

AMENDMENT TO THE DECLARATION OF  
THE ORCHARD HILL HOMEOWNERS ASSOCIATION, INC.

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AMENDMENT TO THE DECLARATION OF  
THE ORCHARD HILL HOMEOWNERS ASSOCIATION, INC.

WHEREAS, the Orchard Hill Homeowners Association, Inc. (previously known as Orchard-Marbella Community Association, Inc.) is a duly created Homeowners Association by virtue of the recordation of its Declaration among the Land Records of Howard County, Maryland in Liber 0973, Folio 090, et. seq. Said Declaration was Amended by way of Amended and Restated Declaration which was recorded among the Land Records of Howard County in Liber 0990, Folio 703 et. Seq.

WHEREAS, the Orchard Hill Homeowners Association, Inc. is a Maryland non-stock corporation in good standing, created pursuant to its Articles of Incorporation filed with the State Department of Assessments and Taxation in accordance with the provisions of the Corporations and Associations Article of the Maryland Annotated Code; and

WHEREAS, the Board of Directors of the Orchard Hill Homeowners Association, Inc. has determined that it is necessary to amend the current Declaration in its entirety; and

WHEREAS, Paragraph 20 of the Association's Declaration provides that the Declaration may be amended by the affirmative vote of not less than a majority (51%) of the total votes of the Owners at any regular or special meeting; and

WHEREAS, Owners representing more than a majority (51%) of the total votes of the Owners at a duly held regular or special meeting have approved the Amended and Restated Declaration as evidenced by the Certificate of Secretary attached hereto; and

NOW THEREFORE, in accordance with the Declaration of the Orchard Hill Homeowners Association, Inc. the Declaration of the Orchard Hill Homeowners Association, Inc. is hereby amended by striking the current Declaration, and any amendments thereto, in their entirety and substituting the following:

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AMENDED AND RESTATED DECLARATION OF  
ORCHARD HILL HOMEOWNERS ASSOCIATION, INC  
(Previously known as Orchard-Marbella Community Association, Inc.)

Article I

Plan of Ownership

Section 1. Applicability. This Amended and Restated Declaration provides for the governance of Orchard Hill Homeowners Association, Inc. (the "Association") pursuant to the requirements of the Maryland Homeowners Association Act (the "Act"), the Maryland Nonstock Corporation Code, the Maryland Contract Lien Act and other applicable Maryland law. The Association, located in Howard County, Maryland was created by recordation of its Declaration among the Land Records of Howard County, Maryland in Liber 0973, Folio 090, et. seq. Said Declaration was amended by way of an Amended Declaration which was recorded among the Land Records of Howard County in Liber 0990, Folio 703 et. seq

Section 2. Compliance. Every Owner, family member, tenant, employee, invitee, agent, licensee and all those entitled to occupy a Lot shall comply with this Declaration and the Association's Bylaws.

Section 3. Office. The office of the Association and the Board of Directors ("Board") shall be located at the Association or at such other place as may be designated from time to time by the Board of Directors.

Section 4. Definitions. Terms used in this Amended and Restated Declaration that are not defined in context shall have the meanings specified herein, or if not defined herein, shall have the meanings specified for such terms in the Act. Specifically, the following terms when used in this Declaration or any Supplemental Declaration shall have the following meanings:

1. "Association" shall mean and refer to Orchard Hill Homeowners Association, Inc., a Maryland corporation, its successors and assigns.

2. The "Common Area" shall include any other real property owned, leased or maintained by the Association (including the improvements thereto) for the common use and enjoyment of the Owners. Notwithstanding the foregoing, in the event the Association maintains or owns all or any portion of any Lot(s) such property shall not be considered Common Area.

3. "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the

Community (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale or leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement evidencing any such other form of security arrangement, has been recorded among the Land Records.

4. "Mortgagee" means the person secured by a Mortgage.

5. "Mortgagee in Possession" means any person who is either (a) a Mortgagee which has possession of a Lot as a result of a default under a Mortgage held by such person, or (b) the Owner of a Lot as the result of the conveyance to such person of the Mortgagor's equity of redemption therein either through a foreclosure proceeding under a Mortgage securing such person and covering such Lot, or in lieu of such foreclosure proceeding.

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

7. "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded among Land Records of Howard County, Maryland, and any and all amendments and supplements thereto from time to time made and recorded.

8. "Dwelling Unit" or "Unit" shall mean and refer to any building or portion of a building situated on a Lot within the Properties originally designated and intended for use and occupancy as a residence by a single family.

9. "Eligible Mortgage Holder" or "Mortgagee" shall mean a holder, insurer or guarantor of a security interest on a Lot who has requested notice from the Association regarding amendments to the Association documents or other significant matters which would affect the interests of the mortgagee.

10. "Lot" shall mean and refer to any plot or parcel of land included within the Properties and shown upon any recorded subdivision map or plat with the exception of the Common Area.

11. "Member" shall mean and refer to any person or entity who is the record owner of a Lot and thus holds membership in the Association.



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

13. "Party Driveway" shall mean and refer to a driveway situate, or intended to be situate, on the boundary line adjoining properties.

14. "Party Fence" shall mean and refer to a fence situate, or intended to be situate, on the boundary line adjoining properties.

15. "Party Wall" shall mean and refer to the entire wall, all or a portion of which is used for support of each adjoining property, situate, or intended to be situate, on the boundary line between adjoining properties.

16. "Properties" or "Property" shall mean and refer to all existing real property, and any additions thereto, which may be subject to this Declaration, or any amendment or Supplemental Declaration.

17. Other terms used herein shall have the meaning ascribed to them in the Act or the meaning customarily ascribed to them in modern English usage.

## Article II

### Property Subject to this Declaration

Section 1. The real property which is subject to this Declaration is located in Howard County, Maryland and is described in the Association's original Declaration, Amended Declaration, Supplemental Declaration and a Deed, all of which was recorded among the Land Records of Howard County at Liber 0973, Folio 090; Liber 0990, Folio 703; Liber 2669, Folio 0236 and at Liber 2677, Folio 088, respectively.

## Article III

### Property Rights

Section 1. Owners Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment, access and ingress and egress, in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting right and right to use of the Common Areas or any facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any single infraction of its published rules and regulations; and

(b) the right of the Association, and with the consent of two-thirds (2/3) of the Members of the Association, in accordance with its Bylaws, to borrow money for the purposes of improving the Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Area and any facilities situated thereon. Such mortgage shall be subordinate to the members' rights as provided hereinafter. In the event of a default upon any such mortgage, the lender's rights thereunder shall be limited to a right, after taking possession of such area, to charge admission and other fees as a condition to continued enjoyment by the members, and if necessary, to open the enjoyment of such area to a wider public until the mortgage debt is satisfied, whereupon the possession of such area shall be returned to the Association and all rights of the members hereunder shall be fully restored; provided, that, under no circumstances, shall the rights of the members of ingress, egress, utilities and parking be affected; and

(c) the right of the Association to take such steps as are reasonably necessary to protect the Common Area against mortgage default and foreclosures; and

(d) the right of the Association to utilize appropriate portions of the Common Area for storm water management facilities and or to accept as Common Area property which has been designated for use as a storm water management facility; and

(e) the right of the Association, with the consent of two-thirds (2/3) of the Members of the Association, to dedicate or transfer all or part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; and

(f) the right of the Association to limit the number of guests of Members using the Common Area; and

(g) the right of the Association to establish uniform rules and regulations pertaining to the use of the Lots, Dwelling Units and the Common Areas, including the imposition of fines for violations thereof; and

(h) the right of the Association to charge reasonable and uniform admission and other fees for the use of the Common Area and any facility situated upon the Common Area; and

(i) the right of the Association, acting by and through its Board of Directors, to grant easements, licenses or other rights of use of the Common Area and facilities situated thereon to persons or entities who are not Members for such consideration and on such terms and conditions as the Board of Directors may from time to time consider appropriate or in the best interest of the Association or the Property; and

(j) the right of the Association to lease any portion or all of the Common Area on such terms and conditions as the Board of Directors may from time to time consider appropriate or in the best interest of the Association or the Property and the right of the Association to enforce the terms of the lease with respect to such Common Area against such property and the Owners and their guests, lessees and invitees; and

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

(l) such other rights reserved or created by this Declaration or the Amended and Restated Bylaws.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, the Bylaws and Rules and Regulations of the Association, his right of enjoyment to the Common Area to the members of his family, his tenants, invitees, or contract purchasers who reside on the Property, and such other persons as may be permitted by the Association.

## Article IV

### Membership & Voting

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration and any amendments hereto, including contract sellers, shall be a Member of the Association and each purchaser of any Lot by acceptance of a deed therefore covenants and agrees to be a Member of the Association whether or not it shall be so expressed in any deed or other conveyance. The foregoing is not intended to include persons or entities who hold an interest merely as a security for the performance of an obligation. For each Lot owned, the Owner thereof shall be entitled to one (1) membership.

Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

#### Section 2. Voting.

(a) Voting at all meetings of the Association shall be on a Lot basis, with each Lot being entitled to cast one (1) vote. Votes assigned to Lots owned by the Association shall be cast as determined by a majority of the Board. Otherwise, where a Lot is owned by more than one person, the person who shall be entitled to cast the vote of such Lot shall be the person named in a "voting certificate" executed by all of the Owners of such Lot and filed with the Secretary or, in the absence of such named persons from such meeting, the person who shall be entitled to cast the vote of such Lot shall be the person owning such Lot who is present at the meeting. If more than one person is present, then such vote shall be cast only in accordance with their unanimous agreement. Voting certificates shall be valid until revoked by a subsequent certificate similarly executed. Cumulative voting for the election of Board Members is not permitted.

Except where otherwise required or provided for by Maryland law, the Act, this Declaration, or the Bylaws, an affirmative vote of the Owners of more than fifty percent (50%) of those Lots voting in person or by proxy or by electronic transmission at a duly convened meeting at which a quorum is present is required to adopt decisions of the Association.

(b) No Owner may vote at any meeting of the Association or be elected to serve on the Board if the Association has recorded a statement of lien against the Owner's Lot and the amount necessary to release such lien has not been paid at the time of such meeting or election or if a Owner has not furnished the Association with his or her name and current mailing address.

(c) No Lessee, lienholder, mortgagee, pledge or contract purchaser shall have any voting rights with respect to the affairs of the Association unless such person or entity has been granted such rights pursuant to a valid proxy.

### Article V

#### Board of Directors

The affairs of the Association shall be governed by a Board of Directors of a size and composition as indicated in the Bylaws.

The Board shall have all powers and duties necessary for the administration of the Association and may do all such things which are not by the Act, this Declaration, or the Bylaws, specifically directed to be done and exercised by the Members.

## Article VI

### Operation of the Property

#### Part A. Budget.

Section 1. Fiscal Year. The fiscal year of the Association shall be January 1 through December 31, unless otherwise determined by the Board.

#### Section 2. Preparation and Approval of Budget.

(a) It shall be the duty of the Board annually to prepare and adopt a budget for the Association containing an estimate of the total income and amount considered necessary to pay the cost of, by way of example and not limitation, the maintenance, management, operation, repair and replacement of the Common Areas, administrative costs, the cost of wages and other personnel costs, materials, insurance premiums, services, supplies, utilities, general expenses, reserves, capital expenses, and all such other expenses that may be declared to be common expenses of the Association by the Act, this Declaration, the Bylaws or by resolution of the Board.

(b) Each Owner shall pay to the Association the annual assessment, which is payable annually, unless otherwise directed by the Board, and said assessment shall be equal to each Owner's proportionate share of the amount necessary, as estimated by the Board, to meet the Association's annual expenses.

(c) The budget shall also include such reasonable amounts as the Board considers necessary to provide working capital, a general operations contingency fund, as well as reserves for repairs and replacements.

(d) At least thirty (30) days before the budget is adopted, the Board shall cause to be prepared and submitted to the Owners an annual proposed budget. The annual proposed budget may be sent to each Lot Owner by mail, by electronic transmission, by posting on the Association's home page, by including the same in the Association's newsletter, or by any other means allowed by the Act. After the thirty (30) day period has expired, the annual budget shall be adopted at an open meeting of the Board. Notice of the meeting at which the proposed budget will be adopted may be sent to each Lot Owner by mail, by electronic transmission, by posting on

the Association's home page, by including the same in the Association's newsletter, or by any other means allowed by the Act.

(e) Except for an expenditure made by the Association because of a condition that, if not corrected, could reasonably result in a threat to the health or safety of the lot owners or a significant risk of damage to the development, any expenditure that would result in an increase in an amount of assessments for the current fiscal year of the Association in excess of 15% of the budgeted amount previously adopted shall be approved by an Amendment to the budget adopted at a special meeting for which not less than 10 days written notice shall be provided to the lot owners in the manner or manners allowed under sub-paragraph (d), above.

Section 2.1 Maximum Annual Assessment. The first maximum annual assessment pursuant to this Declaration shall be the annual assessment that was due for the last fiscal year prior to the recordation of this Declaration.

(a) From and after the recordation of this Declaration, the maximum annual assessment may be increased each year by not more than ten percent (10%) above the maximum annual assessment for the previous year without a vote of the Owners.

(b) From and after the recordation of this Declaration, the maximum annual assessment may be increased each year above ten percent (10%) of the maximum annual assessment for the previous year by a vote of a majority of the Owners in attendance at a regular or special meeting of the Association called for the purpose of approving or disapproving the increase.

Section 3. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any Owner from the obligation to pay the Owner's allocable share of the annual assessment, for that or any subsequent assessment period. In the absence of any annual budget, each Owner shall continue to pay the annual assessment established for the previous fiscal year until notice of the annual payment which is due under the new budget is forwarded to each Owner. A copy of the new budget and each Owner's annual assessment will be mailed or delivered to each Owner at least ten (10) days prior to the due date or as soon thereafter as is possible.

Section 4. Accounting and Disposition of Common Profits. Within ninety (90) days after the end of each fiscal year, the Board shall make available to all Owners, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board for such fiscal year and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board, be an additional contribution to reserves, be placed in a

special account to be expended solely for the general welfare of the Owners, be credited to each Owner's next annual assessment due under the current fiscal year's budget, be disbursed to the Owners, or be used for any other purpose the Board decides, until exhausted. Any net shortage shall be assessed promptly against the Owners and shall be payable either: (1) in full with payment of the next annual assessment due; or (2) in equal monthly installments for such period as the Board of Directors may determine in its sole discretion.

Section 5. Special Assessments. In addition to regular assessments authorized by this Article, the Board, on behalf of the Association, may levy in any fiscal year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Association property, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board may consider appropriate, provided, however, that any special assessment exceeding thirty percent (30%) of that fiscal year's budget shall have the assent of a majority of the Owners in attendance at a regular meeting of the Association or at a special meeting of the Association called for the purpose of approving or disapproving the special assessment. The Board of Directors shall serve written notice of any such special assessment on all Owners by first class mail to the address noted on the Association's roster. Said notice shall state the amount and the reason for the special assessment and the due date or dates. The special assessment may be payable in a lump sum or in installments, and, notwithstanding the applicability of the special assessment to that year only, the installments may extend beyond the fiscal year in which the special assessment was passed, as the Board may determine in its sole discretion.

Notwithstanding the above, the Board may impose a special assessment without membership approval in an amount sufficient to bring the Association into compliance with any law, rule, order or regulation of any governmental or quasi-governmental agency.

Section 6. Additions, Alterations or Improvements by the Board of Directors. The Board shall cause all necessary additions, alterations or improvements to be made to the Common Areas. If, in the opinion of a majority of the Directors, such additions, alterations, or improvements are exclusively for the benefit of an Owner or Owners requesting the same, the requesting Owner or Owners shall be assessed therefore in such proportion as may be determined by the Board of Directors.

Section 7. Reserves. The Association shall establish and maintain a reserve fund by the monthly allocation and payment of an amount to be designated from time to time by the Board based upon a professional evaluation of the sum necessary to repair or replace the Common Areas when necessary. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be invested as determined by the Board of Directors in its sole discretion. However, before finalizing any investment the Board shall consider several factors, including, but not limited by, the risk of the investment, the potential return on the investment, and the liquidity of the

investment. The reserve fund may be expended only for the purpose of effecting the repair and replacement of the Common Areas and the equipment of the Association, for start up costs and operating contingencies of a non-recurring nature, and for such improvements as the Board, in its discretion, deems appropriate and necessary. In the event a Board of Directors is required to borrow money from reserves for anything other than the purpose of effecting the repair and replacement of the Common Areas and equipment of the Association, it shall prepare a repayment schedule that repays the money borrowed within not more than five (5) years, and the repayment schedule so established may be shortened by future Boards but may not be extended beyond five (5) years from the date the moneys were borrowed. The interest of any Owner in any reserve for replacements and any other reserves established by the Association shall be considered an appurtenance of an Owner's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

If the reserves are inadequate for any reason, including non-payment of any Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Owners, and which may be payable in a lump sum or in installments, as the Board may determine. The Board of Directors shall serve notice of any such further assessment on Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next annual payment which is due more than thirty (30) days after the delivery of such notice of further assessment. All Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Notwithstanding the applicability of the assessment to that year only, the installments may extend beyond the fiscal year in which the assessment was passed, as the Board may determine in its sole discretion.

Section 8. Statement of Common Expenses. The Board of Directors shall promptly provide any Owner so requesting the same in writing, a written statement of all unpaid assessments for Common Expenses due from such Owner. The Board of Directors may impose a reasonable charge for such statement to cover the cost of preparation.

Part B. Assessments.

Section 9. Purpose of Assessments. The assessments for Common Expenses levied by the Association shall be used for the following purposes: to promote the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Association; the payment of all costs relating to the administration and operation of the Association; the operation, improvement, maintenance, replacement and repair of the Common Area and facilities situated within said Common Area including, but not limited to, easement areas, roads, walkways, parking areas, tot lots, lighting, storm drainage, grass and vegetation areas, storm water



management, sewer and water lines and any and all other facilities located or established from time to time thereon and including the cost of labor, equipment, materials, management, supervision and all other costs directly or indirectly incurred therefore to the extent that said areas and facilities are not otherwise maintained from time to time by the County or any other governmental agency; the payment of taxes or assessments levied from time to time by any lawful authority against the Common Areas; and the payment of all insurance from time to time carried on the Common Area or the facilities located thereon; and such other purposes rationally related to common good as may be determined by the Board of Directors.

Section 10. Assessment Obligation. Each Owner, by acceptance of a deed for a Lot in the Association, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, (b) special assessments to be established pursuant to the terms of this Declaration and (c) any fines, charges or other specific assessments levied against an Owner's Lot pursuant to and as provided by the Act, the Bylaws or this Declaration. Liability for assessments may not be avoided by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot for which the assessments are made.

Section 11. Late Fees and Interest. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within fifteen (15) days after it is due shall bear interest, from the due date until paid, at the rate of eighteen percent (18%) per annum, (or such greater amount provided for by the Act). Any delinquency which has continued for at least fifteen (15) days shall also be charged a late fee of fifteen dollars (\$15.00) or one tenth (1/10) of the total amount of any delinquent assessment or installment, whichever is greater (or such greater amounts as may be provided for by the Act). A late fee shall only be imposed once for the same delinquent payment.

Section 12. Acceleration of Installments. Upon default in the payment of one or more assessment installments, the entire balance of the annual assessment may be accelerated and declared due and payable in full by the service of notice to such effect upon the defaulting Owner by the Board or the Managing Agent in accordance with Maryland law.

Section 13. Legal Fees and Costs of Collection. The Association shall be entitled to recover from a defaulting Owner all attorney's fees actually incurred and all costs of collection actually incurred by the Association to collect assessments, or any installment thereof, which are more than fifteen (15) days delinquent.

Section 14. Creation of a Lien and Foreclosure. Any assessment levied pursuant to Maryland law, the Bylaws or this Declaration, or any installment thereof, which is not paid on the due date shall be delinquent. All assessments together with management charges, costs, interest, late fees, and all attorney's fees actually incurred shall be a continuing lien upon the Lot against which each such assessment is made. A lien may be imposed on any Lot in accordance with the

requirements of the Maryland Contract Lien Act. The Board, on behalf of the Association, may foreclose on the lien in the same manner and subject to the same requirements now or hereafter provided in the State of Maryland for the foreclosure of mortgages or deeds of trust containing a power of sale or a consent to a decree. Suit for any deficiency following the foreclosure may be maintained in the same proceeding. In the event that a proceeding is brought by the Board on behalf of the Association to foreclose on a lien, the Owner of such Lot may be required, upon resolution of the Board, to pay a reasonable rental for the Lot.

Section 15. Lawsuit. Any assessment or any installment thereof levied pursuant to Maryland law, the Bylaws or this Declaration, which is not paid on the date when due shall be delinquent. All such assessments together with management charges, costs, interest, late fees, and all attorney's fees actually incurred shall be the personal obligation of the Owner. The Board, on behalf of the Association, may bring an action at law against an Owner legally obligated to pay the assessments in order to obtain a money judgment against the Owner for the amount of the unpaid assessments (including fines), as well as the attendant management charges, late fees, interest, legal fees and costs of collection.

Section 16. Lawsuit and Lien are Not Mutually Exclusive Remedies. Upon the placement of a lien on a Lot, the lien shall bind the Lot described in the Statement of Lien. The personal obligation of the Owner to pay the assessment, however, remains the Owner's obligation and a lawsuit to recover a money judgment for non-payment of any assessments levied pursuant to Maryland law, the Bylaws or this Declaration, or any installment thereof, may be maintained without foreclosing on the lien or waiving the lien established to secure payment of the assessments. Likewise, a lien may be established and enforced under the Maryland Contract Lien Act without the Association waiving the right to maintain a lawsuit to recover a money judgment. In the event that a money judgment is obtained for less than the amount claimed in liens filed against a Lot pursuant to the Maryland Contract Lien Act and this Declaration, including all attorney's fees and costs referenced by said liens, the Association is hereby specifically authorized to maintain said liens until all amounts owed are paid in full.

Section 17. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, any assessment lien levied pursuant to this Declaration upon any Lot (and any penalties, interest, late fees or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage or Deed of Trust recorded among the Land Records of Howard County made in good faith for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided in this Article VI.

Section 18. Payments Credited. Payments received from an Owner will be credited to the outstanding balance in the following order:

- a. Court costs, attorney's fees and other costs of collection.
- b. Fines, late fees, or accrued interest, as applicable.
- c. Special assessments.
- d. Annual assessments.

Section 19. Partial Payments. In the event an Owner attempts to make a payment of less than all monies due and owing the Association after collection proceedings have commenced, the Association's attorney or designated collection agent will send a letter by first class mail to the Owner advising the Owner that his or her account remains delinquent as to all remaining monies owed to the Association. The Association's retention of any partial payment does not constitute a waiver of the Board's authority to foreclose on the Owner's property or take action against the Owner to collect the outstanding balance.

Section 20. Returned Check Fees. An Owner may be charged a reasonable fee in an amount to be determined by the Board from time to time for checks returned for insufficient funds or any other reason.

Section 21. Publishing List of Delinquents. The Board of Directors may post a list of Owners who are delinquent in the payment of any assessment or other fees which are due the Association, and against whose Lot a Statement of Lien has been filed. The list of delinquent Owners shall list owners only as "delinquent" as of a particular date, but shall not list the actual amount due. The list may be displayed in any prominent location within the Association or published in a newsletter intended to be circulated to the Owners and residents.

Section 22. Rights of Mortgagees. Upon the written request of a Mortgagee, said Mortgagee shall be entitled to the following:

- (a) To receive a copy of a notice sent to any Owner of a default in the payment of an assessment for common expenses which default remains uncured for thirty (30) days or of some other default.
- (b) To inspect the books and records of the Association in accordance with Section 11B-112 of the Act.
- (c) To receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.
- (d) To receive written notice of all meetings of the Association with the right to designate a representative to attend such meetings.

## Article VII

### Maintenance, Repair, Replacement and Other Common Expenses

Section 1. By the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area, the cost of which shall be charged to all Owners as a Common Expense. Provided however, the Board of Directors may elect to charge to an Owner the cost of maintenance, repair or replacement to the Common Area if in the opinion of a majority of the Board such expense was necessitated by the negligence, misuse or neglect of that Owner, his or her tenants, guests and invitees. All costs (including legal and management fees) incurred by the Association as a result of an Owner's failure to comply with Maryland law, the Bylaws, this Declaration, and the Rules and Regulations may be assessed against the Lot and collected in the same manner as an assessment.

Section 2. By the Owner. Each Owner shall keep his Lot and the exterior of his Dwelling Unit in a clean, sightly and healthful condition, including roofs, gutters, downspouts, exterior building surfaces, walks, driveways, trees, shrubs and grass, glass surfaces, decks, patio area, fenced in yards and other improvements installed by an Owner. Each owner shall do all the painting, maintenance, repair and replacement which may at any time be necessary to maintain the good appearance and condition of the Owner's Lot and Dwelling Unit. Each Owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Association is responsible. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

If, in the opinion of the Board of Directors, an Owner has not maintained their Lot or Dwelling Unit to the standards set forth in this Declaration, the Bylaws or otherwise established by the Board, the Board may choose to perform such maintenance or repairs as it deems necessary. Except in emergency situations, in which case the Board may immediately proceed without notice, no such maintenance or repair shall be undertaken without the approval of a majority of the Board of Directors and not without reasonable written notice to the Owner, which notice shall state the Board's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense, and set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days within which to complete said maintenance, repair or replacement, or, if such maintenance, repair, or replacement is not capable of completion within said thirty (30) day period, to commence said maintenance, repair, or replacement. If any Owner does not comply with the provisions hereof, the Board, by majority vote, may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered to

the then Owner of said Lot, at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects and collected in the same manner as an assessment. Any entry upon a Lot or into a Dwelling Unit by the Board or its authorized agents for the purpose of performing such maintenance or repair or to inspect the Lot or Dwelling Unit shall not be deemed a trespass and any costs associated with said entry shall also be charged to the Owner and collected as an assessment.

The Board of Directors, in its sole discretion, may choose to enforce the provisions of this Section 2 by bringing legal action to compel the Owner to perform his maintenance obligation. In the event that the Board of Directors chooses to bring such an action, the costs thereof, including all attorney's fees actually incurred by the Association, shall be the responsibility of the Owner and the Association shall be entitled to a judgment therefore.

Section 3. Right of Access. The Board or its authorized designee, on behalf of the Association, shall have an irrevocable right and an easement to enter Lots to inspect the same or make repairs when such inspection or repairs reasonably appear necessary for public safety or to prevent damage to other Lots, Dwelling Units or the Common Area, or to enforce the provisions of this Declaration, the Bylaws or the Rules and Regulations. Except in cases involving manifest danger to public safety or property (in which case entry may be effected immediately), the Board shall give at least twenty-four (24) hours notice to the Owners of any Lot to be entered for the purpose of inspection or repairs. Should any Owner, after being twice given notice, fail to allow access to his or her Lot for inspection or the performance of repairs, the Board may effect such needed access at the Owner's expense. An entry by the Board or its designee, on behalf of the Association, for the purposes specified in this Section shall not be considered a trespass. Any cost of effecting access and any maintenance, repair or replacement made by the Board to an Owner's Lot shall be assessed against the Owner's Lot and shall become a continuing lien against the Lot and the personal obligation of the Owner pursuant to this Declaration, and shall be collected in the same manner as an assessment.

Section 4. Utility Charges. The cost of utilities serving the Association which are not individually metered to a Lot shall be a Common Expense.

## Article VIII

### Party Walls, Fences and Driveways

The rights and duties of the Owners of Lots with respect to party walls, fences and driveways shall be governed by the following:

Section 1. General Rules of Law to Apply. Each wall, fence or driveway which is constructed as a part of the original construction on the Property and any part of which is placed on the dividing line between two or more separate Lots, shall constitute a party wall, party fence or party driveway as applicable, and with respect to such wall, fence or driveway, each of the adjoining Owners and their respective Lots shall be subject to an easement for that portion of the wall, fence, or driveway, on their respective Lots, and shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls, fences, and driveways, and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party wall, fence, or driveway is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners or any of such Owner's, agents, guests, or family members (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the party wall or fence.

Section 3. Repairs of Damage Caused by One Owner. If any such party wall, fence or driveway is damaged or destroyed through the act of one adjoining Owner or any of such Owner's agents, guests or family members so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, fence or driveway, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as prior to the damage or destruction, without cost to the adjoining Owner.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by a negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Encroachments. If any portion of a party wall, fence or driveway shall encroach upon any adjoining Lot, or upon the Common Area by reason of reconstruction, settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same shall exist for as long as the building stands.

Section 6. Other Changes. In addition to meeting the other requirements of these restrictive covenants, and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild such Owner's residence in any manner which requires an extension or other alteration of any party wall, fence or driveway, shall first obtain the written consent of the adjoining Owner, which consent shall not be unreasonably delayed or denied.

Section 7. 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 8. Dispute Regarding Party Wall, Fence or Driveway. In the event of a dispute between Owners concerning a party wall, party fence or party driveway, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, or its designated committee, who shall decide the dispute, and the decision of the Board, or its designated committee, shall be final and conclusive as to the parties except that the decision may be appealed by either party to the courts of the State of Maryland.

## Article IX

### Parking Rules & Regulations

Section 1. Parking. All parking shall be used by the Owners for self service parking purposes on a "first come, first serve" basis.

Section 2. Obstruction of Parking Spaces is Prohibited. Nothing shall be stored upon any parking space nor shall the same be permitted to accumulate trash or debris. A vehicle belonging to any resident, guest or invitee of the Association shall not park in a manner which unreasonably interferes with or impedes vehicular access.

Section 3. Prohibited Vehicles. A vehicle which is inoperable, unused, dilapidated, or which is not properly registered and licensed shall not be permitted to park on the Property. No trailers, campers, recreational vehicles, boat trailers, boats and no trucks or other large vehicles in excess of 6,500 pounds gross vehicle weight may be parked within the Association except in such location(s) as may be designated for the parking of such vehicles by the Board. Additionally, no commercial vehicles may be parked on the Property. Despite the foregoing, this provision shall not prohibit the parking within the Property of passenger vehicles (including vans) that display commercial information, including, but not limited to, signs or lettering. After a reasonable attempt at notifying the Owner of such a vehicle (in accordance with the provisions of the Howard County Code) to remove his or her vehicle from the Association property, the vehicle may be towed at the expense of the vehicle's owner. Despite the foregoing, the aforementioned prohibited vehicles may be permitted within the Association so long as they are parked within a fully enclosed garage and not visible from the Common Area or another Lot. In addition, this shall not prohibit commercial vehicles from parking within the Association for the minimum time period necessary to perform its business function for an Owner within the Association provided said

commercial vehicle is attended at all times and is not parked overnight except with the prior approval from the Board.

Section 4. Parking Rules and Regulations. Each resident shall comply in all respects with such supplementary rules and regulations which are not inconsistent with the provisions of this Declaration, which the Board may from time to time adopt and promulgate with respect to parking and traffic control within the Association. The Board is hereby, and elsewhere in this Declaration, authorized to adopt such rules and regulations. After a reasonable attempt at notifying the Owner of a vehicle which is parked in violation of the Rules and Regulations (in accordance with the provisions of the Howard County Code) to remove his or her vehicle from the Association property, the vehicle may be towed at the expense of the vehicle's owner.

## Article X

### Use Restrictions and Rule Making

Section 1. Authority and Enforcement. The Association shall be used only for those uses and purposes set out in this Declaration. The Board shall have the authority to make and to enforce reasonable rules and regulations governing the conduct, use, and enjoyment of the Lots, Dwelling Units and the Common Areas, provided it complies with the following provisions:

(a) Proper notice of the proposed new or revised rules must be given to the Owners, including:

- (1) a copy of the proposed new or revised rules;
- (2) the date that the Board proposes that the new or revised rules take effect;
- (3) notice to the Owners that they may submit written comments to the Board concerning the proposed new or revised rules; and
- (4) fifteen (15) days notice of the date of an open Board meeting to be held for the purpose of discussing the new or revised rules.

(b) Prior to the rules taking effect, an open Board meeting must be held to give the Owners an opportunity to discuss the new or revised rules. The meeting is valid only if:

- (1) all Owners are given notice of the open Board meeting at least 15 days prior to the meeting;



(2) a quorum of the Board of Directors is present at the meeting.

(c) After the above requirements have been fulfilled, the Board can elect to adopt any or all of the proposed rules either at the end of the open Board meeting or at a subsequent regular Board meeting or special Board meeting held to adopt the proposed rules.

Copies of all enacted rules and regulations shall be furnished to the Owners. The Board shall have the power to impose reasonable fines which shall constitute a lien upon the property and shall be collected in the same manner as any other assessment levied against an Owner pursuant to this Declaration, and to suspend an Owner's right to use the Common Areas and to vote. Each day of a continuing violation may be considered a separate violation. Nothing herein contained shall be construed to limit the Association's right to any other additional remedies available to it at law or in equity to enforce the Bylaws, this Declaration, or the Rules and Regulations of the Association. The remedies contained herein shall be construed as cumulative of the Association's other rights of enforcement at law or in equity or any other remedies available to the Association.

Section 2. Dispute Resolution Procedure. The Board or its designated committee may not impose a fine, suspend voting rights (unless the suspension or revocation is related to the Owner's failure to provide a current address or unless a statement of lien has been filed against the Lot and the lien has not been satisfied), or infringe upon any other rights of a member or other occupant for violation of the Bylaws, this Declaration, or the Rules and Regulations unless and until the following provisions set forth below are followed. For purposes of this Section, attorney's fees incurred by the Association in enforcing this Declaration, the Bylaws, or Rules and Regulations against an Owner and assessed against that Owner by the Board shall be deemed a reimbursement of the expenses incurred and shall not be deemed a sanction, fine or an infringement upon any other right of an Owner.

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (1) the alleged violation; (2) the action required to abate the violation; and (3) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if the violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not a continuing one.

(b) Notice. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the alleged violator with written notice of a hearing to be held by the Board. The notice shall contain: (1) the nature of the alleged violation; (2) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the

notice; (3) an invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and (4) the proposed sanction to be imposed.

(c) Hearing. At the hearing, the alleged violator has the right to present evidence and present and cross-examine witnesses. The hearing shall be held in executive session and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the hearing. This proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the person who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the results of the hearing and the sanction, if any, imposed. A decision pursuant to these procedures shall be appealable to the Courts of Maryland.

(d) Sanctions. If, after notice and hearing as stated herein, the Board or its designated committee shall determine that there has been a violation of the Rules and Regulations, the Bylaws or this Declaration, it shall have the power to impose sanctions against the Owner, including reasonable monetary fines as shall be determined by the Board or its designated committee. In the event the fines are not paid, such fines will be considered a lien against the Lot belonging to such Owner, and shall be collectible in the same manner as assessment. The Association shall be entitled to an award of all attorney's fees and costs of collection actually incurred to collect the amount due hereunder.

(e) Owner's Failure to Comply. If any Owner fails to comply with the Act, the Bylaws, or this Declaration or a decision rendered pursuant to this Section, the Owner may be sued for damages caused by the failure or for injunctive relief, or both, by the Association or by any other Owner.

(f) Effect of Failure to Enforce Provision. The failure of the Association to enforce a provision of the Act, the Bylaws, this Declaration, or the rules and regulations on any occasion is not a waiver of the right to enforce any provision on any other occasion.

Section 3. Restriction on Use of Units and Common Areas; Rules and Regulations. Each Lot, Dwelling Unit and the Common Areas shall be occupied and used as indicated in the Rules and Regulations promulgated by the Board, and as follows:

(a) Nuisances shall not be permitted on Association Property or within any Lot, nor shall any use or practice be permitted which is or becomes a source of annoyance to the Owners.

(b) Nothing shall be done or kept in any Lot or in the Common Areas which will increase the rate of insurance for the Property without the prior written consent of the Board. No

Owner shall permit anything to be done or kept in the Owner's Lot or on the Common Areas which will result in the cancellation of insurance on the Property, or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed on the Common Areas.

(c) No immoral, improper, offensive or unlawful use shall be made of the Association Property, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over any portion of the Property shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the property, and if the latter, then the cost of such compliance shall be a Common Expense.

(d) No Owner shall obstruct any of the Common Areas nor shall any Owner place or cause or permit anything to be placed on or in any of the Common Areas without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Areas except with the prior written consent of the Board or a designated committee, as appropriate.

(e) The Common Areas shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Lots.

(f) Nothing shall be done in any Lot or in, on, or to the Common Areas which will impair the structural integrity of the Association's Property or which would structurally change any buildings or improvements thereon.

(g) The maintenance, keeping, boarding or raising of pets shall be subject to this Declaration and to the rules and regulations enacted by the Board. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Lot or upon the Common Areas. This shall not prohibit the keeping of two (2) permitted dogs, cats or other common household domestic pets as may be defined by the Board from time to time provided that they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, there shall be no limitation on the number of pets that an Owner may keep within his Dwelling Unit so long as said pets do not leave said Owners Dwelling Unit and do not create a nuisance in which case they shall be deemed "indoor pets" and not subject to the foregoing limitation, which shall remain in full force and affect with respect to pets that do not meet the criteria for indoor pets. Examples of such indoor pets are birds, fish and snakes. Any dog or other pet determined to be dangerous to the community by the Board of Directors, in its sole discretion, is prohibited. Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property pursuant to, and in accordance with, the dispute resolution procedures set out herein and in accordance with

Maryland law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and they are to be carried or leashed. An Owner or his or her tenant who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and to have agreed to hold the Association free and harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the property. All pets shall be properly registered with Howard County and any other appropriate agency. Owners must, at all times, clean up after their pets and observe all Howard County Animal Control Laws.

(h) No signs of any character shall be erected, posted or displayed upon, in, from, or about any Lot or the Common Areas except those approved by the Board or consistent with current written guidelines established by the Board, unless otherwise provided by the Act or other applicable law. Despite the foregoing, one temporary real estate sign not exceeding six (6) square feet in area may be erected upon any Lot or attached to any Dwelling Unit placed upon the market for sale or rent. Any such temporary sign shall be removed promptly following the sale or rental of such dwelling. Notwithstanding the prohibitions on signage contained herein, an Owner may post or display on its Lot (but not in any Common Area), one or more signs on behalf of a candidate for public office or a slate of candidates for public office, or a sign that advertises the support or defeat of any question submitted to the voters in accordance with Article 33 of the Maryland Annotated Code, for a period of time not to exceed thirty (30) days before and seven (7) days after the primary election, general election or vote on the proposition, or such longer or shorter period as may be specified by applicable Federal, State or local law. The Board of Directors may adopt any other restriction with respect to such signage consistent with applicable Federal, State or local law. The foregoing provisions of this Section are intended to be a restatement of the provisions of Section 11B-111.2 of the Act, and any further amendments or modifications thereto shall be deemed incorporated herein by reference as a part hereof.

(i) Each Lot and the Common Areas shall be occupied and used in compliance with the Rules and Regulations, which may be promulgated and amended by the Board in accordance with this Declaration. All Rules and Regulations shall be consistent with the Act, the Bylaws and this Declaration.

(j) No electrical or telephone wire, air conditioning unit, or other machine, device or permanent improvement shall be installed upon any Lot or Common Areas except in accordance with this Declaration, the Bylaws, or other applicable law.

(k) No television or communication antenna shall be installed upon any Lot or the Common Areas except in accordance with the Federal Communications Commission Rules, this Declaration, the Bylaws, the Rules and Regulations or other applicable law

(l) Patios and decks must be kept in an orderly condition so as not to detract from the neat appearance of the community. No motorcycles may be parked on patios or decks.

(m) The cooking or preparation of food shall not be permitted upon the Common Areas except in areas specifically designated for such activity or without the express written consent of the Board of Directors.

(n) Trash and garbage containers shall not be permitted to remain in public view except in Owners' back yards and on the evening before and the day of trash collection unless otherwise consistent with current written guidelines established by the Board. No incinerator shall be kept or maintained upon any Lot. Garbage, trash and other refuse shall be placed in sealed containers.

(o) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained on any Lot above the surface of the ground. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless it is wrapped, coiled or otherwise enclosed in or on a manufactured reel, cabinet, or other device designed for such purpose.

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

(q) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels. The cost of removing such material shall be borne by the Owner and, if not paid, shall be deemed an assessment for all purposes.

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

(s) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the community of which it is a part.

(t) No play equipment, including, without limitation, swing sets, play houses, climbing equipment, basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any Dwelling Unit or located on any Lot without the prior approval of the Board of Directors or the Architectural Review Committee. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.

(u) No Member shall make any private or exclusive or proprietary use of any of the Common Area and no Member shall engage or direct any employee of the Association on any private business of the Member during the hours such employee is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee of the Association.

(v) No decorative lawn ornament, no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, shed or other buildings shall be erected, used or maintained on any Lot at any time, unless expressly approved by the Board of Directors or the Architectural Review Committee. Despite the foregoing, this shall not prohibit Owners from installing reasonable seasonal holiday decorations not earlier than thirty (30) days prior to a holiday. Said decorations must be removed not later than thirty (30) days after a holiday.

(w) Vegetable gardens shall be maintained only within the rear yard of any Lot, and shall be maintained in a neat and attractive manner.

(x) Lawn furniture shall be used and maintained in rear yards only, unless expressly approved by the Board of Directors or the Architectural Control Committee.

(y) No equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard on any Lot, unless expressly approved by the Board of Directors or the Architectural Control Committee.

(z) Fences must be approved by the Board of Directors or the Architectural Review Committee. Fences and walls shall not exceed 4 feet in height and shall not impede surface drainage. This restriction shall not apply to enclosures of patios, pools or open gardens and shall not apply to retaining walls required by topography. Short sections of fencing, for such purposes as patios and pools, privacy screens, work area screens, and the like, may be higher than 4 feet provided they are not nearer than the minimum building lines to any lot line, and provided that they are located to the rear of the front face of the dwelling. Under no circumstances, however, may they exceed a height of 6 ½ feet.

(aa) Bed sheets, plastic sheets, newspapers, or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot.

(bb) No exterior lighting, emanating from a Lot, shall be directed outside the boundaries of the Lot, without the prior written approval of the Board of Directors or the Architectural Control Committee.

(cc) No garage or outbuilding properly erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

(dd) Clotheslines shall be permitted pursuant to Section 14-130 of the Real Property Article, Annotated Code of Maryland, subject to reasonable rules and regulations regarding the dimensions, placement, or appearance of the clotheslines for the purpose of protecting aesthetic values, or the placement of clotheslines for the purpose of protecting persons or property in the event of fire or other emergencies. Said rules and regulations may be adopted by the Board of Directors as set forth in this Declaration.

(ee) Between 11:00 p.m. and 8 a.m., there shall be no loud or unusual noises; musical instruments, televisions, stereos, lawn mowers and the like shall be used in such a manner as not to disturb other Owners.

(ff) Building Heights. No Dwelling Unit shall exceed two and one-half (2 ½) stories or thirty-two (32) feet in height, and no accessory structure shall exceed one (1) story or fifteen (15) feet in height.

(gg) Swimming Pools. All outdoor swimming pools must be of a permanent type of construction and must be constructed substantially below grade so as to qualify as what is commonly referred to as an "in ground" or "below ground" type. This shall not prohibit the use of above-ground baby pools that are not permanently affixed to the Lot or any structure.

(hh) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently.

(ii) Other Setback. No fences, walls or hedges shall be erected or placed nearer to any street lot line than the minimum building line.

(jj) Traffic View. No improvement, planting, shrubbery or any other obstruction shall be placed on any lot so as to block the clear view of traffic on any streets, nor, in any case on any corner lot, shall any planting be done that will exceed 3 feet in height, except shade trees

which shall be trimmed so that a clear view may be maintained to the height of 8 feet, closer than 20 feet from either street line.

(kk) Front Lawn. The area within the front of the dwelling shall be kept only as a lawn for ornamental or decorative planting of grass and shrubbery.

(ll) Owners shall have the right to use a flagpole and display a flag of The United States of America subject to reasonable rules and regulations regarding the placement and manner of display of the flag which may be adopted by the Board of Directors pursuant to the requirements of Section 14-128 of the Real Property Article, Annotated Code of Maryland.

(mm) In the event that a group home is required to be permitted within the Association pursuant to the Federal Fair Housing Act, said group home shall comply with all reasonable requirements for the supervision of its residents, which requirements shall be determined by the Board of Directors, and no resident in any group home may be a nuisance or a danger to any member of the Association.

#### Section 4. Leasing.

(a) Right to Lease. No portion of any Lot, other than the entire Lot, shall be leased and no Owner shall lease a Lot except in accordance with the provisions of this Declaration, and any leasing other than in accordance with the provisions of this Declaration shall be null and void. The Association shall have a right to evict any tenant whose lease was not approved by the Board of Directors or who does not comply with the provisions of the Act, this Declaration, the Bylaws, or the Association's Rules and Regulations, without incurring any liability whatsoever to said Owner or to such tenant. A "tenant" is any person occupying the Lot at a time when an Owner is not occupying his Lot, even if the tenant has not paid any consideration. No Owner shall lease his Lot other than on a written Lease. An Owner may not lease his Lot for a period of less than one year.

(b) Owners Responsibilities. Any approval by the Association of a lease shall not operate to relieve an Owner of any obligations of an Owner in this Declaration, the Act, the Bylaws, or the Rules and Regulations. During the leasing, an Owner shall remain responsible for the actions or inactions of the tenant, and such actions or inactions may be cause for legal or other action as set forth in this Declaration.

(c) Payments by Tenant. The Board of Directors shall have the authority to collect rent payments directly from any lessee who occupies a Lot leased by an Owner who is more than thirty (30) days delinquent in the payment of assessments or a special assessment and may apply such rent to the account of the Owner to offset delinquent assessments, late fees, interest,



collection costs and attorney's fees. Any amount of such rent collected from a lessee which exceeds the amount due the Association by the Owner shall be forwarded to the Owner.

(d) Form Lease Addendum. The Board may, in its discretion, prepare, approve and require a uniform lease addendum form for use by Owners, which required form can be supplemented by provisions desired by the Owner which do not contradict this Declaration, the Bylaws, the Rules and Regulations, law or public policy. The lease addendum form shall include the following provisions plus any additional provision deemed appropriate by the Board:

(1) That the right of the tenant to use and occupy the Lot shall be subject to and subordinate in all respects to the provisions of this Declaration, the Bylaws, and the Rules and Regulations;

(2) That the Owner shall provide the tenant with copies of this Declaration, the Bylaws and the Rules and Regulations;

(3) That the tenant's breach of this Declaration, the Bylaws, or the Rules and Regulations shall constitute a breach of the lease;

(4) That the Owner's failure to require his or her tenant's compliance with this Declaration, the Bylaws, or the Rules and Regulations or any other applicable laws and ordinances, shall result in the Association, at the Owner's expense, enforcing the provisions of these documents against the tenant, such enforcement including but not limited to, evicting the tenant;

(5) That the Owner's failure to pay the annual assessment, or any special or other assessment, or any installment thereof, or any fine levied against his or her Lot may result in the Association collecting the assessment directly from the tenant and the tenant deducting the assessment from the rental payment owed to the Owner pursuant to the lease terms.

A copy of the lease and the lease addendum shall be forwarded to the Board not more than ten (10) days after the lease and addendum are executed. The foregoing provisions of this Section shall not apply to a mortgagee in possession of a Lot as a result of a foreclosure or other judicial sale or as a result of a proceeding in lieu of foreclosure.

#### Section 5. Family Day Care Homes.

(a) Family Day Care Homes as defined by Maryland law, shall be permitted within the Association.

(b) In accordance with the Act, the approval of a simple majority of the total eligible voters of the Association voting in person or by proxy at any annual or special meeting of the Owners shall be required to enact a provision prohibiting Family Day Care Homes within the Association, and said provision shall constitute an amendment to this Declaration and the Bylaws. If enacted, the provision prohibiting Family Day Care Homes may be eliminated and Family Day Care Homes may once again be permitted by the vote of a simple majority vote of the total eligible voters of the Association voting in person or by proxy at any annual or special meeting of the Owners.

(c) In the event that Family Day Care Homes are allowed within the Association they are subject to the following requirements:

(1) The Owner or "Day Care Provider" (as defined by the Act) operating the Family Day Care Home shall be registered with and have a license issued by the Department of Human Resources, Social Services Administration, in accordance with the registration and licensing provisions set forth in Title 5, Subtitle 5 of the Family Law Article of the Maryland Annotated Code. The Owner shall provide a copy of the license to the Board of Directors prior to establishing and operating the Family Day Care Home and upon each renewal thereof.

(2) The Owner or Day Care Provider shall obtain the liability insurance described in the Insurance Article, Section 19-106 and 19-203 of the Maryland Annotated Code, in at least the minimum amount described in that Section. The Owner or Day Care Provider may not operate the Family Day Care Home without the liability insurance described herein, and shall present proof of insurance to the Board of Directors before establishing and operating the Family Day Care Home and upon any renewal of the policy. The Association may not require the Owner or Day Care Provider to obtain insurance in an amount greater than the minimum amounts set forth in the Code Section set forth above.

(3) The Owner or Day Care Provider shall pay, on a pro rata basis with other Family Day Care Homes then in operation at the Property, any increase in the Association's insurance costs attributable solely to the establishment and operation of the Family Day Care Home, and upon presentation of a statement from the Board setting forth the increased insurance costs, and requesting payment of the same. The increased insurance costs shall be considered an assessment against the Lot, and may be collected in the same manner as an assessment.

(4) The Owner or Day Care Provider shall be responsible for payment of a fee determined by the Board of Directors, for the Family Day Care Home's entitlement to use of the Common Area. The Board shall establish the fee and shall advise all Owners or Day Care Providers operating Family Day Care Homes of the amount due on an annual basis. The fee shall not be in an amount in excess of fifty dollars (\$50.00) or any greater amount permitted by the Act per year on each family day care home. Upon presentation of a statement for the annual

fee and demand for payment, the Owner or Day Care Provider shall promptly remit payment to the Board of Directors. The fee shall be considered an assessment against the Lot, and may be collected in the same manner as an assessment.

Section 6. No-Impact Home-Based Businesses.

(a) No-Impact Home-Based Businesses shall be permitted within the Association. Unless otherwise provided by the Act, a “No-impact home-based business” means a business that:

- (1) Is consistent with the residential character of the dwelling unit;
- (2) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;
- (3) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and
- (4) Does not involve use, storage or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

(b) In accordance with the Act, the approval of a simple majority of the total eligible voters of the Association voting in person or by proxy at any annual or special meeting of the Owners shall be required to enact a provision prohibiting No-Impact Home-Based Businesses within the Association, and said provision shall constitute an amendment to this Declaration and the Bylaws. If enacted, the provision may be eliminated and No-Impact Home-Based Businesses may once again be permitted by the vote of a simple majority of the total eligible voters of the Association voting in person or by proxy at any annual or special meeting of the Owners.

(c) No business, trade or profession may be engaged in any manner within the Association unless such business, trade or profession is a No-Impact Home-Based Business as defined by the Act.

(d) An Owner or resident intending to operate a No-Impact Home-Based Business within the Association shall first notify the Association of the intent to do so.

(e) Under no circumstances may any No-Impact Home-Based Business be operated or maintained upon the Common Area property of the Association.

Section 7. Covenants Committee.

(a) Purpose. The Board may establish a Covenants Committee (the "Committee") consisting of three (3) members appointed by the Board, each to serve at the pleasure of the Board for a term of one (1) year. If the Board of Directors fails to appoint a Covenants Committee, the Board of Directors shall be deemed the Covenants Committee.

(b) Powers. The Committee shall be responsible for enforcement of this Declaration, the Bylaws, the Act, and the Rules and Regulations, excluding architectural matters handled by the Architectural Review Committee or the Board. The Committee shall have the power to issue a cease and desist order to an Owner, his or her tenants, guests, or invitees whose actions are inconsistent with the provisions of the Act, this Declaration, the Bylaws, or the Rules and Regulations. The Committee may act either upon a petition or complaint from any Owner or upon its own motion. Any action, ruling or decision of the Committee may be appealed to the Board by any party deemed by the Board to have standing as an aggrieved party and the Board may modify, affirm, or reverse any such action, ruling or decision. If the Board of Directors is acting as the Covenants Committee then its decision is final and shall only be appealable to the Courts of Maryland. The Committee shall follow all procedures set forth in this Article for the resolution of disputes.

(c) Authority. The Committee shall have such additional duties, powers and authority as the Board may from time to time provide by resolution. The Board may relieve the Committee of any duties, powers and authority either generally, or on a case by case basis. The Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board.

Article XI

Architectural Control

Section 1. Architectural Review Committee. The Board of Directors may exercise all of the powers and duties ascribed in this Article to the Architectural Review Committee ("ARC") or may, in its sole discretion, appoint an ARC to do such things. Members of the ARC serve at the pleasure of the Board for a term of one (1) year.

Section 2. Architectural Changes Must be Approved. The Board of Directors of the Association or its designated committee shall exercise all authority granted in the Bylaws or this

Declaration over architectural control. Except as otherwise provided in this Declaration or the Bylaws, an Owner shall not install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, screens, awnings, decorations, fences, walls, aerials, antennas or other signal receiving devices (to the extent allowed by applicable law), slabs, sidewalks, curbs, gutters, patios, porches, balconies, sheds, or other accessory structures, driveways, or walls, or make any change or otherwise alter, including an alteration in color, in any manner whatsoever the exterior of any Dwelling Unit, his Lot, or the Common Areas, or remove or alter any window or exterior doors of any Dwelling Unit, or make any change or alteration within any Dwelling Unit, his Lot, which will affect the property, interest or welfare of any other Owner, materially increase the cost of operating or insuring the Association, or impair any easement, until the complete plans and specifications, showing the location, nature, shape, change, including, without limitation, any other information specified or required by the Board of Directors or its designated committee, has been submitted to and approved in writing by the Board of Directors or by its designated committee.

Regardless of the Architectural merits of any request for modification or alteration to a Dwelling Unit or Lot, no consent of the Board will be granted to any Owner(s) for such modification or alteration so long as there remains any amount or past due balance owed to the Association by the Owner(s) of the Lot for the payment of assessments, late fees, interest, costs, attorney's fees, fines or other duly levied charge of any type whatsoever. This provision may be waived in the sole discretion of the Board for 1) those Owner(s) that have previously negotiated a plan with the Board to bring any past due balance current and are complying in all respects with the terms of said plan or 2) circumstances in which the Board determines it is in the best interest of the Association or an Owner to allow a modification or alteration on a Lot or Dwelling Unit.

Section 3. Approval of Architectural Alterations. Upon the ARC's approval of an Owner's architectural construction or alteration request, the approved plans and specifications submitted with the request shall become part of the ARC's permanent records and a copy of the plans and specifications bearing the ARC's written approval shall be returned to the Owner. In the event the ARC fails to approve or disapprove any architectural construction or alteration request within sixty (60) days, the request is automatically disapproved. However, the architectural construction or alteration request shall be deemed to be resubmitted to the ARC on the 61st day after the original request. The ARC may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article.

The decisions of the ARC shall be final except that any Owner who is aggrieved by any action or forbearance from action by the ARC, may, within thirty (30) days thereof, appeal the decision to the Board and, upon the written request of such Owner, shall be entitled to a hearing before the Board. A vote of a majority of the Board may modify, affirm, or reverse any action, ruling or decision of the ARC. In the event that the Board is acting as the ARC, the decision shall be final.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the ARC, pursuant to the provisions of this Article, shall be commenced within six (6) months following the date upon which the same are approved by the ARC and shall be substantially completed within twelve (12) months following the date of commencement or within such longer period as the ARC shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the ARC shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from the plans and specifications approved by the ARC without its prior written consent. The ARC's approval of plans and specifications does not constitute a certification of structural soundness or constitute compliance with governmental building codes or other regulations. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any Lot or Dwelling Unit requires execution by the Association and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by an authorized Officer only, without however incurring any liability on the part of the Board of Directors, the Association or any of them to any contractor, subcontractor, or materialman on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom. The requesting Owner shall, at the ARC's request, furnish the ARC with appropriate building permits or other governmental approvals. The Owner shall also be required, at the ARC's request, to submit a certificate of structural soundness from an architect or engineer. The cost of such certificate shall be borne solely by the requesting Owner. Approval of any particular plans and specifications or design by the ARC shall not be construed as a waiver of the right of the ARC to disapprove identical or similar plans, specifications or designs, or elements or features thereof, in the event such plans, specifications or designs are subsequently submitted for use in any other instance.

Section 5. Certificate of Compliance. Upon the completion of any construction or alteration in accordance with plans and specifications approved by the ARC and with the provisions of this Article, the ARC shall, at the request of the Owner, issue a certificate of compliance which shall be prima facie evidence that such construction or alteration referenced in such certificate has been approved by the ARC and was constructed or installed in full compliance with the provisions of the ARC's written approval and with the provisions of this Article, and any rules and regulations enacted pursuant hereto, and such other provisions of this Declaration as may be applicable.

Section 6. Rules and Regulations. Upon the request of the Board, the ARC shall, from time to time, propose for consideration of and adoption by the Board, rules and regulations regarding the form and content of plans and specifications to be submitted for approval to the ARC by Owners requesting construction or alterations to their Lots or Dwelling Units. The ARC

may also be requested by the Board to propose such statements of architectural policy, standards, guidelines, design and style as it deems necessary and proper. The promulgation of such rules, regulations and related provisions shall be adopted by the Board in accordance with the procedures noted in this Declaration. No such rules and regulations, guidelines, statements or the like shall be construed to waive or modify any of the provisions of this Article or any other provisions or requirements of this Declaration.

## Article XII

### Insurance

#### Section 1. Authority to Purchase.

(a) Except as otherwise provided in Section 4 of this Article, all insurance policies relating to the Association shall be purchased by the Board. Neither the Board nor the Managing Agent shall be liable for failure to obtain any coverage required by this Article, or for any loss resulting from such failure, if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at a demonstrably unreasonable cost.

(b) Each policy obtained by the Board shall provide that:

(1) The insurer waives any right to claim by way of subrogation against the Association, the Board, or the Owners, and their respective agents, employees, guests and in the case of each Lot, the members of each household;

(2) Such policy may not be canceled, invalidated or suspended due to the conduct of any Owner (including an Owner's invitees, agents and employees) or of any member, officer or employee of the Board or the Managing Agent, without a prior demand in writing that the Board or the Managing Agent cure the defect;

(3) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board and the Managing Agent and all Mortgagees;

(4) Until the expiration of thirty (30) days after the insurer gives notice in writing to the mortgagee of any Lot, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of

Directors, or any of their agents, employees or household members, nor canceled for non-payment of premiums;

(c) All policies of insurance shall be written by reputable companies licensed to do business in the State of Maryland to the extent reasonably available.

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

Section 2. Liability Insurance. The Board shall obtain and maintain commercial general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage insurance in such limits as the Board may from time to time determine, insuring each member of the Board, the Managing Agent each Owner and the employees of the Association against any liability to the public or to Owners (and their invitees, agents and employees) arising out of, or incident to, the ownership and/or use of the Common Areas. Such insurance shall be issued on a comprehensive liability basis and shall contain:

(a) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his or her action against another named insured;

(b) hired and non-owned vehicle coverage;

(c) host liquor liability coverage with respect to events sponsored by the Association;

(d) deletion of the normal products exclusion with respect to events sponsored by the Association; and

(e) a "waiver of subrogation" which shall preclude the insurer from denying coverage because of the negligent acts of the Association or of an Owner. The Board shall obtain insurance in an amount to be determined by the Board of Directors covering all claims for bodily injury or property damage. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained.

Section 3. Other Insurance. The Board shall obtain and maintain:

(a) adequate fidelity bond coverage as required in Article III, Part C, Section 19 of the Bylaws.

(b) directors and officers liability insurance which affords protection for the Officers, Directors, Committee Members, Volunteers and the Management Agent of the Association of



expenses and fees incurred by any of them in defending any suit or settling any claim which is covered by insurance, judgment or cause of action to which any such Office, Director, Committee Members, Volunteers and the Management Agent shall have been made a party by reason of his or her service as such in an amount to be determined by the Board of Directors;

(c) if required by any governmental or quasi-governmental agency, including but not limited to, the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation or the Veterans Administration, flood insurance in accordance with the then applicable regulations of such agency;

(d) workmen's compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(e) if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form in an amount to be determined by the Board of Directors; and

(f) such other insurance as the Board may determine from time to time to be desirable or necessary.

Section 4. Owner Insurance. Each Owner shall, at his or her own expense, obtain additional insurance ("Owner's Individual Insurance") respecting his or her Lot and Dwelling Unit as contemplated under this Declaration. Owner's Individual Insurance coverage on his or her Lot and Dwelling Unit shall be written on a homeowners policy form, and must include full replacement cost coverage for the Dwelling Unit as well as personal liability coverage.

Section 5. Board of Directors as Agent. The Board is hereby irrevocably appointed the agent for each Owner, each mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in Association property to adjust and to settle all claims arising under insurance policies purchased by the Board and to execute and to deliver releases upon the payment of claims.

Section 6. Uninsured Loss. In the event of an uninsured loss, if the loss is caused by anything in a Lot, the Owner of said Lot shall bear the responsibility for all damages and costs associated with such loss, including repairs to said Lot and Dwelling Unit, other Lots and Dwelling Units, and the Common Areas and all costs and attorney's fees actually incurred, the aggregate of which shall become an assessment and a lien against the Lot and collectible in the same manner as an assessments.

Section 7. Payment of Proceeds. There shall be no insurance trustee. All proceeds of insurance policies purchased by the Board of Directors for the benefit of the Association shall be paid to the Board of Directors. The Board shall disburse such funds as it determines appropriate.

## Article XIII

### Casualty Damage—Repair or Reconstruction

Section 1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 4 of this Article, in the event of damage to or destruction of all or any portion of the Common Areas a result of fire or other casualty, the Board shall arrange for and supervise the prompt repair and restoration of the Common Areas (including fixtures and building service equipment, to the extent that they are part of the Common Areas, as well as common personal property and supplies).

#### Section 2. Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to all or any portion of the Common Areas, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the Common Areas to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board deems necessary.

(b) Assessments. If the proceeds of insurance are insufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and, to the extent that the reserve funds are insufficient to cover the costs, the shortage shall be deemed a Common Expense and a special assessment for the amount of the insufficiency shall be levied against the Owners.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Common Areas, subject to any modifications required by changes in applicable governmental regulations and building code requirements, and using contemporary building materials and technology to the extent feasible.

#### Section 3. Disbursements of Construction Funds.

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of a casualty as well as the assessments collected from the Owners on account of such

casualty shall be held by the Board and shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) If the estimated cost of reconstruction and repair is less than fifty percent (50%) of the total annual assessment for common expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs by the Board of Directors.

(2) If the estimated cost of reconstruction or repair is fifty percent (50%) or more of the total annual assessment for common expenses for that fiscal year or more, then the construction fund shall be disbursed in payment of such costs by the Board of Directors only upon approval of an architect or other professionals qualified to practice in Maryland and employed by the Board to supervise such work. Payment shall be made from time to time, as the work progresses. The architect or other professionals shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (1) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (2) there is no other outstanding indebtedness known to the architect or other professionals for the services and materials described; and (3) the cost as estimated by such architect or other professionals for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall either be divided equally among all Owners and shall be distributed in accordance with the priority of interests at law or in equity in each Lot, or, if the Board deems appropriate, shall be placed in the Association's reserve account.

Section 4. When Reconstruction is Not Required. Except in the case of insubstantial damage to the Common Areas, if any portion of the Common Areas is damaged or destroyed it shall be repaired or replaced promptly by the Association unless:

(a) The Association is terminated; or

(b) More than fifty percent (50%) of the Owners vote not to repair or replace such Common Areas. If the Board of Directors elects not to repair insubstantial damage to the Common Areas, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Association and the balance of any insurance proceeds received on account of such damage

shall be distributed or credited, as the Board of Directors may decide, to all Owners, or if the Board deems appropriate, be placed in the Association's reserve account. If the Association is terminated as set forth herein, the net assets of the Association together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors among all Owners, after first paying out of the share of each Owner, to the extent sufficient therefore, any and all amounts due the Association from the Owner pursuant to this Declaration, and then the amount of any unpaid liens on the Lots in the order of priority of such liens.

Section 5. Eminent Domain and Condemnation. Damages for a taking of all or part of the Common Areas shall be divided equally among all Owners and shall be distributed in accordance with the priority of interests at law or in equity in each Lot, or if the Board deems appropriate, be placed in the Association's reserve account.

Section 6. Termination. The Association may be terminated in accordance with its Articles of Incorporation.

#### Article XIV

##### Amendments

Section 1. Amending the Declaration. This Declaration may be modified or amended either (i) at a duly constituted regular or special meeting of the Association, by a vote of the Owners representing at least a simple majority of the total eligible votes of the Association (or such higher percentage as may be required by the Act) or (ii) pursuant to a written instrument duly executed by the Secretary and acknowledging that Owners representing a simple majority of the total eligible votes of the Association acted to approve the amendment (or such higher percentage as may be required by the Act). An amendment shall not become effective until it is recorded among the Land Records of Howard County, Maryland.

Section 2. Proposing Amendments. Amendments to this Declaration may be proposed by the Board or by petition signed by Owners representing ten percent (10%) of the total eligible votes of the Association, which petition shall be delivered to the Secretary. A description of any proposed amendment shall accompany the notice of any annual or special meeting of the Association at which such proposed amendment will be considered and/or voted upon.

#### Article XV

##### General Provisions

Section 1. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved:

(a) Each Lot within the Association is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots and Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Dwelling Unit, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event an Improvement and/or Alteration on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(b) The rights and duties with respect to sanitary sewer and water, electricity, gas, cable television and telephone lines and facilities shall be governed by the following:

(i) Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Association, the Owner of any Lot, and the Association shall have the right, and are hereby granted an easement to the extent necessary therefore, to enter upon or have a utility company enter upon any portion of the Association in which said installations lie, to repair, replace and generally maintain said installations.

(ii) The right granted in the subsection above shall be only to the extent necessary to entitle the property of the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(iii) Each Lot is hereby subject to an easement upon and across such Lot for the drainage and discharge of water from any storm drain or downspout situated on another Lot and the Owner of such Lot may not alter or obstruct such drainage or flow of water to the detriment of any Lot or the Common Area.

(iv) 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 shall be submitted to its Board of Directors or Covenants Committee, who shall decide the dispute, and the decision of the Board or Covenants Committee shall be final and conclusive as to the parties.

(c) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Association. If a Lot

contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Association, then the Owner of such Lot shall promptly, at such Owner's expense, repair any damage to such utilities caused by the Owner, or the residents of such Owner's Lot.

(d) With respect to any step, patio, deck, downspout or yard drain or other similar structure that was originally built to benefit any Lot and which may encroach upon any portion of the Common Area, there is hereby reserved for the benefit of the Lot for which such step, patio, deck, downspout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Area, but only to the extent the original construction thereof encroaches within the Common Area. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

(e) There is hereby created for the benefit of each Lot, which is enclosed, in whole or in part, by any original wooden, brick, stone, landscaping, or other similar fence and/or wall, a perpetual easement to use any portion of the Common Area that may be located between such fence and/or wall and the record platted lot line for such benefited Lot; and the obligation to maintain such portion of the Common Area shall be that of the Owner of the benefited Lot and the obligation to maintain the wooden, brick, stone, or other similar fencing located within the Common Area, which encloses the benefited Lot, shall be that of the Owner of the benefited Lot. The Owner of any Lot benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement rights provided for herein.

(f) Each Lot is subject to an easement to the extent reasonably necessary to provide access and ingress and egress to and from any other Lot. Such easement shall be over and across any sidewalk, driveway or other walkway situated upon such burdened Lot and shall only benefit the Owner(s), occupants and invitees of any Lot which is otherwise not readily accessible without such easement right and the Owner(s) or occupants of the burdened Lot may not limit, obstruct or otherwise interfere with such easement.

(g) If any dwelling is situated on or near a Lot line such that proper exterior maintenance and repair of the dwelling cannot reasonably be accomplished exclusively on such Owner's Lot, then that Owner shall have an easement over that portion of the adjoining Lot as is reasonably necessary for such exterior maintenance and repair.

Section 2. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 3. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Area or community facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area or community facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or community facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

In addition, the Association shall be and remain wholly free and clear of any and all liability to claims by Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of the Common Area or any of its improvements, fixtures, and facilities; in as much as the control, operation, management, use and enjoyment, of the Common Area shall be within, under and subject to the Association. In this respect, it shall be the affirmative duty and responsibility of each Owner, and user of the Common Area and any facilities therein, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Areas and its improvements and facilities shall use, enjoy, and visit the same at their own risk and peril.

Section 4. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

## Article XVI

### Miscellaneous

Section 1. Notices. Unless otherwise provided in this Declaration all notices, demands, bills, statements, or other communications under this Declaration shall be in writing and shall be deemed to have been duly given if delivered personally or if deposited in the U.S. Mail with sufficient first class, prepaid postage:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary or the Managing Agent, or if no such address is designated, at the address of the Unit of such Owner. If a Unit is owned by more than one person, each such person who so designates an address in writing to the Secretary or the Managing Agent shall be entitled to receive all notices hereunder;

(b) If to the Association, the Board, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by written notice to the Owners in accordance with this Section.

(c) If to a Mortgagee, said notice shall be sent by registered or certified mail to the respective addresses as designated by them from time to time in writing to the Board of Directors.

Section 2. Registration with SDAT. The Association shall register with the State Department of Assessments and Taxation (SDAT) by the 15th day of April each year and provide the SDAT with the names and mailing addresses of the Association's Officers and Directors as well as the names and mailing addresses of the Association's Managing Agent and resident agent, if any.

Section 3. Right to Inspect, Remove and Correct Violations. Provided that the procedures set forth in Article X, Section 2 have been followed, then in the event a violation is not removed or the violation is not otherwise terminated or abated within the time prescribed by the Board, the Association shall have the right, through its agents and employees to enter such Lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation, and the costs thereof including all attorney's fees actually incurred thereby may be assessed against the Owner and thereafter said fees shall constitute a lien against the Lot and be collectible in the same manner as an assessment. The Association shall have the further right, through its agents and employees to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of the Declaration, Bylaws or Rules and Regulations exist within such Lot, and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 4. Legal Proceedings. Failure to comply with the terms of the Bylaws, this Declaration and the duly enacted Rules and Regulations shall be grounds for relief, including, without limitation, an action to recover sums for money damages, injunctive relief, foreclosure of the lien for non-payment of assessments and any other relief afforded by a Court of competent jurisdiction, all of which relief may be sought by the Association, or by any other Owner. Failure or forbearance by the Association or by an Owner to enforce a provision of the Bylaws, this Declaration or the duly enacted Rules and Regulations shall in no event be deemed a waiver of the right to enforce any provision on any other occasion. 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 covenant or provision of the Bylaws, this Declaration and the duly enacted Rules and Regulations cannot be adequately remedied by an action at law or exclusively by recovery of damages.

Section 5. Costs and Attorney's Fees. In any legal proceeding instituted by an Owner, or arising out of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of such proceeding and all attorney's fees actually incurred. In the event that a legal proceeding was not filed against an Owner, but attorney's fees were nonetheless incurred in enforcing the Bylaws, this Declaration or the duly enacted Rules and Regulations against an Owner, the Board may assess all such attorney's fees against the Owner and thereafter said fees shall constitute a lien against that Owner's Lot and be collectible in the same manner as an assessment.

Section 6. Severability. In the event that any part or provision of this Declaration shall be adjudged unlawful or unenforceable under Maryland law, the remainder of this Declaration shall nonetheless survive and remain in full force and effect.

Section 7. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 8. Conflicts. This Declaration is subordinate and subject to all provisions of the Act. All of the terms used in this Declaration, except where clearly repugnant to the context, shall have the same meaning as the Act. In the event of a conflict between the Declaration and the Bylaws, the Declaration shall control. In the event of a conflict between the Declaration and the Act, the Act shall control.

Section 9. Gender and Grammar. Whenever the context of this Declaration requires, the singular shall include the plural and the plural shall include the singular. The use of any gender shall be deemed to include all genders.

Section 10. Waiver. No restriction, condition, obligation or provisions of this Declaration shall be deemed to have been abrogated or waived by reason of any failure by the Board or the Owners to enforce them.

Section 11. Homeowners Association Depository. A copy of this Declaration and all other documents as required by Section 11B-112 of the Act shall be deposited in the Homeowners Association Depository located in the Clerk's Office of the Circuit Court of Howard County, Maryland.



