

HOMEOWNER'S ASSOCIATION

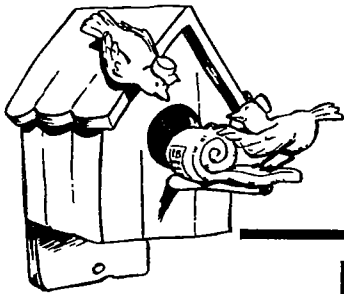
Rockingham
On Little Antietam Creek

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Articles of Incorporation - Rockingham Conservancy, Inc.

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Declaration of Protective Covenants, Conditions, & Restrictions

Recording Information:

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Phase I, Lots #1-35

Rockingham Subdivision

Protective Covenants, Conditions & Restrictions

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), is made this ___ day of August 2000, by VICTOR J. PEEKE, his successors and assigns (hereinafter sometimes referred to as the "Declarant").

I. INTRODUCTION

A. Term

These Covenants are to run with the land and shall be binding upon all parties and all persons until January 1, 2010, at which time each and all said covenants shall be automatically extended for successive periods of ten (10) years unless, by vote of a majority of the then Owners of the Lots covered by

these covenants, it is agreed to change the same in whole or in part; and an instrument setting forth said changes is duly executed and acknowledged by said majority of the then Owners and duly recorded among the land records for Washington County, Maryland.

B. Preamble

WHEREAS, the Declarant is the Owner of the real property which is more particularly described in Exhibit A (the "Property"), and desires to create and develop thereon a residential community with permanent Common Areas, which is more particularly described in Exhibit B (hereafter referred to as the "Park"); and

WHEREAS, the Declarant desires to provide for the preservation of the value and amenities of the Property and the improvements to be constructed thereon and for the maintenance of the Park and construction of community facilities; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, charges and liens hereinafter set forth pursuant to a general plan of improvement for the benefit of all said Owners and subsequent Owners of residential properties located within the Property; and

WHEREAS, the Declarant desires to define the relationship of the community and to define the Park intended to be available for use by this community's members and to provide for a fair and equitable contribution from this community to assist in adequately maintaining the Park available for use; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the Park and Common Areas, administering and enforcing the within covenants, conditions, and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed or intends to form the Rockingham Conservancy, Inc., as a non-profit corporation without capital stock under the laws of the State of Maryland for the purpose of carrying out the powers and duties aforesaid;

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NOW THEREFORE, the Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions, uses, limitations, obligations, easements, assessments, equitable servitudes, reservations, charges and liens hereinafter set forth, all of which are declared and agreed to be in aid of a uniform plan of improvement and use of the Property and shall be deemed to run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, his successors and assigns and any person acquiring or owning an interest in said property and improvements, including without limitation, any person, group of persons, corporation, trust or other legal entity or any combination thereof, who holds such interest solely as security for the performance of an obligation.

C. Purpose

The covenants, conditions, restrictions, easements, reservations and charges set forth herein are hereby declared to insure the most appropriate development and improvement of each Lot and to protect the Owners against such improper use of surrounding Lots as might depreciate the value of their Lot; to preserve, so far as practicable, the mutual beauty of the Property; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development and use of the Lots; to encourage and secure the erection and maintenance of attractive homes thereon, with appropriate locations thereof on Lots including the elevations thereof; to prevent haphazard and inharmonious improvements of Lots; to secure and maintain property setbacks from streets; and adequate free spaces between structures; and, in general, to provide adequately for the erection and maintenance of high type and quality of improvements in and thereby to enhance the value of investment made by Owners of Lots therein.

D. Definitions

(a.) **"Association"** shall mean and refer to the Rockingham Conservancy, Inc., its successors and assigns.

(b.) **"Common Areas"** shall mean and refer to all real property (hereinafter referred to as the "Common Areas" or "Park"), owned or leased by the Association or otherwise available to the Association

for the benefit, use and enjoyment of its members.

(c.) **"Control Committee"** shall mean the Declarant, his successors and assigns, who shall provide for the enforcement of these covenants, conditions, and restrictions including but not limited to the approval or disapproval of improvements to be constructed on the Lots and for the management and maintenance of the Park.

(d.) **"Covenants"** shall mean the covenants, conditions, restrictions, easements, reservations and charges described in this Declaration, which shall run with and bind the land in aid of a uniform plan of improvement and use of the Property.

(e.) **"Declarant"** or **"Developer"** or **"Grantor"** shall mean and refer to the Declarant hereinabove identified in the preamble to this Declaration and its successors and assigns provided, however, that the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant shall not inure to the benefit of or burden the successors and assigns of the Declarant except to the extent that any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Declarant are specifically assigned or transferred to any such successor or assign by instrument in writing.

(f.) **"Development Plan"** shall mean the Preliminary Plan for Rockingham, including all amendments thereto as may be made from time to time. It is the intention of the Declarant to commit the entire Property described in Exhibits A and B to the terms and conditions of this Declaration. Nothing herein shall be construed to prevent the Declarant from making any revisions, modifications and/or substitutions to the above-described Preliminary Plat, which may be necessary and/or appropriate in the Declarant's sole discretion and it is acknowledged by each and every Owner that the Declarant shall be afforded full discretion to make any such revisions, modification and/or substitutions to the development of the Property. Each and every Owner, by acceptance of the deed or other instrument of conveyance for any Lot, expressly waives the principle of common scheme, with respect to the Property so long as the Property is developed for residential use.

(g.) **"Dwelling"** shall mean any building or portion of a building situated upon the Property and designed and intended for use and occupancy as a residence by a single person or family.

(h.) **"Eligible Mortgage Holder"** shall mean a holder of a first mortgage on a Lot who has requested notice from the Association or amendments to the Association documents or other significant matters which would affect the interests of the Mortgagee and who has provided the Association with an address to which such notice is to be delivered.

(i.) **"Improvements"** shall mean all alteration or additions of any kind and character which will be or is located upon a Lot, including without limitation, all buildings, fences, walls, structures, landscaping and swimming pools.

(j.) **"Lot"** shall mean any and all subdivided parcels or property (exclusive of the Park) which are part of the property.

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

(l.) **"Mortgagee"** as used herein, means the holder of any recorded mortgage or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. Mortgagee as used herein shall include deed of trust. **"First Mortgagee"** as used herein shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to "institutional mortgagee" or "institutional holder" and shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government, or of any state or municipal government. As used in this Declaration, the terms "holder" and "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

(m.) **"Owner"** shall mean record Owner, whether one or more persons or entities, of a fee simple title to any Lot situated on the Property, including contract sellers, but excluding those having such interest in a Lot merely as security for the performance of an obligation.

(n.) **"Park"** shall mean that certain real property known as "Huck Finn Park" and as further

described in Exhibit B, which Common Areas shall be owned by the Association for the benefit, use and enjoyment of its members.

(o.) **"Property"** shall mean that certain property described on Exhibit A and such additions as may hereafter be subjected to this Declaration.

(p.) **"Single Family Lot"** shall mean those lots on which detached single family dwellings shall be erected, and shall mean and refer to each and every one of the Lots so designated and described in any Supplementary Declaration of Protective Covenants, Conditions, and Restrictions made by the Declarant or others pursuant to the provisions of this Article.

II. MEMBERSHIP

2.1. **Classes.** The Association shall have two classes of voting membership, which shall be known as "Class A" and "Class B", as follows:

Class A: Class A members shall be all Owners with the exception of the Declarant (with respect to any Lot for which the Declarant holds a Class B membership). Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast by a Class A Member with respect to any Lot. Any Owner who leases his Lot may, in the Lease or other written instrument, assign the voting right appurtenant to such Lot to the Lessee, provided that a copy of such instrument is furnished to the Association.

Class B: Initially, there shall be One Hundred Five (105) Class B memberships in the Association. This number shall be decreased by three (3) for each Class A membership existing at any one time. The Class B member(s) shall be the Declarant as defined herein. Class B member(s) shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership upon the happening of any of the following events, whichever occurs earliest:

(a.) thirty (30) days following the date on which the total authorized and

outstanding votes of the Class A members equals twenty-seven (27); or

(b.) seven (7) 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 sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid seven (7) year period shall be extended by a period of time equal to the length of the delays or seven (7) years, whichever is less; or

(c.) upon the surrender of said Class B memberships by the holders thereof for cancellation on the books of the Association.

Upon the lapse or surrender of all 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 in which the Declarant then holds the interest otherwise required for such Class A membership.

The members of the Association shall have no preemptive rights, as such members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided in this Article.

III. PROPERTY RIGHTS

3.1. Member's Right of Enjoyment. Every Member shall have a non-exclusive right and easement of enjoyment, in common with others, in and to the Common Areas and such non-exclusive right and easement shall be appurtenant to and shall pass with the fee title to every Lot subject to the following:

(a.) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas in a manner designed to promote the enjoyment and welfare of the members and in aid thereof, and with the consent of two-thirds (2/3) of each class of the then members of the Association, voting separately, to mortgage any of the Common Areas; and

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

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

(d.) the right of the Association to suspend the voting rights and the rights to use of the Common Areas for any period during which any assessment remains unpaid and for any infraction of any of the published rules and regulations of the Association; and

(e.) the right of the Association to dedicate or transfer all or any part of the Common Areas to the Town of Keedysville or any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of each class of the then members of the Association consent to such dedication, transfer, purpose and conditions, at any special meeting of the members duly called for such purposes; and provided further, that any such dedications or transfer shall also be subject to the limitations provided for in this Declaration; and

(f.) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility and cable television lines or appurtenances, whether public or private, to any municipal agency, public utility, cable television franchise, the Declarant or any other person; provided, however, that no such licenses, rights-of-way or easements shall be unreasonable and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Areas; and

(g.) the right of Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Areas for display and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a

period of more than ten (10) years after the conveyance of the Common Areas to the Association, or the sale of all residential Lots within the Properties, whichever is earlier; provided, further, that no such use by the Declarant or its sales agents or representatives shall otherwise restrict the members in their use and enjoyment of the Common Areas or facilities thereon; and

(h.) the right of the Association, acting through its Board of Directors, to grant easements, licenses or other rights of use to persons or entities who are not members of the Association in connection with the Common Areas for such considerations and on such terms as the Board deems appropriate.

3.2. Delegation of Right of Use. Any Member of the Association may delegate his rights to the use and enjoyment of the Common Areas to the members of his family who reside permanently with him and to his tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

3.3. Limitations.

(a.) Any other provision of this Declaration to the contrary notwithstanding the Association shall have no right to suspend the right of any Member of the Association to use the public streets and roadways for both vehicular and pedestrian ingress and egress to and for parking.

(b.) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use the Common Areas for necessary, ordinary and reasonable pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Areas for storm water drainage, electrical energy, water, sanitary sewer, natural gas, cable service, telephone service, or similar utilities and services to the Lots.

IV. ASSESSMENTS

A. Maintenance Assessments

4.A.1. General Maintenance Assessment. Except as the assessment of the Declarant is limited by the provisions of Article IV.(B.) of this Declaration, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee Owner of a

Lot within the Property (i.e., each Class A Member of the Association), by acceptance of a deed, therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, an annual sum (herein elsewhere sometimes referred to as a "general assessment" or "maintenance assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including but in no way limited to the following costs:

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

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

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

(d.) cost of liability insurance on the Common Areas and the cost of such other insurance as the Association may effect with respect to the Common Areas; and

(e.) cost of utilities and other services which may be provided by the Association, whether for the Common Areas or for the Lots, or both including but not limited to the cost of snow removal until the town of Keedysville accepts the road; and

(f.) cost of maintaining, replacing, repairing, and landscaping the Common Areas; including, without limitation, the cost of the maintenance of all pathways upon the Property, if any, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

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

The Board of Directors shall determine the amount of the maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a monthly, semi-annual, or annual basis rather than on

the annual basis hereinabove provided for. Any Class A Member may prepay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and maintenance of the Common Areas as defined herein. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of each period and shall, at that time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board.

Written notice of the annual maintenance assessments shall thereupon be sent to the Class A members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Class A Member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed from the preceding period shall continue until a new maintenance assessment is fixed. No Class A Member may exempt himself from liability for maintenance assessment by abandonment of any Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas.

This Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the dwelling or their appurtenances and the responsibility and duties of the Association for maintenance and repairs shall be limited to the Common Areas. The Owner of any Lot shall, at his own expense, maintain his Lot and dwelling and any and all appurtenances thereto, in good order, condition and repair and in a clean, sightly and sanitary condition at all times.

4.A.2. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy in any assessment year, a

special maintenance assessment or assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming a part of the Common Areas, including the necessary fixtures and personal property related thereto, or for such other purposes as the Board of Directors may consider appropriate; provided, however, that any such assessment shall have the assent of the members representing a majority of the then Class A members of the Association and two-thirds (2/3) of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

4.A.3. Reserve Fund Budget and Contribution. The Board of Directors shall annually prepare a reserve fund budget which shall take into account the number and nature of replaceable assets of the Association, the expected life of each asset and the required reserve fund contribution, if any, in an amount sufficient to meet the projected reserve fund budget, with respect both to amount and timing by the imposition of annual assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board of Directors and included within the budget and assessment, as provided in Section 4.A.1 of this Article. Such reserve fund contribution shall be payable as part of the (1) general assessment, applicable to all Lots, 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. A copy of the reserve fund budget shall be distributed to each Owner in the same manner as the operating budget.

4.A.4. Maximum Annual Maintenance Assessments. The initial maximum annual maintenance assessment for each of the Lots to which Class A membership is appurtenant shall not exceed the sum of One Hundred Fifty Dollars (\$150.00) per annum. Except as assessment of the Declarant is limited by the provisions of this Declaration, the annual maintenance assessment shall be levied at a uniform rate for each Lot to which Class A membership is appurtenant.

4.A.5. Increase in Maximum Annual Maintenance Assessment.

(a.) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual maintenance assessment for all Class A memberships

hereinabove provided for, may be increased by the Board of Directors of the Association, without a vote of the Class A membership, by an amount equal to ten percent (10%) of the maximum annual assessment for the preceding year plus the amount by which the prevailing Consumer Price Index shall have increased above the level prevailing as of the date of the recording of this Declaration, plus the amount by which any *ad valorem* real estate taxes and casualty and other insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year.

(b.) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual maintenance assessment for all Class A memberships hereinabove provided for, may be increased above that established by the preceding paragraph by a vote of the members, as hereinafter provided, for the next succeeding year, and thereafter, at the end of such year, for each succeeding year. Any change made pursuant to this paragraph shall have the assent of a majority of the then Class A members of the Association, and two-thirds (2/3) of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

(c.) The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

4.A.6. Notice and Quorum for any Action Authorized Under Sections 4.A.2 and 4.A.5.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.A.2 or 4.A.5 shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

B. Payment of Assessments

4.B.1. Non-Payment of Assessments.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the

date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns to the extent permitted by law. The personal obligation of the Member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same.

If, pursuant to this Declaration, the assessment levied, or any installment thereof, is not paid within fifteen (15) days after the due date, the assessment shall be subject to a late charge of fifteen dollars (\$15.00) or ten percent (10%) of the total amount due, whichever is greater. Upon resolution of the Board of Directors, the assessment may bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland, and the Association may bring an action at law against the Member personally obligated to pay the same, or foreclose on the lien against the Lot or Lots then belonging to said Member in the manner provided in the Maryland Contract Lien Act, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorneys' fees claimed shall be added to the amount of each assessment.

If requested in writing to do so by a mortgagee, the Association shall notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of thirty (30) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article.

4.B.2. Assessment Certificates. The Association shall upon demand at any time furnish to any Member liable for any assessment levied pursuant to this Declaration (or any other party, legitimately interested in the same), a certificate in

writing signed by an officer of the Association setting forth the statute of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

4.B.3. Acceleration of Installments. If the Board of Directors resolves to collect the maintenance assessment on a monthly or semi-annual basis, upon default in the payment of any one or more monthly installment of any assessment levied pursuant to his Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

4.B.4. Priority of Lien. The lien established by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a.) general and special assessments for *ad valorem* real estate taxes on the lot; and

(b.) the liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment thereon of the maintenance assessments provided for in this Declaration or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on account of any such assessments were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon any lot, as in this Article provided, shall be subordinate to the lien of any deed or trust, mortgage or other encumbrance duly recorded on such Lot and made in good faith and for value received and shall in no way affect the rights of the holder of any such deed of trust, mortgage or other encumbrance; provided, however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to a sale or transfer of the Lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure.

Any holder of any deed of trust, mortgage or

other encumbrance duly recorded on the Lot and made in good faith and for value received who comes into possession of the Lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any other purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid maintenance assessments levied against the Lot which accrue prior to the foreclosure sale. Such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the purchaser at any foreclosure sale from any liability for any maintenance assessments thereafter becoming due, or from the lien herein created to secure the payment of such maintenance assessments, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any first mortgage of any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (of the indebtedness secured thereby) not otherwise entitled thereto.

4.B.5. Additional Default. Any recorded first mortgage secured on a Lot in the Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 4 of this Article shall not be altered, modified or dismissed by reason of such failure.

4.B.6. Commencement of Annual Assessment. Except as may be otherwise resolved by the Board of Directors of the Association, the annual maintenance assessment for each Class A membership shall commence on the date a deed for the Lot to which such Class A membership is appurtenant is delivered by the Declarant to the Member. The first annual maintenance assessment shall be pro-rated as of the date on which a deed for

the Lot is delivered to the Member through December 31 of the same year and shall become due and payable at settlement. Except as herein elsewhere provided, the annual assessment for any Lot after the initial annual installment shall become due and payable and a lien on January 1 of each year.

4.B.7. Assessment of Declarant. The Declarant shall pay the full maximum assessments for lots owned by Declarant, which have been improved with a completed dwelling, provided such completed dwellings are occupied, whether as a model home, a sales office, or otherwise.

4.B.8. Exempt Property. No portion of the Common Areas shall be subject to assessment of any kind by the Association.

V. ARCHITECTURAL REVIEW

5.1. Architectural and Environmental Review Committee. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall, ramp, driveway, walkway or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review Committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Board of Directors of the Association or by an Architectural and Environmental Review Committee appointed by the Board of Directors.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, shutters, awnings, patio covers, fences, wall, slabs, decks, sidewalks, curbs, gutters, patios, balconies, porches, driveways, or to make any change or otherwise alter (including any alteration in

color), in any manner whatsoever, the exterior of any improvements constructed upon any Lot or upon any of the Common Areas, or to combine or otherwise join two (2) or more dwellings, or to partition the same after combination, or to remove or alter any windows or exterior doors of any dwelling, until the complete plans and specifications, showing the location, nature, shape, heights, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Board of Directors or the Architectural and Environmental Review Committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Board of Directors or the Architectural and Environmental Review Committee appointed by the Board of Directors.

All of the responsibilities and duties herein delegated to the Architectural and Environmental Review Committee shall be carried out by the Board of Directors of the Association, unless and until the Board appoints such a committee. References hereinafter to the Architectural and Environmental Review Committee shall apply with equal force to the Board of Directors acting in the capacity of such a committee.

5.2. Architectural and Environmental Review Committee - Operation. As stated above, the Board of Directors will appoint an Architectural and Environmental Review Committee. The Architectural and Environmental Review Committee shall be composed of three (3) or more natural persons. The affirmative vote of a majority of the members of the Architectural and Environmental Review Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. Said Committee may from time to time delegate its ministerial and policing functions to the Managing Agent.

5.3. Approvals. Upon approval by the Architectural and Environmental Review Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specification, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the

Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within (60) days after such plans and specifications (and all other materials and information required by the Architectural and Environmental Review Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

Design approval by the Architectural and Environmental Review Committee shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed. The Architectural and Environmental Review Committee shall have the right to charge a reasonable fee for reviewing such application. Any such exterior addition to or change or alteration made, without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at the Owner's cost and expense.

5.4. Limitations. Construction or alterations in accordance with plans and specification approved by the Architectural and Environmental Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date on which the same are approved by the Committee (whether by affirmative actions or by forbearance from action, as in Section 5.3 of this Article provided), and shall be substantially completed within six (6) months following the date of commencement, or within such period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall, again, be required. There shall be no deviation from the plans and specifications approved by the Committee without the prior consent in writing of the Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

5.5. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural and Environmental Review Committee in accordance with

the provisions of this Article, the Architectural and Environmental Review Committee shall, at the request of the Owners thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural and Environmental Review Committee and this Article and with such other provisions and requirements of the Declarations as may be necessary.

5.6. Rules and Regulations. The Architectural and Environmental Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specification to be suitable for approval and may publish and record such statements of policy, standards, guidelines and establish such criteria relative to architectural styles or details, fences, colors, set-backs, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision of requirement of this Declaration. The Architectural and Environmental Review Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural and Environmental Review Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may appeal said decision of the Architectural and Environmental Review Committee to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association as hereinafter provided.

5.7. Appeals. Any Member dissatisfied with a decision of the Architectural and Environmental Review Committee may, within fifteen (15) days after the rendering of such decision, make an appeal thereof to the Board of Directors. Not less than fifteen (15), nor more than sixty (60), days after the noting of such appeal, the Board of Directors shall conduct a hearing thereon. Within fifteen (15) days of such hearing, the Board of Directors may affirm, reverse, modify or remand the decision appealed. Two-thirds (2/3) of the Board of Directors shall be required to reverse a decision of the Architectural and Environmental Review Committee. The Board of Directors is hereby authorized and empowered to

