

# NORBECK GROVE COMMUNITY ASSOCIATION, INC. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by DAY DEVELOPMENT COMPANY, L.C., a Maryland limited liability company, hereinafter referred to as “Declarant”.

## WITNESETH:

WHEREAS, Declarant is the owner of certain real property in the County of Montgomery, State of Maryland, which is more particularly described on the legal description attached hereto and made part hereof as Exhibit “A”.

WHEREAS, Declarant has entered certain agreements with the owner, the “Chichester/Berlage Owner” (as defined below), of property adjacent to the real property described on Exhibit “A” hereto, the “Chichester/Berlage Property” (as defined below), that impact the rights and obligations of the Owners, and Declarant wishes to implement certain provisions of such agreements and to otherwise provide the Owners with notice of such agreements pursuant to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the real property described on Exhibit “A” hereto shall be subject to the Declarant’s right to unilaterally subject such real property to the covenants, conditions, restrictions and easements set forth in this Declaration and to annex such real property within the jurisdiction of the Association pursuant to Article 2 hereof. The Declarant hereby further declares that, upon recordation of one or more Supplementary Declarations in accordance with Article 2 hereof, all or any portion of the real property described on Exhibit “A” hereto, and any other real property annexed within the jurisdiction of the Association in accordance with Article 2 hereof, shall thereafter be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions and easements set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and be binding on all parties having any right, title or interest in all or any portion of the real property described on Exhibit “A” hereto, and any other real property annexed within the jurisdiction of the Association in accordance with Article 2 hereof, their heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of each Owner thereof.

## ARTICLE 1 DEFINITIONS

**Section 1.1. “Administrative Resolutions”** are rules, policies and/or procedures, adopted by the Board of Directors, for implementing provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association, as more fully described in Article 8 of the Bylaws.

**Section 1.2. “Annual Assessments”** shall mean and refer to the assessments levied against all Lots within the Property to fund the Common Expenses, not including Cluster Assessments.

**Section 1.3. “Assessments”** shall mean and refer collectively to any Annual Assessment, Special Assessment, Cluster Assessment, Cluster Special Assessment and all other fees and charges, including all installments thereof, as may be levied by the Association in accordance with this Declaration.

**Section 1.4. “Association”** shall mean and refer to Norbeck Grove Community Association, Inc., a Maryland nonstock corporation, its successors and assigns.

**Section 1.5. “Attached Dwelling Lot”** shall mean and refer to any Lot upon which there is constructed, or is intended to be constructed, a single-family attached or semi-attached dwelling unit, including, but not limited to townhouse dwelling units, and any Lot upon which there is constructed, or intended to be constructed, a condominium unit within a condominium regime established within the Property pursuant to the Maryland Condominium Act.

**Section 1.6. “Attached Dwelling Lot Cluster”** shall mean and refer to any group of Lots which are hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration and which are designated by Declarant as constituting all or a portion of the Attached Dwelling Lot Cluster.

**Section 1.7. “Attached Dwelling Lot Cluster Common Area”** shall mean and refer to any Common Area which is hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration and which is designated by Declarant as constituting all or a portion of the Attached Dwelling Lot Cluster Common Area.

**Section 1.8. “Chichester/Berlage Owner”** shall mean and refer collectively to Carl M. Freeman Associates, Inc., a Maryland corporation, and Carl M. Freeman, an individual residing in Montgomery County, Maryland, as tenants-in-common (“CMFA/CMF”), and Carl M. Freeman Associates, Inc., a Maryland corporation (“CMFA”).

**Section 1.9. "Chichester/Berlage Property"** shall mean and refer to that certain real property owned by CMFA/CMF and by CMFA and located in Montgomery County, Maryland, as such property is more particularly described on Exhibit "B" hereto.

**Section 1.10. "Cluster"** shall mean and refer to any group of Lots which are hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration or which are otherwise designated by Declarant as constituting all or a portion of a specified Cluster of Lots. The term Cluster shall also mean and refer to any group of Lots designated as constituting all or a portion of a specified Cluster of Lots by Declarant or the Board of Directors based on such factors as are deemed appropriate by the Declarant or the Board, including, without limitation, the location and proximity of such Lots, any special features or amenities within or serving such Lots, any special services provided to or requested by the Owners or residents of such Lots, and the input of interested Owners and residents within the Property. Any reference herein to the term Cluster shall include, if established, the Attached Dwelling Lot Cluster and the SFD Lot Cluster.

**Section 1.11. "Cluster Assessments"** shall mean and refer to assessments for those portions of the Common Expenses, if any, as may be levied against the Lots within a specified Cluster in accordance with Article 6 of this Declaration.

**Section 1.12. "Cluster Committee"** shall mean and refer to any committee comprised of the Owners and/or residents of Lots within a specified Cluster, as may be established by the Board of Directors in accordance with Article 15 of this Declaration. Any reference herein to the term Cluster Committee shall include, if established, the Attached Dwelling Lot Cluster Committee and the SFD Lot Cluster Committee.

**Section 1.13. "Cluster Common Area"** shall mean and refer to any Common Area which is hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration and which is designated by Declarant as being for the primary or exclusive use and benefit of a specified Cluster in the Supplementary Declaration annexing such Common Area. The term Cluster Common Area shall also mean and refer to any Common Area designated as being for the primary or exclusive use and benefit of a specified Cluster by Declarant or the Board of Directors based on such factors as are deemed appropriate by the Declarant or the Board, including, without limitation, the location and proximity of such Cluster to the Common Area, any special features or amenities within the Common Area serving such Cluster, and the input of interested Owners and residents within the Property. Any reference herein to the term Cluster Common Area shall include, if established, the Attached Dwelling Lot Cluster Common Area and the SFD Lot Cluster Common Area.

**Section 1.14. "Cluster Special Assessments"** shall mean and refer to any assessment levied by the Association against Lots within a specified Cluster in accordance with Section 6.2 of this Declaration.

**Section 1.15. "Common Area"** shall mean and refer to all real property owned, leased or maintained by the Association (including the improvements thereto) for the common use and enjoyment of the Owners. Notwithstanding the foregoing, in the event the Association maintains all or any portion of any Lot(s) for the primary benefit of the Owner(s) of such Lot(s), such property shall not be considered Common Area. Unless otherwise permitted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (hereinafter referred to as the "Planning Board"), the Common Area must ultimately include, at a minimum, all of the real property and facilities required by and depicted as such on any and all preliminary plans and site plans, as amended, for the Property reviewed and approved by the Planning Board. The timing for the provision of Common Area is set forth in Section 2.4 of this Declaration. Any reference herein to the term Common Area shall include Cluster Common Area.

**Section 1.16. "Common Expenses"** shall mean and refer to the actual and estimated expenses of operating the Association, including a reasonable reserve, all as may be found to be necessary or appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

**Section 1.17. "Community Facilities"** shall mean and refer to any and all improvements and facilities located upon the Common Area and Cluster Common Area including, without limitation, recreational facilities (if any), which are operated and maintained by the Association for the common use and enjoyment of the Owners.

**Section 1.18. "Community-Wide Standard"** shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in the Property. Such standard may be more specifically determined and set forth, from time to time, by the Board of Directors.

**Section 1.19. "Declarant"** shall mean and refer to Day Development Company, L.C., a Maryland limited liability company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Declarant are specifically assigned or transferred to such successors or assigns by an instrument in writing.

**Section 1.20. "Development Plan"** shall mean and refer to approved Site Plan No. 8-91035 entitled "Barnsley Grove Tract", including all amendments, modifications and extensions thereof as may be made from time to time.

**Section 1.21. "Eligible Mortgage Holder"** shall mean and refer to a holder, insurer or guarantor of a First Mortgage on a Lot who has requested notice from the

Association of amendments to the Association documents or other significant matters which would affect the interests of the mortgagee.

**Section 1.22. "Equity Resolutions"** shall mean and refer to those actions of the Board of Directors which create additional covenants, conditions and/or restrictions with respect to the Property, the Common Area or the Cluster Common Area, as more fully described in Article 8 of the Bylaws.

**Section 1.23. "Lawn and Garden Area"** shall mean and refer to any portion of the front, side or rear (if applicable) yard areas of any Lot that contains grass, shrubs, bushes, trees or other planted material; provided, however, that any portion of a Lot which is enclosed by a wall, fence or other obstruction and which is not readily accessible to the Association, as determined by the Board of Directors in its sole discretion, shall not be considered a Lawn and Garden Area.

**Section 1.24. "Lot"** shall mean and refer to (i) any plot of land shown upon any recorded subdivision map of the Property upon which it is intended that a dwelling unit be constructed, including, without limitation, single-family detached, attached and semi-attached dwelling units, and (ii) any condominium unit within any condominium regime established within the Property pursuant to the Maryland Condominium Act. No Lot shall be counted twice in any situation where it may fall within more than one of the descriptions herein contained. The term Lot shall not include Common Area, Cluster Common Area or outlots of property. The term Lot shall be deemed to refer collectively to Attached Dwelling Lots and SFD Lots.

**Section 1.25. "Member"** shall mean and refer to every person, group of persons, corporation, partnership, trust, or other legal entity, or any combination thereof, who holds any class of membership in the Association.

**Section 1.26. "Mortgagee"** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage", as used herein, shall include deeds of trust. "First Mortgage", as used herein, shall mean a mortgage with priority over all 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 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"), Government National Mortgage Association ("GNMA"), 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, or any other organization or entity which has a security interest in any Lot. In the event any mortgage is insured by the Federal Housing

Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the expressions "mortgagee" and "institutional mortgagee" include the FHA or the VA as the circumstances may require, acting, respectively, through the Federal Housing Commission and the Commissioner of Veterans Benefits or through other duly authorized agents.

**Section 1.27. "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.28. "Participating Builder"** shall mean and refer to any person or entity that acquires one or more Lots for the purpose of constructing residential dwelling units on such Lots for sale or lease to others.

**Section 1.29. "Property"** shall mean and refer to all real property as may hereafter be brought within the jurisdiction of the Association pursuant to Article 2 of this Declaration.

**Section 1.30. "SFD Lot"** shall mean and refer to any Lot upon which there is constructed, or is intended to be constructed, a single-family detached dwelling unit.

**Section 1.31. "SFD Lot Cluster"** shall mean and refer to any group of Lots which are hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration and which are designated by Declarant as constituting all or a portion of the SFD Lot Cluster.

**Section 1.32. "SFD Lot Cluster Common Area"** shall mean and refer to any Common Area which is hereafter annexed within the jurisdiction of the Association by Declarant pursuant to Article 2 of this Declaration and which is designated by Declarant as constituting all or a portion of the SFD Lot Cluster Common Area.

**Section 1.33. "Special Assessment"** shall mean and refer to any assessment levied by the Association in accordance with Section 5.4 of this Declaration.

**Section 1.34. "Subassociation"** shall mean and refer to any corporation or unincorporated association, and its successors and assigns, established within the Property, which is governed by the Maryland Homeowners Association Act or the Maryland Condominium Act, whose membership shall consist of the Owners of Lots within the Association.

## ARTICLE 2 DECLARANT'S RIGHT TO SUBJECT PROPERTY TO DECLARATION

**Section 2.1. Property Subject to this Declaration.** The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and

improved subject to this Declaration shall be as described in one or more Supplementary Declarations recorded by the Declarant among the Land Records of Montgomery County, Maryland. The Declarant shall have the right to incrementally annex all or any portion of the real property described on Exhibit "A" hereto within the jurisdiction of the Association by executing and recording one or more Supplementary Declarations, regardless of the ownership of the real property described on Exhibit "A" hereto at the time of such annexation and without the need for the execution or filing of any such Supplementary Declarations by any other party; provided, that the Declarant's right to unilaterally annex the real property described on Exhibit "A" hereto shall only continue for a period of ten (10) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing any portion of the real property described on Exhibit "A" hereto; provided, further, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten (10)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less.

**Section 2.2. Annexations.** The real property described on Exhibit "A" hereto, any real property shown on the Development Plan, any real property contiguous to or in the vicinity of the real property shown on the Development Plan and any real property contiguous to or in the vicinity of the real property described on Exhibit "A" hereto, may be annexed within the jurisdiction of the Association by the Declarant without the consent of the Class A Members of the Association, if any, for a period of ten (10) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Exhibit "A" hereto; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten (10)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. The scheme of this Declaration shall not, however, be extended to include any such real property unless and until the same is annexed within the jurisdiction of the Association by the recordation of a Supplementary Declaration as hereinafter provided. Except as otherwise provided hereinabove, annexations of real property within the jurisdiction of the Association shall require the consent of two-thirds (2/3) of each class of Members.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration among the Land Records of Montgomery County, Maryland, which Supplementary Declaration shall extend the scheme of the within Declaration of Covenants, Conditions and Restrictions to such annexed property. So long as any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the VA or insured by the

FHA, no annexation shall be made pursuant to this Article, or otherwise, except following a determination by the VA or the FHA, as applicable, that the annexation conforms to a general plan for the development of the Property previously approved by the VA or the FHA, as applicable, or, if no such general plan was approved by the VA or the FHA, as applicable, except following the prior written approval of the VA or the FHA, as applicable. Any Supplementary Declaration made pursuant to the provisions of this Article may contain such complementary or supplemental additions and modifications to the covenants and restrictions set forth in the within Declaration as may be considered necessary by the maker of such Supplementary Declaration to reflect the different character or use, if any, of the annexed property. Every Owner of a Lot in property to be annexed as provided herein shall have an easement of enjoyment in and to the Common Area, and such other rights of use as provided in Article 3 herein.

**Section 2.3. Deannexation.** The Declarant may deannex any property annexed within the jurisdiction of the Association for a period of ten (10) years from the date of recordation by the Declarant of the first Supplementary Declaration annexing all or any portion of the real property described on Exhibit "A" hereto, provided that (i) the Declarant is the Owner of such property at the time of deannexation, or (ii) if the Declarant is not the Owner of such property, the Declarant deannexes such property with the written consent of the Owner thereof; provided, further, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten (10)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. Such deannexed property shall no longer be subject to the covenants and restrictions of this Declaration except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to this Declaration which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such deannexation. Such deannexation shall be made by recording a Supplementary Declaration among the Land Records of Montgomery County, Maryland, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

So long as any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the VA or insured by the FHA, no deannexation shall be made pursuant to this Article, or otherwise, except following a determination by the VA or the FHA, as applicable, that the deannexation is not contrary to a general plan for the development of the Property previously approved by the VA or the FHA, as applicable, or, if no such general plan was approved by the

VA or the FHA, as applicable, except following the prior written approval of the VA or the FHA, as applicable.

**Section 2.4. Common Area.** The Common Area shall be annexed within the Association by the Declarant in strict accordance with all regulatory approvals, including any preliminary plan, site plan or project plan, as amended, for the Property reviewed and as approved by the Planning Board, and shall be in accordance with that certain Site Plan Enforcement Agreement for the Property dated as of March 6, 1996, as may be amended, by and between the Declarant and the Planning Board, and in accordance with Article 2, Section 2.2 hereof. The Declarant, if joined in an application by all necessary parties in interest, reserves the right to seek an amendment to any regulatory approval for the purpose of modifying the location and amount of real property comprising the Common Area, and for the purpose of modifying the improvements to be constructed on such Common Area, including but not limited to an amendment whereby such improvements are no longer required to be constructed, which amendment shall be reviewed by the Planning Board in accordance with applicable law. Such amendment shall be effective only if approved by the Planning Board.

## ARTICLE 3 PROPERTY RIGHTS

**Section 3.1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and Community Facilities, including an easement for the use and enjoyment of the private streets, parking areas, sidewalks, trails and pathways, if any, within 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 Association to charge reasonable and uniform admission and other fees for the use of the Common Area and Community Facilities;
- (b) the right of the Association to suspend an Owner's voting rights and right to use the Common Area or Community Facilities (i) for any period during which any Assessment against such Owner's Lot remains unpaid, or (ii) after notice and an opportunity for a hearing, for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that the obligation of such Owner to pay Assessments shall continue unabated during such period of suspension of voting rights or right to utilize the Common Area or Community Facilities;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area or Community Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective without the consent of two-

thirds (2/3) of each class of Members and fifty-one percent (51 %) of the Eligible Mortgage Holders, and unless the Maryland-National Capital Park and Planning Commission, or its successors or assigns, has given its prior written approval thereof, which approval shall not be unreasonably withheld or delayed;

- (d) the right of the Association to limit the number of guests of Owners utilizing the Common Area and Community Facilities;
- (e) the right of the Association to establish Administrative Resolutions and Equity Resolutions pertaining to the use of the Property, the Common Area and the Community Facilities;
- (f) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the Community Facilities by Members and their guests;
- (g) the right of the Declarant to designate all or any portion of the Cluster Common Area as being for the exclusive use of the Owners and residents within a specified Cluster;
- (h) the right of the Association to designate all or any portion of the Cluster Common Area as being for the exclusive use of the Owners and residents within a specified Cluster pursuant to a duly adopted Equity Resolution;
- (i) the right of the Association to provide for the exclusive use by Owners and residents of certain designated parking spaces within the Common Area;
- (j) the right of the Association, the Declarant, utility companies and other Owners with respect to the easements established by this Declaration;
- (k) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, and with the consent of two-thirds (2/3) of each class of Members, to borrow money for the purpose of improving the Common Area and Community Facilities in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Area, Cluster Common Area and Community Facilities;
- (l) 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;
- (m) the right of the Declarant (or the Participating Builders, if the Declarant confers such rights to Participating Builders), as more fully set forth in Section 10.1 of this Declaration, to grant easements, to utilize reserved rights and easements, and to otherwise utilize the Common Area, Community Facilities and Cluster Common Area as it deems appropriate in connection

with the development, sales and marketing of all or any portion of the Property;

- (n) the right of the Association, acting by and through its Board of Directors, to grant easements, licenses or other rights of use of the Common Area and Community Facilities to persons or entities that are not Members of the Association for such consideration and on such terms and conditions as the Board of Directors may from time to time consider appropriate or in the best interest of the Association or the Property;
- (o) the right of the Association to be the lessee of any portion or all of the Common Area and the right of the Association to enforce the terms of the lease with respect to such Common Area against such property and the Owners and their guests, lessees and invitees.

**Section 3.2. Limitations.**

- (a) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use any private streets, sidewalks, trails and pathways, if any, within the Common Area for both vehicular and pedestrian ingress and egress to and from such Member's Lot.
- (b) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use the Common Area for necessary, ordinary and reasonable vehicular and pedestrian ingress and egress to and from such Owner's Lot or to suspend any easement over the Common Area for storm water drainage, electrical energy, water, sanitary sewer, natural gas, CATV or similar service, telephone service or similar utilities and services to the Lots.

**Section 3.3. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws and rules and regulations of the Association, such Owner's right of enjoyment to the Common Area and Community Facilities to the members of such Owner's family, such Owner's tenants, social invitees, or contract purchasers who reside within the Property.

**Section 3.4. Community Facilities Membership Rights of the Chichester/Berlage Residents.** Occupants of residential dwelling units within the Chichester/Berlage Property (the "Chichester/Berlage Residents") shall have the right, which shall be appurtenant to and shall pass with title to the Chichester/Berlage Property, to purchase limited purpose memberships in the Association which shall entitle any Chichester/Berlage Resident that purchases such membership to enter into the Common Area and to use the Community Facilities, subject to:

- (a) the availability of such memberships, which shall be determined by the Board of Directors of the Association based upon: (i) the actual or projected usage of the Common Area and Community Facilities by the Owners and their family members, guests, tenants, lessees and

invitees, (ii) the actual or projected capacity of the Common Area and Community Facilities, (iii) the requirements of any applicable governmental authority or agency, and (iv) applicable law;

- (b) the right of the Association to charge the Chichester/Berlage Residents an admission or other fee for the use of the Common Area and Community Facilities, provided that such fee shall be reasonable in amount and comparable to the fees or Assessments imposed on the Owners entitled to use the Common Area and Community Facilities;
- (c) the right of the Association to impose the same rules, regulations, covenants, conditions and restrictions on the use of the Common Area and Community Facilities by the Chichester/Berlage Residents as are imposed on the Owners pursuant to this Declaration, the Bylaws and Articles of Incorporation of the Association, including, without limitation, (i) the right of the Association to suspend the right of any Chichester/Berlage Resident to use the Common Area or Community Facilities for any period during which any admission or other fees payable by such Chichester/Berlage Resident for the use of the Common Area and Community Facilities remain unpaid, (ii) the right of the Association to limit the number of guests of the Chichester/Berlage Residents that may utilize the Common Area and Community Facilities; and (iii) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and Community Facilities; and
- (d) the proviso that the right of the Chichester/Berlage Residents to purchase such membership may be exercised at their election and shall not constitute an obligation or burden on the Chichester/Berlage Property or the Chichester/Berlage Residents.

## **ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS**

**Section 4.1. Membership.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 4.2. Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** With the exception of the Declarant (until expiration of the Class B memberships as provided below), every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner of any Lot which is part of the Property shall be a Class A Member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on

account of such interest. When more than one (1) person or entity holds an interest in any Lot, all such persons and entities shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Any Owner who leases his or her Lot may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Association.

**Class B.** There shall initially be One Thousand Five Hundred Eighteen (1,518) Class B memberships in the Association. This number shall be increased by three (3) memberships for each Lot which is annexed within the jurisdiction of the Association in accordance with Section 2.2 of this Declaration in excess of Five Hundred Six (506) Lots, and shall be decreased by three (3) memberships for each Lot conveyed to a Class A Member (excluding any Lot conveyed to a Participating Builder). The Class B Member shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by specific assignment in writing from the Declarant.

The Class B Member shall be entitled to one (1) vote for each Class B membership. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

- (i) thirty (30) days following the date on which the total authorized and outstanding votes of the Class A Members (excluding any Participating Builder) exceeds the number of Class B memberships; or
- (ii) ten (10) years from the date of recordation of this Declaration; provided, however, that if the Declarant, its successors or assigns, is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten (10)-year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less; or
- (iii) upon the surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.

Upon the lapse or surrender of the Class B memberships as provided for in this Article, the Declarant shall thereafter become a Class A Member of the Association as to each and every Lot in which the Declarant then holds the interest otherwise required for such Class A membership.

## **ARTICLE 5 COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 5.1. Creation of the Lien and Personal Obligation of Assessments.** There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article 5. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments or charges, and (ii) Special Assessments for capital improvements. The Annual Assessments and Special Assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the property against which each such Assessment is made, provided the requirements of the Maryland Contract Lien Act, if applicable, have been fulfilled. Each such Assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to a prior Owner's successors in title unless expressly assumed by such successors.

### **Section 5.2. Purpose of Assessments.**

- (a) The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area and Community Facilities (including, without limitation, the private streets and roadways), the maintenance and repair of the Lawn and Garden Area (in accordance with Section 11.3 of this Declaration), the payment of real estate taxes, assessments and utility services for the Common Area and Community Facilities, management fees, administration expenses, insurance and all other costs and expenses incurred by the Association in the proper conduct of its activities, including, without limitation, reserves for replacements or contingencies, and charges accruing under any cross-easement or reciprocal easement agreements. The Assessments may also be used for the maintenance, repair and replacement of any property or facilities serving or appurtenant to the Property which the Board of Directors of the Association is obligated or elects to maintain whether or not such property or facilities are owned by the Association or are located within the Property (including, without limitation, any property or facilities which the Association is authorized to maintain pursuant to this Declaration) or for any other purpose within the reasonable discretion of the Board of Directors. Neither Annual Assessments nor Special Assessments shall be utilized for the construction of

capital improvements if such capital improvements are otherwise required to be constructed by the Declarant.

- (b) The Assessments levied by the Association may also be used for maintaining and providing reserves for any and all storm water management facilities including, without limitation, ponds, basins, storm drainage pipes, inlets, oil grit separators, drainage areas and underground facilities, if any, whether such storm water management facilities are located within the Property or not, as long as such storm water management facilities are designed to benefit or serve any portion of the Property or are required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency. The Association shall not refuse to accept the conveyance of any such facilities from the Declarant. Such storm water management facilities may benefit property not within the jurisdiction of the Association and the maintenance of such facilities may be set forth in a crosseasement or other agreement, in which event the Association shall maintain the facilities pursuant to such agreement.

**Section 5.3. Maximum Annual Assessment; Deficit Funding; Budgets.** The initial maximum Annual Assessment applicable to the Lots (except as otherwise provided herein with respect to Lots owned by the Declarant or a Participating Builder) shall be the amount set forth in a Supplementary Declaration recorded by the Declarant among the Land Records of Montgomery County, Maryland (the "Maximum Annual Assessment"). Given that the Declarant will be conveying unimproved Lots to Participating Builders who will be subject to Assessments as set forth below, Lots owned by the Declarant shall not be subject to any Assessments; provided, however, that the Declarant shall pay full Assessments for Lots owned by the Declarant upon which a dwelling unit has been completed and occupied by a party other than the Declarant.

Lots owned by Participating Builders shall be subject to an Assessment equal to fifty percent (50%) of the Assessments applicable to Lots owned by the Class A Members (excluding the Participating Builders and, if applicable, the Declarant); provided, however, that Participating Builders shall pay full Assessments for Lots owned by the Participating Builders upon which a dwelling unit has been completed and occupied by a party other than a Participating Builder. Lots formerly owned by the Participating Builders shall be subject to the full amount of such Assessments commencing upon transfer or conveyance of any such Lot from a Participating Builder to any other Owner (other than to another Participating Builder or the Declarant).

Notwithstanding any provision contained in this Declaration to the contrary, the Declarant hereby covenants and agrees for the benefit of the Class A Members to pay any and all expenses incurred by the Association during the "Deficit Period" (as such term is hereinafter defined) in furtherance of the Association's purposes to the extent that the Assessments levied during the Deficit Period are

insufficient to pay such expenses; provided, however, that the Declarant's obligation to fund Association deficits hereunder during any fiscal year of the Association shall not exceed hundred percent (100%) of the Assessments that would have been applicable to Declarant's Lots during such fiscal year had the Declarant not been entitled to a reduced Assessment under this Section. As used herein, the term "Deficit Period" shall mean that period of time commencing on the date of recordation of this Declaration and ending 'on the earlier of (i) the date on which the Class B membership lapses and becomes a nullity in accordance with the provisions of this Declaration; or (ii) the date upon which the Declarant, in writing and recorded among the Land Records of Montgomery County, Maryland, declares that it (from the date specified in such recorded writing) waives its right to pay reduced Assessments on Lots owned by the Declarant in accordance with this Section 5.3. The Declarant may make such declaration with respect to less than all of the Lots owned by the Declarant, to be owned by the Declarant, or to be brought within the jurisdiction of the Association, in which event the Deficit Period shall terminate only with respect to those Lots specifically described. Any deficit required hereunder to be paid by the Declarant shall be payable and collectible in the same manner as any other Assessments required to be paid to the Association.

On January 1 of the year immediately following the first conveyance of a Lot to a Class A Member, and on January 1 of each subsequent year, the Maximum Annual Assessment for that year may increase, without a vote of the Class A membership, by an amount up to ten percent (10%) of the Maximum Annual Assessment for the immediately preceding year. At any time after January 1 of the year immediately following the first conveyance of a Lot to a Class A Member, and as often as is necessary or desirable, the Maximum Annual Assessment may be increased above the amount permitted above by a vote of two-thirds (2/3) of each class of Members, who are voting, in person or by proxy, at a meeting duly called for this purpose.

If the Board of Directors determines that the functions of the Association may be properly funded by an Annual Assessment less than the applicable Maximum Annual Assessment for any fiscal year of the Association, then the Board of Directors may levy such lesser Annual Assessment as it deems appropriate. The levy of an Annual Assessment less than the applicable Maximum Annual Assessment for any fiscal year shall not affect the right of the Board of Directors to levy an Annual Assessment equal to the full amount of the applicable Maximum Annual Assessment for that year or any subsequent year.

The Board of Directors shall make a reasonable effort to prepare a budget at least thirty (30) days before the beginning of each fiscal year. The budget shall include the estimated costs of operating the Association during the coming year and the budget shall also include an amount sufficient to establish and maintain a reserve fund in accordance with a reserve fund budget separately prepared

by the Board of Directors pursuant to Section 5.8. The Board of Directors shall cause a copy of the budget, and the amount of the Assessments to be levied against each Lot for the following year, to be delivered to each Owner at least fourteen (14) days prior to the commencement date of the new Assessments. The budget and the Assessments shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget and the Assessments are disapproved by a vote of at least a majority of both classes (provided that the Class B memberships have not lapsed) of the total Association membership; provided, however, that the affirmative vote of at least one (1) Director from each class shall be required for the Board to approve any budget.

Notwithstanding the foregoing, however, in the event the membership disapproves the budget or the Board of Directors fails for any reason to determine the budget for any fiscal year of the Association, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current fiscal year shall continue for the succeeding fiscal year.

The Declarant may establish a working capital fund for the initial operation of the Association. Such working capital fund may be funded by a one-time Assessment of three (3) times the monthly Assessment for a Lot and shall be payable, if established, by a Participating Builder's grantee upon the earlier of settlement or occupancy of a completed dwelling located on any Lot.

Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any Class A Member may prepay one or more installments of any Annual Assessment levied by the Association, without premium or penalty.

**Section 5.4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment or Special Assessments applicable to that year for such purposes as the Board of Directors may deem appropriate; provided that any such Assessment shall be approved by two-thirds (2/3) of each class of the Members, who are voting, in person or by proxy, at a meeting duly called for this purpose. The Association may also levy a Special Assessment against any Owner to reimburse the Association for costs incurred in bringing any Owner and his or her Lot into compliance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the rules and regulations of the Association. Such a Special Assessment may be levied upon the vote of the Board of Directors after notice to the Owner and an opportunity for a hearing before the Board of Directors. Any provision of the foregoing to the contrary notwithstanding, the affirmative vote of at least one (1) Director from each class shall be required to approve any Special Assessment.

**Section 5.5. Notice and Quorum.** Written notice of any meeting called for the purpose of increasing the Maximum

Annual Assessment above the amount specified in Section 5.3 hereof or for the purpose of establishing a Special Assessment in accordance with Section 5.4 hereof, shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership of the Association (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.6. Variable Rate of Assessment.**

- (a) The Board of Directors may, from time to time, establish by resolution nonuniform rates of assessment for Lots within the Property. Such rates shall be based on actual costs incurred by the Association relating to the operation and maintenance of the Property; provided, however, that all Lots containing the same type of dwelling unit and located within the same Cluster shall be assessed at a uniform rate. For example, and for purposes of illustration only, the Board of Directors may establish variable rates of assessment for Attached Dwelling Lots and SFD Lots to reflect the estimated level of benefit that the Owners of each type of dwelling unit have or will receive from services provided by the Association. It is anticipated that the SFD Lot Owners will have or will receive a lower level of benefit from services provided by the Association than the Attached Dwelling Lot Owners and, accordingly, it is anticipated that the Association will impose a lower rate of assessment for SFD Lots. The imposition of nonuniform rates of assessment shall rest solely at the discretion of the Board of Directors.
- (b) In the event that the actions or activities of any Owner causes or results in increased expenses for the Association, the Board of Directors may assess such increase in expenses against the Owner and such Owner's Lot, after notice to such Owner and an opportunity for a hearing. For example, and for purposes of illustration only, the Board of Directors may assess the amount of any insurance deductible paid by the Association against any Owner and such Owner's Lot if the Association is required to pay such deductible as a result of the misuse or neglect of the Owner. Such Assessment shall be a lien against the Owner's Lot and shall be payable and collectible in the same manner as any other Assessments required to be paid to the Association; provided, however, that neither the Declarant nor any Participating Builder shall be subject to any Assessment based on this Section 5.6(b).

**Section 5.7. Date of Commencement of Assessments; Due Dates.** Unless an earlier commencement date is established by the Board of Directors, the Assessments

provided for herein shall commence as to all Lots simultaneously with the conveyance of the first Lot to a Class A Member. The first Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

**Section 5.8. Reserve Fund Budget and Contribution.**

The Board of Directors shall annually prepare a reserve fund budget which shall take into account the number and nature of the replaceable assets of the Association, the expected life of each asset, and the expected repair or replacement cost of each asset; provided that the affirmative vote of at least one (1) Director from each class shall be required to adopt any reserve fund budget. The Board of Directors shall set the required reserve fund contribution, if any, in an amount sufficient to meet the projected reserve needs of the Association, as shown on the reserve fund budget, with respect both to amount and timing by the imposition of Annual Assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board of Directors and included within the budget and Assessment, as provided in Section 5.3. Such reserve fund contribution shall be payable as part of the Annual Assessment, applicable to all Lots (except as otherwise provided with respect to Lots owned by the Declarant and the Participating Builders in Section 5.3), to the extent such reserve fund will be utilized to replace assets which are determined by the Board of Directors to benefit substantially all Owners. Reserves may also be maintained for operating contingencies and insurance deductibles. A copy of the reserve fund budget shall be distributed to each Owner in the same manner as the operating budget.

**Section 5.9. Assessment of Lots Subject to Subassociation.** With respect to any Annual Assessments or Special Assessments provided for herein which are payable by the Owners of Lots which have been subjected to a Subassociation, the Board of Directors may elect by resolution to collect such Assessments directly from the governing body of the Subassociation, provided that the governing body of such Subassociation elects by resolution to collect such Assessments from its members on behalf of the Association. In such event, payment of the Annual Assessments and Special Assessments provided for herein shall be an obligation of such Subassociation; provided, however, that each Owner shall remain personally liable for all Assessments against such Owner's Lot and each such Lot shall remain subject to the lien for the Assessments established by this Declaration. If the Board of Directors elects to collect Assessments from the Subassociation, then all notices regarding Assessments against such Lots shall be sent to the governing body of the Subassociation; provided, however, that notice of any action to enforce an Owner's personal obligation to pay Assessments or to foreclose the lien against such Owner's Lot shall also be sent to the Owner of the Lot. This Section shall not be deemed to limit or waive, and shall be without prejudice to, any rights,

remedies, or recourses available to the Association for non-payment of Assessments.

## **ARTICLE 6 CLUSTER ASSESSMENTS; COMMENCEMENT OF CLUSTER ASSESSMENTS**

**Section 6.1. Cluster Assessments.** Subject to the limitations applicable to Assessments imposed on Lots owned by the Declarant and the Participating Builders pursuant to Section 5.3 of this Declaration, in addition to the Assessments provided for in Article 5 of this Declaration, and not in lieu thereof, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee simple owner of a Lot within any Cluster, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, a monthly sum (hereinafter sometimes referred to as a Cluster Assessment) equal to one twelfth (1/12) of the Member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, to meet its annual expenses of maintaining the Cluster Common Area appurtenant to such Cluster and performing any other services which primarily benefit the Lots within that Cluster, as determined by the Board of Directors, which may include, but not be limited to, the maintenance, repair and replacement of the private streets, parking areas, sidewalks, trails and pathways, if any, and for performing such other maintenance and repairs upon the Cluster Common Area or other property within or appurtenant to such Cluster as the Association may from time to time elect to perform, including, but not necessarily limited to, the following:

- (a) the cost of maintaining, replacing and repairing the Cluster Common Area or other property within or appurtenant to such Cluster (and any improvements situated thereon), in whole or in part, including, without limitation, snow removal, parking area striping, street lighting, sweeping, washing, landscaping (including, but not limited to, mowing, fertilizing, watering, mulching and repair or replacement of trees, bushes, shrubbery and other plants or plant-like material), specialty signing and the like; and
- (b) the cost of funding a separate reserve to be established by the Association for the non-recurring repair and replacement of the Cluster Common Area or other property within or appurtenant to such Cluster (and any improvements situated thereon), in whole or in part.

The Board of Directors shall determine the amount of the Cluster Assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual Cluster Assessments may be levied and collected on a

quarterly, semi-annual or annual basis rather than on the monthly basis hereinbefore provided for in this Article 6. Any Class A Member so obligated may prepay one or more installments on any annual Cluster Assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of an annual budget for the Cluster Assessments for each Cluster. The budget shall be prepared and distributed to the Members within such Cluster and adopted by the Board of Directors of the Association in accordance with the provisions of Section 5.3 of this Declaration. The Board of Directors of the Association shall make a reasonable effort to fix the amount of the annual Cluster Assessments against each Lot within each Cluster within the Property 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 Cluster Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Lot Owner within such Cluster upon reasonable notice to the Board. Written notice of the annual Cluster Assessments shall thereupon be sent to the Members who own Lots within such Cluster. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual Cluster Assessments hereunder for that or the next period, or the disapproval of the budget by the Members pursuant to this Declaration, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Class A Member so obligated from the obligation to pay the annual Cluster Assessments, or any installment thereof, for that or any subsequent assessment period; but the annual Cluster Assessments fixed for the preceding period shall continue until a new Cluster Assessment is established. No Owner of a Lot within a Cluster may exempt himself from liability for the Cluster Assessments applicable to such Cluster by abandonment of any Lot belonging to him within such Cluster by the abandonment of his right to the use and enjoyment of the property within such Cluster, including, but not limited to, the Cluster Common Area.

**Section 6.2. Cluster Special Assessments.** In addition to the regular annual Cluster Assessments authorized by this Article, the Association may levy, in any assessment year, a Cluster Special Assessment or Cluster Special Assessments, applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a capital improvement located upon, or forming a part of, the Cluster Common Area within such Cluster or other property exclusively benefitting or serving the Lots within such Cluster, or for such other purposes as the Board of Directors may deem appropriate; provided that any such special Cluster Assessment shall be approved by two-thirds (2/3) of Lot Owners within such Cluster, who are voting, in person or by proxy, at a meeting duly called for this purpose.

**Section 6.3. Cluster Notice and Quorum.** Written notice of any meeting called for the purpose of establishing a

Cluster Special Assessment in accordance with Section 6.2 hereof shall be sent to all Members within the Cluster not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership of the Association within such Cluster (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6.4. Reserve or Repairs and Replacements of the Cluster Common Area.** The Association may establish and maintain separate reserve funds for repairs and replacements (in whole or in part) of the Cluster Common Area for each Cluster and of other property within or appurtenant to such Cluster (and any improvements situated thereon) by the allocation and payment periodically to such reserve funds of an amount to be designated from time to time by the Board of Directors to be collected from the Lot Owners within such Cluster.

The reserve for repairs and replacements of the Cluster Common Area within any particular Cluster (and any improvements situated thereon) may be expended only for the purpose of effecting the repairs and replacement (in whole or in part) for such Cluster Common Area or other property within or appurtenant to such Cluster (and any improvements situated thereon) including, without limitation, the repair and replacement of any private streets, parking areas, sidewalks, trails and pathways, if any, constructed thereon, and for operating contingencies of a non-recurring nature relating to such property and any improvements situated thereon. The Association may establish such other reserves for such other purposes associated with any Cluster as the Board of Directors may from time to time consider to be necessary or appropriate.

## **ARTICLE 7 REMEDIES OF ASSOCIATION FOR NON-PAYMENT OF ASSESSMENTS**

**Section 7.1. Non-Payment of Assessments.** Any Assessment levied by the Association which is not paid within ten (10) days after the due date established for such Assessment by the Board of Directors, may, upon resolution of the Board, bear interest from the due date until paid at the rate of interest established by the Board, not to exceed the maximum, if any, rate of interest permitted under the laws of the State of Maryland (or such lesser sum as VA and/or FHA may specify if any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is guaranteed by VA or insured by FHA). The Board of Directors may also impose a reasonable late fee against any

Owner (and such Owner's Lot) for failure to pay any Assessment within ten (10) days after the due date for such Assessment. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment, and/or foreclose on the lien against such Owner's Lot in the manner now or hereafter provided under the Maryland Contract Lien Act, or as may otherwise be provided under applicable law. The Owner personally obligated to pay the delinquent Assessment shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred by the Association in connection with the collection of such Assessment.

**Section 7.2. Assessment Certificate.** The Association shall, upon demand of any Owner, issue such Owner a written certificate signed by an officer of the Association setting forth whether the Assessments applicable to such Owner's Lot have been paid, and if not paid, the amount of the delinquent Assessments. A properly executed certificate of the Association regarding the status of Assessments on a Lot shall be binding on the Association as of the date of issuance. If permitted by applicable law, the Association may charge a reasonable fee for the issuance of each such certificate.

**Section 7.3. Acceleration of Installments.** Upon default in the payment of any Assessment, the entire balance of all unpaid Assessments for the remainder of the fiscal year may, at the Board's discretion, be accelerated and declared due and payable in full, in the same manner as the delinquent portion of such Assessment.

**Section 7.4. Priority of Lien.** The lien for Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust recorded against a Lot. Sale or transfer of any Lot shall not affect the Assessment lien; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. No sale or transfer of a Lot shall exempt such Lot or the Owner thereof from liability for any Assessments thereafter coming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on a Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

## **ARTICLE 8 ARCHITECTURAL CONTROL**

**Section 8.1. Architectural Change Approval.** No building, fence, wall, mailbox, basketball backboard, basketball hoop, swimming pool, swing set, climbing apparatus, children's play equipment, shed, doghouse, pen, or other structure or improvement of any kind shall be commenced, erected or maintained upon the Property, nor

shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes in color, changes or additions to driveways, or walkway surfaces and landscaping modifications) 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 covenant committee composed of three (3) or more representatives appointed by the Board of Directors of the Association ("Covenant Committee"). In the event said Board, or its designated committee, fails to approve or disapprove any design and location within sixty (60) days after the plans and specifications for such design and location have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Approval by the Covenant Committee or by the Board shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed, nor shall such approval be substituted in lieu of applicable governmental approvals and permits or be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions. The Board or the Covenant Committee shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed the costs actually incurred by the Board or the Covenant Committee. Any exterior addition to or change or alteration made without application having first been made and approval obtained as provided above shall be deemed to be in violation of this covenant and the addition, change or alteration may be required to be restored to the original condition at the Owner's cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits therefor having first been obtained by the Owner from the applicable public authorities or agencies. In addition, no changes, alterations or additions may be constructed which are not in compliance with local zoning ordinances, governmental guidelines or restrictions. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article 8 shall not be applicable to the Declarant or any part of the Property owned by the Declarant. The provisions of Sections 8.1 through 8.6 of this Declaration shall not be applicable with respect to any initial improvements constructed by a Participating Builder, provided that such Participating Builder has otherwise complied with Section 8.6 of this Declaration.

**Section 8.2. Initiation and Completion of Approved Changes.** Construction or alterations in accordance with plans and specifications approved by the Board of Directors or the Covenant Committee pursuant to the provisions of this Article shall be commenced within six (6) months of such approval and completed within twelve (12) months of such approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and

specifications shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Board of Directors or the Covenant Committee without the prior consent in writing of the Board of Directors or the Covenant Committee.

Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Board of Directors or the Covenant 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 8.3. Certificate of Compliance.** Upon completion of any construction or alterations or other improvements or structures in accordance with plans and specifications approved by the Board of Directors or the Covenant Committee in accordance with the provisions of this Article, the Board or the Covenant Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Board or the Covenant Committee in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

**Section 8.4. Covenant Committee Rules and Regulations; Appeal of Covenant Committee Decision.** The Covenant Committee 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 such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, 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 Covenant Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Covenant Committee may appeal the decision of the Covenant Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors. A majority of the Board of Directors shall be required to reverse the decision of the Covenant Committee.

**Section 8.5. Exterior Appearance.** Except as specifically provided herein to the contrary, and without limiting the generality of this Article 8, the following shall apply to every Lot and dwelling unit within the Property, unless otherwise expressly provided by the Covenant Committee or the Board of Directors:

- (a) storm windows installed by any Owner or resident, provided such installation is approved by the Board of Directors or the Covenant Committee, shall be painted the same color as the window trim. No bars, awnings or other additions shall be installed over the windows;

- (b) the installation of any storm door(s) must receive prior approval of the Board of Directors or the Covenant Committee, including, but not limited to, the style, color and material of said storm door(s). Storm doors must be of the same design as the dwelling unit, must be either full or three-quarters view clear glass (without bars or other designs or additions which obstruct the view of the primary door) and must match the front door or the trim around the front door;
- (c) the color of the exterior of all structures or dwellings on Lots including, without limitation, garage doors, all sidings, gutters, downspouts, brick, trim, exterior wood decks, fences and gates, if any, shall not be changed or altered without the approval of the Board of Directors or the Covenant Committee;
- (d) the roof of any dwelling shall be repaired or replaced with materials, substantially identical in construction, shingle type, texture and color as the material utilized in the original construction of the dwelling; and
- (e) mailboxes shall be repaired or replaced with materials substantially identical in construction, design and colors as the materials utilized in the original construction of the dwelling.

Notwithstanding anything to the contrary contained in this Section 8.5, the provisions of this Section shall not apply to any Lot or dwelling owned by the Declarant.

**Section 8.6. New Construction.** No construction of the initial improvements on a Lot by a Participating Builder may be commenced until the plans and specifications for such improvements have been approved, in writing, by the Declarant. The initial improvements constructed within each Lot, by a Participating Builder, shall be in accordance with such design guidelines as may be adopted by the Declarant from time to time. The Declarant shall have sixty (60) days from its actual receipt of all the material which it may reasonably request from the Participating Builder in which to approve or disapprove such plans and specifications. Failure to respond within this time frame shall be deemed automatic approval of the plans and specifications by the Declarant. The approval of the Declarant shall in no way be substituted in lieu of applicable governmental approvals and permits and no construction may commence until all such approvals and permits have been obtained. The Declarant's approval shall not be construed as a representation or warranty of any type regarding the design or construction of any improvement built by any Participating Builder. The Declarant may disapprove any plans and specifications (or any elements or features thereof) for any reason, in its reasonable discretion, and approval of any plans and specifications (or any elements or features thereof) does not constitute a waiver of the right to disapprove the same or similar plans and specifications (or any elements or features thereof) subsequently submitted for any purpose. Any provision of this Declaration to the contrary notwithstanding, the approval of the Declarant under this Section shall be the only approval required pursuant to this

Declaration with respect to the construction of the initial improvements on a Lot by a Participating Builder.

## ARTICLE 9 USE RESTRICTIONS

In addition to all other covenants contained herein and in addition to other use restrictions adopted by Equity Resolutions, the use of the Property and each Lot therein is subject to the following:

**Section 9.1. Permitted Uses.** The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a dwelling, except that a home office may be maintained in a dwelling, provided that (i) such use is limited to the person actually residing in the dwelling; (ii) no more than one (1) employee or staff member, other than a person actually residing in the dwelling, are utilized; (iii) such use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation and (iv) the person utilizing such home office maintains a place of business other than the dwelling. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant or the Participating Builders from the use of any Lot or dwelling, or improvement thereon, for promotional or display purposes, or as “model homes”, a sales and/or construction office, or the like, nor shall it be construed to in any way limit the ability of an Owner or resident to employ maids, nannies or other similar domestic help.

**Section 9.2. Licensed Family Day Care within the SFD Lot Cluster.** The use of any dwelling unit within the SFD Lot Cluster as a “family day care home”, as defined in §11B-111.1 of the Maryland Homeowners Association Act, as amended (the “Act”), may be prohibited pursuant to an Equity Resolution adopted by the Board of Directors in accordance with the Bylaws and approved by the vote of a majority of the SFD Lot Owners at any regular or special meeting of such Owners duly called for this purpose, subject to the provisions of this Section. If adopted, such prohibition may be eliminated and licensed family day care homes may subsequently be approved by the vote of a majority of the SFD Lot Owners at any regular or special meeting of such Owners duly called for this purpose. Unless prohibited by the Board of Directors as discussed above, or in the event that licensed family day care homes are approved by the SFD Lot Owners pursuant to this Section, licensed family day care homes shall be permitted within the SFD Lot Cluster, subject to the following:

- (a) The percentage of licensed family day care homes permitted within the SFD Lot Cluster shall not be more than the seven and one-half percent (7.5%) of the total number of dwellings units within the SFD Lot Cluster.
- (b) Each “day care provider”, as defined in §11B-111.1 of the Act, operating a licensed family day care home

within the SFD Lot Cluster shall pay, on a pro-rata basis (based on the total number of licensed family day care homes operating within the SFD Lot Cluster) any increase in insurance costs incurred by the Association that is solely and directly attributable to the operation of licensed family day care homes within the SFD Lot Cluster.

- (c) The Association may impose a reasonable fee not to exceed Fifty Dollars (\$50.00) per year on each licensed family day care home for the use of the Common Area and/or Cluster Common Area.
- (d) Before any dwelling unit within the SFD Lot Cluster may be operated as a licensed family day care home the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the licensed family day care home.
- (e) Each day care provider operating a licensed family day care home within the SFD Lot Cluster shall obtain the liability insurance described under Article 48A, §481D of the Annotated Code of Maryland (1991), as amended, in at least the minimum amount described d under that statute, and shall not operate unless such minimum liability insurance is in effect at all times.
- (f) The Board of Directors reserves the right to restrict the use of facilities and amenities within the Property (including, without limitation, the swimming pool) or to charge user fees for the use of such facilities and amenities.

**Section 9.3. Licensed Family Day Care within the Attached Dwelling Lot Cluster.** The use of any dwelling unit within the Attached Dwelling Lot Cluster as a “family day care home” as defined in § 11B-111.1 of the Maryland Homeowners Association Act, as amended (the “Act”) is prohibited. The foregoing prohibition may be eliminated and licensed family day care homes may be approved by the vote of a majority of the Attached Dwelling Lot Owners at any regular or special meeting of such Owners duly called for this purpose. In the event that licensed family day care homes are approved by the Attached Dwelling Lot Owners pursuant to this Section, licensed family day care homes shall be permitted within the Attached Dwelling Lot Cluster, subject to the following:

- (a) The percentage of licensed family day care homes permitted within the Attached Dwelling Lot Cluster shall not be more than the seven and one-half percent (7.5%) of the total number of dwellings units within the Attached Dwelling Lot Cluster.
- (b) Each “day care provider”, as defined in §11B-111.1 of the Act, operating a licensed family day care home within the Attached Dwelling Lot Cluster shall pay, on a prorata basis (based on the total number of licensed family day care homes operating within the Attached Dwelling Lot Cluster) any increase in insurance costs incurred by the Association that is solely and directly

attributable to the operation of licensed family day care homes within the Attached Dwelling Lot Cluster.

- (c) The Association may impose a reasonable fee not to exceed Fifty Dollars (\$50.00) per year on each licensed family day care home for the use of the Common Area and/or Cluster Common Area.
- (d) Before any dwelling unit may be operated as a licensed family day care home the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the licensed family day care home.
- (e) Each day care provider operating a licensed family day care home within the Attached Dwelling Lot Cluster shall obtain the liability insurance described under Article 48A, §481D of the Annotated Code of Maryland (1991), as amended, in at least the minimum amount described under that statute, and shall not operate unless such minimum liability insurance is in effect at all times.
- (f) The Board of Directors reserves the right to restrict the use of facilities and amenities within the Property (including, without limitation, the swimming pool) or to charge user fees for the use of such facilities and amenities.

**Section 9.4. Prohibited Uses and Nuisances.** Except for the activities of the Declarant and the Participating Builders during the construction and development of the Property, or 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 Area or Cluster Common Area:

- (a) no noxious or offensive trade or activity shall be carried out upon the am Lot or within any dwelling or upon the Common Area or Cluster Common Area or any other pan of the Property, 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, amplifier 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 upon the exterior of any other improvements constructed upon any Lot.
- (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, or other part of the Property, except that this shall not prohibit the keeping of a reasonable number of dogs, cats, caged birds or other small domestic animals as pets provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; (iii)

such pets are maintained in strict conformance to all laws and ordinances; (iv) no pet shall be kept unattended outside for an extended period of time; and (v) no Member shall keep any "wolf dogs" (i.e., the dog resulting from the mating of dogs and any member of the wolf family) or other similar dogs or animals which may be offense or constitute a nuisance. The Board of Directors or the Covenant Committee 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 Area 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 or other part of the Property.
- (d) except for parking within garages, and except as herein elsewhere provided, no junk vehicle, commercial vehicle (including vans used for commercial use and vehicles displaying commercial signage), truck (as defined by the Maryland Department of Motor Vehicles and/or by common usage and practice except for light pick-up trucks of three-quarter (3/4) ton capacity or less used for non-commercial purposes), unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, camp truck, house trailer, recreation vehicle, boat or other similar vehicles, machinery or equipment of any kind or character including, but not limited to, farm tractors and similar vehicular farm equipment (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Area or Cluster Common Area) shall be kept upon the Property or upon the public or private streets adjacent to the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Board of Directors or the Covenant Committee may, in their sole discretion, provide for and maintain a suitable area designated for the parking of vehicles that would otherwise be prohibited by this Section, and the Board of Directors or the Covenant Committee may establish a reasonable charge for the use of such area which shall be collectible from the Owners that use such area in the

same manner as other Assessments as provided in this Declaration.

- (e) trash and garbage containers shall not be permitted to remain in public view except on days of trash collection and the evening prior to such days of trash collection, and shall be stored inside the garage or within an approved storage shed within each Lot at all other times. No incinerator shall be kept or maintained upon any Lot. Placing debris or storage of materials within the Common Area (other than by the Declarant) is prohibited. Firewood shall be stored in the rear yard of each Lot, shall be adequately screened and stacked above ground in a storage rack (subject to the approval of the Covenant Committee) and shall be maintained in a neat and attractive manner.
- (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. The provisions of this subsection shall not apply to the Declarant or the Participating Builders and, further, the provisions hereof 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, the Declarant, the Participating Builders or any other person for any purpose.
- (g) no tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the Property.
- (h) no decorative lawn ornament, no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, or other building shall be erected, used or maintained on any Lot at any time. A storage shed may be erected, constructed or placed on a Lot provided that such shed (i) is approved, in writing, with respect to design (including, but not limited to color and materials), location and construction by the Covenant Committee; (ii) is not constructed from metal; (iii) if constructed, such shed must conform to the architectural style and materials of the dwelling unit; and (iv) any shed must be properly maintained at all times by the Owner of the Lot upon which it is located. The Board may, through the adoption of an Equity Resolution, adopt additional covenants and restrictions regarding storage sheds.
- (i) no fires, grilling or barbecuing shall be permitted in the front yard of any Lot.
- (j) except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such promotional sign or signs including, without limitation, advertisement signs as may be maintained by the Declarant, the Participating Builders or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or dwelling; provided, however that one (1) temporary real estate sign may be erected upon any Lot or attached to any dwelling unit placed upon the market for sale or rent. The Board may, through the adoption of an Equity Resolution, adopt additional covenants and restrictions regarding signage. The foregoing restrictions shall not be applicable to any signage that is otherwise authorized or permitted within the Property pursuant to the "Signage Easements" and the "Chichester/Berlage Agreement" (as such terms are defined below).
- (k) no water pipe, sewer pipe, gas pipe, drainage pipe, cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.
- (1) no play equipment, including, without limitation, basketball backboards, basketball hoops, swing sets, climbing apparatus and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling without the prior written approval of the Covenant Committee pursuant to Article 8 hereof. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.
- (m) 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 the direction or flow of any drainage channels.
- (n) no outside television aerial or radio antenna, or other aerial or antenna for either reception or transmission, including, but not limited to, satellite dish antenna, shall be maintained upon the Property without the prior written approval of the Covenant Committee pursuant to Article 8 hereof; provided, however, that any satellite dish antenna in excess of twenty-four inches (24") in diameter shall be prohibited. Such aeriels or antennae may be erected and maintained within the dwellings located upon the Property.
- (o) vegetable gardens shall be maintained only within the rear yard of any Lot, and shall be maintained in a neat and attractive manner. The location and placement of vegetable gardens, including fencing and screening shall be subject to the prior approval of the Covenant Committee.

- (p) lawn furniture shall be used and maintained in rear yards or decks only and shall be maintained in a neat and attractive manner.
- (q) no equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard of any Lot.
- (r) no Member shall make any private, exclusive or proprietary use of any of the Common Area or Cluster Common Area and no Member shall engage or direct any employee of the Association on any private business of the Member during the hours such employee is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee of the Association.
- (s) any fence constructed upon the Property shall not extend forward of the rear building line of the dwelling on the Lot upon which any such fence is erected.
- (i) No fence within any Lot of the Attached Dwelling Lot Cluster shall be more than six feet (6') in height. Chainlink and other wire fencing are specifically prohibited. Except with the prior written approval of the Covenant Committee pursuant to Article 8, all fences shall be brick or board on board.
- (ii) No fence within any Lot of the SFD Lot Cluster shall be more than six feet (6') in height. Three (3) rail vinyl split rail, vinyl estate board and board on board fences are permitted (subject to the prior approval of the Covenant Committee), and chainlink and other wire fencing are specifically prohibited; provided, however, that thin vinyl wire fencing used in conjunction with a split rail or similar fencing for the purpose of enclosing pets is permitted if installed on the installing Lot Owner's side of the fence and if prior written approval is obtained from the Covenant Committee pursuant to Article 8. The foregoing restrictions shall not be applicable to fencing installed in conformance with applicable law and/or regulations for purposes of enclosing a swimming pool.
- (t) bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot.
- (u) children's play and similar equipment shall not be allowed to remain overnight within any front yard of any Lot or within the Common Area or Cluster Common Area.
- (v) children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted in the rear yard of a Lot only; provided the prior written approval of the Covenant Committee is obtained and that such equipment, playhouse(s) and/or apparatus is properly maintained at all times.
- (w) no exterior lighting, emanating from a Lot, shall be directed outside the boundaries of the Lot nor shall such lighting materially affect the enjoyment by residents of neighboring Lots.
- (x) no drying or airing of any clothing or bedding shall be permitted outdoors within any Lot, and clothes hanging devices such as lines, reels, poles and frames shall not be permitted outdoors within any Lot.
- (y) no garage or outbuilding properly erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. No garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without the prior written approval of the Covenant Committee pursuant to Article 8 of this Declaration. Notwithstanding the foregoing, any SFD Lot owned by the Declarant or a Participating Builder upon which is situated a dwelling unit in which the garage has been modified to serve as living area shall be exempt from this paragraph and any grantee of the Declarant or a Participating Builder, and their respective successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such SFD Lot. In no event shall any garage constructed on an Attached Dwelling Lot be altered, modified, or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles nor shall any outbuilding properly erected on an Attached Dwelling Lot at any time be used for human habitation, temporarily or permanently.
- (z) all swimming pools within the SFD Lot Cluster shall be installed in-ground Swimming pools may not be installed within the Attached Dwelling Lot Cluster.

#### **Section 9.5. Leasing and Transfers**

- (a) No portion of a dwelling unit, other than an entire dwelling unit, may be leased or rented unless the prior written approval of the Board of Directors or the Covenant Committee is obtained. All leases shall contain provisions advising the tenant of his/her obligation to comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association, and provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Bylaws or rules and regulations of the Association, or of any other document, agreement or instrument governing the dwelling units and/or the Property. The Owner(s) of a leased Lot shall notify the Association in writing of the Owner's current address and shall provide the Association with a copy of the lease. The Owner(s) of a leased or rented dwelling unit shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission,

including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit may be rented or leased shall be six (6) months. In no event may transient tenants be accommodated in any dwelling unit, nor shall any dwelling unit be utilized for hotel purposes or as a group home.

- (b) Prior to the sale, conveyance or transfer of any Lot or dwelling unit to any person, the Owner shall notify the Board of Directors in writing of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made and provide to it such other information as the Board of Directors may reasonably require. Failure to comply with the provisions of this Section shall not void, prohibit or otherwise invalidate the sale, conveyance or transfer of any Lot or dwelling unit nor may it have any affect upon any mortgage or deed of trust thereon.

**Section 9.6. Parking.**

- (a) The Board of Directors shall be entitled to establish supplemental rules concerning parking on any portion of the Common Area, Cluster Common Area, Community Facilities and Lots, including, without limitation, providing for the involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules.
- (b) The Declarant, its successors and assigns, and its nominee or nominees and any agents, servants and/or employees thereof shall be exempt from the provisions of this Section.

**Section 9.7. House Rules. Etc.** There shall be no violation of any reasonable rules for the use of the Common Area, Cluster Common Area and Community Facilities or "house rules" or other community rules and regulations not inconsistent 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 by the Board in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules and regulations.

**Section 9.8. Exemptions.** None of the foregoing restrictions shall be applicable to (i) improvements constructed by or to the activities of the Declarant and the Participating Builders, and their respective officers, employees, agents and assigns, in their development, marketing, leasing and sales activities within the Property, or (ii) to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Area, Cluster Common Area and Community Facilities.

## ARTICLE 10 DECLARATION OF EASEMENTS AND RIGHTS

**Section 10.1. Declaration of Easements and Rights.**

The following easements and rights are hereby declared or reserved:

- (a) For a period of ten (10) years from the recordation of this Declaration, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Area and Cluster Common Area.
- (b) Each Lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots, Common Area and Cluster Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.
- (c) There is hereby reserved unto the Declarant (and its successors and assigns to whom such easement has been specifically assigned in writing), for the benefit of the real property shown on the Development Plan, and for the benefit of the Declarant and its agents, a blanket easement upon, across and under the Property (provided such easement does not encroach upon any building within the Property or unreasonably interfere with the use and enjoyment of the Property), for vehicular and pedestrian ingress and egress, curb cuts, slope, or grading easements, as well as for the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines and other equipment on the Property, to affix and maintain electrical or telephone

wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Property, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property. There is further reserved unto the Declarant the right to erect entry features, promotional and other similar items within the Property provided they do not unreasonably interfere with the use, operation and enjoyment of the Property. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities, utility companies and the Association, over any part of the Property in furtherance of the blanket easement created by this subsection. Further, without limiting the generality of the foregoing, the Declarant reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property; provided, however, that if requested by the Declarant, any party having an interest in the Property shall promptly join in and execute such confirmatory easements and other agreements.

- (d) The Property shall be subject to a non-exclusive, perpetual easement and right of passage, for the benefit of the Association membership, for ordinary and reasonable pedestrian ingress and egress over, across and upon any sidewalk, trail or pathway (or the replacement thereof) constructed within the Property by the Declarant or any Participating Builder that may reasonably be deemed to have been constructed or intended for pedestrian use.
- (e) An easement is hereby reserved to Declarant and its agents to enter the Common Area, Cluster Common Area and Community Facilities during the period of construction and sale on the Property, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of residences, including, without limitation, a business office, sales/leasing office, storage area, construction yards, advertisement and other signs, displays and model units.
- (f) Declarant also reserves the right to enter into the Property for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property or the improvements thereon. There is further reserved unto the Declarant and its agents a non-exclusive easement over, across and through all of the Common Area and Cluster Common Area for the purpose of access, the storage of building supplies and materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction, rehabilitation and repair of the Property.
- (g) For a period of ten (10) years from the date of conveyance of the first Lot, the Declarant reserves a blanket easement and right on, over and under the Property to establish, maintain, change and correct drainage of surface or subsurface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this subsection.
- (h) The rights and duties with respect to sanitary sewer and water, storm drains, downspouts, yard drains, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:
- (i) Whenever water, sanitary sewer and water, storm drains, downspouts, yard drains, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, and the Association shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Property in which said installations lie, to repair, replace and generally maintain said installations.
- (ii) The right granted in subsection (i) above shall be only to the extent necessary to entitle the property of the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.
- (iii) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, or its designated committee, who shall decide the dispute, and the decision of the Board, or its designated

committee, shall be final and conclusive as to the parties.

- (iv) Each Lot is hereby subject to an easement upon and across such Lot for the drainage and discharge of water from any storm drain or downspout situated on another Lot and the Owner of such Lot may not alter or obstruct such drainage or flow of water to the detriment of any Lot, the Common Area or the Cluster Common Area.
- (i) With respect to any step, patio, deck, downspout or yard drain or other similar structure that may benefit any Lot and is constructed by the Declarant or a Participating Builder and which may encroach upon any portion of the Common Area or Cluster Common Area, there is hereby reserved for the benefit of the Lot that such step, patio, deck, downspout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Area or Cluster Common Area, but only to the extent that the Declarant's or a Participating Builder's original construction thereof encroaches within the Common Area or Cluster Common Area. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby. Notwithstanding the foregoing, in the event that any Lot is enclosed, in whole or in part, by any wooden, brick, stone or other similar fence and/or wall intentionally constructed by the Declarant or a Participating Builder with the knowledge that it would enclose any particular Lot, the Owner of such Lot shall not be entitled to the benefit of the foregoing easement.
- (j) There is hereby created for the benefit of each Lot, which is enclosed, in whole or in part, by any wooden, brick, stone or other similar fence and/or wall constructed by the Declarant or a Participating Builder, a perpetual easement to use any portion of the Common Area or Cluster Common Area that may be located between such fence and/or wall and the record platted lot line for such benefitted Lot; and the obligation to maintain such portion of the Common Area or Cluster Common Area shall be that of the Owner of the benefitted Lot and the obligation to maintain the wooden, brick, stone, or other similar fencing located within the Common Area or Cluster Common Area, which encloses the benefitted Lot, shall be that of the Owner of the benefitted Lot. The Owner of any Lot benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of our resulting from the use, enjoyment and benefit of the easement rights provided for herein.
- (k) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Property. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Property, then the Owner of such Lot shall promptly, at his expense, repair any damage to such utilities caused by the Owner, or such Owner's tenants, lessees, agents, guests, invitees, licensees or family members.
- (1) The Declarant reserves the right to modify or alter the size, number, type and location of the Common Area, Cluster Common Area, Community Facilities and Lots, as well as the improvements thereon, as it deems necessary or desirable in conjunction with the development of the Property. Without limiting the generality of the foregoing, the Declarant reserves the right to resubdivide all or a portion of the Property, to convey Common Area and Cluster Common Area, to modify the site plans, to construct improvements on the Common Area and Cluster Common Area, and to take whatever other action with respect to the Common Area, Cluster Common Area and the Lots as the Declarant may deem necessary or desirable.
- (m) Each Attached Dwelling Lot shall be subject to a non-exclusive easement and right of passage for the benefit of any adjacent Attached Dwelling Lot (the "Benefitted Lot") to the extent reasonably necessary to permit the Owner of the Benefitted Lot (the "Benefitted Owner") access to the exterior of the dwelling unit situated upon such Benefitted Lot for purposes of inspecting, maintaining, repairing, replacing and otherwise caring for the exterior of the Benefitted Owner's dwelling unit; provided, however, that the Benefitted Owner shall take reasonable steps to minimize any damage to the adjacent Attached Dwelling Lot or Owner as a result of the exercise of this easement, and that the Benefitted Owner shall restore as nearly as possible the adjacent Attached Dwelling Lot and dwelling unit to its original condition if there is any damage or alteration to such Attached Dwelling Lot or dwelling unit as a result of the exercise of this easement. The Benefitted Owner's exercise of its rights hereunder shall be at reasonable times and shall not interfere with the use and enjoyment of the adjacent Attached Dwelling Lot by the Owner thereof. The Benefitted Owner shall indemnify and save harmless the adjacent Owner from any loss or damage that such Owner may sustain, including reasonable attorneys' fees, as a result of the entry by the Benefitted Owner on the adjacent Owner's Attached Dwelling Lot.
- (n) The Association shall have an easement to enter any portion of the Property for the performance of its duties hereunder including, without limitation, fenced, or other similar areas of the Property.
- (o) The Association, its agents and employees, shall have an irrevocable right and an easement to enter the Lots for the purposes of exercising the rights and fulfilling the obligations established by this Declaration and any

Supplementary Declarations recorded hereafter. The interior of any dwelling situated on a Lot may not be entered by the Association or its agents or employees except in the case of an emergency to protect the Common Area or Cluster Common Area, other Lots or persons from injury or damage.

- (p) The Association is hereby granted a non-exclusive easement and right of passage on, through, over, under and across the real property shown on the Development Plan to maintain, repair and replace any trails and pathways that are constructed or installed by the Declarant or a Participating Builder and that are situated within or appurtenant to and serving the Property.
- (q) The Association is hereby granted a non-exclusive easement and right of passage on, through, over and across the Lots, the Common Area and the Cluster Common Area to maintain, repair and replace any storm water management area or facilities situated within the Lots, Common Area or Cluster Common Area including, without limitation, ponds, basins, storm drainage pipes, inlets, oil grit separators, drainage areas and underground facilities, if any.
- (r) The Association is hereby granted a non-exclusive easement and right of passage on, through, over, under and across the real property shown on the Development Plan to maintain, repair and replace any entrance features and improvements (and the property upon which such entrance features and improvements are located) that are constructed or installed by the Declarant or a Participating Builder and that are situated within or appurtenant to and serving the Property.
- (s) Portions of the Property may be subject to conservation easements establishing one or more natural conservation areas within the Property for purposes of restricting clearing, grading and other disturbances within such areas, subject to the terms of such easements and the regulations of any applicable governmental authority or agency. Such natural conservation areas may include, without limitation, tree save areas, wetlands and associated buffers, as designated on the Development Plan and/or on the subdivision plats or any other plan for the Property. Owners of Lots shall not dump refuse, cut trees, clear brush, cut grass or otherwise disturb these areas in contravention of any such conservation easements.
- (t) Portions of the Property may be subject to easements establishing one or more public hiker/biker or horse trails over the Common Area or Cluster Common Area. It is presently anticipated that the Declarant or a Participating Builder will construct a temporary wall, fence, barrier or other structure over certain portions of such trails to block access to certain property adjoining the Property. The Association shall remove any such wall, fence, barrier or other structure in accordance with the requirements of the Potomac Electric Power Company and any easement or agreement establishing

such public hiker/biker or horse trails, or at the direction of any governmental authority or agency.

**Section 10.2. Chichester/Berlage Property Easements.**

Portions of the Property are subject to “Signage Easements” and “Utilities Hook-Up Easements” benefiting the Chichester/Berlage Owner, as described in that certain Chichester/Berlage Easement and Development Agreement dated as of the 17th day of March, 1995, and recorded among the Land Records of Montgomery County, Maryland in Liber 13511, at folio 86 et seq. (the “Chichester/ Berlage Agreement”). The Signage Easements generally grant the Chichester/Berlage Owner the right to install, maintain, relocate, and remove signs within the Property. The Utilities Hook-Up Easements generally grant the Chichester/Berlage Owner the right to enter the Property for purposes of (i) clearing, grading, excavating, installing, constructing, maintaining, repairing, and replacing water lines, sanitary sewer lines, and storm water management lines, drains, and facilities related thereto to service the Chichester/Berlage Property, (ii) connecting such utilities to existing utility lines and facilities, (iii) constructing, connecting recreation trails for the purpose of hiking/walking/running, bicycling (or similar non-motorized recreational uses, such as roller blading or skating), and horseback riding, and (iv) a right of access (ingress and egress) for all such uses. In the event of any conflict between this Declaration and the Chichester/Berlage Agreement with respect to the foregoing easements, the Chichester/Berlage Agreement shall control. The Association shall execute and deliver such further assurances of the easements and rights contained in this Section 10.2 as may be reasonably requested by the Chichester/Berlage Owner.

**Section 10.3. Association Easements.** The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses and similar interests over any part of the Common Area and Cluster Common Area for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association.

## ARTICLE 11 MAINTENANCE

**Section 11.1. Owners’ Maintenance.** Except as otherwise specifically provided in this Declaration, each Owner shall keep each Lot owned by such Owner, and all improvements therein or thereon, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management and the Community-Wide Standard, including, without limitation, proper maintenance of lawns and landscaping. In the event an Owner of any Lot in the Property shall fail to maintain the Lot and the improvements situated thereon, the Association or its agent shall have the right to enter upon said Lot to repair, maintain and restore the Lot and any improvements erected thereon. The Association shall also have the right to enter the Lots to correct drainage. Whenever entry is not required in an emergency situation,

the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration, plus an Assessment of fifteen percent (15%) of such costs to cover the Association's administrative expenses, shall be collectible from the Owner of such Lot in the same manner as Assessments as provided in this Declaration.

**Section 11.2. Association Maintenance.**

- (a) The Association shall maintain, repair and replace the Common Area, Cluster Common Area and Community Facilities and shall keep the Common Area, Cluster Common Area and Community Facilities in good order at all times. This obligation shall include, without limitation, the following: (i) maintenance, repair and, as necessary, replacement of any private streets, parking areas, trails and pathways, if any, within the Common Area and Cluster Common Area, (ii) maintenance, repair and, as necessary, replacement of any sidewalks that are constructed or installed by the Declarant or a Participating Builder within the Common Area, Cluster Common Area and/or Lots, provided that the Association shall not be obligated to maintain, repair or replace any sidewalk leader within a Lot or Common Area that may reasonably be deemed to serve or benefit only that Lot. The Association shall maintain, repair and replace any rights-of-way, entry strips, entrance features or improvements (and the property upon which such entrance features and improvements are located) that are constructed by the Declarant or a Participating Builder and that are situated within or appurtenant to and serving the Property including, without limitation, any landscaping and other flora situated thereon. The Association shall also maintain, repair and replace any real and personal property, facilities and equipment for which the Association is responsible pursuant to any lease, easement or agreement, or the direction of any governmental authority or agency. The expenses of all such maintenance, repairs and replacement shall be a Common Expense of the Association, including, but not limited to, any reserves as may be established by the Board. The Association shall also maintain any portion of any Lot that it is obligated to maintain pursuant to this Declaration, or any easement or other agreement.
- (b) The Association shall be responsible for the maintenance, repair and replacement of any storm water management area or facilities situated within the Common Area or Cluster Common Area, including, without limitation, ponds, basins, storm drainage pipes, inlets, oil grit separators, drainage areas and underground facilities, if any. The Association shall also be responsible for the maintenance, repair and replacement of any storm water management area or facilities which serve and/or benefit the Property whether or not located within the Common Area or Cluster Common Area if the Association is responsible therefor pursuant to any easement, agreement or the direction of any governmental authority or agency. Such

responsibility may be in the form of contributing the Association's share of the maintenance costs of any storm water management area, facility or equipment pursuant to an easement or agreement which shall be a Common Expense of the Association. The Board of Directors may enter into any such easements and/or other agreements as the Board may deem necessary or desirable for purposes of allocating and/or sharing the costs associated with the maintenance of any storm water management areas, facilities and/or equipment which serve and/or benefit the Property. The Association shall not refuse to accept the conveyance of any such storm water management area, facilities or equipment from the Declarant.

**Section 11.3. Lawn and Garden Area Maintenance.**

The Association may elect, pursuant to a duly adopted Equity Resolution, to maintain and keep in good order the Lawn and Garden Area located within any Lot, group of Lots or all of the Lots, as provided below. The Board of Directors may elect, in its sole discretion, to assume such maintenance responsibilities with respect to all or a portion of the Lawn and Garden Area as the Board may deem necessary or appropriate, including, without limitation, responsibility for mowing, fertilizing, trimming and/or otherwise maintaining all or any portion of the grass, shrubs, bushes, trees, and other planted materials, and any replacements thereof, as may be located within the Lawn and Garden Area. Maintenance of the Lawn and Garden Area by the Association shall be with such frequency and in conformity with such standards as may be established by the Board of Directors from time to time.

Any Owner may request that the Association refrain from performing all or a part of the Lawn and Garden Area maintenance described above. Such a request must be made to the Association at least thirty (30) days prior to the date the Owner desires the Association to refrain from such maintenance. The Association shall not unreasonably withhold approval of such request, provided the Owner has demonstrated to the satisfaction of the Association his or her intention to maintain the Lawn and Garden Area, as applicable, in a manner acceptable to the Association. In the event an Owner elects to maintain the Lawn and Garden Area situated on his or her Lot pursuant to the terms hereof, such Owner shall not be entitled to any reimbursement from the Association or reduction in the Assessments levied against such Lot.

**Section 11.4. Maintenance of Chichester/Berlage Storm Water Management Facilities.** Portions of the Property are subject to "Storm Water Management Easements" benefitting the Chichester/Berlage Owner, as described in that certain Barnsley Easement and Development Agreement dated as of the 17th day of March, 1995, and recorded among the Land Records of Montgomery County, Maryland in Liber 13511, at folio 15, et seq. (the "Barnsley Agreement"). The Storm Water Management Easements generally require the Declarant, its successors and assigns, to maintain, repair and restore, in

good order or condition, all improvements within that portion of the Chichester/Berlage Property upon which the storm water management facilities will be constructed, at the sole expense of the Declarant, its successors and assigns, until acceptance by a governmental agency or authority, or a third party, of responsibility for such maintenance, repair and restoration obligations. The Barnsley Agreement provides that the following entities shall maintain, repair and restore all storm water management facilities at such entities' sole expense and liability:

- (a) The Declarant, its successors and assigns, shall be responsible for such maintenance, repair and restoration from the effective date of the Barnsley Agreement until the occurrence of the event described in Section 11.4(b) below.
- (b) Beginning on the date that all Class B memberships shall have lapsed or been surrendered by the Declarant pursuant to this Declaration, the Association shall be responsible for such maintenance, repair and restoration until the occurrence of the event described in Section 11.4(c) below.
- (c) As used in this Section, the defined term "Chichester/Berlage HOA" shall mean a homeowners association formed pursuant to the Maryland Homeowners Association Act and the members of which own residential dwellings constructed on the Chichester/Berlage Property. A Chichester/Berlage HOA does not exist as of the effective date of this Declaration; however, such an entity may be formed in the future. Beginning on the date that the declaration of covenants, conditions and restrictions for the Chichester/Berlage HOA (the "Chichester/Berlage CCR's") is recorded among the Land Records of Montgomery County, Maryland, the Association established herein shall be relieved of the maintenance, repair and restoration obligations described in this Section. Thereafter, the "declarant" and/or the Chichester/Berlage HOA (as defined in the Chichester/Berlage CCR's) shall be responsible for such maintenance, repair and restoration unless and until such responsibility is accepted or assumed by an applicable governmental authority or another third party.
- (d) Notwithstanding the foregoing, to the extent that a governmental agency or authority accepts primary, exclusive and permanent responsibility for maintenance, repair and restoration of all or certain portions of such storm water management facilities, the entities identified above shall be relieved of all such obligations.

In the event of any conflict between this Section and the Barnsley Agreement, the Barnsley Agreement shall control.

**Section 11.5. Additional Maintenance Responsibilities.**

The Association may, in the discretion of the Board of Directors and by adoption of Administrative or Equity Resolutions, increase or decrease the maintenance responsibilities upon all or any portion of the Property. In

such event, increased or decreased costs of such maintenance shall be assessed only against those Owners residing within the portion of the Property receiving the services. For example, the cost of any maintenance responsibilities that benefit only one group of Owners (e., Attached Dwelling Lot Owners) may be assessed against that group. This assumption of responsibility may take place either by contract or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the Community-Wide Standard. The provision of services in accordance with this Section shall not constitute discrimination within a class.

## **ARTICLE 12 INSURANCE**

**Section 12.1. 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 individual Owner shall carry blanket all risk casualty 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 or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board of Directors of the Association, or its duly authorized agent, shall have the authority to obtain insurance for all or any of the dwellings located on the Property, unless the Owners thereof have supplied proof of adequate coverage to the Board of Directors' satisfaction. The Board of Directors and the Association shall incur no liability to any Owner or mortgagee in the event that the Board of Directors or the Association shall elect not to exercise their authority to obtain such insurance for all or any of the dwellings located on the Property. In the event the Board of Directors obtains insurance for any Lot or dwelling unit pursuant to this Section, the cost thereof shall be assessed against the Lot benefiting from such insurance and shall be collectible in the same manner as any other Assessment under Article 5 of this Declaration. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the dwelling and other structures constructed on 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 and, in accordance with all applicable building code requirements, unless approval to do otherwise is obtained from the Board of Directors or the Covenant Committee. Each Owner of a Lot covenants and agrees that in the event that such dwelling is totally destroyed, the Owner shall proceed promptly to repair or to reconstruct the dwelling in a manner consistent with the original construction, unless approval to do otherwise is obtained from the Board of Directors or the Covenant Committee.

**Section 12.2. Required Coverage.** The Board of Directors of the Association, or its duly authorized agent,

shall be required to obtain, maintain and pay the premiums, as a Common Expense, upon a policy of hazard insurance covering the Common Area, Cluster Common Area and any property required to be insured by the Association pursuant to any easement or lease agreement (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Area or Cluster Common Area of the Association or such other property which the Association may insure, as well as common personal property and supplies.

The hazard insurance policy shall afford, as a minimum, protection against loss or damage by fire and all other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, and shall name the Association as a named insured. The insurance should cover one hundred percent (100%) of the current replacement cost (less a reasonable deductible) of the insured property. Coverage need not include land, foundations, excavations or other items that are usually excluded from insurance coverage. Unless a higher maximum amount is required pursuant to the law of the State of Maryland, the maximum deductible amount for coverage of the Common Area and Cluster Common Area is the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. The funds to cover any applicable deductible should be included in the Association's reserve or operating account.

Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by the Best's Key Rating Guide of B/III or better (or its equivalent). Each insurer must be specifically licensed or authorized by law to transact business within the State of Maryland. The policy contract shall provide that no Assessment may be made against the mortgagee, and that any Assessment made against others may not become a lien on the mortgaged Lot superior to the First Mortgage.

The hazard insurance policy must provide that the insurance carrier shall notify the Association and each mortgagee named in the mortgagee clause in writing at least ten (10) days before it cancels or substantially changes the Association's coverage. In addition, each Eligible Mortgage Holder shall receive timely written notice of any lapse, material modification or cancellation of any insurance policy covering the Common Area and/or Cluster Common Area.

All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly acceded by private institutions as mortgage investors in the area in which the mortgaged premises are located. The following endorsements are also required: (i) an Inflation Guard Endorsement (if reasonably available); (ii) a Construction Code Endorsement if the Common Area or Cluster Common Area is subject to a construction code provision which would become operative and require changes to undamaged

portions of any structures, even when only part of a structure is destroyed by an insured hazard or peril, and (iii) a Steam Boiler and Machinery Coverage Endorsement if any structure within the Common Area or Cluster Common Area has central heating or cooling, which should provide for the insurer's minimum liability per accident per location to be at least equal to the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the structure(s) housing the boiler or machinery.

If the Common Area and/or Cluster Common Area is located in a Special Flood Hazard Area designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map, the Association must maintain a "master" or "blanket" policy of flood insurance on the Common Area and/or Cluster Common Area. The amount of flood insurance shall be at least equal to the lesser of one hundred percent (100%) of the insurable value of all structures and improvements situated in such Special Flood Hazard Area or the maximum coverage available under the applicable National Flood Insurance Administration program. Unless a higher deductible amount is required under the laws of the State of Maryland, the maximum deductible amount for flood insurance policies shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy's face amount. The funds to cover this deductible amount should be included in the Association's reserve or operating account.

The Association shall obtain and maintain a comprehensive general liability policy of insurance covering all of the Common Area, Cluster Common Area, public ways and any other areas that are under the Association's supervision. The policy shall also cover any commercial space owned by the Association, even if such space is leased to others. The policy should provide coverage for bodily injury (including death) and property damage that results from the operation, maintenance or use of the Common Area or Cluster Common Area and any legal liability that results from law suits related to employment contracts in which the Association is a party. Supplemental coverage to protect against additional risks should also be obtained, if required by a mortgagee. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Liability coverage shall be at least One Million Dollars (\$1,000,000.00) per occurrence, for bodily injury and property damage, unless higher amounts of coverage are required by a mortgagee. The liability policy must provide that the insurance carrier shall notify the Association in writing at least ten (10) days before it cancels or substantially modifies the Association's coverage.

**Section 12.3. Fidelity Insurance.** To the extent reasonably available, blanket fidelity insurance shall be maintained by the Board of Directors for all officers, directors, managers, trustees, employees and volunteers of the Association (including, but not limited to Declarant appointees) and all other persons handling or responsible for

funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board of Directors has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board of Directors. Except for fidelity insurance that a management agent obtains for its personnel, all other fidelity insurance policies should name the Association as the insured and should have their premiums paid as a Common Expense by the Association. Fidelity insurance obtained by a management agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or management agent at any time while the fidelity policy is in force, and should be at least equal the sum of three (3) months aggregate Assessments on all Lots within the Association, plus any reserves. Fidelity insurance policies should contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The fidelity insurance policies should provide that they cannot be canceled or materially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association.

**Section 12.4. Additional Required Insurance.** The Board of Directors of the Association, or its duly authorized agent, shall be required to obtain and maintain (i) adequate levels of Directors and officers liability insurance, as determined by the Board of Directors, covering all Directors and officers of the Association (including, without limitation, Declarant appointees), and (ii) such additional insurance as may be required to afford the protection offered by Section 5-312 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as amended.

**Section 12.5. Repair and Reconstruction of Common Area After Fire or Other Casualty.** In the event of damage to or destruction of any portion of the Common Area or Cluster 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 shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate. Promptly after a casualty causing damage or destruction of any portion of the Common Area or Cluster Common Area for which the Association has the responsibility of maintenance, repair, and/or replacement, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Common Area or Cluster Common Area in as good a condition as existed prior to the casualty. Such costs may include, without limitation, professional fees and premiums for such bonds as the Board of Directors may desire.

## ARTICLE 13 PARTY WALLS AND FENCES

The rights and duties of the Owners of Attached Dwelling Lots with respect to party walls and party fences constructed as a part of the original construction on the Property shall be governed by the following:

**Section 13.1. General Rules of Law to Apply.** Each wall or fence which is constructed as a part of the original construction on the Property and any part of which is placed on the dividing line between separate Attached Dwelling Lots, shall constitute a party wall or party fence, as applicable, and with respect to such wall or fence, each of the adjoining Owners shall assume the burdens, and be subject to an easement for that portion of the wall or fence on his or her Lot, and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls and fences and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

**Section 13.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** If any such party wall or fence is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, his/her 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, in proportion to their respective use of the party wall or fence.

**Section 13.3. Repairs of Damage Caused by One Owner.** If any such party wall or fence is damaged or destroyed through the act of one adjoining Owner or any of his/her agents or

guests or members of his/her family so as to deprive the other adjoining Owner of the full use and enjoyment of such wall or fence, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

**Section 13.4. Damage by Exposure.** If any party wall is damaged by reason of exposure to the elements caused by the negligence or intentional acts of the Owner or occupant(s) of an Attached Dwelling Lot sharing the use of such party wall, the Owner of such Attached Dwelling Lot shall be responsible to promptly repair such party wall at such Owner's sole expense.

**Section 13.5. Encroachments.** If any portion of a party wall or fence shall encroach upon any adjoining Attached Dwelling Lot, or upon the Common Area or Attached Dwelling Lot Cluster Common Area by reason of reconstruction, settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the wall or fence shall exist.

**Section 13.6. Right to Contribution Runs with Land.**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 13.7. Dispute .** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or fence or with respect to the sharing of the cost thereof, then, upon written request of one 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 14 MANAGEMENT

**Section 14.1. 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, including, but not limited to, the following:

- (a) to establish (with the approval of the Board of Directors of the Association) and provide for the collection of the annual maintenance Assessments and any other Assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with the law and the provisions of this Declaration; and
- (b) to provide for the care, upkeep, maintenance and surveillance of the Common Area, Cluster Common Area and Community Facilities; and
- (c) to designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Area, Cluster Common Area and Community Facilities; and
- (d) to promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Area, Cluster Common Area and Community Facilities; and
- (e) to provide such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

**Section 14.2. Duration o Management Agreement.**

Unless otherwise determined by the Board of Directors by Administrative Resolution, any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated (i) for cause by either party upon thirty (30) days written notice thereof to the other party, or (ii) without cause, on ninety (90) days 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 (1)-year periods.

## ARTICLE 15 CLUSTER COMMITTEES

**Section 15.1. Function.** Owners and residents within the Property may serve on Cluster Committees, established in accordance with this Article and any Administrative Resolution adopted by the Board of Directors. Cluster Committees shall serve in an advisory capacity with respect to issues and matters that relate to or are of particular concern to the Owners or residents of the Clusters represented by such Cluster Committees.

**Section 15.2. Cluster Committee Membership.** Each Cluster Committee shall consist of an uneven number of not less than three (3) or more than five (5) individuals, who shall be designated by the Board of Directors from among the Owners and residents of Lots within the Cluster represented by such Cluster Committee and who shall serve at the pleasure of the Board of Directors.

**Section 15.3. Cluster Committee Operations.** Each Cluster Committee shall be responsible for establishing the rules and procedures applicable to its activities, provided that the right of all Owners and residents of Lots within the Cluster served by any Cluster Committee to meaningful participation in the Cluster Committee shall not be abridged. Cluster Committees shall provide all Owners and residents within their Cluster and the Board of Directors with reasonable prior notice of all Cluster Committee meetings and all such meetings shall be open to all Owners and their guests in accordance with Maryland State and Montgomery County law. Each Cluster Committee shall designate one of its members as spokesperson for purposes of all meetings of the Board of Directors, Covenant Committee and other Association committee meetings attended by the Cluster Committee. The designated spokesperson shall be the only member of the Cluster Committee entitled to express the committee's views at any such meeting.

**Section 15.4. Cluster Committee Authority.** Cluster Committees shall generally be provided with a reasonable prior opportunity to comment, either in person or in writing, on proposed actions by the Board of Directors, Covenant Committee and all other Association committees that relate to the Cluster served by such Cluster Committee. Cluster Committees shall serve as an advisory committee to the Board of Directors with respect to issues and matters of particular concern to the Owners and residents of the Cluster represented by such Cluster Committee, including, but not limited to, the amount of Cluster Assessments and the manner of the maintenance and repair of Cluster Common Area within the Cluster. Cluster Committees shall serve as an advisory committee to the Board of Directors and the

Covenant Committee with respect to the interpretation and enforcement of the restrictive covenants established by Article 9 of this Declaration, and the architectural controls established by Article 8 of this Declaration. The recommendations of a Cluster Committee shall not be binding on the Board of Directors, the Covenant Committee or any Association committee; provided, however, that the Board of Directors, the Covenant Committee and any applicable Association committee shall make a reasonable effort to implement such recommendations unless to do so would not be in the best interests of the Association as determined by the Board of Directors, the Covenant Committee or applicable Association committee, in their sole discretion.

**Section 15.5. Further Cluster Committee Provisions.**

The Board of Directors may adopt Administrative Resolutions further defining the authority of Cluster Committees, as well as Administrative Resolutions establishing further rules and procedures to be followed by the Cluster Committees in connection with the exercise of such authority.

## ARTICLE 16 GENERAL PROVISIONS

**Section 16.1. Common Area and Cluster Common Area Responsibility.** The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, Cluster Common Area, Community Facilities and any property, real or personal, which the Association is delegated the responsibility for pursuant to any easement or lease agreement, and all improvements thereon (including, without limitation, furnishings and equipment related thereto, private drainage facilities and common landscaped areas), and shall keep the Common Area, Cluster Common Area, Community Facilities and such other property in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall accept title to any real estate or personal property offered to the Association by the Declarant.

**Section 16.2. Personal Property and Real Property for Common Use.** The Association may acquire, lease, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

**Section 16.3. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws or any lease, easement or other agreement

or document affecting the Association, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**Section 16.4. Limitation of Liability.** The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to persons or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Area, Cluster Common Area or Community Facilities or other property within the control or supervision of the Association, or from any wire, pipe, drain, conduit or the like. 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 Area, Cluster Common Area or other property within the control or supervision of the Association. No diminution or abatement of Assessments, as hereinelsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area, Cluster Common Area or other property within the control or supervision of the Association, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

**Section 16.5. Enforcement.** The Association, or any Owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or Bylaws of the Association or any rule or regulation promulgated by the Association pursuant to its authority as provided in the Declaration, Articles of Incorporation or Bylaws. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenants or restrictions herein contained or any provision of the Bylaws, Articles of Incorporation or rules and regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter. 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 or any provision of the Bylaws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Association, or any Owner or mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner, provided that the requirements of the Maryland Contract Lien Act are substantially fulfilled.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable notice, in writing, provided to the Owner, may enter any Lot to remedy any violation of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations of the Association provided, however, that the Association may not enter the interior of any dwelling unit except in an emergency. The costs of such action shall become a binding, personal obligation of the Owner otherwise responsible for such violation and shall also be a lien upon the Lot of such Owner.

**Section 16.6. Fines.** In addition to the means for enforcement provided elsewhere herein, the Association shall have the right to levy fines against an Owner or such Owner's guests, relatives, lessees or invitees, in the manner set forth herein, and such fines shall be collectible as any other Assessment such that the Association shall have a lien against the Lot of such Owner as provided in this Declaration, the Bylaws and the Articles of Incorporation and such fine(s) shall also become the binding personal obligation of such Owner.

- (a) The Board of Directors or the Covenant Committee shall be charged with determining whether there is probable cause that any of the provisions of this Declaration, the Bylaws, Articles of Incorporation or the rules and regulations of the Association, regarding the use of the dwelling units, Lots, Common Area, Cluster Common Area, Community Facilities or other Association property, are being or have been violated. In the event that the Board of Directors or the Covenant Committee determines an instance of such probable cause the Board shall provide written notice to the person alleged to be in violation, and the Owner of the Lot which that person occupies or is visiting if such person is not the owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed a reasonable amount established by the Board for each offense. The amount of the fine shall be based upon the costs and inconvenience caused to the Association and shall not be a penalty. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that it will henceforth cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.
- (b) If a hearing is timely requested, the Board of Directors or the Covenant Committee shall hold the same, and

shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner or the Board of Directors may produce. Any party at the hearing may be represented by counsel.

- (c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board of Directors or the Covenant Committee shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board of Directors or the Covenant Committee determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.
- (d) A fine pursuant to this Section shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot, and shall be collectible in the same manner as any other Assessment, including by the Association's lien rights as provided in this Declaration and the Bylaws. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting such Owner's Lot payment of the amount of any fine(s) assessed against that Lot.
- (e) Nothing herein shall be construed as a prohibition or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations, including, but not limited to, legal action for damages or injunctive relief.

**Section 16.7. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 16.8. Duration and Amendment.** Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by, or the affirmative vote of, the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded in the Land Records of Montgomery County, Maryland.

**Section 16.9. Rights of the Maryland-National Capital Park and Planning Commission ("Commission" herein).** Any other provision of this Declaration or the Bylaws or Articles of Incorporation of the Association 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 of the Commission, which consent shall not be unreasonably withheld or delayed:

- (a) abandon, partition, dedicate, subdivide, encumber, sell or transfer any of the Common Area, Cluster Common

Area or Community Facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Area, Cluster Common Area and Community Facilities by the Members of the Association shall not be considered a transfer within the meaning of this Section; or

- (b) abandon or terminate the Declaration; or
- (c) modify or amend any material or substantive provision of this Declaration, or the Bylaws or the Articles of Incorporation of the Association; or
- (d) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association to any other entity; or
- (e) substantially modify the method of determining and collecting Assessments as provided in this Declaration.

The Commission shall have the right to bring action for any legal or equitable relief necessary to enforce the rights and powers granted to the Commission hereunder.

**Section 16.10. Changes and Modifications by Declarant.** The Declarant shall have the right, for a period of ten (10) years following the date of recordation of this Declaration, without the consent of the Members of the Association or any other party, to modify, amend or change any of the provisions of this Declaration as the Declarant may deem necessary or desirable to correct errors or omissions herein, provided that so long as a Lot is encumbered by a deed of trust or mortgage which is guaranteed or insured by VA or FHA, then VA or FHA, as applicable, shall have the right to approve any material amendment, modification or change to this Declaration.

**Section 16.11. FHA-VA Approvals.** Provided that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is insured by FHA or guaranteed by VA, and further provided that there are then Class B memberships of the Association outstanding, 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 or approval of the FHA and the VA, as circumstances may require:

- (a) change the basic organization of the Association including the merger, consolidation, or dissolution of the Association; or
- (b) dedicate, convey, or mortgage the Common Area or Cluster Common Area; or
- (c) annex additional properties (other than an annexation by the Declarant as provided in this Declaration); or
- (d) otherwise materially modify or amend any provision of this Declaration, the Bylaws or the Articles of Incorporation of the Association.

**Section 16.12. Casualty Losses.** In the event of substantial damage or destruction to any of the Common

Area or Cluster Common Area, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his/her Lot with respect to the distribution to such Member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Area or Cluster Common Area.

**Section 16.13. Condemnation or Eminent Domain.** In the event any part of the Common Area or Cluster Common Area 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 shall give prompt written notice of any such proceeding or proposed acquisition to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association shall entitle any Member to any priority over the holder of any First Mortgage of record on his/her 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 Area or Cluster Common Area.

**Section 16.14. Notice to Eligible Mortgage Holders.** The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Area, Cluster Common Area, Community Facilities or any Lot subject to a First Mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.
- (b) Any delinquency in the payment of Common Expense Assessments or charges owed by an Owner whose Lot is subject to a First Mortgage or security interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity insurance maintained by the Association.

To be entitled to receive notice of the foregoing, the Eligible Mortgage Holder must send a written request to the Association, stating both its name and address and the Lot and Block designation or address of the Lot on which it has (or insures or guarantees) the mortgage.

**Section 16.15. Declarant's Power of Attorney.** Notwithstanding any provision to the contrary contained in the Articles of Incorporation or Bylaws of the Association or this Declaration, the Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of ten (10) years from the date the first Lot is conveyed to a Class A

Member, or until it conveys title to the last Lot, whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in any Lot, Common Area, Cluster Common Area or Community Facilities, any such agreements, documents, amendments or supplements to this Declaration, the Articles of Incorporation and Bylaws of the Association which may be required by FNMA, FHA, VA, FHLMC, GNMA or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Association, or institutional lender or title insurance company designated by the Declarant.

- (a) By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Lots, Common Area or Cluster Common Area, each and every such contract purchaser, Owner, Eligible Mortgage Holder, mortgagee or other lienholder or party having a legal or equitable interest in any Lot, Common Area or Cluster Common Area does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.
- (b) No such agreement, document, amendment, supplement or other instrument which adversely affects the value of a Lot, or substantially increases the financial obligations of an Owner, or reserves any additional or special privileges for the Declarant not previously reserved, shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering the Lots owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Lot, Common Area, Cluster Common Area or Community Facilities shall not be made without the prior written consent of the owners of all such mortgages.
- (c) The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots, Common Area, Cluster Common Area and Community Facilities and shall be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant, its successors, transferees and assigns until the initial conveyance of all Lots, Common Area, Cluster Common Area and Community Facilities planned to be

annexed within the jurisdiction of the Association or the expiration of same.

**Section 16.16. Taxes and Assessments.** It is the intent of this Declaration that insomuch as the interests of each Owner to use and enjoy the Common Area (and any other property to which such Owner may have a right of use and enjoyment) is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Common Area (or other property) shall be included in the Assessment for each such Lot and as a result, any Assessment directly against such Common Area (or other property if the Association is responsible for the real estate taxes levied thereon) should be of a nominal nature reflecting that the full value of the same should be included in the several Assessments of the various Lots.

**Section 16.17. Successors of Declarant.** Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by an instrument, in writing, without notice to the Association. \_

**Section 16.18. 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 Area, Cluster Common Area or Community Facilities 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, Cluster Common Area or Community Facilities.

**Section 16.19. 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.

**Section 16.20. Declarant Reserved Rights.** No amendment to this Declaration may remove, revoke, or modify any right, reservation or privilege of the Declarant without the prior written consent of the Declarant or any successors or assignees (pursuant to Section 16.17) of the Declarant.

**Section 16.21. Perpetuities.** If any of the covenants, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 16.22. Declarant Development.** As long as the Declarant has an interest in developing the Property or the Property, the Association may not use its financial resources, directly or indirectly, to defray the costs of opposing any development activities reasonably consistent with the general intention of the Development Plan, as amended.

Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or other groups.

***Section 16.23. 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.

[SIGNATURE PAGE FOLLOWS]

# AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORBECK GROVE COMMUNITY ASSOCIATION, INC.

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Amendment") is made this \_\_\_\_ day of \_\_\_\_, 1999, by DAY DEVELOPMENT COMPANY, L.C., a Maryland limited liability company ("Declarant").

## RECITALS

A. Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions for Norbeck Grove Community Association, Inc. among the Land Records of Montgomery County, Maryland (the "Land Records") on May 24, 1996, in Liber 14139, folio 73, et seq. (the "Original Declaration").

B. Declarant recorded that certain Supplementary Declaration of Covenants, Conditions and Restrictions for Norbeck Grove Community Association, Inc. among the Land Records of Montgomery County, Maryland (the "Land Records") on February 23, 1998, in Liber 15558, folio 230, et seq. and that certain Supplementary Declaration of Covenants, Conditions and Restrictions for Norbeck Grove Community Association, Inc. among the Land Records of Montgomery County, Maryland (the "Land Records") on March 10, 1998, in Liber 15612, folio 359, et seq. (hereinafter, together with the Original Declaration and any and all supplementary declarations and amendments, being referred to collectively as the "Declaration").

C. Article XVI, Section 16.15 of the Declaration provides, in part, that "the Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of ten (10) years from the date the first Lot is conveyed to a Class A Member, or until it conveys title to the last Lot, whichever occurs first, the right to execute on behalf of all contract purchasers, Owners, Eligible Mortgage Holders, mortgagees, and other lienholders or parties claiming a legal or equitable interest in any Lot or Common Area, any such agreements, documents, amendments or supplements to this Declaration, the Articles of Incorporation and Bylaws of the Association which may be required by FNMA, FHA, VA, FHLMC, GNMA or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Association, or institutional lender or title insurance company designated by the Declarant."

D. Subsequent to the recordation of the Declaration, the Department of Veterans Affairs adopted VA Loan Guaranty Release 96-18 (the "VA Release") which requires that certain provisions be contained in declarations and bylaws for planned unit developments which differ in some respects from those which are contained in the Declaration.

E. The Declarant desires to amend the Declaration pursuant to Section 16.15 of the Declaration so that it complies with the terms and provisions of the VA Release.

F. Subsequent to the recordation of the Declaration, certain of the lots and parcels described therein were resubdivided as set forth on Exhibit "A" attached hereto and made a part hereof, and Declarant desires to reflect in this Amendment the most current lot and parcel references for all of the Property. Declarant further desires to subject all of the property described on Exhibit "A" attached hereto to the full force and effect of the Declaration.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which are hereby incorporated in and made a substantive part of this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby declares as follows:

I. Article II, Sections 2.1, 2.2 and 2.3 of the Declaration are deleted in their entirety and the following are inserted in their place:

### **"Section 2.1. Property Subject to this Declaration.**

The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration shall be as described in one or more Supplementary Declarations recorded by the Declarant among the Land Records of Montgomery County, Maryland. The Declarant shall have the right to incrementally annex all or any portion of the real property described on Exhibit "A" hereto within the jurisdiction of the Association by executing and recording one or more Supplementary Declarations, regardless of the ownership of the real property described on Exhibit "A" hereto at the time of such annexation and without the need for the execution or filing of any such Supplementary Declarations by any other party; provided, that the Declarant's right to unilaterally annex the real property described on Exhibit "A" hereto shall only continue for a period of seven (7) years from the date of recordation of this Declaration by the Declarant or five (5) years from the date of recordation of the first Supplementary Declaration by the Declarant; provided further that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid seven (7)-year or five (5)-year period, as applicable, shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less

**Section 2.2. Annexations.** The real property described on Exhibit "A" hereto and any real property shown on the Development Plan may be annexed within the jurisdiction of the Association by the Declarant without the consent of the Class A Members of the Association, if any, for a period of seven (7) years from the date of recordation by the Declarant of the Declaration or five (5) years from the date of recordation of the first Supplementary Declaration by the Declarant annexing all of any portion of the real property described on Exhibit "A" hereto; provided however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid seven (7)-year or five (5)-year period, as applicable, shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. The scheme of the Declaration shall not, however, be extended to include any such real property unless and until the same is annexed within the jurisdiction of the Association by the recordation of a Supplementary Declaration as hereinafter provided. Except as otherwise provided hereinabove, annexations of real property within the jurisdiction of the Association shall require the consent of two-thirds (2/3) of each class of Members. Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration among the Land Records of Montgomery County, Maryland, which Supplementary Declaration shall extend the scheme of the within Declaration of Covenants, Conditions and Restrictions to such annexed property. So long as any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the VA or insured by the FHA, no annexation shall be made pursuant to this Article, or otherwise, except following a determination by the VA or the FHA, as applicable, that the annexation conforms to a general plan for the development of the Project previously approved by the VA or the FHA, as applicable, or, if no such general plan was approved by the VA or the FHA, as applicable, except following the prior written approval of the VA or the FHA, as applicable. Any Supplementary Declaration made pursuant to the provisions of this Article may contain such complementary or supplemental additions and modifications to the covenants, conditions and restrictions set forth in the within Declaration as may be considered necessary by the maker of such Supplementary Declaration to reflect the different character or use, if any, of the annexed property. Every Owner of a Lot in property to be annexed as provided herein shall have an easement of enjoyment in and to the Common Area, and such other rights of use as provided in Article 3 herein.

**Section 2.3. Deannexation.** The Declarant may deannex any property annexed within the jurisdiction of the Association for a period of seven (7) years from the

date of recordation by the Declarant of the Declaration or five (5) years from the date of recordation of the first Supplementary Declaration by the Declarant annexing all or any portion of the real property described on Exhibit "A" hereto, provided that (i) the Declarant is the Owner of such property at the time of deannexation, or (ii) if the Declarant is not the Owner of such property, the Declarant deannexes such property with the written consent of the Owner thereof; provided, further, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid seven (7)-year or five (5)-year period, as applicable, shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. Such deannexed property shall no longer be subject to the covenants, conditions and restrictions of this Declaration except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to this Declaration which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such deannexation. Such deannexation shall be made by recording a Supplementary Declaration among the Land Records of Montgomery County, Maryland, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use

So long as any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the VA or insured by the FHA, no deannexation shall be made pursuant to this Article, or otherwise, except following a determination by the VA or the FHA, as applicable, that the deannexation is not contrary to a general plan for the development of the Project previously approved by the VA or the FHA, as applicable, or, if no such general plan was approved by the VA or the FHA, as applicable, except following the prior written approval of the VA or the FHA, as applicable."

2. Article III Section 3.1(k) is deleted and the following is inserted in its place:

"(k) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, and with the consent of two-thirds (2/3) of each class of Members, to borrow money for the purpose of improving the Common Area and Community Facilities in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Area, Cluster Common Area and Community Facilities. A lender's rights, in the event of default upon any such mortgage or deed of trust on the Common

Area, Cluster Common Area and/or Community Facilities are limited to, after taking possession of such common areas, charging reasonable admission and other fees as a condition of continued enjoyment by members, and, if necessary, to a wider range of users; provided, however, that such lender's rights are subject to and shall not interfere with the rights of ingress and egress over the Common Area provided to all Owners, without charge, for access to and from his or her Lot, set forth in Section 3.2(a) below."

3. The Maximum Annual Assessment provided for in Article V, Section 5.3 shall be set as follows:

- (a) SFD Cluster Maximum Annual Assessment: Five Hundred Eighty-Two Dollars (\$582.00) each.
- (b) Townhouse Cluster Maximum Annual Assessment: One Thousand One Hundred Sixteen Dollars (\$1,116.00) each.
- (c) Condominium Cluster Maximum Annual Assessment: One Thousand Four Hundred Twenty-Two Dollars (\$1,422.00) each.

4. The following paragraph shall be inserted into Article V, Section 5.3 of the Declaration as the second paragraph therein:

"Lots owned by the Declarant shall, at the option of the Declarant, (i) be subject to an assessment equal to twenty-five percent (25%) of the annual and special assessments applicable to Lots owned by the Class A Members (excluding the Participating Builders) or (ii) be subject to the obligation of the Declarant to make up any actual deficits incurred by the Association on an annual basis; provided, however, that the Declarant shall pay full annual and special assessments for Lots owned by the Declarant upon which a dwelling unit has been completed and occupied by a party other than the Declarant. The Declarant shall have the right to elect to pay deficits in lieu of a portion of the annual assessment after a determination by the VA that (i) the budget is reasonable and will realistically maintain the Common Area, (2) the assessment share allocated to each Owner is reasonable and in proportion to the total number of lots within the Association, and (iii) the developer's obligation creates a lien against land it owns. The obligation of the Declarant pursuant to this Section 5.3 shall be secured by the lien rights set forth in Section 5.1 of this Declaration."

5. The following Section 16.8A shall be inserted after Article XVI, Section 16:

**Section 16.8A. Material Amendments and Extraordinary Actions.** "Material Amendments" (as defined below) and "Extraordinary Actions" (as defined below) must be approved by Owners entitled to cast at least sixty-seven percent (67%) of the votes of all Owners present, in person or by proxy, and voting at

any meeting of the Association held in accordance with Section 16.8A(c) below, including at least a majority of the votes of all Owners present, in person or by proxy, and voting at such meeting other than the Declarant.

- (a) "Material Amendment" shall mean and refer to an amendment to this Declaration, the Bylaws or the Articles of Incorporation adding, deleting or modifying any provision regarding the following:
  - (i) assessment basis or assessment liens;
  - (ii) any method of imposing or determining any charges to be levied against individual Owners; improvements;
  - (iii) reserves for maintenance, repair or replacement of Common Area
  - (iv) maintenance obligations;
  - (v) allocation of rights to use the Common Area;
  - (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on the Lots;
  - (vii) reduction of insurance requirements;
  - (viii) restoration or repair of Common Area improvements;
  - (ix) the addition, annexation or withdrawal of land to or from the Project;
  - (x) voting rights;
  - (xi) restrictions affecting leasing or sale of a dwelling unit;
  - (xii) any provision which is for the express benefit of mortgagees.
- (b) An "Extraordinary Action" shall mean and refer to any of the following actions:
  - (i) merging or consolidating the Association (other than with another nonprofit entity formed for purposes similar to the Association);
  - (ii) determining not to require professional management if that management has been required by this Declaration, the Bylaws, the Articles of Incorporation, a majority of Eligible Mortgage Holders, or a majority vote of the Owners;
  - (iii) expanding the Association to include land not previously described as additional land which increases the overall land area of the Project or the number of Lots by more than ten percent (10%);
  - (iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise

- transferring or relocating the boundaries of the Common Area (except for (a) granting easements which are not inconsistent with or which do not interfere with the intended Common Area use; (b) dedicating Common Area as required by any public authority or agency; (c) boundary-line adjustments made in accordance with the provisions of this Declaration; or (d) transferring Common Area pursuant to a merger or consolidation with a nonprofit entity formed for purposes similar to the Association);
- (v) using insurance proceeds for purposes other than construction or repair of the insured improvements; or
- (vi) making capital expenditures (other than for maintenance, repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.
- (c) The following requirements shall be applicable to any meeting of the Association called for purposes of adopting a Material Amendment or taking a Material Action: (i) written notice of such meeting shall be sent to all Members at least twenty-five (25) days in advance of such meeting; (ii) the notice shall state the purpose of the meeting and contain a summary of any Material Amendments or Extraordinary Actions proposed; (iii) the notice shall contain a copy of a proxy that can be cast in lieu of attendance at the meeting; and (iv) the presence of Members entitled to cast, or of proxies entitled to cast, at least ten percent (10%) of the total authorized vote of all Members shall constitute a quorum for purposes of such meeting.
- (d) Any Material Amendment which changes the rights of any specific class of Members must also be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present, in person or by proxy, and voting at any meeting of the Association held in accordance with Section 16.8A(c) above.
- (e) The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Members other than the Declarant: (i) termination of the Declaration; (ii) dissolution of the Association, except pursuant to a consolidation or merger; and (iii) conveyance of all Common Area.
- (f) Provided that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is guaranteed by VA, and further provided that there are then Class B memberships of the Association outstanding, the Association shall provide VA with a copy of all Material Amendments, and all Material Amendments and Extraordinary Actions must be approved by VA. Failure to obtain such approval may result in the Lots within the Association not being eligible for VA guaranteed loans, but such failure shall not be deemed to invalidate any Material Amendment or Extraordinary Action which is otherwise approved by the Members in accordance with this Declaration.”
6. Article XVI, Section 16.14 is deleted in its entirety and the following is inserted in its place:
- “Section 16.14. Notice to Eligible Mortgage Holders.** The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):
- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Area or any Lot subject to a First Mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.
- (b) Any delinquency in the payment of Common Expense assessments or charges owed by an Owner whose Lot is subject to a First Mortgage or security interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any Material Amendment or Extraordinary Action.
- (e) Proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any such action is taken.
- (f) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.
- To be entitled to receive notice of the foregoing, the Eligible Mortgage Holder must send a written request to the Association, stating both its name and address and the Lot and Block designation or address of the Lot on which it has (or insures or guarantees) the mortgage.”
7. The following Section 16.24 is inserted at the end of Article XIV of the Declaration:
- “Section 16.24. Additional Rights of Eligible Mortgage Holders.** Eligible Mortgage Holders have the following rights in addition to those set forth elsewhere in this Declaration:

- (a) to require that the Association employ a Management Agent, by a majority vote of the Eligible Mortgage Holders.
- (b) to require an audit of the Association's financial records, by a majority vote of the Eligible Mortgage Holders.
- (c) to inspect books and records of the Association in accordance with the Bylaws of the Association."

8. The following Section 16.25 is inserted after the above at the end of Article XIV of the Declaration:

**"Section 16.25. Dissolution of the Association.**

The Association may be dissolved in accordance with the provisions set forth in the Articles of Incorporation of the Association."

9. Declarant hereby confirms that the property described on Exhibit "A" attached hereto and made a part hereof (the "Property"), which includes all of the property described in Exhibit "A" to the Original Declaration as well as certain additional lots, shall be and is hereby made subject to the operation and effect of the Declaration, so that the Property shall be deemed included within the scheme of the covenants and restrictions of the Declaration and fully subject to the operation and effect of the Declaration, including each and every covenant, condition, restriction and easement set forth therein. Exhibit "A" attached hereto shall replace Exhibit "A" to the Original Declaration.

10. In the event that any term or provision of this Amendment is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

11 Capitalized terms used herein shall be defined as set forth in the Declaration, unless otherwise provided herein.

12. This Amendment shall be construed in accordance with the laws of the State of Maryland, and shall become effective upon recordation among the Land Records.

[SIGNATURE PAGE FOLLOWS]