

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
BEACON HILL COMMUNITY ASSOCIATION, INC.**

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APPENDICES

Appendix One Definitions of Significant Terms Used in the Governing Documents

Appendix Two The Declarant's Reserved Rights and Obligations

EXHIBITS

Exhibit "A" Description of Property Subject to the Declarant's Unilateral Right to Annex

Exhibit "B" Description of Lots and/or Community Property Annexed by this Declaration

BEACON HILL COMMUNITY ASSOCIATION, INC.**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

SANDLER AT BEACON HILL, L.L.C., a Virginia limited liability company (the "Declarant") hereby affirms, adopts and subscribes to the purposes and provisions of this Declaration and declares that the covenants, conditions, easements and restrictions contained herein, as well as any subsequent covenants, conditions, easements and restrictions and Community Codes which are promulgated or adopted in accordance with, or which become a part of, the Governing Documents shall be binding upon and applicable to all real property subjected to this Declaration by one or more Declarations of Annexation as provided herein. The Declarant intends by the recordation of this Declaration to create a general plan and scheme of development for a community known as Beacon Hill, which is intended to contain single family homes, a golf course and an equestrian center including equestrian trails. The Declaration provides a framework for an orderly and reasonable development and operation of Beacon Hill. The Governing Documents for Beacon Hill provide various rights and privileges to the Declarant to permit it to achieve its development goals, including implementation of the Community Plan, in a reasonable manner. The Declaration also confers powers and authority to the Beacon Hill Community Association, Inc., a Virginia non-stock corporation comprised of all Owners within Beacon Hill, to permit the reasonable administration and operation of the Association and to permit the Association to maintain and preserve the Community Areas.

**ARTICLE 1
PREAMBLE**

WHEREAS, the Declarant desires to provide for the preservation and enhancement of property values within the Community; and

WHEREAS, the Declarant desires to adopt and implement a common scheme of development intended to provide for and maintain a high quality of life for the Owners within the Community; and

WHEREAS, it is the intention of the Declarant to provide opportunities to the Owners within the Community to enjoy a community environment that enriches personal and family life, that fosters neighborhood congeniality and that engenders an overall spirit that establishes the Community as a rewarding place to live and grow; and

WHEREAS, the Declarant believes that for the Community to offer unique opportunities to its Owners, its Owners must necessarily make special efforts to contribute to the well being of the Community; and

WHEREAS, the Declarant intends to develop the Property in a manner that combines business and social objectives; and

WHEREAS, to accomplish these objectives the Declarant believes that it is in the best interests of the Community for the Declarant to maintain a significant and influential role in the implementation of the Community Plan and the Declarant has therefore retained numerous rights and will exercise significant control and influence over the Property until the development process has been completed.

NOW, THEREFORE, in consideration of the foregoing, the provisions of which are a substantive part of this Declaration, and other good and valuable consideration, the Declarant hereby declares that, upon recordation of one or more Declarations of Annexation in accordance with this Declaration, 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 and Appendix Two hereof, shall thereafter be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, easements and restrictions set forth in the Governing Documents, as modified and amended from time to time, all of which shall run with the real property subjected to the Governing Documents and which shall be binding on all parties having any right, title or interest in all or any portion of the Community, their respective heirs, personal representatives, successors, transferees and assigns, as well as occupants, guests and invitees, and shall inure to the benefit of each Owner thereof.

ARTICLE 2 PROPERTY SUBJECT TO GOVERNING DOCUMENTS

Section 2.1. Property to be Subjected to the Governing Documents. The real property which shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the Governing Documents shall be as described in one or more Declarations of Annexation recorded among the Land Records of Loudoun County, Virginia. As set forth more fully in Appendix Two hereof, all or any portion of the real property described on Exhibit "A" hereto, as well as any real property contiguous to or in the vicinity of the Community, may be annexed within the jurisdiction of the Association unilaterally by the Declarant, regardless of the ownership of such real property at the time of annexation. The Declarant declares that the portion of the Property described on Exhibit "B" hereto is hereby made subject to the effect and operation of this Declaration, so that the Lots and/or Community Property described on Exhibit "B" hereto shall be deemed included within the scheme of the covenants and restrictions of this Declaration and fully subject to the effect and operation of this Declaration, including each and every covenant, condition, easement and restriction set forth herein. This Declaration, each Declaration of Annexation, the Bylaws, the Articles of Incorporation and the Community Codes together establish a general plan of development for Beacon Hill and this general plan of development may be modified or amended from time to time by supplemental or additional covenants, conditions, easements, restrictions, rules, or guidelines applicable to all or portions of the Property and the Annexable Property, including

only portions of the Annexable Property being annexed. Such supplemental and additional covenants, conditions, easements, restrictions, rules, Community Codes or guidelines may be more or less restrictive than the provisions of this Declaration.

Section 2.2. Annexations. The real property described on Exhibit "A" hereto and any real property contiguous to or in the vicinity of the Community, may be annexed within the jurisdiction of the Association by or with the consent of the Declarant, without the consent of the Class A Members of the Association or any other party, for a period of ten (10) years from the date of the recordation of this Declaration. The Declarant may transfer its right to annex the Annexable Property in accordance with Section 18.4 of the Declaration. Nothing in this Declaration shall be construed to require the Declarant, or any successor or assign of the Declarant, to annex or develop any portion of the Property and the Declarant reserves the right to utilize or develop any portion of the Annexable Property for any lawful purpose. Further, the Declarant (or any successor or assign pursuant to Section 18.4 of the Declaration) may from time to time record an instrument among the Land Records of Loudoun County, Virginia, to remove all or a portion of the foregoing property from the Annexable Property so that such property is no longer subject to annexation pursuant to this Article 2.

The Association shall also have the right to annex any real property to this Declaration. Annexations by the Association shall require the consent of the owner of the property to be annexed, the consent of a majority of the Members of the Association, and the consent of the Declarant, provided the Declarant owns any portion of the Property or the Annexable Property. Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Declaration of Annexation among the Land Records for Loudoun County, Virginia, which Declaration of Annexation shall extend the scheme of this Declaration to such annexed property. Any Declaration of Annexation 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 this Declaration as may be considered necessary or desirable by the maker of such Declaration of Annexation to reflect the different character, use, or nature, if any, of the annexed property, including, without limitation, exemptions from any or all of the design review and architectural control requirements of Article 7 of this Declaration, any leasing or occupancy restrictions, or use restrictions with respect to any Lot at the time that a Declaration of Annexation is recorded annexing such Lot within the Association.

Section 2.3. Deannexation. So long as the Declarant owns any portion of the Property or the Annexable Property, the Declarant may unilaterally amend this Declaration in order to remove (deannex) any portion of the Property from the force and effect of this Declaration and the other Governing Documents, provided that such deannexation does not have an actual substantial and material adverse impact on the remaining portion of the Property. Upon the recordation of an amendment to withdraw any portion of the Property, such deannexed property shall no longer be subject to the provisions of the Governing Documents except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to the Governing Documents 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 written instrument among the Land Records of Loudoun County, Virginia, withdrawing the effect of the covenants, conditions, easements and restrictions of the Governing Documents from the deannexed property.

Section 2.4. Community Property. The Community Property shall be annexed within the Association by the Declarant in accordance with all County approvals, including any preliminary subdivision plans, site development plans or final subdivision plats, as amended, and as approved by the County, 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 Community Property, and for the purpose of modifying the improvements to be constructed on such Community Property, including but not limited to an amendment whereby such improvements are no longer required to be constructed.

ARTICLE 3 PROPERTY RIGHTS

Section 3.1. Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of use, access and enjoyment in and to the Community Property, including an easement for the use and enjoyment of the private streets, roadways, parking areas, trails and walkways within the Community Property. Each Owner's right to use and enjoy the Community Property shall extend to members of the Owner's family, lessees and invitees, subject to applicable Community Codes. Any Owner who leases his/her Lot shall be deemed to have assigned his/her right to utilize the Community Property to the lessee of the Lot. The Owner's easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) The rights and obligations set forth in the Governing Documents, as amended from time to time, and any other covenants and easements relating to the Community Property;

(b) Any covenants, conditions, easements, restrictions or reserved rights contained in any deed conveying Community Property to the Association;

(c) The right of the Association or other applicable parties to charge reasonable admission or other fees for the use of the Community Property or any facilities situated upon the Community Property;

(d) The right of the Association to suspend an Owner's right to use the Community Property and/or any facilities situated thereon for (i) any period during which any assessment against such Owner's Lot remains delinquent for more than sixty (60) days (or such other time period provided by applicable law), and (ii) for a period not to exceed sixty (60) days for each infraction of the Governing Documents, provided that such Owner is given reasonable notice of the violation and an opportunity for a hearing in accordance with the Governing Documents;

(e) The right of the Association to dedicate or transfer all or any part of the Community Property to any public agency, authority, or utility for such purposes as are consistent with the purposes of the Governing Documents and subject to such approval requirements as may be set forth in the Governing Documents;

(f) The right of the Association to limit the number of guests of Owners that may utilize the Community Property and any facilities situated thereon;

(g) The right of the Association to establish Community Codes pertaining to the use of the Community Property and any facilities situated thereon including, without limitation, the right of the Association to designate portions of the Community Property as Exclusive Community Property;

(h) The rights of the Association, the Declarant, utility companies and Owners with respect to the easements established by or created pursuant to the Governing Documents;

(i) The right of the Association, in accordance with the Governing Documents, to borrow money for the purpose of improving the Community Property and any facilities situated thereon in a manner designed to promote the enjoyment and welfare of the Owners and in aid thereof to mortgage any of the Community Property and facilities situated thereon;

(j) The right of designated Owners to the exclusive use of any portions of the Community Property designated as Exclusive Community Property;

(k) The right of the Declarant to grant easements, leases, licenses or other rights with respect to the Community Property on such terms and conditions as it deems appropriate, to utilize reserved rights and easements, and to otherwise utilize the Community Property as it deems appropriate in connection with the development of the Community;

(l) The right of the Association to grant easements, leases, licenses, or other rights of use of the Community Property and any facilities situated thereon to Owners and to persons or entities who are not Owners for such consideration and on such terms and conditions as the Association may from time to time consider appropriate. Without limiting the generality of the foregoing, the Association may enter into a long-term lease of the Equestrian Center upon such terms and conditions as are determined by the Board of Directors, in its sole discretion; and

(m) Such other rights of the Declarant and the Association as are not inconsistent with the Governing Documents.

Section 3.2. Limitations. Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Owner to use any private streets, roadways, or parking areas within the Community Property for both vehicular and pedestrian ingress and egress to and from such Owner's Lot and for parking; provided, however, that the Association shall have the right to designate the use of parking spaces within the Community Property.

ARTICLE 4 THE ASSOCIATION AND ITS MEMBERS

Section 4.1. Purpose and Role of the Association. Except as otherwise provided in the Governing Documents, the Association shall be responsible for the management, operation and control of the Community Areas. The Association is empowered to enforce the Governing Documents. The Association shall exercise its responsibilities in accordance with the Governing Documents.

Section 4.2. Membership in the Association. Every Owner shall be a Member of the Association. With the exception of the Declarant, no Owner, whether one or more persons or entities, shall have more than one (1) membership for each Lot owned. However, all Owners shall be subject to the Governing Documents. Membership in the Association shall be appurtenant to and may not be severed from ownership of any Lot. Membership rights and obligations are more fully described in the Bylaws.

Section 4.3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. With the exception of the Declarant and the Participating Builders (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 has been annexed into the Community 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. Ownership of a Lot shall entitle each Owner holding the interest required for Class A membership to cast one (1) vote; provided, however, that if more than one (1) person or entity are the Owners of a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the secretary of the Association, but in no event shall more than one (1) vote be cast with respect to any Lot. No Owner, other than the Declarant, shall have more than ten (10) votes, regardless of the number of Class A memberships held by such Owner. Any Owner that leases a Lot may, in the lease or other written instrument, assign the voting right appurtenant to such Lot to the Owner's lessee, provided that a copy of such instrument is furnished to the Association.

Class B. There shall initially be four hundred four (404) Class B memberships in the Association. This number shall be decreased by one (1) membership for each Lot conveyed to a Class A Member (excluding any Lot conveyed to a Participating Builder; unless assigned in writing by the Declarant to a Participating Builder, the Declarant shall retain the Class B membership and voting rights of a Lot owned by 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, issued and outstanding votes of the Class A Members equals two hundred three (203);

(ii) Ten (10) years from the date of recordation of this Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a 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) When in its discretion the Class B member elects to relinquish its Class B memberships.

Upon the lapse or surrender of any of the Class B memberships as provided for in this Article, the Declarant shall thereafter remain a Class A Member of the Association as to each and every Lot from time to time subject to the terms and provisions of this Declaration in which the Declarant then holds the interest otherwise required for Class A membership. The Declarant shall continue to retain all other rights reserved to the Declarant in the Governing Documents, notwithstanding the lapse or surrender of the Class B Memberships.

ARTICLE 5 COVENANT FOR ASSESSMENTS

Section 5.1. Creation of Lien and Personal Obligation for Assessments. Except as Assessments of the Declarant and Participating Builder are limited herein, each Owner of a Lot by acceptance of a deed therefor, whether or not expressly stated in such deed, shall be deemed to covenant and agree to pay the Association all Annual Assessments, Special Assessments and Local Area Assessments as may be levied by the Association in accordance with the Governing Documents. Each Assessment, together with interest, costs, late fees and reasonable attorneys' fees and other legal and collection costs, 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 applicable law have been fulfilled. Each Assessment, together with interest, costs, late fees and reasonable attorneys' fees and other legal and collection costs shall also be the personal obligation of the Owner of the Lot at the time 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, however any lien established prior to the transfer of any Lot shall continue until paid and satisfied in full. No Owner shall be exempt from liability for Assessments by abandonment of such Owner's Lot or by the abandonment of such Owner's right to the use and enjoyment of the Community Property, or by any other means. No Owner shall be entitled to any diminution, abatement or set-off of Assessments for any alleged failure of the Association to perform its duties or for any reduction in services or benefits by the Association.

Section 5.2. Purpose of Assessments. Assessments levied by the Association may be used to promote the recreation, health, safety and welfare of the Owners within the Community and for any lawful purpose relating to the proper conduct of Association activities, including, without limitation, the following:

(a) Improvement, maintenance, repair and replacement of the Community Areas including, without limitation, some or all of the rights-of-way, equestrian trails, Equestrian Center, the Water Tanks (defined in Section 12.2), entry strips, signs and entrance features or improvements located within the Community, or which are appurtenant to and serve or benefit the Community;

(b) Improvement, maintenance, repair and replacement of any and all storm water management facilities (including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities) 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 or quasi-governmental authority or agency. The Association shall not refuse to accept the conveyance of any such facilities from the Declarant;

(c) Payment of charges or expenses accruing with respect to off-site facilities that serve or benefit the Community, which the Association elects to maintain or which are otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency;

(d) Payment of all taxes, charges and assessments levied against the Community Property and any facilities situated thereon;

(e) Payment for services provided to the Association for the benefit of the Community Property, any facilities situated thereon, as well as for the Lots, Living Units and/or Owners, to the extent the Association agrees to provide such services, including, without limitation, trash removal, community water and sewer systems and surveillance, as applicable;

(f) Payment of management fees, utility charges and operating expenses relating to the Community Areas and any facilities situated thereon;

(g) Payment of insurance premiums for liability and property insurance on the Community Areas and any facilities situated thereon, for directors and officers liability insurance, and for such other insurance as the Association may obtain with respect to its officers and directors or the Community Property, any facilities situated thereon, Lots and/or the Living Units within the Community;

(h) Funding all reserves established by the Association, including, without limitation, general operating reserves and reserves for replacements and/or contingencies; and

(i) Payment of all other costs and expenses incurred by the Association in the proper conduct of its activities or as may be deemed by the Board of Directors to be in any reasonable way related to the well being of the Community and the Owners.

Section 5.3. Adoption of Common Expense Budget At least sixty (60) days before the beginning of each fiscal year, the Board of Directors shall make a reasonable effort to prepare a budget setting forth the estimated Common Expenses during the coming year, including a reasonable amount to establish a reserve fund in accordance with this Article 5.

The Association is hereby authorized to levy Annual Assessments against all Lots which are subject to assessment in order to fund the Common Expenses. The Annual Assessment shall be set at a level which is reasonably expected to produce revenue for the Association equal to the total budgeted Common Expenses, including reserves. Either the Declarant or the Association may, but shall not be required to, increase or decrease the Annual Assessment otherwise applicable to specific Lots to such amount as the Declarant or Board of Directors deems to be appropriate in relation to the scope or level of services, benefits or voting rights available or anticipated to be utilized by Members within such Lots as well as the cost to the Association of providing such services and benefits.

So long as the Declarant retains the Declarant's Rights and Obligations as set forth in Appendix Two, the Declarant may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy in the form of a contribution, an advance against future assessments due from the Declarant, or a loan, (or a combination of each) in the Declarant's sole discretion. Any such subsidy and the form thereof shall be set forth as a separate line item in the budget. The payment of a subsidy in any year shall not obligate the Declarant to continue payment of a subsidy in any other year. Except for the payment of any subsidy which the Declarant elects to provide, the Declarant shall be exempt from the payment of all Assessments.

The Board of Directors shall make a reasonable effort to send a copy of the budget and a notice of the amount of the Annual Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. The budget and Assessments shall become effective unless a special meeting of the Association is held and at such special meeting the budget and Assessments are disapproved by Members representing at least a majority of the total votes in the Association. There shall be no obligation to call a special meeting of the Association for the purpose of considering the budget except on petition of the Members as provided in the Bylaws for special meetings.

If the proposed budget and Annual Assessment is disapproved or if the Board of Directors fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 5.4. Adoption of Local Area Budgets. In addition to the budget for Common Expenses set forth in Section 5.3 above, at least sixty (60) days before the beginning of each

fiscal year, the Board of Directors shall, if Local Area Expenses are anticipated for the coming year, make a reasonable effort to prepare a separate budget covering the estimated Local Area Expenses for each Local Area anticipated to incur Local Area Expenses during the coming year. The Board of Directors shall be entitled to establish a budget and Local Area Assessments for a Local Area if it determines that additional services, benefits or facilities are being provided to such Local Areas. In addition, a Local Area Committee may request that additional services, benefits or facilities be provided by the Association, and in such case, any additional anticipated costs may be added to the budget for Local Area Expenses. Such budget shall include a reserve fund for repair and replacement of any capital items maintained within the Local Area which are intended to be utilized primarily by Members within the Local Area. By way of example and not limitation, (i) a Local Area Assessment shall be imposed against any Lots for which the Association has maintenance responsibilities for the septic fields that are located upon the Golf Course which serve such Lots, and (ii) a Local Area Assessment may be imposed on a Local Area consisting of those Lots within the Property which are served by a community well and/or sewer system in the event that the County or other entity does not assume the responsibility for the operation of such well and/or sewer system.

The Association may levy Local Area Assessments equally against all Lots within the Local Area which are subject to Assessments; provided, if so specified in the Declaration of Annexation applicable to such Local Area or if so directed by the Local Area Committee, any portion of the Local Area Assessment intended for exterior maintenance of structures, landscaping of individual Lots, insurance on structures, or any other expenses intended to benefit a particular Lot, may be levied individually on the benefited Lot based upon the anticipated costs to be incurred for such benefited Lot.

The Board of Directors shall make a reasonable effort to send a copy of the budget for the Local Area and notice of the amount of the Local Area Assessment for the coming year to each Owner of a Lot in the Local Area at least thirty (30) days prior to the beginning of the fiscal year. Such budget and Assessment shall become effective unless disapproved by a majority of the Owners of Lots in the Local Area to which the Local Area Assessment applies.

If the proposed budget and Assessment for any Local Area is disapproved or if the Board of Directors fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 5.5. Special Assessments. In addition to the Annual and Local Area Assessments authorized by this Article, the Board of Directors, subject to and in accordance with applicable law, may levy in any assessment year a Special Assessment or Special Assessments, applicable in that year only, for the purpose of defraying any unbudgeted expenses or any expenses in excess of those contained in the budget or for such other purposes as the Board of Directors may consider to be in the best interests of the Association; provided, however, that any Special Assessment levied by the Board may be rescinded or reduced by a majority of votes cast for such purpose, in person or by proxy, at a meeting of the Association held within sixty (60) days after such Special Assessment is levied. A Special Assessment may be levied against all

Members if it relates to Common Expenses or against the Lots within a Local Area if it relates to Local Area Expenses. The Association may also levy a Special Assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Lot into compliance with the Governing Documents; provided, that such Special Assessment may only be levied upon the affirmative vote of the Board of Directors, after notice and an opportunity for a hearing has been provided to the Owner.

Section 5.6. Commencement and Applicability of Assessments. Assessments shall commence as to each Lot which has been annexed to the Community pursuant to a Declaration of Annexation on the first day of the month following (a) the date upon which the Declaration of Annexation has been recorded against such Lot or (b) the date upon which the Board of Directors adopts a budget and determines to levy Assessments. Annual Assessments and annual Local Area Assessments shall be adjusted based upon the number of months remaining in the fiscal year in which the Assessments commence. No Lot, including Lots owned by the Declarant or Participating Builders, shall be subject to any Assessment by the Association prior to annexation.

Section 5.7. Assessments Applicable to Participating Builders. Each Participating Builder shall be subject to a single Assessment of Three Hundred Dollars (\$300.00) per Lot, unless otherwise agreed to by the Declarant. Assessments against these Participating Builders shall be payable upon the later to occur of (i) conveyance of such Lots from the Declarant to the Participating Builder or (ii) annexation of the Lots into the Community by a Declaration of Annexation. The Assessment of Three Hundred Dollars (\$300.00) per Lot by each Participating Builder shall be in lieu of all other Assessments now or hereinafter levied by the Association, provided however that (i) each Participating Builder shall pay full Assessments for any Lots owned by the Participating Builder upon which a Living Unit has been completed and occupied and (ii) the grantee of each Participating Builder shall be liable for the Initial Contribution and all subsequent Assessments applicable to Lots.

Section 5.8. Initial Contribution. The Declarant may establish an "Initial Contribution" to assist with the funding of the initial operation of the Association. Such Initial Contribution, if established, may be funded by a one time assessment of up to one-fourth (1/4) of Annual Assessments and/or Local Area Assessments applicable to a Lot and shall be payable, if established, by the initial non-Declarant, non-Participating Builder purchaser of each Lot upon settlement of a completed Lot. The Initial Contribution shall be in addition to other Assessments and shall not be considered an advance payment of Assessments.

Section 5.9. Reserves. The Association shall establish and maintain a reasonable reserve fund for the repair and replacement of the Community Areas and the Exclusive Community Property and any facilities situated thereon. Such reserve fund may also be established for the repair and replacement of any property, improvements or facilities otherwise required or intended to be maintained by the Association pursuant to any easement, agreement or the direction of any governmental authority or agency. The Board of Directors shall set the required reserve fund contribution in an amount sufficient to meet the projected reserve needs of the Association. The reserve fund contribution shall be included as part of the Association's annual budget, and shall be payable as part of the (i) Annual Assessment applicable to all Lots

(except as otherwise provided with respect to Lots owned by the Declarant and Participating Builders) 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, and (ii) Local Area Assessments to the extent such reserve fund will be utilized to replace assets which are determined by the Board of Directors to primarily benefit the Owners of the Lots subject to such Local Area Assessment. The Association may establish such other reserve funds as the Board of Directors may from time to time consider necessary or desirable, including, without limitation, a general operating reserve. The proportional interest of an Owner in any reserve fund established by the Association shall be considered an appurtenance of such Owner's Lot and shall not be separately withdrawn, assigned, transferred or otherwise separated from the Lot to which it appertains, and shall be deemed to be transferred with such Lot.

ARTICLE 6

REMEDIES OF ASSOCIATION FOR NON-PAYMENT OF ASSESSMENTS

Section 6.1. Non-Payment of Assessments. Any Assessment levied by the Association pursuant to the Governing Documents 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 Commonwealth of Virginia. 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 establish and foreclose the lien against such Owner's Lot and all improvements thereon in the manner now or hereafter provided under applicable law.

Section 6.2. 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 not prohibited by applicable law, the Association may charge a reasonable fee for the issuance of each such certificate.

Section 6.3. 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 6.4. Priority of Lien. The lien for Assessments under the Governing Documents shall be subordinate to the lien of any first mortgage or deed of trust recorded against a Lot. The 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.

Section 6.5. Application of Past Due Assessments. Except as otherwise required by applicable law, amounts collected for past due Assessments and related costs shall be applied in the following order:

- (a) To payment of attorneys' fees and other legal and collection costs.
- (b) To payment of late fees.
- (c) To payment of any interest accrued on the delinquent Assessments.
- (d) To payment of delinquent Assessments.

ARTICLE 7 DESIGN REVIEW AND ARCHITECTURAL CONTROL

Section 7.1. Architectural Control. No construction or development activities, including, without limitation, staking, clearing, landscaping, excavation, grading or other site work, shall be commenced or maintained on any Lot or the Community Property, no building, structure or other improvement of any kind, including, without limitation, fences, walls, mailboxes, decks, porches, gazebos, pools, hot tubs and tennis courts shall be commenced, erected or maintained within the Property, and no exterior addition, change or alteration of any nature to the Lots, Living Units or other existing improvements within the Property, including, without limitation, changes in color, changes or additions to driveway or walkway surfaces and landscaping modifications (hereinafter, individually and collectively referred to as "Improvements"), shall be made until and unless the requirements of this Article 7 have been fulfilled.

Section 7.2. Initial Construction. To the extent the Declarant has reserved rights of architectural review, approval or control over all or any portion of the Community pursuant to any contract, deed, covenant or other agreement, then the provisions of such other contract, deed, covenant or other agreement shall control and supersede any other matter otherwise within the scope of this Article 7, and the approval by the Declarant pursuant to such other contract, deed, covenant or other agreement of any other matter otherwise within the scope of this Article 7 shall be deemed full and complete compliance with this Article 7. To the extent the Declarant has expressly assigned in writing any or all of its reserved rights pursuant to this Article 7 to the Design Review Committee, then any such assigned rights shall be exercisable by the Design Review Committee, as set forth herein.

Section 7.3. Design Review.

(a) **Design Review by the Declarant.** Each Owner, by a deed or other instrument conveying an interest in any portion of the Property, acknowledges that, as the developer and initial owner of the Property, the Declarant has a significant and substantial interest in ensuring that the improvements within the Property enhance the Community and do not adversely impact the ability of the Declarant to market, sell, or lease any portion of the Property. Each Owner, by acceptance of a deed or other instrument conveying an interest in any portion of the Property, agrees that no Improvements shall be commenced within or upon a Lot unless and until the Declarant has given its prior written approval for such Improvements, which approval may be granted or withheld in the sole discretion of the Declarant. In reviewing and acting upon any request for an approval, the Declarant shall be acting in its own interest and shall owe no duty to any other Person, including, without limitation, the Association or any of its Members.

The rights reserved to the Declarant pursuant to this Article 7 shall be applicable for the duration of the Declarant's Rights and Obligations Period, unless earlier assigned or terminated by a written instrument executed by the Declarant.

(b) **Design Review Committee.** The Declarant may, but shall not be obligated to, assign all or a portion of its reserved rights under this Article 7 to a design review committee appointed by the Board of Directors (the "Design Review Committee"), subject to (i) the right of the Declarant to revoke such assignment at any time and thereafter resume jurisdiction over the matters previously assigned to the Design Review Committee and (ii) the right of the Declarant to veto any decision of the Design Review Committee which the Declarant believes, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has retained any rights under this Article 7, the authority of the Design Review Committee shall be limited to such matters as are specifically assigned to it by the Declarant. Unless and until such time as the Declarant assigns all or a portion of its reserved rights, neither the Design Review Committee nor the Association shall have any authority over design matters and upon any such assignment, the Design Review Committee shall accept and exercise the authority so assigned strictly in accordance with this Article 7 and in accordance with any such assignment.

The Design Review Committee, if and when appointed, shall consist of at least three (3) members who shall serve and may be removed and replaced in the discretion of the Board of Directors. The members of the Design Review Committee need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The duties of the Design Review Committee established under this Article 7 shall be exercised by the Board of Directors in the event that a Design Review Committee is not appointed by the Board or to the extent any such duties are not delegated by the Board to the Design Review Committee.

(c) **Design Review by the Association.** Upon expiration or termination of the rights of the Declarant under this Article 7, the Association, through the Board of Directors or its

Design Review Committee, shall assume responsibility for design matters hereunder and the Association shall be entitled to exercise all those powers previously reserved to the Declarant pursuant to this Article 7.

(d) **Application Fees and Reimbursements.** The Declarant and thereafter the Design Review Committee may establish and charge reasonable fees for review of applications hereunder. In addition, the Declarant or the Design Review Committee may retain architects, engineers or other design professionals to assist in the review of any application and the Declarant or the Design Review Committee may require reimbursement by the applicant of fees charged by any architect, engineers or other design professionals.

Section 7.4. Design Review Guidelines and Procedures.

(a) **Design Guidelines.** The Declarant, the Board of Directors, or the Design Review Committee, to the extent that any of the foregoing entities has jurisdiction hereunder (the entity having jurisdiction at any particular time is referred to in this Article 7 as the "design review entity"), may, but shall not be required to, establish Design Guidelines to provide guidance to Owners and Participating Builders regarding matters deemed to be of relevance or importance to the design review entity in considering applications for design approval. The Design Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of an application. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another, depending upon the location, type of construction or use, and unique characteristics of the property.

Any Design Guidelines adopted pursuant to this Article 7 shall be subject to modification and amendment from time to time in the sole discretion of the design review entity. Modifications and amendments to the Design Guidelines shall not apply to or require modifications to or removal of Improvements previously approved once such Improvements have commenced. There shall be no limitation on the scope of modifications or amendments to the Design Guidelines. All modifications and amendments to the Design Guidelines shall be published in Association newsletters, electronic bulletin boards, by e-mail, or by other means calculated to give reasonable notice to Owners of such modifications or amendments; provided, however, that the failure of any Owner to actually receive any Design Guideline or modification or amendment to the Design Guidelines pursuant to this Article 7, shall not affect the validity of any such Design Guideline or modification or amendment thereto.

The design review entity shall make copies of the Design Guidelines available to Owners and Participating Builders and may charge a reasonable fee to cover the costs of providing the Design Guidelines.

(b) **Procedures.** Prior to commencing any Improvements for which review and approval is required under this Article, an application for approval ("Application") of such Improvements shall be submitted to the design review entity in such form as may be required by the design review entity or by the Design Guidelines. The Application shall include detailed plans showing the site layout, including grading, exterior elevations, exterior materials and

colors, landscaping, drainage, lighting, irrigation, and other features of the Improvements, as required by the Design Guidelines and the design review entity. The design review entity may also require the submission of such additional information as it deems necessary to consider any application.

The design review entity may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to the Golf Course, equestrian trails, surrounding structures and plant life, compliance with the general intent of the Design Guidelines and architectural merit. In many instances, decisions will be based solely on aesthetic considerations and each applicant acknowledges that determinations as to such matters may be highly subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements.

The design review entity shall, within forty-five (45) days after receipt of a complete Application, advise the applicant, in writing, at an address specified by such party at the time of the Application, of (i) the approval of the Application, or (ii) the disapproval of the Application, providing a reasonable explanation of the segments or features of the Application which are objectionable and suggestions, if any, for addressing such objections. In the event the design review entity fails to advise the applicant by written notice within forty-five (45) days of receipt of a complete Application of either the approval or disapproval of the Application, the applicant may give the design review entity written notice of such failure to respond, stating that unless the design review entity responds within ten (10) days of receipt of such notice, approval shall be deemed granted. Upon such further failure of the design review entity to grant an approval or disapproval, approval shall be deemed to have been given, subject to the right of the Declarant (during the Declarant's Rights and Obligations Period) or the Board of Directors (after expiration of the Declarant's Rights and Obligations Period) to veto approval by the Design Review Committee as set forth in this Article 7. Notwithstanding the foregoing, no approval, whether expressly granted or deemed granted pursuant to this Section 7.4(b), shall be materially inconsistent with the Design Guidelines unless a variance has been granted in writing as set forth below. The notices contemplated herein shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery.

Within three (3) business days after the Design Review Committee has approved any application relating to proposed Improvements within the scope of matters delegated to the Design Review Committee by the Declarant (during the Declarant's Rights and Obligations Period) or the Board of Directors (after expiration of the Declarant's Rights and Obligations Period), the Design Review Committee shall give written notice of such action to the Declarant or the Board of Directors, as the case may be, together with such other information as the Declarant or the Board of Directors may require. The Declarant (during the Declarant's Rights and Obligations Period), in the Declarant's sole discretion, or the Board of Directors (after expiration of the Declarant's Rights and Obligations Period), by unanimous consent of all Board

members, shall have fifteen (15) days after receipt of such notice to veto any such action by written notice to the Design Review Committee and/or the applicant.

If construction does not commence on any Improvements for which approval has been granted within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the applicant to re-submit the Application for reconsideration and approval in accordance with such Design Guidelines as are then in effect. The applicant shall diligently pursue construction to completion and all Improvements shall be completed within one (1) year of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the applicant, as determined in the sole discretion of the design review entity.

Section 7.5. Non-Precedential Nature of Approvals. Each applicant acknowledges that the composition of the Design Review Committee will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Design Guidelines may vary from time to time. In addition, each applicant acknowledges that it may not always be possible to identify objectionable features of proposed Improvements until the Improvements are completed, in which case it may be unreasonable to require changes to the Improvements previously approved, but the design review entity may refuse to approve similar Improvements in the future. Approval of Improvements for any particular applicant or Lot shall not be deemed a waiver of the right to withhold approval as to any similar Improvements subsequently submitted for approval.

Section 7.6. Waivers and Variances. The design review entity may, in its sole discretion, but shall not be required to, authorize waivers or variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations, architectural merit, or other reasonable considerations warrant such a waiver or variance. Such variances shall be granted only if and when, in the reasonable judgment of the design review entity, unique circumstances exist, and no applicant shall have any right to demand or obtain a waiver or variance. No waiver or variance may (i) be effective unless in writing, (ii) be contrary to this Declaration, (iii) estop the design review entity from denying a waiver or variance in other circumstances or (iv) be inconsistent with the goals or objectives of the Declarant.

Section 7.7. Limited Scope of Approval. The standards and procedures established by this Article 7 are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Community. Neither the Declarant, the Association, the Board, nor the Design Review Committee shall bear any responsibility for ensuring structural integrity or soundness or compliance with building codes and other governmental approvals or requirements, or ensuring that any Improvements are located so as to avoid impairing views from or having other negative impacts on other Lots. No representation is made by the Declarant with respect to the quality, size, value or design of future Improvements. Neither the Declarant, the Association, the Board, the Design Review Committee, nor any member of any of the foregoing shall be liable for soil conditions, drainage problems, availability or suitability of the Lots for well and septic systems, or other site work, nor for defects or errors in any plans or specifications submitted as part of an

Application, nor for any structural or other defects in Improvements constructed according to an approved Application, nor for any injury, damages, or loss arising out of the manner, design or quality of any approved Improvements.

Section 7.8. Enforcement. Any Improvements constructed in violation of this Article 7 or in a manner inconsistent with the approved Application shall be deemed to be nonconforming. Upon written request from the Declarant, the Board of Directors or the Design Review Committee, the defaulting Owner shall, at their own cost and expense, promptly remove any nonconforming Improvement and restore the property to substantially the same condition as existed prior to the nonconforming Improvements. Should an Owner fail to remove and restore as required, the Declarant, the Board of Directors or the Design Review Committee, or their designees shall have the right to enter the Lot or Living Unit, remove the violation and restore the Lot or Living Unit to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall promptly reimburse all costs incurred by any of the foregoing in exercising its rights under this Section 7.8.

Declarant (during the Declarant's Rights and Obligations Period), or the Association (after expiration of the Declarant's Rights and Obligations Period), as the case may be, may preclude any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms and provisions of this Article 7 and the Design Guidelines from continuing or performing any further activities in the Community, subject to the notice and hearing procedures contained in the Bylaws. Neither the Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this Article 7.

In the event that the Association fails to take enforcement action within thirty (30) days after receipt of a written demand from the Declarant identifying the violator and/or specifying the nature of the violation, then the Association shall reimburse the Declarant for all costs reasonably incurred by the Declarant in taking enforcement action with respect to such violation, but only to the extent the Declarant prevails in such action.

Section 7.9. Exemption for Existing Improvements. The Declarant may, but shall not be obligated to, exempt portions of the Property from any or all of the design review and architectural control requirements of this Article 7, including, without limitation, providing full or partial exemption for any Lot containing existing improvements at the time such Lot is annexed within the Association pursuant to Section 2.2 above, which exemption shall be irrevocable by the Association.

ARTICLE 8 COVENANTS COMMITTEE

Section 8.1. Purpose and Powers of the Covenants Committee. The purpose of the Covenants Committee shall be to ensure compliance with the Governing Documents and to foster harmony within the Community through reasoned and impartial adjudication of disputes

within the Community as they arise. To this end, the principle powers of the Covenants Committee shall be as follows:

- (a) To make reasonable efforts to resolve conflicts relating to the Governing Documents between and among Owners on an informal and amicable basis.
- (b) To investigate and render decisions on alleged violations of the Governing Documents.
- (c) Upon petition of any Owner or upon its own initiative, to issue cease and desist requests to any Owner whose actions are deemed to be inconsistent with the provisions of the Governing Documents or otherwise detrimental to the Community.
- (d) To provide interpretations of the Governing Documents when requested to do so by a member of the Board of Directors or on its own initiative.
- (e) To impose reasonable violation charges for violations of the Governing Documents, subject to the approval of the Board of Directors.
- (f) To propose Community Codes for hearing alleged violations of the Governing Documents, for adoption by the Board of Directors, which shall incorporate reasonable concepts of due process and fundamental fairness. Such Community Codes, and amendments thereto, may also be proposed and approved by the Declarant (during the Declarant's Rights and Obligations Period) or by the Board of Directors, either acting alone, without action by the Covenants Committee. No such Community Codes shall be construed as a waiver of any provision or requirement of the Governing Documents.
- (g) Such additional powers as may be granted by the Board of Directors to enable the Covenants Committee to fulfill its duties under the Governing Documents.

Section 8.2. Selection of Covenants Committee. The Covenants Committee shall consist of not less than three (3) nor more than five (5) persons. For so long as the Declarant's Rights and Obligations are in effect, the Declarant may appoint a majority of the members of the Covenants Committee, and the balance of the committee shall be appointed by the Board of Directors. Members of the Covenants Committee appointed by the Declarant shall serve at the pleasure of and may be removed, without cause, by the Declarant. Members of the Covenants Committee appointed by the Board of Directors shall serve at the pleasure of and may be removed, without cause, by the Board. Upon expiration of the Declarant's Rights and Obligations Period, or earlier upon written notice from the Declarant to the Association, the number, qualifications, tenure, and manner by which members of the Covenants Committee are to be chosen shall be as determined from time to time by the Board of Directors, in the Board's sole discretion. Covenants Committee members need not be Owners. In the event that the Declarant and/or the Board of Directors shall have failed to appoint a Covenants Committee, or in the event of the Covenants Committee's absence, resignation or inability or refusal to act, the Board of Directors shall have the power and authority of the Covenants Committee and shall

otherwise exercise and discharge the Covenant Committee's duties under the Governing Documents.

Section 8.3. Appeal. Subject to such procedures as may be established by the Board of Directors, any Owner may appeal an adverse Covenants Committee decision to the Board of Directors. The Board of Directors may uphold, modify or reverse the decision of the Covenants Committee.

Section 8.4. Jurisdiction of Covenants Committee. Any provision hereof to the contrary notwithstanding, the Covenants Committee shall have no jurisdiction over the Declarant. The Board of Directors may from time to time, in its sole discretion, restrict the jurisdiction or authority of the Covenants Committee, either generally or on a case-by-case basis.

ARTICLE 9 LOCAL AREA COMMITTEES

Section 9.1. Function. Owners may serve on any Local Area Committees, established in accordance with this Article or pursuant to any Community Codes adopted by the Board of Directors. Local Area Committees shall serve in an advisory capacity with respect to issues and matters that relate to Local Areas.

Section 9.2. Establishment. The Board of Directors may, by adoption of a Community Code, designate the Local Areas within the Community to be served by a Local Area Committee. Designation of Local Area Committees shall be based on such factors as are deemed appropriate by the Board of Directors, including, without limitation, the location and proximity of the Lots to be represented, any special features or amenities within or serving the Local Area to be represented, any special services provided to or requested by the Owners within the Local Area to be represented, and the input of interested Owners.

Section 9.3. Local Area Committee Operations. Each Local Area Committee, established by the Board of Directors, shall be responsible for establishing the procedures applicable to its activities, provided that the right of all Owners within the Local Area to meaningful participation in the Local Area Committee shall not be abridged. Local Area Committees shall provide all Owners within the Local Area and the Board of Directors with reasonable prior notice of all Local Area Committee meetings and all such meetings shall be open to all Owners. Each Local Area Committee shall designate one of its members as spokesperson for purposes of all meetings of the Board of Directors, Covenants Committee or Design Review Committee.

Section 9.4. Local Area Committee Authority. Local Area 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, Covenants Committee, or Design Review Committee which would impact their Local Area. Local Area Committees may serve as an advisory committee to the Board of Directors with respect to issues and matters of particular concern to the Owners of the Local Area, including, but not limited to, the amount of the Assessments and the manner of the maintenance and repair of the Lots, Living Units and

Community Areas within the Local Area. Local Area Committees may serve as an advisory committee to the Covenants Committee with respect to the interpretation and enforcement of the Governing Documents within the Local Area. Local Area Committees may also serve as an advisory committee to the Design Review Committee with respect to the review and approval or disapproval of applications for Improvements within the Local Area. The recommendations of a Local Area Committee shall not be binding on the Board of Directors, the Covenants Committee or the Design Review Committee; provided, however, that the Board of Directors, the Covenants Committee and the Design Review Committee shall make a reasonable effort to implement such recommendations unless to do so is determined to not be in the best interests of the Community by the Board of Directors, the Covenants Committee or the Design Review Committee, in their sole discretion.

Section 9.5. Further Local Area Committee Provisions. The Board of Directors may adopt Community Codes further defining the authority of Local Area Committees, as well as Community Codes establishing further rules and procedures to be followed by the Local Area Committees in connection with the exercise of such authority.

ARTICLE 10 COMMUNITY CODES

Section 10.1. Objectives and Goals. By the creation and recordation of this Declaration, the Declarant intends to create a planned community with the goals of enhancing the quality of life of Owners, protecting the aesthetics and environment within the Community, and promoting a sense of community among Owners. To serve these goals, the Declarant recognizes that the changes in circumstances, conditions, needs, and desires within the Community will require the modification and amendment of the Community Codes from time to time.

Every provision of the Governing Documents, including the Community Codes, shall apply to all Owners, tenants, occupants, guests and invitees of any Lot. All Owners who lease their Lots shall include a notice provision in the lease informing the tenant and all occupants that the Lot and Community Property are subject to the Governing Documents and the Community Codes. However, the failure to include such a provision in the lease shall not relieve any Person of responsibility for complying with the Governing Documents.

Section 10.2. Promulgation of Community Codes. Community Codes shall be promulgated by the Declarant or the Board of Directors in accordance with this Section and provided to prospective purchasers of Lots within the Community, in accordance with the Virginia Property Owners' Association Act and/or such other applicable laws. Community Codes shall have the same force and effect and binding nature against the Property as the covenants, conditions, easements and restrictions contained within this Declaration. Consequently, the Property and the Owners are not only subject to the provisions of the Declaration, but shall also be subject to the Community Codes, as promulgated in accordance with this Article 10. Subject to the terms of this Article 10, Community Codes may be established, modified, repealed or amended as follows:

(a) Subject to the terms of this Article 10, and in accordance with its duty to exercise reasonable judgment on behalf of the Association and its Members, the Declarant (during the Declarant's Rights and Obligations Period) or the Board of Directors, as applicable, may establish, modify, cancel, limit, create exceptions to, or expand Community Codes. The Declarant, or the Board of Directors, as applicable, shall make a good faith effort to provide each Member with at least thirty (30) days prior notice of a proposed Community Code. The Declarant or the Board of Directors, as applicable, may provide the notice of the proposed Community Code in a community newsletter, electronic bulletin board, by electronic mail, or by other means which the Declarant or Board of Directors, as applicable, determines will be reasonably effective in providing such notice to a majority of Members. Members shall have a reasonable opportunity to express their views on proposed Community Codes at a Board meeting, by mail, electronic bulletin board, electronic mail or other forum prior to action on the proposed Community Code.

(b) Any Community Codes adopted by the Declarant or the Board, as applicable, shall become effective thirty (30) days thereafter; provided, however, that any Community Code adopted by the Board may be repealed or amended by a majority of votes cast for such purpose, in person or by proxy, at a Special Meeting of the Association called for that purpose. At any such meeting, Members may vote by proxy, and proxies may be filed by facsimile or other electronic means so long as they meet the requirements of Virginia law. The Board shall have no obligation to call a meeting to consider disapproval except upon the petition of Members as required by the Bylaws for special meetings.

(c) All additions, modifications and amendments to the Community Codes shall be published in Association newsletters, electronic bulletin boards, by e-mail, or by other means calculated to give reasonable notice to Owners of such additions, modifications or amendments.

Section 10.3. Owners' Acknowledgement and Notice to Purchasers. All Owners of Lots are given notice that use of their Lots is subject to all Community Codes as they may be modified from time to time in accordance with this Article 10. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property may be impacted by the Community Codes and that the Community Codes may change from time to time.

Section 10.4. Community Code Limitations. Except as may be specifically set forth in this Declaration, as amended, neither the Declarant nor the Board may adopt any Community Code in violation of the following provisions:

(a) **Equal Treatment.** Similarly situated Owners shall be generally treated in a substantially similar manner; provided, the Community Codes may vary from one portion of the Community to another depending upon housing type, Local Areas or similar factors.

(b) **Occupancy Limitations.** No Community Code shall unreasonably interfere with the ability of Owners to determine the composition of their households, except that, subject to the provisions of Section 10.4(i), the Association shall have the authority to

require that all Living Unit occupants be members of a single household unit (which household unit may include live-in nannies and domestic workers). Further, the Association may limit the total number of occupants permitted in each Living Unit based on the size of the Living Unit, the facilities within the Living Unit or the impact on the Community Property.

(c) **Activities Within Living Unit.** No Community Code shall unreasonably interfere with activities within the interior confines of Living Units, except that, subject to the provisions of Section 10.4(i), the Association may restrict or prohibit the following:

- (i) Activities not normally associated with residential or home office use;
- (ii) Activities that create monetary costs for the Association or other Owners;
- (iii) Activities that create a danger to the health or safety of occupants of other Living Units;
- (iv) Activities that generate excessive noise or traffic;
- (v) Activities that create unsightly conditions visible outside the Living Unit; and
- (vi) Activities that create an unreasonable source of annoyance.

(d) **Animals.** The Association may adopt Community Codes regarding pets designed to minimize damage and disturbance to other Owners, including reasonable provisions requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on the size of the Lot and Living Unit, the facilities within the Lot and the potential impact on the Community Areas. Nothing shall prevent the Association from requiring removal of any animal that presents an actual or realistic threat to the health or safety of Owners or occupants of Lots or from requiring abatement of any nuisance or unreasonable source of annoyance caused by any animal.

(e) **Allocation of Expenses and Usage Rights.** The initial allocation of expenses and rights to use Community Property among the Owners shall not be unreasonably and materially changed to the detriment of any Owner over that Owner's written objection to the Association. Nothing shall prevent the Association from altering the availability or use of Community Property, from adopting rules or Community Codes for use of Community Property, or from denying use privileges to those who abuse the Community Property, violate the Governing Documents, or fail to pay Assessments.

(f) **Alienation.** No Community Code shall prohibit outright the leasing or transfer of any Lot, or require consent of the Association for transfer of any Lot.

(g) **Altering Existing Uses or Rights.** Any Community Code which would (1) require Owners to dispose of personal property which is properly maintained in or on the Lot or (2) require a material alteration of a use permitted prior to the effective date of such Community Code shall not apply to an Owner without his or her written consent unless the Community Code was in effect at the time the Owner acquired his or her interest in the Lot.

(h) **Reasonable Rights to Complete the Community Plan.** No Community Code or action by the Association shall impede the Declarant's development rights within the Property.

ARTICLE 11 DECLARATION OF EASEMENTS AND RIGHTS

Section 11.1. Declaration of Easements and Rights. In addition to the reserved rights and easements set forth in Appendix Two of this Declaration, the following easements and rights are hereby declared or reserved:

(a) The Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities (including, but not limited to, all State and County governmental authorities and agencies) and utility companies over any part of the Property.

(b) Each Lot within the Community is hereby declared to have an easement, not exceeding three feet (3') in width, over the adjoining Lots and Community Property for the purpose of accommodating any encroachment due to engineering errors or errors in original construction of fences, 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 and knowing conduct of said Owner or Owners.

(c) There is hereby reserved unto the Declarant [and to such other party(ies) as the Declarant may specifically, and in writing, assign such rights], for the benefit of the Annexable Property, a blanket easement upon, across and under the Property for vehicular and pedestrian ingress and egress, driveway aprons or culverts, slope, or grading easements, for the placement of signs, including, without limitation, signs relating to the Golf Course or Equestrian Center, signs utilized for sales and marketing purposes or Community signs, 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 within 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 within the Property. There is further reserved unto the Declarant the right to erect entry features, promotional and sales displays and other similar items within the Property provided they do not unreasonably and materially interfere with the use, operation and enjoyment of Lots within 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 and utility companies, 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 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) There is hereby further reserved for the benefit of the Annexable Property a right of any Owner (or such Owner's guests, invitees, licensees or other parties entitled to occupy any dwelling unit within the Annexable Property) of any dwelling unit within the Annexable Property to use any recreational or other similar facilities that may, from time to time, be located within the Community; provided, however, as a condition precedent to the exercise of such rights, the election to allow the use of such facility(ies) is specifically made by the Declarant pursuant to a written instrument recorded among the Land Records of Loudoun County, Virginia. If the rights contemplated by the provisions above are elected, then the parties benefiting from such rights shall be obligated to pay their pro-rata share of the cost of maintaining, operating and repairing such facilities, which share shall be computed by multiplying the total of such bona-fide costs times a fraction, the numerator of which shall be the number of completed dwelling units owned by the party from whom such contribution is sought and the denominator shall be the total number of completed dwelling units entitled to use such facilities. The computation contemplated by the immediately preceding sentence shall be made at each time a contribution for such costs is sought. It is the intention of this Section 11.1(d) to permit reasonable rights of use over the Property for the benefit of the Annexable Property in the event any portion of the Annexable Property is not annexed into the Community. Upon any such annexation, the provision of this Section 11.1(d) shall no longer be applicable because the right of use will otherwise be established by this Declaration.

(e) A blanket easement is hereby reserved to the Declarant to enter and utilize the Property during the period of construction and sales within the Community, and to maintain such facilities and perform such operations as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the development or construction of the Property, and any adjacent or contiguous property.

(f) The Declarant reserves the right to enter any portion of the Community 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 Community or the improvements thereon. There is further reserved unto the Declarant and its agent(s) a non-exclusive easement over, across and through all of the Community Property for the purpose of access, the storage of building

supplies, materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction or repair of the Community.

(g) For a period of twenty (20) 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 maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance; provided, however, that the Declarant shall have no obligation to exercise such right. 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, electricity, gas, cable television, master television antenna systems, security and surveillance systems, telephone lines and similar utilities (individually and collectively, "Systems") shall be governed by the following:

(i) Whenever Systems are or have been installed within the Community, 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 or repair company enter upon any portion of the Community in which said Systems lie, to repair, replace and generally maintain said installations. Such easement shall include, without limitation, the right to enter upon any portion of the Community, including private streets, for the installation, replacement, repair and maintenance of water and sewer lines.

(ii) The rights granted in subsection (i) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to the full and reasonable use and enjoyment of its property, 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 installations, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter may be submitted to its Board of Directors or Covenants Committee, who may (but shall not be required to) decide the dispute, and any decision of the Board or Covenants Committee shall be final and conclusive as to the parties.

(i) The Association shall have an easement to enter any portion of the Community for the performance of its duties hereunder; provided that such easement shall not

entitle entry within the interior portion of any Living Unit, and provided further such easement in no way interferes with the development related activities of the Declarant.

(j) A mutual right and easement for the Systems is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with the Systems being provided to other Owners within the Community. If a Lot contains any utility pipes, ducts, conduits, wires or other Systems which are for the benefit, in whole or in part, of other Owners within the Community, then the Owner of such Lot shall promptly, at such Owner's expense, repair any damage to such Systems caused by the Owner.

(k) There is hereby reserved an exclusive, perpetual, blanket easement over the Property for the benefit of the Declarant, the Association, the Owners, and such other persons as the Declarant or the Association may from time to time designate for use of portions of the Property as an equestrian trail. The foregoing persons shall be entitled to the use, enjoyment and right of passage over such equestrian trail, subject to reasonable restrictions imposed by the Board of Directors. Any Owner or other user of the equestrian trail or the Equestrian Center agrees to use such trail in a reasonable and prudent manner and to indemnify the Declarant, the Association, and other Owners from any loss or liability relating to the use of the equestrian trail or the Equestrian Center, other than loss or liability due to the gross negligence or willful misconduct of such indemnitees. No Owner of any Lot which contains any portion of the equestrian trail shall interfere with, fence off or otherwise obstruct the use of the equestrian trail.

Section 11.2. Golf Course Easements and Restrictions.

(a) In addition to the Governing Documents, the Property is subject to certain agreements, easements and restrictions relating to the Golf Course including that certain Declaration of Developer's Restrictive Covenants dated November 30, 1999 and recorded or to be recorded among the Land Records of Loudoun County, Virginia (any such agreements, easements and restrictions related to the Golf Course shall be referred to as the "Golf Course Agreements"). The Golf Course Agreements generally establish certain easements and restrictions pertaining to the Golf Course and the Property, including, without limitation, a prohibition on the location of certain improvements within a buffer area established over portions of the Property adjacent to the Golf Course, and a restriction on activities within such buffer area and along the boundary between the Golf Course and the Property that disturb the use or enjoyment of the Golf Course or the Property. This Declaration shall be subject and subordinate to the Golf Course Easement.

(b) The Lots and Community Property are hereby subject to an easement permitting errant golf balls originating from the Golf Course which unintentionally come upon such Lots or Community Property, and for golfers at reasonable times and in a reasonable manner to come upon the Lots or Community Property to retrieve such errant golf balls; provided, however, that if any Lot is properly fenced or walled, the golfer shall seek the Owner's permission before entry. Under no circumstances shall the Declarant (or any successors of the Declarant), any Participating Builder, the owner or operator of the Golf Course, the Association or its Members (in their capacity as such) be held liable for any damage or injury resulting from

errant golf balls or the exercise of this easement, and by taking title to a Lot, every Owner expressly assumes the risks associated with living in proximity to the Golf Course.

(c) The Lots and Community Property are hereby subject to an easement in favor of the Golf Course for overspray and runoff of water from any irrigation system serving the Golf Course and are further subject to an easement for noise generated from Golf Course maintenance equipment as well as for the runoff of chemical turf treatments.

Section 11.3. 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 Community Property for any lawful purpose which the Board, in its sole discretion, determines to be in the best interests of the Association, provided that during the Declarant's Rights and Obligations Period, the prior consent of the Declarant is obtained.

ARTICLE 12 MAINTENANCE OF LOTS AND COMMUNITY AREAS

Section 12.1. Lot Maintenance. Except as otherwise specifically provided in the Governing Documents, each Owner of a Lot within the Community shall keep such Lot, and all landscaping and improvements therein or thereon, including, without limitation, private well and septic systems, as well as any areas such as right-of-ways adjacent to the Lot, in good order and repair and free of debris, including but not limited to the painting (and other appropriate external care) of all buildings and other improvements located within such Lot, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to maintain such Owner's Lot and the improvements situated thereon, the Board of Directors or its agent shall have the right to enter upon said Lot to repair, maintain and restore the Lot and the exterior of the dwellings and any other improvements erected thereon. The Association shall also have the right to enter Lots to correct drainage. Except in the case of an emergency, the Board of Directors shall provide an Owner at least fifteen (15) days written notice prior to entering a Lot for the purposes set forth in this Section. Notice shall be deemed to be given when mailed by regular or certified mail to the address of the Owner as it appears in the records of the Association. All costs related to such correction, repair, maintenance or restoration shall be collectible by the Association in the same manner as Assessments and may become a lien upon such Lot, provided that all requirements of applicable law have been satisfied. Such lien may be enforced in the same manner as the lien for any other Assessment under the Governing Documents.

Section 12.2. Association Maintenance. Except to the extent such responsibilities are delegated to others pursuant to a lease, license or other agreement, the Association shall maintain, repair, replace and keep in good order (i) the Community Areas and any improvements, landscaping and facilities situated thereon, (ii) any and all storm water management facilities (including, without limitation, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities) 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 or quasi-governmental authority or agency, (iii) rights-of-way, entry strips, signs and entrance features or improvements located within the Community, or which are appurtenant to and serve or benefit the Community, and (iv) and any other property, facilities or equipment appurtenant to and serving or benefiting the Community (including recreational facilities) which the Association elects or is required to maintain, repair or replace. Such maintenance, repair and replacement shall be funded as provided in the Governing Documents. Without limiting the generality of the foregoing, the Association shall be responsible for the maintenance, repair and replacement of (A) the equestrian trails, (B) underground water tanks for fire control and related fire hydrants and water lines ("Water Tanks"), (C) community well and/or community sewer systems serving Lots (to the extent maintenance of such community well and/or community sewer systems is not undertaken by the County or other entity), and (D) septic systems located within the Golf Course serving Lots within the Property. Such maintenance responsibilities of the Association shall (i) extend to portions of the equestrian trails, Water Tanks, community well and/or community sewer systems, and septic systems located within the Community as well as within the Golf Course, or property adjoining the Community or Golf Course, and (ii) be pursued in a diligent manner so as to insure a reasonable level of health, sanitation and welfare to the Owners. The Association shall have no responsibility for the maintenance, repair and replacement of any well, sewer or septic systems located solely within a Lot which serve only that Lot.

Section 12.3. Lot Landscape Maintenance. Either the Declarant (pursuant to a Declaration of Annexation or Community Code) or the Board of Directors (pursuant to a duly adopted Community Code) may elect to assume maintenance responsibilities for the lawn and garden areas, or other portions of some or all of the Lots. Lawn and garden area maintenance may include, without limitation, responsibility for mowing, fertilizing, trimming, pruning 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 all or a portion of the Lot. The Association may also elect to assume exterior maintenance responsibilities for some or all of the Living Units and improvements within the Lots. Any such maintenance by the Association shall be with such frequency and in conformity with reasonable standards as may established by the Board of Directors from time to time. In the event the Association assumes such maintenance responsibilities, all costs relating to the same shall generally be assessed only against the Owners of Lots that receive such maintenance services. The Declarant or Board of Directors may also elect to provide these landscaping services to all Lots within a Local Area, in which case the costs associated with the same may be assessed as Local Area Expenses.

An Owner may request that the Association refrain from performing all or a part of the maintenance services described above. Such a request shall be made to the Association at least ninety (90) days prior to the date the Owner desires the Association to refrain from such maintenance, or such other time period as the Association may prescribe. 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 landscaping in a manner and with such frequency as is acceptable to the Association. In the event an Owner elects to maintain the landscaping 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 Assessments levied against such Lot, unless the Association elects to do so. However, the Association reserves the absolute discretion to refrain from providing such reimbursement.

ARTICLE 13 PARTY FENCES, JOINT DRIVEWAYS AND SHARED IMPROVEMENTS

The rights and obligations of the Owners with respect to party fences, joint driveways and similar shared improvements constructed as part of the original construction within the Community shall be governed by the following:

Section 13.1. General Rules of Law to Apply. Each improvement which is constructed within Lots as a part of the original construction and any part of which is placed on the dividing line between separate Lots shall constitute a "Shared Improvement". With respect to such Shared Improvement, each of the adjoining Owners shall assume the burdens of and be subject to an easement for that portion of the Shared Improvement on such Owner's Lot, and shall be entitled to the benefits of this Article 13. To the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply to Shared Improvements and their adjoining Owners.

Section 13.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. All Owners who make use of or benefit by any Shared Improvement on a regular basis shall share the cost of the reasonable repair and maintenance of such Shared Improvement, in equal proportions, unless otherwise agreed by such Owners. If a Shared Improvement is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners (including ordinary wear and tear and deterioration from lapse of time), then, in such event, all such adjoining Owners benefiting from the Shared Improvement shall proceed forthwith to rebuild or repair such Shared Improvement to its original condition or the condition which existed immediately prior to the damage, unless otherwise agreed by such Owners. The costs associated with rebuilding or repairing a Shared Improvement pursuant to this Section 13.2 shall be shared equally among all adjoining Owners benefiting from the Shared Improvement, unless otherwise agreed by such Owners.

Section 13.3. Repairs of Damage Caused by One Owner and/or Resident. If any such Shared Improvement is damaged or destroyed through the act of one adjoining Owner and/or resident, so as to deprive the other adjoining Owner and/or resident of the full use and enjoyment of such Shared Improvement, then the Owner and/or resident responsible for such damage shall proceed forthwith to rebuild or repair such Shared Improvement to its original condition or the condition which existed immediately prior to the damage, without cost to the adjoining Owner and/or resident.

Section 13.4. Changes to Shared Improvements. In addition to meeting the other requirements of this Declaration, and of any building code, zoning ordinance or similar governmental regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Living Unit in any manner which requires the extension or other alteration of any

Shared Improvement, shall first obtain the written consent of the adjoining Owner. Such consent shall not be unreasonably withheld, delayed or denied.

Section 13.5. 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 13.6. Driveway Right of Passage. With respect to any private driveway within and shared by the Owners of two or more Lots, there shall be a perpetual and non-exclusive easement and right of passage on, through, over, under and across such driveway reserved to and for the benefit of the Owners of the Lots upon which the joint driveway has been built or installed. This easement shall also be reserved to and for the benefit of any Lots which such joint driveway has reasonably been designed to serve or benefit, for purposes of vehicular and pedestrian ingress and egress to and from such Lots. No person shall in any way interfere with the free and unobstructed use thereof by said Owners.

Section 13.7. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a Shared Improvement 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 may be submitted to its Board of Directors or Covenants Committee who may (but shall not be required to) decide the dispute, and the decision of such Board of Directors or Covenants Committee shall be final and conclusive upon the parties.

ARTICLE 14 MORTGAGEE NOTICES, CONSENTS AND APPROVALS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots.

Section 14.1. Notices of Action. Any institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association stating its name and address and the street address of the Lot to which its Mortgage relates shall be deemed an "Eligible Mortgagee" and shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Mortgagee, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy required to be maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

Section 14.2. Other Provisions for First Mortgagees. To the extent not inconsistent with Virginia law:

(a) Any substantial and material restoration or repair of the Community Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration, unless the approval is obtained of the Eligible Mortgagees on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Mortgagees are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgagees on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Mortgagees are allocated.

(c) An election to terminate the Association under any other circumstances shall require the consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as the Declarant's Rights and Obligations Period exists, and the approval of the Eligible Mortgagees of Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage held by an Eligible Mortgagee appertain.

Section 14.3. No Priority. No provision of this Declaration gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Community Property.

Section 14.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 14.5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently modify any of its respective requirements which necessitate modifications to provisions of the Governing Documents, the Board of Directors, without approval of the Owners, may record an amendment to this Article 14 to reflect such changes.

Section 14.6. Construction of Article 14. Nothing contained in this Article 14 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Article 14.

Section 14.7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board of Directors to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the

Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 15 GOLF COURSE

Section 15.1. Ownership and Operation of the Golf Course. All persons and entities, including all Owners and residents of the Community, are hereby advised that no representations or warranties have been or are made or authorized by the Declarant or any other person or entity with regard to the continuing existence, ownership or operation of the Golf Course, if any, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically made in writing by the Declarant. Further, the ownership and/or operation of the Golf Course, if any, may change at any time and from time to time by virtue of, but without limitation:

(a) The sale or transfer of the Golf Course, or of the rights to operate the Golf Course, by the Golf Course owner;

(b) The creation or conversion of the ownership and/or operating structure of the Golf Course to an "equity" club or similar arrangement whereby the Golf Course or the rights to operate the Golf Course are transferred to an entity which is owned or controlled by its members; or

(c) The transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the Golf Course owner.

No consent of the Association, or any Owner or resident shall be required to effectuate any such sale, transfer or conversion.

Section 15.2. Right to Use. Neither membership in the Association nor ownership or occupancy of a Living Unit shall confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner of the Golf Course, including, without limitation, the payment of a daily greens fee. The owner of the Golf Course shall have the right, from time to time, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents and agreements.

Section 15.3. View Impairment. Neither the Declarant, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Living Units will be preserved without impairment. In addition, the owner of the Golf Course may, in its discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Living Units and any

express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 15.4. Jurisdiction and Cooperation. It is the Declarant's intention that the Association and the owner and operator of the Golf Course shall cooperate to the maximum extent possible in the operation of the Property and the Golf Course. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

ARTICLE 16 EQUESTRIAN CENTER

Section 16.1. Ownership and Operation of the Equestrian Center. All persons and entities, including all Owners and residents of the Community, are hereby advised that no representations or warranties have been or are made or authorized by the Declarant or any other person or entity with regard to the continuing existence, ownership or operation of the Equestrian Center, if any (including, without limitation, boarding capacity or availability), and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically made in writing by the Declarant. If developed, the Declarant may convey the Equestrian Center to the Association; however, the Declarant shall have no obligation to make such conveyance and the Declarant may enter into a lease with a third-party for the Equestrian Center, may transfer ownership of and the rights to operate the Equestrian Center to other persons or entities, or may otherwise utilize or develop the Equestrian Center.

Section 16.2. Right to Use. Mere membership in the Association or ownership or occupancy of a Living Unit shall not confer any right to use the Equestrian Center. Rights to use the Equestrian Center will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the Declarant (during the Declarant's Rights and Obligations Period), the Board of Directors (after expiration of the Declarant's Rights and Obligations Period), or the Equestrian Center operator to the extent such authority has been assigned to the Equestrian Center operator by the Declarant or the Board of Directors, as the case may be, who shall further have the right, from time to time, to amend or waive the terms and conditions of use of the Equestrian Center, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents and agreements. Unless otherwise determined by the Declarant or the Board of Directors, all charges for services rendered to Owners or residents by the Equestrian Center shall be in addition to any Assessments.

Section 16.3. Jurisdiction and Cooperation. It is the Declarant's intention that the Association and the Equestrian Center operator shall cooperate to the maximum extent possible in the operation of the Property and the Equestrian Center.

ARTICLE 17 AMENDMENT OF DECLARATION

Section 17.1. By the Declarant. Until ten (10) years after the recordation of this Declaration, or until such time as the Declarant no longer owns any portion of the Annexable Property, whichever shall occur later, the Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no materially adverse effect upon any significant property rights of any affected Owner. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision of the Declaration into compliance with any applicable governmental statute, rule, regulation, or judicial determination which is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association, Federal Housing Administration, Veterans Administration or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (iv) to satisfy the requirements of any governmental or quasi-governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

Section 17.2. By Members. Except as otherwise set forth elsewhere in this Declaration, this Declaration may be amended only by agreement of the Owners of two-thirds (2/3) of the Lots subject to the Declaration (or such other percentage provided by applicable law), and the consent of the Declarant, so long as the Declarant owns any portion of the Annexable Property. However, the percentage of votes necessary to amend a specific clause within the Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause in the event that such prescribed percentage is greater than two thirds (2/3) (or such other percentage provided by applicable law). Agreement of the required majority of Owners to any amendment of the Declaration shall be evidenced by their execution of the amendment, or ratifications thereof.

Notwithstanding the foregoing, the Board of Directors shall have the right, by a vote of two-thirds (2/3) of the members of the Board, to amend this Declaration for the purpose of incorporating within the Declaration any Community Code previously adopted, if the Board determines that the enforceability of any such Community Code would be enhanced by such action. Any Community Code which is incorporated within this Declaration in accordance with the foregoing may thereafter be modified by the Board of Directors in the same manner described above.

Section 17.3. Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Land Records of Loudoun County, Virginia, unless a later effective date is specified therein and. In the case of amendments made by the Members, the amendment shall be recorded together with a certification, signed by the President or Secretary of the Board, that the requisite majority of Owners signed the amendment or ratifications thereof as provided in Section 17.2. Any procedural challenge to an amendment

promulgated by the Declarant must be made within thirty (30) days of its recordation or such amendment shall be presumed to have been validly adopted. An action to challenge the validity of an amendment adopted by the Association may not be brought more than one (1) year after the amendment is effective (or such other time period provided by applicable law). In no event shall a change of conditions or circumstances operate to automatically amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 17.4. Loudoun County Approval of Amendments. Notwithstanding anything contained in this Declaration to the contrary, no material amendment of this Declaration may be made without the prior written consent of Loudoun County, Virginia, which consent shall not be unreasonably withheld or delayed.

ARTICLE 18 GENERAL PROVISIONS

Section 18.1. Security and Safety: Limitation of Liability.

(a) Neither the Association, the Declarant, nor any successor or assign of the Declarant, shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made or implied that any fire protection system, burglar alarm system or other surveillance system or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system was designed or intended.

(b) Each Owner acknowledges, understands and covenants to inform its tenants, and all occupants, guests and invitees of its Lot that the Association, the Declarant, and any successor or assign of the Declarant are not insurers and that each person using the Property assumes all risks of personal injury and loss or damage to property, by theft or otherwise, including loss or damage to Lots, Living Units, or personal property (whether maintained on a Lot or on Community Areas). All persons using or maintaining horses or other animals on the Property assume all risk of loss or injury to such animals. In addition, each person using the Property acknowledges that certain risks are inherent from being on or in the proximity of a golf course, or in activities involving horses or other animals and agrees to assume all risk of personal injury, including death, resulting from being on or in proximity to the Golf Course, or resulting from proximity to, handling of, and activities involving horses or other animals on the Property.

(c) 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 person or property caused by the elements or resulting from water which may leak or flow from any portion of the Community Property, or from any pipe, drain, conduit or the like. No diminution or abatement of Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Community Property, or from any action taken by the Association.

Section 18.2. Enforcement. Unless otherwise limited, the Association, any Owner and any Mortgagee 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 the Governing Documents. Failure by the Association, any Owner or by any Mortgagee to enforce any provision of the Governing Documents, 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 Governing Documents, cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Association, or any Owner or Mortgagee, successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Governing Documents, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner and/or resident committing or responsible for such violation, and such costs shall be collectible in the same manner as any other Assessment under the Governing Documents.

Section 18.3. 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 18.4. Successors of the 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 instrument in writing, without notice to the Association.

Section 18.5. Taxes and Assessments. It is the intent of this Declaration that insofar as the interests of each Owner to use and enjoy the Community Property is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Community Property shall be included in the assessment for each such Lot and as a result, any assessment directly against such Community Property 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 18.6. No Dedication to Public Use. Nothing herein shall be construed as a dedication to public use or as an acceptance for maintenance of any Community Property 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 Community Property.

Section 18.7. 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, conditions, restrictions, servitudes, easements, charges

and liens set forth in this Declaration; however, the failure to do so shall not (i) affect the validity of any such deed, or (ii) the enforceability of the covenants, conditions, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 18.8. Declarant Reserved Rights. No supplement or amendment to the Governing Documents may remove, revoke or modify any right, reservation or privilege of the Declarant without the prior written consent of the Declarant.

Section 18.9. Non-Association Disputes. The Association expressly has no right or obligation to intervene in any disputes between and among Owners or in any other matters that do not directly involve Community Property or other issues for which the Association has been conferred responsibility pursuant to the Governing Documents.

Section 18.10. Limitations. As long as the Declarant is the Owner of any portion of the Community, the Association may not use its financial resources to defray the costs of opposing any lawful development activities of the Declarant. Nothing in this Section shall be construed to limit the rights of Owners to act as individuals or in affiliation with other Owners or groups.

Section 18.11. Conveyance by Declarant. The Declarant may convey unimproved or improved land to the Association to be held as Community Property, or may construct improvements on any Community Property. The consent of the Association shall not be required for such conveyance or construction. The Declarant shall have the right to permit the Association and its Members to enjoy and utilize land which has not been conveyed but which is intended to become Community Property. The Association shall have the right to maintain such Property and levy Assessments for such maintenance costs.

Section 18.12. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

Section 18.13. Perpetuities. If any of the covenants, conditions, easements, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be signed this 30th day of November, 1999.

WITNESS/ATTEST:

SANDLER AT BEACON HILL, L.L.C.,
a Virginia limited liability company

By: Odyssey Development, Inc.,
Its Authorized Agent

Melissa Fultz

By:
Larry A. Goldstein, President

COMMONWEALTH OF VIRGINIA

*

*

to wit:

*

COUNTY OF Fairfax

I HEREBY CERTIFY that on the 30th day of Nov, 1999, before the subscriber, a Notary Public in and for the above jurisdiction, personally appeared Larry A. Goldstein, known to me (or satisfactorily proven) to be the President of Odyssey Development, Inc., the authorized agent for Sandler at Beacon Hill, L.L.C., a Virginia limited liability company, and that he, being authorized to do so, executed the foregoing instrument on behalf of such limited liability company for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Diana Foster
Notary Public

My Commission Expires: 9-30-01

[NOTARIAL SEAL]

**BEACON HILL COMMUNITY ASSOCIATION, INC.
DECLARATION
APPENDIX ONE**

*Definitions of Significant Terms
Used in the Governing Documents*

Annexable Property refers to the real property described in Exhibit "A" attached hereto and incorporated by reference herein, as well as any other real property which is permitted to be annexed to the Declaration.

Annual Assessments refer to assessments levied against all Lots within the Community which are subject to assessments to fund Common Expenses which are determined by the Board of Directors to be for the general benefit of all Lots.

Assessments refer to all Annual Assessments, Special Assessments, Local Area Assessments and other fees and charges, including all installments thereof, as may be levied by the Association in accordance with the Governing Documents.

Articles of Incorporation or Articles refer to the Articles of Incorporation for Beacon Hill Community Association, Inc., as filed with the State Corporation Commission of Virginia.

Association refers to the Beacon Hill Community Association, Inc., a Virginia nonstock corporation, its successors and assigns, the entity which holds title to the Community Property and the entity responsible for carrying out the objectives of the Governing Documents.

Board of Directors or Board refers to the governing body of the Association as more fully described in the Bylaws and Articles of Incorporation of the Association.

Bylaws refer to the Bylaws of the Beacon Hill Community Association, Inc., as adopted by the Board of Directors, as amended from time to time.

County refers to the Loudoun County, Virginia, and any County agency, regulatory authority or department.

Common Expenses refer to the actual and estimated expenses of operating the Association incurred for the general benefit of all Units, including any reasonable reserves, as determined by the Board of Directors in accordance with the Governing Documents.

Community and Property refer to all real property as may be annexed, from time to time, within the jurisdiction of the Association by the recordation of one or more Declarations of Annexation, in accordance with this Declaration.

Community Areas refer to the Community Property, together with those areas, if any, for which, pursuant to this Declaration, any Declaration of Annexation, or any Community Code, the Association assumes maintenance or other responsibilities.

Community Codes refer to the rules, regulations, standards and guidelines as may be promulgated from time to time in accordance with the Declaration.

Community Plan refers to the Declarant's plan for the development of the Property. Given its dynamic nature, the Community Plan is subject to change from time to time in the sole discretion of the Declarant in order to address the changing needs of the Community, in response to changes in market conditions or for any other reason deemed necessary or desirable by the Declarant.

Community Property refers to all real property owned or leased by the Association (including the improvements thereto) for the common use and enjoyment of the Owners. The Community Property must ultimately include all of the real property and facilities required by and depicted as such on any and all preliminary subdivision plans, final subdivision plats and site development plans, as amended, for the Property reviewed and approved by the Loudoun County, Virginia, as amended from time to time. The timing for the provision of Community Property is set forth in Section 2.4 of this Declaration. Community Property shall include Exclusive Community Property. Community Property shall not include any portion of the Golf Course.

Declarant refers to Sandler at Beacon Hill, L.L.C., a Virginia limited liability company, its successors, transferees and assigns, provided, however, that no successor, transferee or assign of the Declarant shall acquire any of the Declarant's Rights and Obligations unless all or some of the Declarant's Rights and Obligations are specifically set forth and described in the instrument of succession, transfer or assignment.

Declarant's Rights and Obligations refers to any and all privileges, powers, easements, exemptions, rights and duties reserved to the Declarant in the Governing Documents, including in Appendix Two of this Declaration.

Declaration of Annexation refers to any instrument, including, without limitation, any supplementary declaration of covenants, conditions and restrictions, recorded by the Declarant, which expressly extends the provisions of this Declaration to the real property described in Exhibit "A" of this Declaration or any other real property which is permitted by the Governing Documents to be annexed.

Design Guidelines refers to the architectural guidelines and procedures, if any, as adopted from time to time in accordance with this Declaration.

Equestrian Center refers to certain areas within the Property which may be conveyed to the Association and which are or may be developed and operated as an equestrian center by a private operator, and includes all related and supporting facilities and improvements operated in

connection with such equestrian center, including stables, pastures, indoor and outdoor riding areas, and equestrian trails.

Exclusive Community Property refers to any portions of the Community Property intended for the exclusive use or primary benefit of more than one, but less than all, Lots.

Golf Course refers to that certain parcel of land adjacent to the Property which is or is intended to be owned by a private operator and which is anticipated to be developed and operated as a golf course, and includes all related and supporting facilities and improvements operated in connection with such golf course. The Golf Course is not subject to the Declaration and is not part of the Community Areas, but is intended to be the beneficiary of those provisions of the Declaration relating to the Golf Course.

Governing Documents refer to the Declaration, the Articles of Incorporation, the Bylaws and the Community Codes, as the same may be amended from time to time.

Living Unit refers to any structure or portion of a structure located upon a Lot designed and intended for use and occupancy for residential purposes, including single-family detached dwellings.

Lot refers to any plot of land designated as a separate subdivided lot of record upon any recorded subdivision plat of the Property upon which a Living Unit has been, or is intended to be, constructed. The term Lot shall not include Community Areas or outlots of property dedicated for public use.

Local Area refers to any areas which are designated by the Board of Directors to serve two or more, but less than all Lots.

Local Area Assessments refers to any assessments imposed against Lots benefited by Local Areas. Local Area Assessments shall be used to fund expenses related to Local Areas.

Local Area Committee refers to any committee comprised of the Owners or representatives of Owners served by a Local Area.

Local Area Expenses refer to actual and estimated expenses, including reserves, as determined by the Board of Directors, related to providing services, benefits or the operation of a Local Area.

Member refers to every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, that holds any class of membership in the Association pursuant to this Declaration.

Mortgage refers to a mortgage deed of trust, a deed to secure debt or any other form of security instrument affecting title to a Lot.

Mortgagee refers to an institutional or governmental holder of a Mortgage.

Owner refers to the record title holder of any Lot, whether one or more Persons. The term Owner excludes those having an interest in a Lot merely as security for the performance of an obligation.

Participating Builder refers to a person or entity that acquires one or more Lots from the Declarant for the purpose of building a residential structure(s) for sale or lease to others in the ordinary course of business of such person or entity.

Person shall refer to a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

Special Assessments refer to assessments levied in accordance with Section 5.5 of the Declaration.

**DECLARATION
APPENDIX TWO**

The Declarant's Reserved Rights and Obligations

To secure the Declarant's interests related to the development of the Property, including the pursuit and furtherance of the missions and goals of the Community established and modified from time to time by the Declarant, the Declarant shall have, in addition to the rights set forth elsewhere in the Governing Documents, the benefit of certain rights and be encumbered with certain obligations, as set forth herein.

§A-101 Duration of the Declarant's Rights and Obligations

The rights and obligations reserved for the benefit of the Declarant (the "Declarant's Rights and Obligations") shall extend until the sooner to occur of the conveyance of all Lots contained or to be contained within the Community to Owners other than the Declarant or Participating Builders, or fifteen (15) years after the last filing of a Declaration of Annexation, except that some specific rights and obligations may expire by virtue of their being tied to the occurrence of certain events arising prior to conveyance of all Lots. The Declarant, however, may elect to voluntarily terminate all or any portion of the Declarant's Rights and Obligations by expressing such election in writing to the Association. The term during which the Declarant's Rights and Obligations may continue shall sometimes be referred to as the "Declarant's Rights and Obligations Period." No amendment of this Appendix Two may be made without the concurrence of the Declarant.

§A-102 Right to Complete Community Plan

Development Activities. The Declarant shall have the right to conduct all lawful activities required or related to the completion of the Community Plan, as such may be amended from time to time. The Association shall not, as an entity, take any position of opposition against provisions of the Community Plan in a public setting, except that such prohibition shall not apply if the Declarant is seeking an amendment or modification to any existing regulatory approval which has an adverse and material impact on the affairs of the Association. Neither shall the Association utilize any of its material or financial resources to oppose the lawful development activities of the Declarant. Given the evolving nature of the Community Plan which is applicable to the Property, it will be necessary for the Declarant to make changes and modifications to the Community Plan from time to time. This provision is not intended to diminish the right of any individual to express opinions nor of the Association to pursue claims arising out of any actual adverse and material breaches of agreements or representations by the Declarant.

Annexations. The Declarant hereby declares that all of the Annexable Property 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. For the duration of the Declarant's Rights and Obligations Period, the Declarant shall have the right to incrementally annex all or any portion of the Annexable Property within the jurisdiction of the Association by executing and recording one or more Declarations of Annexation, regardless of the ownership of the Annexable Property at the time of such annexation and without the need for the execution or filing of any such Declarations of Annexation by any other party. To the extent required by law, the Participating Builders and any other party who may own any part of the Annexable Property at the time of its annexation hereby irrevocably constitute and appoint the Declarant, and its successors, transferees and assigns, as their attorney-in-fact for the purpose of executing and filing all such Declarations of Annexation. The foregoing power of attorney 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 the Annexable Property and shall be binding upon the Participating Builders and any other party who may own any part of the Annexable Property at the time of its annexation.

§A-103 Amendments and Other Actions Affecting the Declarant

Governing Documents. The Association shall make no amendments to the Governing Documents that may adversely affect the Declarant's interests, including the Declarant's Rights and Obligations, without the Declarant's prior written consent. No action may be taken by the Association that materially affects the Declarant's interests without the Declarant's concurrence. In these contexts, the Declarant's interests are intended to include those of the Participating Builders, because of their indispensable role in fulfilling the intent of the Community Plan.

Easements. The Association shall take no action seeking to alter easements established in the Governing Documents by the Declarant, nor to prevent establishment of easements necessary to complete the Community Plan.

§A-104 The Declarant's Responsibilities for Affairs of Association

The Declarant shall be exclusively responsible for conducting the affairs of the Association until at least one Owner, other than the Declarant or a Participating Builder, has been elected to a seat on the Board of Directors.