

DECLARATION

KEMPTON PARK OWNERS ASSOCIATION

PAC 139

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
(KEMPTON PARK OWNERS ASSOCIATION, INC.)

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

(KEMPTON PARK OWNERS ASSOCIATION, INC.)

THIS DECLARATION, made this 3rd day of October, 2001, by TATE TERRACE REALTY INVESTORS, INC., a Virginia corporation, referred to hereinafter as the "Developer".

WITNESSETH:

WHEREAS, the Developer is the Owner of the real property described in Article II of this Declaration, which the Developer desires to develop into a residential community known or to be known as "Kempton Park at Steeplechase", with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and to this end, desires to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Developer desires that a part of such real property be subdivided into Lots upon which are or will be constructed residential dwelling units, which Lots will be individually owned, and the Developer desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an entity to which should be delegated and assigned the powers of maintaining and administering the community property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has incorporated Kempton Park Owners Association, Inc., under the Nonstock Corporation Law of the State of Virginia for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Developer for itself, its successors and assigns, declare that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions,

easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereafter set forth.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

A. "Association" shall mean and refer to Kempton Park Owners Association, Inc.

B. "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.

C. "Declaration" shall mean and refer to this document of Covenants, Conditions, Restrictions, and Easements as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

D. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Suffolk, Virginia, or (ii) shown as a separate Lot upon any recorded subdivision map.

E. "Developer" shall mean and refer to Tate Terrace Realty Investors, Inc., its successors and assigns. It shall also mean any builder, contractor, investor, or other person or entity who purchases a Lot in Kempton Park at Steeplechase for the purpose of resale thereof to a Public Purchaser, or for the purpose of constructing improvements thereon for resale to a Public Purchaser. "Public Purchaser" shall mean the first person using a Lot for residential purposes as a fee simple owner or owning the Lot for rental to third parties as a tenant.

F. "Member" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.

G. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities

who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any property or a lessee or tenant, of any residence. The term "Owner" shall not include a Developer. For the purpose of the enforcement of the rules and regulations of the Association and by By-Laws, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot.

H. "Property" shall mean and refer to all properties which are subject to this Declaration pursuant to Section 2.01 and 2.02 hereof.

I. "Unit" shall mean and refer to each completed dwelling (as evidenced by issuance of a Certificate of Occupancy issued by the City of Suffolk, Virginia) including any garage, situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Suffolk and the State of Virginia, all of which property shall be hereinafter referred to as "Property". The real property initially subject to this Declaration is known as Kempton Park at Steeplechase and is described in Schedule A attached hereto.

Section 2.02. Additional Property. Other lands ("Additional Property") in addition to the lands described in Schedule A, may become subject to this Declaration in the following manner.

The Owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this

Declaration to such additional lands and thereby subject such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and not inconsistent with the provisions of this Declaration.

Any buildings or other improvements on such lands or to be constructed on such lands must be harmonious in style to those improvements on lands initially covered by this Declaration.

Section 2.03. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Articles of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III

THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01 Formation of the Association. Pursuant to the Nonstock Corporation Law of Virginia, the Developer has formed Kempton Park Owners' Association, Inc. (the "Association"), to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and in the Articles of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Articles of Incorporation, the Association shall have all the powers and be subject to the limitations of a Nonstock Corporation as contained in the Virginia State Nonstock Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members only Owners and the Developer. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definitions of the words "Owner" and "Developer" as found in Article I of this Declaration.

Section 3.03. Lots Owned or Held by More than One Person or by a Corporation. When any Lot is owned more than one person as tenants by the entirety, in joint or in common ownership or interest, such Owners shall collectively be entitled to only that number of votes prescribed herein for such Lot and if such Owners cannot agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. For a corporate Owner or other entity Owner, votes may be cast by an appropriate officer of such corporation or person holding an authorized position in any entity.

Section 3.04. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot or Unit merely as security for the performance of an obligation shall not be a Member.

Section 3.05. Assigning Right to Vote. The Developer may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee of such membership may make successive like assignments. Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.06. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Articles of Incorporation and By-Laws of the Association and the Nonstock Corporation Law of the State of Virginia as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.07. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.08. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.09. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance of malfeasance in the performance of duties.

Section 3.10. Developer's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Developer or its successor owns or has under construction on lands described in Schedules A and B to this Declaration (whether or not covered by this Declaration) Lots equal in number to 25% or more of the number of Lots to which title has been transferred to Owners other than Developer, but in no event more than five (5) years from the date of recording of the Declaration, the Board of Directors may not, without the Developer's written consent, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to Association Property, or (ii) hire any employee in addition, alteration, or improvement to Association Property, or (iii) hire any employee in addition to the employees, if any provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. Until five (5) years from the date of recording of this Declaration, if the developer owns or has under construction on lands described in Schedules A and B to this Declaration (whether or not such lands are then subject to this Declaration) Lots equal in number to 25% or more of the number of Lots to which title has been transferred to Owners other than Developer, this Section

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shall not be amended without the written consent of the Developer.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Developer intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property". The Association must accept any such conveyance made by the Developer provided such conveyance is made without consideration. The Developer generally will convey the Association Property, or parts thereof, to the Association within one year after the facilities therein, if any, are complete. Notwithstanding the foregoing, all property shown on any plat of the Property as common area or to be conveyed to the Association, shall be conveyed to the Association on or before January 1, 2008.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject however, to the rights of the Association and the right of the Developer as set forth herein.

Every Member shall also have a Common Access Easement for ingress and egress and the Common Utility and Conduit Easements. These easements, as described in Sections 4.05 and 4.06 hereof, will be subject to the rights of the Association.

Section 4.03. Rights of Association. With respect to the Association Property owned, and in accordance with the Articles of Incorporation by By-Laws of the Association, the Association shall have the right:

A. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof, or to enhance the preservation of such facilities, or which, in the discretion of the Association, shall serve to promote the best interest of the Members;

B. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

C. To dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all owners other than the Developer who shall vote by written ballot, which shall be sent to all Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots subject to mortgagees advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable. Notwithstanding the foregoing, the Association may not dispose of or transfer any Association Property, by sale or otherwise, except to an organization created and organized to own and maintain the Association Property (or applicable part thereof) without first offering to convey the same to the City of Suffolk or another appropriate governmental agency for compensation in an amount not exceeding the appraisal of a mutually acceptable appraiser.

D. To enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date of the canvass thereof.

Section 4.04. Rights of Developer. With respect to Association Property and in addition to the rights reserved in Section 4.05 below, the Developer shall have the right until the completion of the construction, marketing and sale of all dwelling Units to be constructed on lands described in Schedules A and B to this Declaration to:

A. Grant and reserve easements and rights of way for the installation maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone, cable TV, internet access and sewer to service any Additional Property as referred to in Section

2.02-A of this Declaration;

B. Connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Additional Property added pursuant to Section 2.02-A of this Declaration;

C. Use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration) and any Additional Property added pursuant to Section 2.02-A of this Declaration;

D. Operate sales center(s) and/or model homes, maintain signs abutting Lots, and Units for sale, have prospective purchasers and others visit such sales center(s) and/or model homes and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and

E. Grant to itself or to others such easements and rights of way as may be reasonably needed for the orderly development of any Additional Property added pursuant to Section 2.02-A of this Declaration.

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association, the Developer and its successors and assigns. With respect to its exercise of the above rights, the Developer agrees (i) to repair any damages resulting within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Developer's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Developer.

Section 4.05. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot or within any Unit shall be owned by the Owner of such Lot or Unit, except any portion thereof owned by utility company or the City of Suffolk, Virginia. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing, but

not located on such other Unit or Lot. The Association shall have the right of access to each Unit and Lot for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot or within any Unit and servicing any other Unit or Lot. The costs of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessment, except that, if occasioned by a negligent or willful act or omission of a specific expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, and shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof.

Section 4.06. Common Access Easement. The Developer and all Owners and their guests, mortgagees, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways, driveways, and roadways located on the Association Property and the Association shall have an easement of access to each Lot for maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities the maintenance of which is the responsibility of the Association.

Section 4.07. Maintenance of Association Facilities and Maintenance Easements. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards. In addition the Association shall be solely responsible for the lawn maintenance of those areas of Lots designated Maintenance Easements.

Section 4.08. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other association, condominiums and cooperatives. Any decision to discontinue independent professional management of certain Association duties and functions and establish self-management therefor shall require the prior written consent of 67% of all Owners, written notice of which proposed decision shall be sent to all Owners and to all lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon. No such decision shall be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing prior to the date set for voting on the proposed change that they are opposed to such change, which

opposition shall not be unreasonable.

Section 4.09. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration and in particular the provisions of Articles VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10. Easements Reserved to Developer for Benefit of Additional Property. Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.01 of this Declaration for the following purposes:

A. Ingress and Egress over roadways; and

B. Use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer, internet access and cable television. This easement shall not include the right to consume any water, gas, or electricity for which one or more individual Lot Owners are billed directly without the consent of the individual Lot Owners affected.

Upon the connection of lines and/or facilities servicing such land area comprising the Additional Property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.11. Distribution of Condemnation Awards. In the event all or part of Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds are distributed, in accordance with the provisions of the insurance policies of the Association maintained pursuant to Article VIII of this Declaration. The Board of Directors shall promptly send

written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Units whose names appear on the books or records of the Association.

ARTICLE V

ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

A. Annual assessments or charges for the maintenance and operation, and for reserves for repair and replacement of Association Property, utility lines servicing two or more Units (whether or not on Association Property) and the green areas located within the bounds of Association Property ("Maintenance Assessments"); and

B. Special assessments for capital improvements ("Special Assessments");

together hereinafter being referred to as "Assessments". The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages of the Lots and Units.

Section 5.03. Date of Commencement and Notice of Assessments and Changes in Annual Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed to a Public Purchaser as defined in Section 1.01-E. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of the beginning of each fiscal year. The Assessments shall be due and payable monthly unless the Board of Directors

establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full maintenance Assessments and Special Assessments, if any, except that there shall be no Maintenance Assessment on Lots owned by the Developer.

Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment shall be the same for all Lots, except Developer owned Lots, so that the number of Assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and determine the annual Maintenance Assessment for each Lot. Whenever any group of Lots is provided a service not provided to all of the Lots and the Association has taken over the provision or payment of such service, the Lots receiving such additional service shall be assessed a supplement to the standard Maintenance Assessment, in an amount which will defray the costs of such additional service. The supplemental assessment hereby authorized shall be treated for collection purposes the same as the standard Maintenance Assessment.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Lot Owners, in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association, at least forty (40) days in advance of the date or initial date set for voting thereon.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of or repair of a capital nature to the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto; provided, that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital

improvement, and for any amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Lot Owners at least thirty (30) days in advance, setting forth the purpose of the meeting.

Section 5.08. Non-Payment of Assessment. If an Annual Assessment, or installment thereof, is not paid on the due date established pursuant to Section 5.03 hereof, then the balance of Assessment shall be deemed delinquent. Any delinquent Assessment together with interest thereon at the rate of ten per cent (10%) per annum from the due date, accelerated future installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns.

In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them. If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed the greater of \$20.00 or 10% of the amount of such Assessment or installment thereof for each month such Assessment or installment thereof remains unpaid. In addition the Association may add all costs of collecting such overdue Assessment to the Owners account as an Additional Assessment.

Neither dissatisfaction with the quantity or quality of maintenance services furnished by the Association nor a disruption in providing maintenance or other services shall in any circumstance entitle any Owner to withhold or not pay Assessments due to the Association for the Lot or Lots owned by such Owner.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to an Owner of a default in paying Assessments, may at its option, or shall at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year.

Section 5.11. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot, the Association shall within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge as determined by the Board of Directors may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of or lender on the Lot or Unit on which such certificate has been furnished. In addition, the Association shall prepare and issue the disclosure packet required by Section 55-512 of the Code of Virginia to all appropriate parties and may charge the party requesting such packet a fee determined by the Association up to the maximum amount authorized by Section 55-512 of the Code of Virginia.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Unit pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion of the Board of Directors, except that (i) any member of the Board of Directors of the Association who has been elected or appointed by the Developer shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Developer, and (ii) any consent of the Developer as required by Section 3.10 of this Declaration must be obtained.

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Section 5.14. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

A. To assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder; and

B. To enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

(1) Assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;

(2) Establish sinking funds and/or other security deposits;

(3) Apply all funds received by it first to the payment of all principal and interest on such loan when due, or to apply the same to such purpose after providing for costs of collection;

(4) Establish such collection, payment and lien enforcement procedures as may be required by the note holders; and

(5) Provide for the custody and safeguarding of all funds received by it.

Section 5.15. Capital Contribution. With respect to each Lot, at the settlement on the conveyance of the Lot to the first Public Purchaser of the Lot, there shall be collected from the first Public Purchaser of the Lot (or the Seller to such Private Purchaser if the contract between the Seller and Public Purchaser so provides) a Capital Contribution equal to three months of Assessments which would be levied against such Lot at the then current rate of Annual Assessments in effect for the Property. The Capital Contribution shall be deemed and treated as part of the Annual Assessment for the purposes of this Article and these covenants.

ARTICLE VI

MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the buildings and improvements on Association Property, the maintenance, repair and replacement of all parks, BMP facilities, parking areas, driveways, streets and walkways on the Association Property, and the maintenance of all landscaped area including any landscaped areas located within the bounds of any public roadway, and the maintenance, repair and replacement of any identification or directional signs, streets lights or other facilities installed by or at the direction of the Developer or the Association shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing more than one Unit and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of, the Association.

The Association shall be responsible for all landscape maintenance for the Association Property. No Owner shall plant any shrubbery or other plantings on Association Property without the written approval of the Architectural Committee. Subject to the Provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance which are not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for any other Maintenance to the Units, Lots, or Association Property.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act of omission of an Owner, any family member, tenant, guest or invitee shall be made at the cost and expense of such Owner or the Developer, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such costs shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit or Lot, as the case may be, to secure the payment thereof.

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Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of Unit exteriors, walkways, driveways, fences, lawns and planting on the Property, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property. The Association may not, by act or omission, change, waive or abandon any such schedules or regulations, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Owners (excluding the Developer) voting in person or by proxy, written notice of which shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date of voting thereon, setting forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Developer to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Committee as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Committee.

A. Committee Composition. The Architectural Committee shall consist of three (3) regular members and two (2) alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board of Directors or an officer of the Association.

B. Alternate Members. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be until the time that the Association is no longer under Developer Control.

Thereafter the term of each Architectural Committee member appointed shall be for the period of one year and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term.

D. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time shall be and is hereby vested solely in the Board of Directors; provided, however that no regular or alternate member may be removed from the Architectural Committee by the Board of Directors except by the vote or written consent of a majority of all the members of the Board of Directors.

E. Resignations. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Developer or to the Board of Directors, whichever then has the right to appoint Committee members.

F. Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Developer or the Board of Directors, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate members.

G. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, and to perform other duties imposed upon it by the Declaration. Developer, and builders who purchase vacant Lots for the purpose of constructing houses thereon, shall not be subject to the Committee's decisions.

H. Meetings. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of the Section above, the vote or written consent of any two regular members, at a meeting or otherwise, shall constitute the act of the Committee.

I. Waiver. The approval of the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under the Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.03. Submission of Plans to Architectural Committee. Submission shall be in accordance with the requirements, rules and regulations adopted by the Committee. After transfer of title to any Lot or any other portion of the Property by the Developer or a builder to a Public Purchaser, no exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a written plan or plans therefor in such form and detail as the Architectural Committee requires, have been submitted to and reviewed and approved by the Architectural Committee. A reasonable fee may be charged and collected for processing each submission.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. the Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

A. Failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;

B. Failure to include information in such plans as requested;

C. Objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking;

D. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

E. Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations; or

F. Any other matter which is in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses, inharmonious or incompatible with or inferior to the general plan or improvement of the property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 35 calendar days after submission thereof said applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee if not acted upon by it within 35 calendar days after the receipt of the letter by the Committee.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind that Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans; provided, further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

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Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Committee.

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

ARTICLE VIII

INSURANCE AND RECONSTRUCTION

Section 8.01. Insurance to be Carried. To the extent reasonably obtained and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (1) fire and casualty insurance on property owned by the Association, (2) liability insurance, (3) directors and officers liability insurance and fidelity bonds, with coverages as are deemed appropriate in the judgment of the Board of Directors.

Coverage may not be cancelled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days written notice to the insured, including all known mortgagees of Units or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

ARTICLE IX

GENERAL COVENANTS AND RESTRICTIONS

Section 9.01. Advertising and Signs. Except for signs erected by or with the permission of the Developer in connection with the initial development, no additional sign of any nature shall be placed on any Lot or other portion of the Property except with the consent of the Architectural Committee.

Section 9.02. Animals, Birds and Insects. The Association shall have the right to establish rules and regulations regarding pets including but not limited to prohibiting and/or limiting the number or types of pets.

Section 9.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon a Lot or other portion of the Property unless approved by the Architectural Committee in writing. All fences shall be constructed with white vinyl material. A fence may extend forward of the rear building line of the dwelling constructed on the Lot only in order to encompass a pedestrian walk-through door to the garage or the main portion of the dwelling, provided that the entire pedestrian opening is located in the rear one half of the garage or rear one half of the dwelling. With regard to corner Lots, all fences which exceed 48" in height may not be located any closer than 20' from the edge of the curb adjoining the abutting street.

Section 9.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property.

Section 9.05. No Above Surface Utilities without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground, unless there is prior written approval given by the Developer.

Section 9.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property.

Section 9.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, or quarrying.

Section 9.08. Dwelling in Other than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property.

Section 9.09. Television and Radio Antennas/Satellite Dishes. No outside antenna or satellite dish shall be erected on any Lot or other portion of the Property, except that not more than one satellite dish not exceeding 18" in diameter may be erected and maintained on each Lot in an inconspicuous location. Plans for placing such a satellite dish on any Lot must be submitted to the Architectural Committee in accordance with Section 7.03 hereof for prior review and approval or disapproval. This prohibition shall include any similar apparatus or equipment for receiving or transmitting radio, television or other transmissions not presently in use but which may be developed, invented, adopted or created subsequent to the date hereof.

Section 9.10. Trees and Other Natural Features. After the transfer of title by the Developer of a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the written permission of the Architectural Committee. Each Lot shall have one newly planted (upon initial construction) two inch (2") caliper tree, which is to be planted and located in the front yard not more than five feet (5') behind the front property line.

Section 9.11. Motorcycles. No motorcycle or similar motor vehicle shall be operated on any portion of the Common Area except on streets, parking areas or similar portions of the Common Area intended for motor vehicle traffic.

Section 9.12. Residential Use Only. Except as provided in Section 9.13 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto, except that prior to transfer of title by the Developer to all of the Property the Developer may use one or more Lots or other portions of the Property for model homes and/or a real estate sales office. The rights reserved hereunder to the Developer are also reserved and granted unto builders who purchase

vacant Lots from the Developer for the purpose of constructing houses thereon.

Section 9.13. Commercial and Professional Activity on Property. No wholesale or retail business shall be conducted in or on any Lot or other portion of the Property without the consent of the Architectural Committee, except (i) by the Developer in conjunction with the initial construction, development, lease and sale of Lots and Units, and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 9.14. Outside. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except in areas, if any, expressly designated on the plats depicting the Property or by the Board of Directors from time to time for storage areas for such vehicles.

Section 9.15. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Developer, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof.

Section 9.16. Prohibited Vehicles. Unless used in connection with the construction or sales of Units by the Developer (or a builder who has purchased vacant Lots from the Developer for the purpose of constructing houses thereon), or maintenance of the Property, no commercial vehicle, boat, boat trailer, motor home, house trailer, recreational vehicle or other vehicle with similar items may be parked or stored on any part of the Property or Lot unless fully enclosed within a closed garage or in an area specifically designated for storage in accordance with Section 9.13. The term "commercial vehicles" shall include all commercial trucks and shall also include all other motor vehicles and vehicular equipment which shall bear any sign imprinted, painted or placed on any exterior surface of said vehicle containing a reference to a commercial business or undertaking. The term "recreational vehicles" shall include all motorized vehicles used or designed primarily for recreational purposes except for jeeps and other four-wheel drive vehicles of a similar size. Nothing in this section shall be construed to prohibit or limit the parking of any vehicle of any kind or nature in a closed garage.

Section 9.17. Clotheslines. Outdoor clotheslines or other facilities for the drying or airing of any clothing or bedding shall not be permitted on any Lot or portion of the Property.

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Section 9.18. No Transient Leases. An Owner shall not lease a Unit to a transient tenant, i.e., a lessee whose initial lease term is less than one year, nor shall an Owner lease a Unit more than once during any one year period of time. This restriction shall not preclude the Developer from permitting a contract purchaser of a Unit to occupy the Unit prior to transfer of title. Any lease must be in writing and shall be subject to the requirements of this Declaration and the By-Laws and any rules promulgated pursuant thereto. The Board of Directors shall have the express authority to establish rules dealing with leases including but not limited to the establishment of standard lease forms and registration of such leases with the Association.

Section 9.19. Building Setback Line. No dwelling or other structure shall be built or located on any Lot closer to the front, side and rear Lot lines than the requirements provided and set forth by the City of Suffolk. If the City of Suffolk has granted an Owner a variance from such setback requirements, the Architectural Committee may grant an identical variance in a proper situation in its sole determination.

Section 9.20 Outbuildings/Sheds. Outbuildings/sheds on a Lot must be located within the boundary established by projecting the side building lines of the dwelling constructed on the Lot to the rear line of the Lot or the Owner must install a six foot (6') high fence in accordance with the provisions of Section 9.06 hereof to screen the outbuilding/shed from other Lots. No outbuilding or shed shall exceed ten feet (10') by twelve feet (12') or one hundred inches (100") in height.

Section 9.21 Suffolk Requirements. All construction and improvements on the Lots shall comply with the requirements of the City of Suffolk applicable to the Property, including, without limitation, the requirements of the Consent Agreement dated June 29, 2000 by and between Developer and the City of Suffolk.

ARTICLE X

ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 10.01. Declaration Runs with the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges which may become liens against his, her or its

property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 10.02. Enforceability.

A. Actions at Law or Suit in Equity. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Developer and the Association (being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity to enforce the provisions hereof.

B. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of the Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration. Fines and penalties for violations of the Declaration, By-Laws and rules and regulations adopted by the Board of Directors in accordance with the provisions of Section 55-513 of the Code of Virginia as in effect from time to time.

Section 10.03. No waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by the beneficiary or any other to do so thereafter, as to

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the same or a similar violations, occurring prior to or subsequent thereto. No liability shall attach to the Developer, the Association (or any officer, director, employee, Member, agent, committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 10.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated thereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator.

If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot, Unit or other portion of the Property owned by such Owner, if any.

Section 10.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant thereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, with respect to areas not maintained by the Association, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 10.06. Default Notices to be Sent to Mortgagees. The Association shall be notified by each Lot Owner or such Lot Owner's mortgagee of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, when requested by the mortgager, the Association shall thereafter provide such

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mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration.

Section 10.07. Amending or Rescinding. The Developer, during the time the Developer owns any Lots, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner written consent. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration, not including those Lots owned by the Developer. In addition, and notwithstanding the above, until ten (10) years from the date of recording of this Declaration, so long as the Developer owns or has under construction on lands described in Schedules A and B of this Declaration (whether or not such lands are covered by this Declaration) dwelling units equal in number to fifteen percent (15%) or more of the number of Lots to which title has been transferred to purchasers for occupancy, the written consent of the Developer will be required for any amendment which adversely affects a substantial interest or right of the Developer, which consent must not be unreasonably withheld.

In voting for such amendment or rescission, Owners shall have one (1) vote for each Lot owned.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or rescission.

In addition to the approval of the Owners and Developer as provided for herein, no amendment or rescission which substantially affects the interest of any lending institution shall be effective if lending institutions which together are mortgagees on one-third or more of the lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagees shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 10.08. Owner Responsible for Tenants. Any lease of a Unit shall provide that the tenant shall comply in all respects

with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules or regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies which it may have pursuant to Section 10.02 of this Declaration. Any one who leases his Unit shall provide the Association with the names and telephone numbers of all persons who are tenants or who will reside in the Unit.

Section 10.09. When Amendment or Rescission Becomes Effective. Any amendment or rescission to the Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the Court. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 10.10. Duration. The provisions of this Declaration unless amended or rescinded as hereinbefore provided, shall continue with full force and effect against both the Property and the Owners thereof until forty (40) years from the initial date of recordation of the original Declaration and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten (10) years.

Section 10.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property to the end that the Property shall be reserved and

maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 10.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. Land required to be set aside for open space by the City of Suffolk, Virginia may not be developed for any purpose not expressly approved by the City of Suffolk, Virginia.

Section 10.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 10.14. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

Section 10.15. Failure to Perform Functions. If the Association shall fail to maintain the Association Property in reasonable order and condition and in accordance with the plans for the Property approved by the City of Suffolk, Virginia, it is acknowledged and agreed that the City of Suffolk, Virginia, after having previously given the Association notice of such failure to maintain such property and a reasonable period of time within which to remedy such failure, shall have the right to enter upon the Association Property and undertake the maintenance necessary to restore the Association Property to a reasonable order and condition in accordance with the plans and charge the cost thereof to the Association.

ARTICLE XI

GENERAL

Section 11.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 11.02. Right Reserved to Impose Additional Protective Covenants. The Developer reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.


Section 11.03. Notice. Any notice required to be sent to the Developer or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Developer, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 11.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity, subject to the conditions provided for herein with respect to an assignment and delegations to a successor corporation or trust.

Section 11.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Articles of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

IN WITNESS WHEREOF, Tate Terrace Realty Investors, Inc., as Developer, has caused this Declaration to be signed in its name and behalf, all as of the day and year first above written.

Tate Terrace Realty Investors, Inc.,
a Virginia corporation

By: 
Name: R. GOTTLING
Title: VP. SEC.

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EXHIBIT A

LEGAL DESCRIPTION

Property shown as Parcel B-2 on plat entitled, "Amended Minor Subdivision Plat of Minor Subdivision of Parcel 31, Tax Map 12 (Pl. Bk. 14, Pg. 224-231) (DB. 338, P. 745) creating Parcels B-1 and B-2", Sleepy Hole Borough, Suffolk, Virginia, said plat being recorded in the Clerk's Office of the Circuit Court of the City of Suffolk in PC. 2, Slides 199B and 199C on October 25, 1999.

INSTRUMENT #010012177
RECORDED IN THE CLERK'S OFFICE OF
SUFFOLK ON
OCTOBER 4, 2001 AT 11:50AM
HENRY C. MURDEN, CLERK.

BY: Sarah A. Hught (UC)