

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
LENOX PLACE AT SUNNYSIDE, ALEXANDRIA VIRGINIA**

THIS AMENDED AND RESTATED DECLARATION (“Declaration”) is made this ____ day of _____ 20____, by LENOX PLACE AT SUNNYSIDE HOMEOWNERS ASSOCIATION (“Association”).

W I T N E S S E T H:

WHEREAS, the declarant, The Restec Corporation (“Declarant”), executed the Declaration of Covenants, Conditions, and Restrictions for Lenox Place at Sunnyside, Alexandria, Virginia (“Original Declaration”) for purposes of creating the planned residential community known as “Lenox Place at Sunnyside,” and caused said Original Declaration to be recorded on August 23, 1989 at Deed Book 1279 Page 368, et seq., among the land records of the City of Alexandria (“Land Records”).

WHEREAS, Article XI of the Original Declaration provides the requirements for amending the Original Declaration, and the Association’s Board of Directors and at least sixty-seven percent of the Association’s Members desire to amend and restate the Original Declaration in its entirety;

NOW, THEREFORE, pursuant to Article XI of the Original Declaration, the Original Declaration, including any subsequent amendments thereto, if any, is hereby amended and restated in its entirety by this Declaration as follows, and all the Property as defined below is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions and other provisions hereinafter set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. “Association” shall mean and refer to the LENOX PLACE AT SUNNYSIDE HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. “Property” shall mean and refer to that certain real property described in Article II, Section 1 below, and such additions thereto, if any, as may hereafter be brought within the jurisdiction of the Association, in accordance with the terms of this Declaration.

Section 3. “Common Area” shall mean all real property with appurtenances thereto (including any improvements thereon) owned by the Association for the common use and enjoyment of the Members of the Association, including but not limited to Association-owned private streets (“Private Streets”).

Section 4. “Lot” shall mean and refer to any plot of land shown upon any recorded Subdivision plat of the Property, but with the exception of the Common Areas and areas dedicated as public streets.

Section 5. “Member” shall mean and refer to every person or entity who holds Membership in the Association pursuant to Article III below.

Section 6. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including but not limited to contract sellers, and those who have acquired fee simple title to any Lot through inheritance or foreclosure (regardless of whether such ownership is not yet reflected by the Land Records), but excluding those having an interest merely as security for the performance of an obligation.

Section 7. “Declarant” shall mean and refer to THE RESTEC CORPORATION, its successors and assigns, if such successors or assigns acquired more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. “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 9. “Mortgage”, as used herein, means the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed or trust, encumbering one or more of the Lots. “Mortgage”, as used herein, shall include deed of trust. “First Mortgage,” as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term

“mortgagee” shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term “institutional mortgagee” or “institutional holder” shall include mortgagees which are banks, trust companies, insurance companies, mortgage insurance companies, savings and loans 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. As used in this Declaration, the terms “holder” and “mortgagee” shall include the parties secured by any deed of trust or any beneficiary thereof.

ARTICLE II

Section 1. Property Subject to Declaration. The Property is the real property previously subjected to the Original Declaration in accordance therewith as reflected in the Land Records, and such additional land has may be hereafter subjected to this Declaration in accordance with Section 2 below, all of which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration.

Section 2. Additions. Annexation of additional real property shall require the approval of at least two-thirds (2/3) of the Owners, obtained through either or both written approvals signed by the Owners or by vote at an Association meeting duly called for this purpose, written notice of which shall be sent to all Owners not less than fourteen (14) days or more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Any annexations made pursuant to this Article shall be made by recording a supplementary declaration among the Land Records, which shall extend the scheme of this Declaration to such annexed property.

So long as any Lot is encumbered by a deed of trust or Mortgage which is guaranteed by the Veterans Administration or insured by Federal Housing Authority, no annexation shall be made pursuant to this Article, or otherwise, except following a determination by the Veterans Administration and/or Federal Housing Authority that the annexation conforms to a general plan for the development of the community previously approved by the Veterans Administration and/or Federal Housing Authority or, if no such general plan was approved by the Veterans Administration and/or Federal Housing Authority, except following the prior written approval of the Veterans Administration and/or Federal Housing Authority.

ARTICLE III
MEMBERSHIP

Section 1. Every Owner of a Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one Membership for each Lot owned. 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.

Section 2. Owners shall be entitled to one vote for each Lot in which they hold the interest required for Membership by this Article. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of annexation of additional properties, memberships shall arise with respect to such additional properties upon recordation of the supplemental declaration among the Land Records extending the scheme of this Declaration to such annexed property and upon acquisition of a Lot within that additional property by an owner. An Owner is not eligible to vote as a Member of the Association if that Owner is more than 30 days' past due in the payment of any assessments or other sums owed to the Association in accordance with this Declaration.

ARTICLE IV

Section 1. Member's Right of Enjoyment. Each Member, in common with other Members, shall have a right and easement of enjoyment in and to the Common Areas and community facilities and such easement shall be appurtenant to and shall pass with the fee title to every Lot subject to the following:

(a) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, and with the consent of sixty-seven percent (67%) of those Owners present in person or by proxy at a meeting of the Association duly called for that purpose, to borrow money for the purpose of improving, repairing or replacing the Common Areas and community facilities in a manner designed to promote the enjoyment and welfare of the Members, or for other

purposes related to the operation and management of the Association, and in aid thereof to mortgage any of the Common Areas and community facilities;

(b) the right of the Association 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;

(c) the right of the Association to adopt reasonable rules respecting use of the Common Areas and community facilities and to reasonably limit the number of guests of Members who may use any facilities which are developed upon the Property;

(d) the right of the Association to suspend the voting rights and the rights to use the Common Areas and community facilities for a period not to exceed sixty (60) days for any infraction of this Declaration or any of the published rules and regulations of the Association (other than nonpayment of assessments), and the right of the Association to suspend the right to use the Common Area and other Association-provided facilities and services if an Owner becomes more than 60 days past due in the payment of any assessment against that Owner's Lot (with such suspension lasting until the Owner's assessment account is brought current);

(e) the right of the Association to dedicate or transfer all or any part of the Common Areas or community facilities to any public or municipal agency, authority, utility or other entity for appropriate purposes, subject to such conditions as may be agreed to by the Members and further subject to the then existing laws and applicable ordinances; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless sixty-seven percent (67%) of the Owners consent to such dedication, transfer, purpose and conditions, at any special meeting of the Association duly called for such purpose;

(f) 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, 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 the use and enjoyment of the Common Areas and community facilities;

(g) the right of the Association, acting by and through its Board of Directors, to enter into agreements whereby the Association acquires leaseholds, membership or other

possessory or use interests 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;

(h) the right of the Association, acting by and through its Board of Directors, and its contractors or agents to enter a Lot and a dwelling or other improvements located on a Lot to perform emergency repairs;

(i) the right of the Association to regulate parking on Common Area through the granting of easements, licenses, or promulgation of rules and regulations, including the right to assign and reserve parking spaces for the exclusive use of individual Owners, residents or their guests in accordance with Article VI, Section 9 below;

Section 2. Delegation of Right of Use. Any Member of the Association may delegate his rights to the use and enjoyment of the Common Areas and community facilities to the Members of his family who reside permanently with him and to his tenants, contract purchasers and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce. Any Member who does not reside at his or her Lot shall be deemed to have delegated such rights of use and enjoyment to the lawful occupants of that Lot.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Assessment Obligations. Each Owner, whether or not it shall be so expressed in any deed or other conveyance for that Owner's Lot, shall be deemed to covenant and agree to pay the Association assessments levied in accordance with this Declaration, including: (1) the Annual Assessment, (2) special assessments, and (3) other charges, costs or fees that are assessed and collected from time to time as hereinafter provided. These annual and special assessments, plus any resulting late fees, interest and costs of collection (including attorney's fees) shall be a charge on the Lot and shall be a continuing assessment lien upon the Lot against which each such assessment is made as provided in Section 6 below, and shall also be the personal obligation of the Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to successors in title and both parties (seller and purchaser) shall be jointly and severally liable for any such assessments that are delinquent and remain

unpaid as of the time of settlement on the Lot (except as provided in Section 8 below, regarding mortgagee rights).

Section 2. Annual Assessments. Annual Assessments as hereinafter defined are payable by all Owners, in advance, in monthly installments equal to one-twelfth (1/12) of the Owner's proportionate share of the sum required by the Association, as estimated by its Board of Directors, or payable as otherwise determined by the Board, to meet its annual expenses (herein elsewhere sometimes referred to as the "Annual Assessment") including but in no way limited to the following:

(a) the cost of all operating expenses of the Common Areas and community facilities, including any recreational facilities and the services furnished to or in connection with the Common Areas and common facilities, including charges by the Association for any services furnished by it;

(b) the cost of necessary management and administration of the Association and the Common Areas and community facilities, including fees paid to any Management Agent;

(c) the amount of all taxes and assessments levied against the Common Areas and community facilities;

(d) the cost of liability insurance on the Common Areas and community facilities and the cost of such other insurance as the Association may obtain;

(e) the cost of utilities and other services which may be provided by the Association including snow removal on the Common Areas and community facilities, site security and trash pickup;

(f) the cost of maintaining, replacing, repairing and landscaping all exterior areas, except the enclosed rear yards, of the community, 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 pathways, the 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;

(g) the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements;

(h) the cost of any leasehold, membership or other possessory or use interests 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

(i) the carrying out and enforcing of this Declaration, including but not limited to court costs and attorney's fees.

The Board of Directors shall determine the amount of the Annual Assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of the Annual Assessment may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis hereinabove provided for. Any Owner may prepay one or more installments on any Annual Assessment levied by the Association, without interest.

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 all exterior areas required by this Declaration. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the Annual 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 Assessment applicable thereto which shall be kept in the office of the Association (or its Management Agent) and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the Annual Assessment shall thereupon be sent to the Owners. The omission by the Board of Directors, before the expiration of any assessment period to fix the amount of the Annual Assessment 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 Owner from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period, but the Annual Assessment fixed for the preceding period shall continue until a new Annual Assessment is fixed. No Owner may exempt himself from liability for assessments for any reason, including but not limited to by abandonment of any Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas and community facilities.

Except as may be specifically provided for in this Declaration, the Association shall not have any responsibility for the maintenance or repair of the Dwellings or their appurtenances.

Section 3. Special Assessments. In addition to the Annual Assessment authorized by this Article, the Association may levy against all Owners in any assessment year a Special Assessment(s), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate or unbudgeted repair or replacement of a described capital improvement located upon, or forming a part of the Common Areas and community and recreational facilities, including the Private Streets, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate; provided that any such Special Assessment may be rescinded or reduced by majority vote of those Owners present in person or by proxy at a meeting of the Association duly called for this purpose, held within sixty (60) days after the date the Association sent notice of such Special Assessment to all Owners.

Section 4. Reserves for Replacements. The Association shall establish and maintain a reserve fund for repair and replacement of the Common Areas and community and recreational facilities by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors in the Association's annual budget. Such fund shall be conclusively deemed to be a common expense of the Association 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 of, or fully guaranteed as to principal by, the United States of America. The reserves for repair and replacement of the Common Areas and community and recreational facilities may be expended only for the purpose of affecting the repair or replacement of the Common Areas and community facilities, including, for example, major repairs to any sidewalks, parking areas, streets, or roadways located on Common Area, equipment replacement, and for operating contingencies of a nonrecurring nature relating to the Common Areas and community facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his 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.

Section 5. Increase in Annual Assessment. Without a majority vote of those Owners attending, in person or by proxy, a meeting of the Association duly called for this purpose, the

Board of Directors shall not increase the Annual Assessment from one year to the next by an amount equal to more than:

(a) The greater of (1) ten percent (10%) of the Annual Assessment for the preceding year, or (2) the percentage increase for the preceding month of July (as compared to July of the previous year) in the Consumer Price Index–All Urban Consumers (Washington-Baltimore All Items, November 1996=100), or if not available, a comparable pricing index, plus

(b) The amount by which any ad valorem real estate taxes and casualty and other insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year.

Section 6. Non-Payment of Assessments.

(a) Memorandum of Lien for Assessments. Any assessment levied pursuant to this Declaration, and any installment thereof, which is not paid on the date when due shall be delinquent and, once perfected, shall be prior to all other liens and encumbrances except as provided under Section 55-516(A) of the Virginia Property Owners' Association Act ("POA Act"). The Association, in order to perfect the lien, shall record a memorandum of lien in the Land Records in accordance with the POA Act, with such lien being verified by the oath of the principal officer of the Association or, in the discretion of the Board, by the Association's treasurer. Prior to filing a memorandum of lien, a written notice shall be sent to the Owner by certified mail, at the Owner's last known address, informing the Owner that a memorandum of lien will be filed in the circuit court clerk's office of the City of Alexandria. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien or as otherwise required by the POA Act.

The lien evidenced hereby shall bind the Lot or Lots herein described in the hands of the then Owner thereof, his heirs, devisees, personal representatives and the personal obligation of the Owner to pay such assessment shall, in addition, remain his personal obligation.

No suit or other proceeding may be brought to enforce or foreclose the lien evidenced herein after thirty-six (36) months from the date the lien was recorded or within such other time period as may be specified by the POA Act. No suit or other proceeding may be brought to enforce or foreclose the lien except in accordance with the POA Act.

(b) Late Fees, Interest and Collection Costs. Any assessment not paid by the applicable due date is delinquent. If an Annual Assessment or special assessment levied pursuant to this

Declaration, or any installment thereof, is not paid so that it is received by the Association within ten (10) days after it is due, then a late fee shall be automatically assessed in the amount of \$10.00 (or such other amount as may be established by the Board, but in no event less than 10% of the assessment or, if applicable, installment amount). In addition, if an account becomes more than 30 days' delinquent, then the unpaid assessment balance (including, e.g., Annual and Special assessments, late fees, and other charges assessed per this Declaration) may bear interest at the rate of ten percent (10%) per annum from the applicable due date(s) until paid, and the remaining unpaid installments for that assessment, if any, may be accelerated such that the full balance is immediately due and payable in full. All costs of collection incurred by the Association as a result of an Owner's delinquency, including reasonable attorney's fees, shall be assessed and added to that delinquent Owner's assessment account as they are incurred or as collection action is taken, without the need for a case-by-case vote by the Board (and regardless of whether suits or liens are filed). All late fees, interest, attorney's fees and other collection costs are the personal obligation of the delinquent Owner and constitute part of the continuing lien against that Owner's Lot in accordance with Article V, Section 1 above.

(c) Other Remedies. In addition to or instead of pursuing any other remedies available to the Association under this Declaration or applicable law, if an account is more than 60 days' past due, the Association may bring an action at law against the Owner personally obligated to pay the same, and or in the alternative foreclose on the lien against the Lot or Lots then belonging to said Owner in the manner now or hereafter provided by law or, if no separate provision is made by law, then in the 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 the Association shall be entitled to recover interest, collection costs and reasonable attorneys' fees of not less than thirty-three percent (33%) of the sum claimed. Suit for any deficiency after foreclosure may be maintained in the same proceeding.

The Association shall notify the holder of the First Mortgage 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 Owner's obligation to pay such sums or 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.

Section 7. Assessment Certificates. The Association shall, upon written demand at any time, by registered or certified mail, furnish to any Owner liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate in writing and in form sufficient for recordation signed by an officer of the Association, setting forth the status of said assessment, 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 assessment therein stated to have been paid. A charge not to exceed the greater of Fifteen Dollars (\$15.00) or the actual cost incurred by the Association in preparing and issuing such certificate may be levied in advance by the Association for each certificate so requested.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot owner from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. 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; (c) all properties owned by charitable or other organizations exempt from taxation by the laws of the Commonwealth of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Dissolution of 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 assessment specified in Section 1 of this Article, and each Owner shall continue to be personally obligated for such assessment, to the extent that such assessments are required to enable the grantee of the real property owned by the Association to properly maintain it. In no event, however, shall the assessment exceed the amount that would otherwise be payable to the Association in accordance with the provisions of Section 4 of this Article.

ARTICLE VI

Section 1. Architectural Review Committee. Except for original 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 Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair not altering the exterior appearance of a Lot or Dwelling, 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 Committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural Review Committee (“ARC”) designated by the Board of Directors. The ARC shall have the authority to either deny or approve (including approving with reasonable stipulations or conditions) such written requests for exterior additions, alterations or improvements. The ARC’s decisions shall be consistent with the Declaration and the Rules and Regulations.

Section 2. Architectural Review Committee- Appointment/Composition. The Board of Directors shall appoint an ARC. The ARC shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors. Action taken by the ARC requires the affirmative vote of a majority of those ARC members attending an ARC meeting at which a quorum is present. Notwithstanding anything to the contrary in this Declaration, in the event that there is no ARC (whether due to lack of volunteers or other reasons beyond the reasonable control of the Board), then the Board shall carry out all such functions specified in the Declaration as being done by such committee.

Section 3. Approvals, etc. Upon approval by the ARC of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant

submitting the same. In the event the ARC fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the ARC) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with, but only to the extent not in direct conflict with a restriction contained in this Article VI. Under no circumstances shall the ARC have the authority to grant a variance or waive any provision of the Declaration or the Rules and Regulations, and all actions or inactions by such committee are subject to appeal to, and review by, the Board in accordance with any applicable deadlines or procedures contained in the Rules and Regulations.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the ARC (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the ARC 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 ARC shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be consent in writing of the ARC. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the ARC 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. ARC Procedures and Architectural Rules and Regulations, etc. The ARC may from time to time adopt and promulgate reasonable rules and regulations regarding its operational procedures and the form and content of plans and specifications to be submitted for approval. In addition, the ARC may propose for Board review and adoption such statements of policy, standards, guidelines, and criteria relative to architectural styles or details, fences, colors, set-backs, materials or other matters relative to architectural control 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 ARC may charge and collect a reasonable fee

for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. Subject to any applicable procedures and deadlines contained in the Rules and Regulations, any Member who is aggrieved by any decision, action or forbearance from action by the ARC may appeal the decision of the ARC 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.

Section 6. Prohibited Uses and Nuisances. Except with the prior written approval of the Board of Directors of the Association, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any Dwelling or upon the Common Areas:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within a Dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other Members. 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 Lot, including on the exterior of any Dwelling or upon the exterior of any other improvements;

(b) The maintenance, keeping, boarding 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, except that this shall not prohibit the keeping of dogs, cats 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. The Board of Directors or, upon resolution of the Board of Directors, the ARC, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and 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;

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any Lot;

(d) Except as herein elsewhere provided, no junk vehicle, trailer, camper, camp truck, house trailer, boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the maintenance or repair of any Dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance, repair and operation of the Common Areas and community facilities) shall be kept upon the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like;

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection (unless otherwise permitted under the Rules and Regulations). No incinerator shall be kept or maintained upon any Lot. Garbage, trash and other refuse shall be placed in covered containers, or plastic bags as designated by the Association. The Association reserves the right to remove such containers left in violation of this provision;

(f) 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. No portion of any Dwelling (other than the entire Dwelling) shall be leased. 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;

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

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

(i) No sound hardwood trees measuring in excess of two (2) inches in diameter two (2) feet above the ground shall be removed from any Lot without written approval of the Association acting through the Board of Directors or ARC, after obtaining approval from the city Arborist. The ARC may from time to time propose for review and adoption by the Board such additional rules and regulations regarding the preservation of trees or other natural resources and wildlife as it may consider appropriate;

(j) No structure of a temporary character, and no trailer, tent, bare, pen, kennel, run, stable or outdoor clothes line shall be erected, used or maintained on any Lot at any time;

(k) Except for entrance signs, directional signs, signs for traffic control or safety, including “No Parking” signs on the Private Streets, community “theme areas” and such promotional sign or signs as may be maintained by the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Dwelling unless authorized under the Rules and Regulations, provided, however, that one temporary real estate “for rent” or “for sale” sign not exceeding six (6) square feet in area, or smaller if required by the city zoning ordinance, may be erected upon any Lot or attached to any Dwelling while placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Dwelling;

(l) No structure, planting or other material 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 unreasonably change, obstruct or retard direction or flow of any drainage channels. No storage shall be allowed without the consent of the ARC;

(m) No outside television aerial, “satellite dish” or like device, or radio antenna, or other aerial or antenna for either reception or transmission shall be maintained upon the Property, except that such aerials or antenna may be erected and maintained within the Dwellings located upon the Property; however, an Owner or lawful occupant of a Dwelling may install on the exterior of that Dwelling or its Lot (but wholly within the Lot’s boundaries) the type of satellite dishes or antennas that are covered by the Federal Communications Commission’s Over-the-Air Reception Devices (“OTARD”) rule. As of the date of this Declaration, the OTARD rule covers: (i) “dish” antennas that are one meter (39.37”) or less in diameter that are designed to receive direct broadcast satellite service (including direct-to-home satellite service) or to receive or transmit fixed wireless signals via satellite; (ii) antennas that are one meter or less in diameter or

diagonal measurement and are designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; and (iii) antennas that are designed to receive local television broadcast signals;

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

(o) Each Owner shall, at his own expense, maintain his enclosed rear yard and Dwelling located on his Lot, and any and all appurtenances thereto, in good order, condition and repair and in a clean, sightly and sanitary condition at all times. Except to the extent required to be maintained by the Association, the Owner shall also keep the front yard area of his Lot in good order and in a clean, sightly and sanitary condition. In the event any Owner shall fail to maintain or repair his Lot, Dwelling or appurtenances thereto in a manner consistent with the Declaration or any applicable Rules and Regulations, the Association shall have the right, after thirty (30) days' notice of its intent to exercise this right to the Owner, to make the necessary repairs and/or maintenance to the Lot, Dwelling or appurtenances thereto, and to charge the cost of such repairs to the Owner, which amount shall be due and payable to the Association from that Owner as a special assessment.

(p) Owners may install solar panels on the exterior of their Dwelling provided, however, that the Owner has first obtained the prior written approval of the ARC pursuant to Article VI, Section 1, to ensure that the solar panels and the installation thereof comply with the Association's architectural and design standards.

Section 7. Residential Use - Leasing. All Lots and Dwellings shall be used for private residential purposes exclusively. No business or other commercial enterprise shall be conducted partially or entirely on or within a Lot or Dwelling except for those "home occupations" permitted under the City of Alexandria zoning ordinance if such home occupation would not violate another provision of the Declaration.

Any lease or rental agreement for the lease of a Lot and the improvements thereon shall be in writing and the initial term of such lease shall be for a minimum period of one (1) year. All leases shall expressly provide that (1) the renter's right to occupy the Lot is subject in all respects to the provisions of the Declaration and Rules and Regulations, and that any failure by the renter or other occupant of the leased Lot to comply with the terms of such Governing Documents shall be a material default under such lease, and (2) the Association has the right to require the renter to forward his/her rental payments to the Association rather than to the Owner-landlord if that Owner becomes more than 30 days' delinquent in amounts owed to the Association, until such time as that Owner's account is brought current. Any Owner leasing his or her Lot shall provide the Association with a copy of the lease no later than 10 days after the execution of the lease and after any change in renter(s). The Rules and Regulations may provide for a mandatory lease addendum to ensure compliance with these provisions.

Section 8. Fences. No fences shall be constructed upon the Property other than those originally provided by Declarant or those approved by the ARC. However, under no circumstances shall an Owner place a fence, in whole or in part, on Common Area. The only fences allowed on the Common Area are those designed to serve the interests or needs of the Association as authorized by the Board of Directors and constructed on behalf of the Association.

Section 9. Parking. Parking upon the Common Areas and Private Streets may be regulated by the Board of Directors and parking spaces may be assigned by the Board of Directors of the Association (or by such committee as the Board of Directors may designate for that purpose) for use by Owners, residents or visitors. Taking into account the limited number of Common Area parking spaces, the Board may charge a reasonable fee for the use of an assigned parking space, and may also regulate and assign Common Area parking spaces to all or less than all Lots on a non-uniform basis dependent on, for example, the different number of parking spaces that are located on each Lot and the location of the Common Area spaces, and including but not limited to assigning Common Area parking spaces so that each Lot has the same number of parking spaces within the Property set aside for that Lot's exclusive use (including Common Area parking and Lot driveways and garages). 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 by the Board of Directors without the express written

consent of both the Owner of the Lot to which such other space has been assigned and the Board of Directors of the Association, nor shall any Member invite, encourage or permit the use by this 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, whether owned by the Owner or any other person, shall be permitted to remain on or be parked on the Common Area 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.

Section 10. House Rules / Rules and Regulations. The Board of Directors shall have the authority to adopt, amend and enforce, on behalf of the Association, reasonable rules and regulations (“House Rules” or “Rules and Regulations”) relating to the Common Area, to architectural and maintenance standards applicable to the Lots, and to other areas of Association responsibility under applicable law or the Declaration, Bylaws or Articles of Incorporation. There shall be no violation of any Rules and Regulations not in conflict with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the Membership in writing. The Owners, however, by a majority vote of the Owners present in person or by proxy at a meeting of the Association convened in accordance with the provisions of the Association’s Bylaws and called for that purpose, may repeal or amend any such Rules and Regulations adopted by the Board of Directors.

Section 11. Enforcement

(a) Right to Remove or Correct Violations. In the event 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 in the event of any other conduct in violation of any of the provisions or requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article and without the approval of the ARC or the Board of Directors required herein, and, upon written notice from the ARC 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 other period as may be required in any such notice) after notice of such violation is sent to the Owner of the Lot upon which such violation exists, or to the Owner responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such Owner, then the Association shall have the right, through its contractors, agents and employees (but only after a resolution of the Board of Directors) to enter upon such Lot and to take such steps as maybe necessary to remove or otherwise terminate or abate such violation and the cost thereof shall be specially assessed against the Lot upon which such violation occurred and when so assessed, a statement for the amount thereof shall be sent 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 (and subject to the same limitations) as provided in Article V of this Declaration. The Association shall have the further right, through its contractors, agents, employees or committee members, 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 or Rules and Regulations exist on such Lot; and neither the Association nor any such contractor, 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 Section 11 to the contrary, the Association shall initiate judicial proceedings before any item of construction can be structurally altered or demolished.

(b) Other Enforcement Remedies. Enforcement of the Declaration and other Governing Documents (including the Bylaws, Articles of Incorporation and Rules and Regulations) may be through any or all available remedies, including but not limited to by any proceeding at law or in equity, or through other means available under the Declaration or applicable law, against any person or persons violating or attempting to violate or circumvent any provision, covenant or restriction, to restrain a violation and to recover damages, and to enforce any lien created by the Declaration. Failure by the Association to enforce any provision, covenant or restriction for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. The cost of enforcement efforts taken by the Association, including attorney's fees incurred by the Association, shall constitute a special assessment that

acts as a lien against the responsible Owner's Lot as set forth in Article V and the personal obligation of the responsible Owner. Each Owner is responsible for such Owner's own violations of the Declaration and other Governing Documents and for violations by such Owner's family members, tenants, guests, contractors and agents.

In addition to any other available action or remedy, the Association may also assess violation charges against Members for violations of the Declaration or Rules and Regulations (other than for nonpayment of assessments, which are addressed in other provisions of the Declaration), after first giving the responsible Member notice and an opportunity for a hearing in front of the Board of Directors, in accordance with any applicable requirements and limitations in Section 55-513 of the POA Act and any Board-adopted notice and hearing procedures.

All powers, duties and authority vested in or delegated to the Association are exercised by the Board of Directors, acting on behalf of the Association, except where such power, duty or authority is expressly reserved to the Owners (or Members) by the provisions of this Declaration, the Association's Articles of Incorporation or Bylaws, or applicable law, and except where delegated to the ARC in accordance with the Declaration or delegated by the Board to a committee in accordance with the Bylaws.

ARTICLE VII

Section 1. Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing.

Any management agreement entered into by the Association shall provide inter alia, that such agreement may be terminated, with or without cause and without the payment of any penalty or termination fee, by either party upon ninety (90) days written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 2. 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 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 community 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.

ARTICLE VIII

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

Section 2. There is hereby granted a blanket easement to the Association, its directors, officers, agents, contractors and employees, to any manager employed by or on behalf of the Association to enter upon the Property in the exercise of the functions provided by this Declaration and the Articles, Bylaws and Rules and Regulations of the Association, and to all police, firemen, ambulance personnel and all similar persons to enter upon the Property in the event of emergencies and in performance of governmental functions.

Section 3. An easement is hereby granted to the Association, its directors, officers, agents, contractors and employees and to any manager employed by or on behalf of the Association to enter upon any Lot for the following purposes:

- (a) Maintenance, repair and replacement of fences on any Lot line;
- (b) Maintenance, repair and replacement of lamp posts; and
- (c) Maintenance or corrective activities on any Lot in which the respective Owner

has failed to maintain pursuant to Article VI, Section 11 hereinabove.

Section 4. The rights accompanying the easements provided by Section 1 hereof shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of, any Owner or tenant directly affected thereby when not an emergency situation or a governmental function.

Section 5. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

ARTICLE IX
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as a part of the original construction of the homes upon the property and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. 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 adjoining owners, his agents or family (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 formerly existed in proportion to their respective use of the party wall.

Section 3. Repairs Caused by One Owner. If any such party wall is damaged or destroyed through the act of one adjoining owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment of the wall, then the owner at fault shall forthwith proceed to rebuild and repair the same to as good condition as formerly existed without cost to the adjoining owner.

Section 4. 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 proposing to modify, make additions to or rebuild his 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.

Section 5. Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article IX shall be appurtenant to the land and shall pass to any Owner's successors in title.

Section 6. 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.

ARTICLE X

Insurance Requirements

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 on the Common Areas and community facilities except for those items normally excluded from coverage such as land, foundations and excavation; but including fixtures, building service equipment, common personal property and supplies. Insurance should be in the amount of 100% of the current replacement cost of Common Areas and community facilities with maximum deductible of the lesser of \$10,000.00 or 1% of the face amount of the policy. The following endorsements should be obtained if applicable and available: Construction Code Endorsement; Agreed Amount and Inflation Guard Endorsement; and Steam Boiler and Machinery Coverage Endorsement. Flood Insurance should also be obtained if applicable.

The Association shall maintain a comprehensive general liability insurance policy covering all Common Areas or other areas under its supervision. The policy should provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence.

The Association shall maintain a blanket fidelity bond or employee dishonesty policy to protect the Association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association, or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an

amount equal to the lesser of \$1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association.

All insurance policies shall provide for ten (10) days written notice to the Association before cancellation or substantial modification of any policy. All premiums shall be paid as a common expense by the Association.

ARTICLE XI

Section 1. Amendment. Subject to the other limitations set forth in this Declaration, this Declaration may be amended with the written consent of not less than sixty-seven percent (67%) of the Owners. If any proposed amendment to this Declaration is approved by the Owners as set forth above, the president of the Association (or vice president, in the president's absence or inability to act) shall execute the amendment instrument, certifying that the requisite percentage of Owners approved the amendment and signed ratifications thereof. Any amendment must be properly recorded in the Land Records and shall be effective upon such recordation.

Section 2. Duration. Unless amended in accordance with the provisions of Section 1 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 the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive period of twenty (20) years each.

Section 3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community. Enforcement of these covenants and restrictions shall be through the exercise of one or more remedies provided for in the Declaration, including but not limited to by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants of 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 the Owner of any Lot 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 any Owner or any Mortgagee of any Lot which becomes 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 Areas and community facilities 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 any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 4. 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. The failure to include such a reference shall not relieve the Lot or Owner from the effect or obligation imposed by this Declaration.

Section 5. Notices. Except as otherwise provided herein, 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 prepaid, 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.

Section 6. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas or community facility 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 Areas or community facilities.

Section 7. Severability. Invalidation of anyone of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 8. Mortgagee Consents. Any other provision of this Declaration to the contrary notwithstanding, neither the Members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of at least fifty-one percent (51%) of the institutional holders of all First Mortgages of record on the Lots:

- (a) amend or modify the provisions relating to voting rights established herein;
- (b) amend or modify the provisions relating to maintenance assessments or common expenses or their collection;
- (c) amend or modify the provisions relating to reserves for maintenance, repair and replacement of Common Areas or community facilities;
- (d) amend or modify the provisions relating to maintenance and repair responsibilities;
- (e) reallocate the interests of the Lot owners in the Common Areas or rights to their use;
- (f) amend or modify the provisions relating to the boundary of any Lot or Common Areas once the Lot is sold by the Declarant to an owner or once the Common Areas are conveyed to the Association;
- (g) amend or modify the provisions relating to the annexation of property to the subdivision;
- (h) amend or modify the provisions relating to insurance or fidelity bond coverage;
- (i) amend or modify the provisions relating to the leasing of Lots;
- (j) impose a restriction on an owner's right to sell or transfer a Lot;
- (k) implement a decision to establish self management when professional management had been required previously by a mortgage holder;
- (l) amend or modify the provisions relating to the restoration or repair of the project after hazard damage or partial condemnation;
- (m) terminate the legal status of the project after substantial destruction or condemnation occurs;
- (n) amend or modify the provisions expressly benefiting mortgage holders;
- (o) resolve to use the proceeds of casualty insurance for any other purpose than the repair, replacement or restoration of the Common Areas and community facilities; or
- (p) amend or modify any material or substantive provision of this Declaration or the Bylaws of the Association.

Neither the Members, Board of Directors nor the Association shall, by act or omission, terminate the legal status of the project for reasons other than the substantial destruction or

condemnation of the property without the prior written consent and approval of at least sixty-seven percent (67%) of the institutional holders of all First Mortgages of record on the lots.

In the event of a proposed non-material addition or amendment to this Declaration, including but not limited to a correction of a technical error or clarification of a statement, the consent and approval of a holder of an institutional mortgage shall be deemed given if such a holder fails to submit a response to any written proposal for an amendment or addition within thirty (30) days after it is made.

Section 9. Additional Rights of Mortgagees - Notice. Upon written request of any holder of a First Mortgage, the Association shall promptly notify such holder of the First Mortgage on any Lot for which any assessment levied pursuant to the Declaration or any installment thereof, becomes delinquent for a period in excess of thirty (30) days and the Association shall promptly notify the holder of the First Mortgage on any Lot with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of thirty (30) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any First Mortgage on any Lot and the protection extended in this Declaration to the holder of any such Mortgage shall not be altered, modified or diminished by reason of such failure.

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the First Mortgage on the Lot which is the subject matter of such suit or proceeding.

Any institutional first mortgagee of any Lot within the property may pay any taxes, utility charges or other charge levied against the Common Areas and community facilities which are in default and which may or have become a charge or lien against any of the Common Areas and community facilities and any such institutional first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to the Common Areas and community facilities. Any First Mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

Section 10. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas or community facilities, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the holders of all First Mortgages of

record on the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his Lot with respect to the distribution to such Member of any insurance proceeds paid or payable on account of any or destruction of any of the Common Areas or community facilities.

Section 11. Condemnation or Eminent Domain. In the event any part of the Common Areas and community facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association, who are hereby designated and appointed attorney-in-fact to represent the Members in such proceedings and related negotiations, shall give prompt written notice of any such proceeding or proposed acquisition to the holders of all First Mortgages of record on the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his Lot with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of any of the Common Areas and community facilities. Any proceeds from any such condemnation or eminent domain proceeding shall be payable to the Association for the benefit of the Lot Owners and their Mortgagees. Any distribution of funds received in connection therewith shall be on a pro-rata per Lot basis.

Section 12. Captions and Gender. The captions contained in this Declaration are for the 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 singular shall include the plural and vice versa.

Section 13. Use of Technology. Notwithstanding anything to the contrary in this Declaration or the Association's Bylaws or Articles of Incorporation, the Board may provide for or allow notices, votes, consents or approvals to be accomplished using the most advanced technology available at the time if such use is a generally accepted business practice, all in accordance with any requirements and limitations imposed by Section 55-515.3 of the POA Act and by the Virginia Nonstock Corporation Act. If a provision of the Governing Documents provides for a vote, approval or consent of Members (or Owners) at a meeting, then at the Board of Director's discretion, such vote, approval or consent may also, or in the alternative, be obtained by mail or electronic transmission in accordance with applicable law, and in such event, the minimum total number or percentage of Members (or Owners) required to participate in the

process shall be equal to the applicable quorum requirement had a meeting been held for that purpose, and such process shall be subject to the same amount of advance notice as would have to be given to Members (or Owners) had a meeting been held for that purpose.

IN WITNESS WHEREOF, the president of the Association has executed this amendment instrument on behalf of the Association, and hereby certifies that this amendment was duly adopted by the required percentage of Owners, whose signatures are attached hereto.

PROPOSED