forth in this Declaration, including approval of Mortgagees, FHA and/or VA, as applicable, this Declaration may be amended by an instrument signed by not less than two thirds (2/3) of the Lot Owners. Any amendment must be recorded to become effective. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

Section 3. Duration. Unless amended in accordance with the provisions of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of twenty (20) years each, unless prior to the expiration of any period the covenants and restrictions are expressly terminated by an instrument signed by Owners of two thirds (2/3) of the Lots, and with the approval of Mortgagees as provided in this Article and with the approval of any necessary governmental authorities.

Section 4. Construction and Enforcement. The provisions hereof shall be liberally construed to accomplish the purpose of creating a uniform plan for the development and operation of the community. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages or both, and against any Lot to enforce the lien created hereby; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by the Owner or any Mortgagee which become subject to the provisions hereof and by any other person, firm, corporation or other legal entity who has any right to the use of any of the Common Area owned by the Association.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of the covenants or restrictions contained herein can not be adequately remedied by action at law or exclusively by recovery of damages. The prevailing party in litigation to enforce the covenants shall be entitled to recover the cost of preparing the action and such additional attorney's fees involved in such proceeding.

Each Owner by accepting the deed to a Lot and each tenant by occupying the Dwelling located thereon expressly agrees to waive his/her or her right to trial by jury in any action, proceeding or claim brought by either of the parties hereto against each other on any matters arising out of or in any way connected with this Declaration, the Bylaws or any rules of the Association, the use or occupancy of the Lot or any Common Area, or any claim of damages resulting from any act or omission in any way connected thereto.

Section 5. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration. Furthermore, each such Owner shall comply with the provisions of the Virginia Property Owners' Association Act in any transaction effecting sale or transfer of the Lot.

Section 6. Notices. Unless otherwise specified in this Declaration, any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by ordinary mail, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice shall only be required to be sent to one (1) address of record for each Lot.

Section 7. No Dedication to Public Use. Nothing herein contained shall be construed as the dedication to public use or as an acceptance for maintenance of any Common Area by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.

Section 8. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

Section 9. Annexation. Any additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 10. Effect of Annexation. In the event that any additional lands are annexed to the Property pursuant to this Article, ( d) such additional lands shall be considered within the definition of the Property for all purposes of this Declaration, and (e) all voting of the membership of the Association, and all voting by the Owners hereunder, shall be aggregated as a single vote, it being intended that any voting requirements need not be fulfilled separately for the real property described herein and for each tract of additional lands described in a supplemental declaration.

Section 11. FHA or VA Rights on Annexation. So long as any Lot is encumbered by a Mortgage which is guaranteed by the Department of Veterans Affairs or insured by Federal Housing Authority, no annexation shall be made pursuant to this Article, or otherwise, except following a determination by the Department of Veterans Affairs and/or Federal Housing Authority that the annexation conforms to a general plan for the development of the community previously approved by the Department of Veterans Affairs and/or Federal Housing Authority.

Section 12. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger; provided, however, such merger shall have been approved by the vote of two-thirds (2/3) of the votes of the Members in the Association at a meeting duly called for such purpose, in accordance with the provisions of this Article. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the properties together with covenants and restrictions established on any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the properties except as hereinafter provided.

Section 13. Other Additions. Upon approval in writing of the Association pursuant to a vote of its Members as provided by its Bylaws, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association, may file for record among the land records of Fairfax County, Virginia, a supplementary declaration so effecting the same.