

DECLARATION OF COVENANTS & RESTRICTIONS

MADE BY

WHITTIER PARK, L.L.C.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

WHITTIER PARK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHITTIER PARK (the "Declaration") is made effective for all intents and purposes as of the 11th day of December, 1998, by WHITTIER PARK, L.L.C., a Virginia limited liability company (hereinafter the "Developer"), and THE WHITTIER PARK HOMEOWNERS ASSOCIATION, INC., a Virginia non-stock corporation.

WITNESSETH:

WHEREAS, the Developer is the owner of real property located in the City of Falls Church, Virginia, as more particularly described on Exhibit A which is attached hereto and incorporated herein by reference; and

WHEREAS, the Developer desires to create on the Property (as hereinafter defined) a residential community with permanent open spaces and other common facilities for the benefit of the community, including, but not limited to, certain private streets and alleys and such other areas as may be subjected to this Declaration of Covenants and Restrictions; and

WHEREAS, in order to provide for the preservation and enhancement of the property values, amenities, and opportunities in the community which will contribute to the personal and general health, safety, and welfare of residents and for the maintenance of the land and improvements thereon, the Developer desires to subject the Property to the covenants,

restrictions, conditions, easements, charges, and liens of this Declaration of Covenants, Conditions and Restrictions, said covenants, restrictions, easements, conditions, and charges running with said Property and binding all persons or entities having or acquiring any right, title, or interest in the Property or any part thereof, and inuring to the benefit of each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Developer has incorporated The Whittier Park Homeowners Association, Inc. as a non-stock, non-profit corporation under the laws of the Commonwealth of Virginia.

NOW, THEREFORE, the Developer does hereby grant, establish, and convey to each Owner mutual non-exclusive rights, privileges, and easements of enjoyment on equal terms in common with all other Owners in and to the use of the Common Areas (as hereinafter defined) and facilities; and does hereby declare the Property to be held, transferred, sold, conveyed, encumbered, leased, rented, used and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens (hereinafter referred to as "Covenants and Restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title, or interest in the herein described real property or any portions thereof, their heirs, successors and assigns, and shall inure to the benefit of, and be enforceable by, the Developer, its successors and assigns, any persons acquiring or owning an interest in said property and improvements including, without limitation, any person, group of persons, corporation, trust or other legal entity, or any combination thereof.

AND FURTHER, the Developer hereby delegates and assigns to The Whittier Park Homeowners Association, Inc. the powers of owning, maintaining, and administering the Common Areas, administering and enforcing the Covenants and Restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates to the contrary, the terms listed below shall be construed in accordance with the following definitions:

Section 1. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights, or a formal letter stating "No objection."

Section 2. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for The Whittier Park Homeowners Association, Inc., filed with the Virginia State Corporation Commission, as amended from time to time.

Section 3. "Assessable Unit" shall mean and refer to any real property within the Property which is subject to assessments, as provided in Article V hereof.

Section 4. "Association" shall mean and refer to The Whittier Park Homeowners Association, Inc., its successors and assigns.



Section 5. "Board of Directors" or "Directors" means the executive and administrative entity established by Article IV of the Articles of Incorporation of the Association as the governing body of the Association.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 7. "Common Areas" shall mean and refer to all portions of the Property and all interests therein, including easements and improvements thereon, owned or leased by the Association or otherwise available to the Association for the use and enjoyment of the Members.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions, as the same may from time to time be amended by one or more Supplementary Declarations.

Section 9. "Developer" shall mean and refer to Whittier Park, L.L.C., a Virginia limited liability company, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder (i) unless such rights and obligations are specifically assigned by Whittier Park, L.L.C. by assignment recorded among the Land Records of Arlington County, or (ii) unless said rights and obligations of the Developer inure to the successor of Whittier Park, L.L.C. by operation of law, or (iii) unless such rights and obligations inure to a purchaser at foreclosure or a grantee in a deed in lieu of foreclosure from the Developer who acquires not less than ten (10) Lots. If a Developer assigns its rights and obligations with respect to a portion of the Property to one or more parties pursuant to clause (i) above, then the Developer and its assignee(s) shall be co-

Developers under this Declaration with respect to the portion of the Property as to which the Developer assigned its rights and obligations. The rights and obligations of the Developer set forth herein, as Developer, shall cease five (5) years after settlement on the sale of the first Lot to an Owner other than the Developer, or in the event of the annexation of additional properties pursuant to Article II hereof, five (5) years after the date of recordation of the last Supplementary Declaration among the Land Records of Arlington County.

Section 10. "Entrance Features" shall mean the brick, stone or other permanent monuments (including signage which provides identification for the Property ), located at the intersection of Hillwood Avenue and Whittier Circle and at the intersection of S. Cherry Street and Rolling Trace, including any light fixtures and lights, landscaping and other amenities, if any, immediately adjacent thereto, at the entrances to the Property on Hillwood Avenue at Whittier Circle and on S. Cherry Street at Rolling Trace.

Section 11. "Falls Church" shall mean and refer to the City of Falls Church, Virginia, and all agencies of said governmental authority.

Section 12. "Federal Mortgage Agencies" shall mean and refer to those Federally related agencies, if any, which may from time to time have an interest in the Property, or any portion thereof, including, but not limited to, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Association, and successors to their interests.

Section 13. "First Mortgagee" shall mean and refer to an Institutional Lender which holds the first lien deed of trust on a Lot and which has notified the Association in writing of its interest in the Lot.

Section 14. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, any Supplementary Declarations or amendments to this Declaration, and the Bylaws of the Association, all as initially drawn by the Developer and filed or recorded as the case may be, and all as may be duly amended from time to time.

Section 15. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Rules, as such may be amended from time to time.

Section 16. "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, mortgage companies, pension funds, Federal Mortgage Agencies, or business trusts, including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured a loan of such a lender, or any combination of any of the foregoing entities.

Section 17. "Living Unit" shall mean and refer to any structure or portion of a structure situated upon the Property designed and intended for use and occupancy as a residence by a Single Family.

Section 18. "Lot" shall mean and refer to a portion of the Property designated as a separate subdivided lot of record on a plat of subdivision, resubdivision, consolidation, or boundary-line adjustment of a portion of the Property, recorded among the Land Records of Arlington County, or any other plot of land shown upon any recorded subdivision plat of the Property, with the exception of Common Areas, as heretofore defined, and areas dedicated as public streets.

Section 19. "Members" shall mean and refer to members of the Association, each of whom shall be the Owner of a Lot.

Section 20. "Notice" shall mean and refer to (i) written notice delivered personally or mailed to the last known address of the intended recipient; or (ii) notices published at least once a week for two consecutive weeks in a newspaper having general circulation in Falls Church; or (iii) notice published in two consecutive issues of the newsletter of the Association, if any, which is delivered personally or mailed to the address of each occupied Living Unit.

Section 21. "Occupant" shall mean and refer to a resident of a Living Unit, who is the lessee or sublessee. There shall be only one Occupant per Living Unit for the purposes of this Declaration, although the Living Unit may house several individuals.

Section 22. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether referring to one person or entity or collectively to more than one person or entity who have joint ownership of a Lot. The term "Owner" shall not include those having an interest merely as security for the performance of an obligation or by virtue of a contract to purchase a Lot (but the term Owner shall include contract sellers of Lots).

Section 23. "Property" shall mean and refer to all real property which is hereby subjected to the Declaration, together with such other real property as may from time to time be annexed thereto in accordance with Article II hereof, and all improvements now or hereafter existing thereon, and excluding any real property which is subjected to this Declaration and subsequently withdrawn in accordance with Article II, Section 2 of this Declaration. At this time, the Property consists of the real property described on Exhibit A attached hereto.

Section 24. "Quorum of Members" shall mean and refer to the representation at a duly called meeting of the Members by presence or proxy of Members who hold at least fifteen percent (15%) of the outstanding Class A votes, and the representation by presence or proxy of the Class B Member, so long as it shall exist. In the event a "Quorum of Members" is not present at a duly called meeting of the Members, no action may be taken which requires the vote of a Quorum of Members. At the next duly called meeting of the Members after failure of the attending Members at the previous meeting to constitute a quorum, the quorum requirement shall be at least ten percent (10%) of the outstanding Class A votes and the representation by presence or proxy of the Class B Member, so long as the Class B membership shall exist, provided that in order for the reduced quorum requirement to apply, the purpose of the meeting as recited in the notice given to all Members is the same as the purpose recited in the notice of the preceding meeting at which no quorum was present.

Section 25. "Registered Notice" shall mean and refer to any Notice which has been sent by registered United States mail, return receipt requested, postage paid, to the last known address of the intended recipient and which has been signed for or has been certified by the United States

Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

Section 26. "Rules" shall mean and refer to the rules and regulations adopted from time to time by the Board of Directors governing the use, occupancy, operation and physical appearance of the Property.

Section 27. "Single Family" shall mean and refer to a single housekeeping unit which includes not more than three adults who are legally unrelated.

Section 28. "Storm Water Management Facilities" shall mean and refer to the storm water management and drainage facilities, conduits, pipes, lines, storm sewers, inlets, sepiors, detention tanks, and related appurtenances, serving the Property and located within the Common Areas.

Section 29. "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions which may be recorded by the Developer, which expands the Property beyond the land which is initially subjected to this Declaration.

Section 30. "Wren's Parking Easement" shall mean and refer to the easement granted to the Wren's Subdivision located immediately north of the Property for the purpose of providing parking for the exclusive use of said Wren's Subdivision.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The Property. The Property is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration and all covenants, restrictions, conditions, easements, charges and liens set forth herein.

Section 2. Additions to The Property. So long as the Class B Member is still a Member of the Association, the Developer shall have the unilateral right, without the consent of the Class A Members, to subject to this Declaration any additional property which the Developer owns or acquires in the vicinity of the initial Property, provided that not more than five (5) years have lapsed since the recordation of the last Supplementary Declaration among the Land Records of Arlington County, Virginia.

The Supplementary Declaration which subjects additional property to this Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration. The Supplementary Declaration may contain such complementary additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches to which the annexed land or parts thereof may be subject, all of which may be significantly at variance with other portions of the

Property, but all of which shall be consistent in quality with the improvements constructed on the Property.

The additions authorized under this Section 2 shall be made by complying with the requirements of the applicable zoning ordinances; by securing the Approval of the Federal Mortgage Agencies, if required; by recording on the Land Records of Arlington County one or more Supplementary Declarations of covenants and restrictions with respect to the additional property; and by filing with the Association the preliminary plat for such additions.

Section 3. Withdrawable Real Estate. So long as the Developer is still a Class B Member of the Association, the Developer shall have the unilateral right, without the consent of the Class A Members or any other Class B Member, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Living Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of recordation of this Declaration among the Land Records of Arlington County; and further provided, that such withdrawal of any portion of the Property shall not result in the Property failing to comply with applicable zoning ordinances.

Section 4. Merger. In accordance with its Articles of Incorporation, the real estate, personal property, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes. Similarly, the real estate, personal property, rights, and obligations of an association similar in corporate nature and purposes to the Association may, by operation of law, be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a



merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration upon any other properties as one scheme. No such merger or consolidation shall, however, effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided. Such merger or consolidation shall require the affirmative vote of at least sixty-seven (67%) percent of the Class A Members and the approval of the Class B Member, so long as the Class B membership still exists.

### ARTICLE III

#### THE ASSOCIATION

Section 1. Organization. The Association is a non-profit, non-stock corporation organized and existing under the laws of the Commonwealth of Virginia and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as the same may be amended from time to time; provided, however, that no other Governing Documents shall be amended for any reason, or otherwise changed or interpreted, so as to be inconsistent with the provisions of this Declaration.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except as provided in the Governing Documents. Each person or entity which is a record Owner of a Lot shall be a member of the Association.

(b) Member's Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

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

Class A. Class A Members shall be all Owners (as defined in Article I), except the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot owned by such Owner.

Class B. The Class B Member shall be the Developer, or any successor or assignee (i) to whom the Developer assigns any or all of its rights as Developer pursuant to this Declaration by assignment recorded in the Land Records of Arlington County, or (ii) who is a purchaser at foreclosure with respect to the Developer's interest in the Property or a grantee in a deed in lieu of foreclosure from the Developer, who acquires not less than ten (10) lots. Such assignment under clause (i) of the foregoing sentence shall only operate as to the land which is owned by such successor or assignee and which is referenced specifically in the instrument of assignment. The Class B Member shall have three (3) votes for each Lot in which it owns a fee or undivided fee interest.

The Class B membership and Class B voting rights shall cease, and be converted to a Class A membership with Class A voting rights, upon the earlier to occur of the following events: (i) when at least seventy-five percent (75%) of the Lots at the Property have been conveyed by the Developer to individuals or entities other than the Developer, or an assignee or successor to the Developer as described in the foregoing paragraph, or (ii) five (5) years after settlement on the sale of the first Lot to an Owner other than the Developer; provided, however,

that in the event of the annexation of additional properties pursuant to Article II hereof, the Class B membership shall be revived with respect to all Lots owned by the Developer, including those Lots contained in the annexed property, which Class B membership shall cease and be converted to Class A membership with Class A voting rights upon the earlier to occur of the following events: (i) when at least seventy-five percent (75%) of the Lots in such annexed property have been conveyed by the Developer to individuals or entities other than the Developer or an assignee or successor to the Developer as described in the foregoing paragraph, or (ii) five (5) years after the date of recordation of the Supplementary Declaration subjecting such annexed property to the provisions of this Declaration.

(d) Exercise of Vote. The vote for any membership which is held by more than one person may be exercised by any one of them, provided that no objection or protest by any other holder of such membership is made prior to the completion of a vote. If such protest is lodged prior to the completion of the vote, the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. Except in the case of the Class B voting rights; in no event shall more than one vote be cast with respect to any Lot.

Section 3. Board of Directors.

(a) Composition. The number of Directors and method of selection of Directors shall be as provided in the Bylaws; provided, however, that the Developer, until its rights as a Class B Member cease, shall be entitled to appoint at least three (3) Directors.

(b) Extent of Power.

(1) The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Founding Documents and which are not specifically reserved to Members or the Developer by said Documents.

(2) The Board of Directors shall exercise its powers in accordance with the Governing Documents.

(c) Powers and Duties. By way of example and without limiting the generality thereof, the Board of Directors shall have the power and obligation to perform the following duties:

(1) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging, or disposal of Common Areas which shall be subject to the provisions of Article II and Article IV of this Declaration.

(2) Rule Making. To establish rules and regulations for the use of property as provided in Articles IV and VI and to review, modify, and approve architectural standards adopted by the Architectural Review Board.

(3) Assessments. To fix, levy, and collect assessments as provided in Article V, including, without limitation, the establishment of reserves as set forth in Article V of this Declaration.

(4) Easements. To enter into, make, grant, perform, enforce and vacate contracts, agreements, licenses, leases, easements and/or rights-of-way over and across the Common Areas as may become necessary, or as deemed reasonable by the Board of Directors or by the site plan for the Property approved by Falls Church , or as provided in Article VII hereof.

(5) Employment of Agents. To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association.

(6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II.

(7) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or foreclosed, and suspending membership rights, for enforcing or effectuating any of the provisions of the Governing Documents.

(8) Performance and Enforcement of Third Party Agreements. To take all actions, as may be reasonably necessary or appropriate to perform the obligations of the Association, and to enforce or defend rights, obligations, easements, burdens and benefits under all third party agreements affecting the Property, including without limitation, providing all consents, waivers, approvals, appointments, responses to requests for approval, performing all maintenance obligations, preparing budgets as may be required, bringing or defending a suit, causing a lien to be filed or foreclosed, or removed, and exercising all remedies available for enforcing or effectuating any of the provisions of the third party agreements.

Section 4. The Architectural Review Board.

- (a) Composition. Until all Class B membership rights cease, the Architectural Review Board shall be composed of three (3) members appointed by the Developer. When all Class B membership rights cease, the Architectural Review Board shall consist of three (3) or more persons who shall be appointed by the Board of Directors as provided in the Bylaws.
- (b) Powers and Duties. The Architectural Review Board shall regulate the external design, appearance, and location of improvements located on the Property in such a manner so as to (i) preserve and enhance values of the Property, (ii) avoid activities deleterious to the aesthetic or property values of the Property, (iii) maintain a harmonious relationship among the structures and the natural vegetation and topography, and (iv) promote the general welfare and safety of the Owners, the Occupants and their households, guests, employees, agents and invitees. Except for construction or development by, for or under contract with the Developer, and except for any improvements to any Lot or to the Common Areas accomplished by the Developer concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall, deck or other exterior improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including any change of color on any exterior portion of a Living Unit) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural Review Board) shall have been submitted to and approved in writing as to safety,

harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural Review Board. In no event shall a deck or balcony be constructed or permitted to be constructed on Lots 14 through 33, without the prior written consent of Falls Church.

In furtherance of its purposes, the Architectural Review Board shall:

- (1) Review and approve, modify, or disapprove written applications of Owners and of the Association, for improvements or additions to Lots, Living Units, or Common Areas. Notice of any disapprovals of applications shall be by Registered Notice. Approvals shall be sent by regular first-class mail. A copy of the plans and specifications, as approved by the Architectural Review Board, shall be deposited among the permanent records of such Architectural Review Board. The Architectural Review Board shall have the absolute right to disapprove any application for improvements or additions to Lots, Living Units or Common Areas, notwithstanding any approvals of any Owner's application by any governmental authority for such improvements or additions..
- (2) Adopt architectural standards subject to the confirmation of the Board of Directors.
- (3) Monitor Lots and Living Units for compliance with the design guidelines and the architectural standards approved by Falls Church with respect to the initial development of the Property and approved plans for alteration in accordance with the Bylaws and Rules.
- (4) Adopt procedures for the exercise of its duties and enter them in the Rules.

(c) Failure to Act. In the event that the Architectural Review Board fails to approve, modify, or disapprove, in writing, a correctly filed application within ninety (90) days after the plans and specifications (and all other materials and information required by the Architectural Review Board) have been submitted to it in writing, and provided that the request set forth in such application does not violate (i) any provision of this Declaration, or (ii) or any laws, regulations and/or ordinances applicable to the Property, then approval by the Architectural Review Board will be deemed granted. Notification of total or partial disapproval shall include the reasons for such disapproval. Failure of the Architectural Review Board or the Board of Directors to enforce the architectural standards adopted by the Architectural Review Board or to notify an Owner of noncompliance with the architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of the enforcement of this Declaration at any later date.

(d) Appeal. An applicant may appeal an adverse decision of the Architectural Review Board, within sixty (60) days after such adverse decision is rendered, to the Board of Directors, which may reverse or modify such decision, but in no event shall the Architectural Review Board or the Board of Directors be required to reconsider an adverse decision where the proposal violates applicable zoning ordinances or approvals relating to the Property.

(e) Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural Review Board pursuant to the provisions of this Article III, Section 4 shall be commenced within ninety (90) days following the date upon which the same are approved by the Architectural Review Board (whether by affirmative action or by



Section 6. Insurance. The Association shall maintain insurance against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage and all risk endorsements for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering all Common Areas. The policy shall provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence. All insurance policies shall provide for at least ten (10) days written notice to the Association before material modification or cancellation of any policy. All premiums shall be paid as a common expense by the Association. In the event that the Association shall fail to maintain insurance for the Common Areas or allow insurance coverage to lapse, one or more of the First Mortgagees shall have the right, upon reasonable notice to the Association, to obtain such insurance and to advance premiums on behalf of the Association. The Association shall reimburse such First Mortgagees for premiums advanced.

#### ARTICLE IV

##### COMMON AREAS

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management, control, maintenance, repair and replacement, for the benefit of the Members, of all Common Areas, including, without limitation, private alleys (but not including the private driveways located on Lots), and sidewalks and walkways adjacent thereto and street lights within the Common Areas (to the extent not maintained by Virginia Power Company or the City of Falls Church),

policy shall provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence. All insurance policies shall provide for at least ten (10) days written notice to the Association before material modification or cancellation of any policy. All premiums shall be paid as a common expense by the Association. In the event that the Association shall fail to maintain insurance for the Common Areas or allow insurance coverage to lapse, one or more of the First Mortgagees shall have the right, upon reasonable notice to the Association, to obtain such insurance and to advance premiums on behalf of the Association. The Association shall reimburse such First Mortgagees for premiums advanced.

#### ARTICLE IV

##### COMMON AREAS

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management, control, maintenance, repair and replacement, for the benefit of the Members, of all Common Areas, including, without limitation, private streets and alleys (but not including the private driveways located on Lots), and sidewalks and walkways adjacent thereto and street lights within the Common Areas (to the extent not maintained by Virginia Power Company or the City of Falls Church), landscaping within all Common Areas, and all improvements on the Common Areas including retaining walls, if any, and privacy walls and other fences within the Common Areas (but not privacy fences on Lots), walkways, sidewalks and steps in the Common Areas (but not steps or stoops on Lots), parking areas within the Common Areas, furnishings, and equipment

(i) seven (7) years after the recordation of this Declaration of (ii) the conveyance of the last Lot to any Owner other than the Developer, at which time the Storm Water Management Maintenance Costs shall be reallocated among the completed Living Units.

The Association shall further be responsible for the regular mowing of grass areas in the front yards of the Lots and those portions of the side yards of the Lots which are not enclosed by fences or otherwise (but not in the rear yards) and the grass areas or landscape areas within the Common Areas. The Owners shall be responsible for mowing and maintaining the rear yard areas, and for watering all front and rear yard areas and all trees, shrubbery, ground cover and landscaped areas in the front and rear yards of the Lots. The Association shall be responsible for pruning and trimming shrubbery planted by the Developer or the Association in the front yard of a Lot and the mulching of flower beds in the front yard of a Lot, and shall replace any shrubbery or trees within the front yard of a Lot which dies during the one-year period after conveyance of the Lot by the Developer to an Owner, at no cost to the Owner, except that if such shrubbery or trees die by reason of failure of the Owner to water such shrubbery or trees on a regular basis, or by reason of damage caused by the Owner, then the cost of replacement of the shrubbery shall be borne by the Owner of the Lot on which such shrubbery or trees died and the Association shall charge such cost to the Owner of such Lot as a Special Assessment. After such one-year period following the conveyance of a Lot by the Developer to an Owner, the Association shall continue to replace any shrubbery and trees which dies, if initially planted by the Developer or the Association in the front yard of the Lot, but the cost of such replacement (materials and labor) under all circumstances shall be charged by the Association to the Owner of such Lot as a Special

pruning and trimming shrubbery planted by the Developer or the Association in the front yard of a Lot and the mulching of flower beds in the front yard of a Lot, and shall replace any shrubbery or trees within the front yard of a Lot which dies during the one-year period after conveyance of the Lot by the Developer to an Owner, at no cost to the Owner, except that if such shrubbery or trees die by reason of failure of the Owner to water such shrubbery or trees on a regular basis, or by reason of damage caused by the Owner, then the cost of replacement of the shrubbery shall be borne by the Owner of the Lot on which such shrubbery or trees died and the Association shall charge such cost to the Owner of such Lot as a Special Assessment. After such one-year period following the conveyance of a Lot by the Developer to an Owner, the Association shall continue to replace any shrubbery and trees which dies, if initially planted by the Developer or the Association in the front yard of the Lot, but the cost of such replacement (materials and labor) under all circumstances shall be charged by the Association to the Owner of such Lot as a Special Assessment. The Owners shall be responsible for the maintenance and replacement of all shrubbery, trees, ground cover and grass areas in the rear yards on their Lots, and the Owners shall be solely responsible, at their sole cost and expense, for the watering, care and maintenance of any and all flowers, plants shrubbery and trees planted by the Owner on his or her Lot, and the Owner shall keep all such plantings of the Owner free of bugs and bores. An Owner who fails to maintain his or her plantings free of bugs and bores shall be responsible for any costs incurred by the Association by reason of the infestation of other landscaping, trees, shrubbery and flowers maintained by the Association.

Section 2. Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to the Common Areas and the facilities thereon.

Section 3. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to regulate the use of the Common Areas for the benefit of the Members, to reasonably limit the number of guests of Members who may use any facilities which are developed on the Common Areas, and to establish Rules for the use of the Common Areas.
- (b) The right of the Association to suspend the voting rights and the right of a Member to use the Common Areas for any period during which any assessment against his Lot or Living Unit remains unpaid for more than thirty (30) days after notice until such default has been remedied.
- (c) The right of the Association to borrow money for the purpose of improving the Common Areas and improvements thereon and in connection therewith; to mortgage any or all of the Common Areas with the consent of at least sixty-seven percent (67%) of the Class A Members, the approval of the Class B Member, so long as the Class B membership rights shall exist, and the consent of at least fifty-one percent (51%) of the First Mortgagees, if required by the First Mortgagees. In the event of a default upon any mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to suspend continued

enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored.

(d) The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure, provided that such steps are consistent with the other provisions of this Declaration.

(e) The right of the Association to convey, transfer or dedicate all or any part of the Common Areas to any public or municipal agency, authority, utility or other entity for appropriate purposes, subject to the then existing laws and ordinances, with the consent of at least sixty-seven percent (67%) of the Class A Members, the approval of the Class B Member, and the consent of at least fifty-one percent (51%) of the First Mortgagees.

(f) The right of the Association to grant licenses, rights-of-ways and easements for access or construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any governmental authority, utility company, the Developer or any other person, portions of the Common Areas to Members on a uniform, non-preferential basis.

(g) The right of the Association, acting by and through its Board of Directors, to enter onto a Lot or into a Living Unit or other improvements on a Lot to perform emergency repairs or to perform the obligations of the Association set forth herein.

(h) The right of the Association, at any time or times, consistent with the then existing zoning ordinances of Falls Church, and pursuant to a recorded subdivision or

resubdivision plat, to transfer part of the Common Areas to or at the direction of the Developer for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Property, provided that: (i) such transfer shall not reduce the portion of the Property required by Falls Church to be set aside for open space at the time of the transfer, (ii) all Lots which were adjacent to Common Areas prior to such transfer remain adjacent to Common Areas after such transfer, and (iii) the adjustment shall not materially alter the Common Areas.

Section 4. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Areas to the members of his or her family and to his or her guests subject to such general regulations as may be established from time to time by the Board of Directors and as are included within the Rules.

Section 5. Title to Common Areas. The Developer hereby covenants that areas designated as open space, which the Developer conveys to the Association as Common Areas, shall be free and clear of financial liens and financial encumbrances at the time of conveyance, except for those that may exist pursuant to this Declaration or those obligations imposed by other covenants affecting the Property. In the event that a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the First Mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid to discharge the lien or encumbrance.

Section 6. Covenant in Favor of Falls Church. Notwithstanding anything contained herein to the contrary, in the event that the Association fails to maintain the Common Areas in reasonable order and condition and in accordance with the plans for the Property approved by

Falls Church, then Falls Church may, at its option, serve notice in writing upon the Association or upon the Owners setting forth the manner in which the Association has failed to maintain the Common Areas in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice. If the deficiencies are not cured with said thirty (30) days or any extension thereof, Falls Church may enter upon the Common Areas for the purposes of maintenance thereof for a period of one (1) year so as to prevent the Common Areas from becoming a public nuisance. Falls Church may assess each Owner of a Lot a pro rata share of the costs incurred by Falls Church, which costs, if and when so assessed, shall constitute a continuing lien on each Lot in the same manner as that described in Article V, Section I hereof; provided that in the event Falls Church makes such assessment against each Lot, said lien shall nonetheless be subordinate to the lien of any first mortgage or first deed of trust on any Lot. The foregoing covenant in favor of Falls Church shall run with and bind the Property as set forth in Article IX, Section I hereof.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to



the Association such Annual and Special Assessments as are established herein and to pay same in the manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass as a personal obligation to his successors in title unless expressly assumed by them. Prior to or at the time of any conveyance of a Lot, all liens, unpaid charges and assessments shall be paid in full and discharged. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or waiver of the use or enjoyment of the Common Areas, or any portion thereof, or abandonment of his Living Unit or Lot.

Section 2. Method of Assessment. All assessments shall be levied by the Association against Assessable Units and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments as provided hereinafter and set the dates on which such assessments shall become due.

Section 3. Annual Assessments.

(a) Purpose. The Annual Assessments shall be used exclusively to promote the health, safety, and welfare of the Members of the Association as a whole and in particular to improve, maintain, and operate the Common Areas and facilities, and shall include the following:

- (i) The cost of all operating expenses of the Common Areas and facilities, and the services furnished to or in connection with the Common Areas and charges by the Association for any services furnished by it.
- (ii) The cost of necessary management and administration of the Common Areas, including fees paid to any management agent.
- (iii) The amount of all taxes and assessments levied against the Common Areas.
- (iv) The cost of liability insurance on the Common Areas and facilities and the cost of such other insurance as the Association may effect with respect to the Common Areas.
- (v) The cost of utilities and other services which may be provided by the Association, including, without limitation, snow removal on the Common Areas, site security and trash removal, to the extent that such services may be provided by the Association.
- (vi) The cost of maintaining, replacing, repairing and landscaping all exterior areas which are expressly described as the Association's responsibility in this Declaration, whether designated as "Common Areas" or not, including, without limitation, those obligations of the Association under Article IV Section 1 of this Declaration.
- (vii) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for repair and replacements.
- (viii) The implementation, administration, and enforcement of this Declaration, including, but not limited to, court costs and attorney's fees.
- (b) Basis for Assessment. There shall be two (2) classes of Assessable Units, all of which shall be assessed at a uniform rate within each class:

Class I: All Lots on which Living Units have been constructed and which are or have been occupied by a Single Family shall be assessed at one hundred percent (100%) of the Annual Assessment rate.

Class II: All Lots owned by the Developer on which Living Units have been constructed but which have not been initially occupied by a Single Family, and all Lots owned by the Developer on which Living Units have not been constructed or construction has not been completed shall not be assessed, and the Developer shall not be required to pay, the Annual Assessment which would otherwise be assessed against such Lot(s) if they were owned by a Class A Member. In consideration of the Developer's exemption from assessments, the Developer hereby covenants and agrees to fund any budget deficits, without cost to the Association, until the earlier to occur of (i) such time as the Class B membership shall cease to exist, or (ii) the Developer ceases to own any Lots; provided, however, that the Developer's obligation under this Article V, Section 3(b) shall not exceed the amount which it would have paid had it been assessed at the rate applicable to Class I Assessable Units. The Developer's obligation under this Section does not include any expenses that the Association is unable to meet because of non-payment of any Owner's assessment or because of unusual or extraordinary expenses. At the option of the Developer, the Developer shall remain exempt from payment of Annual Assessments even after conversion to Class A membership, until the occupancy of the Living Unit located on each Lot owned by the Developer, provided that the Developer funds any budget deficits as provided in this Section.

(c) Maximum. Until the first day of the fiscal year following commencement of assessments, the maximum Annual Assessment rate for that year shall not exceed Six Hundred Dollars (\$600.00).

(d) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum Annual Assessment rate each year by the greater of: (1) a factor of not more than ten percent (10%) of the maximum for the current fiscal year; or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in (a) the Consumer Price Index, or equivalent, as published by the United States Department of Labor, and (b) the real estate taxes and casualty and other insurance premiums payable by the Association. Such increase shall become effective the first day of the next fiscal year. As used herein, the term "Consumer Price Index" means the index now known as the "United States Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)," all items, for the Washington, D.C. SMSA (1982-84=100), or if such index ceases to incorporate a significant number of items now incorporated therein, ceases to reflect the increases in expenses of the Association, or if a substantial change is made in the method of establishing such index, then such other reliable or governmental or other non-partisan index designated by the Board of Directors shall be used.

Notwithstanding anything to the contrary set forth herein, from and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board of Directors with the affirmative vote

of at least sixty-seven percent (67%) of the Class A Members who are present and voting in person or by proxy at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if Class B membership has not ceased in accordance with the provisions of this Declaration.

(e) Budget; Method of Assessment. The Board of Directors shall prepare, or cause to be prepared, an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of all Common Areas and other areas for which the Association is responsible. Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles), and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for), and reserves for replacements, major repairs and renovations of the Common Areas.

By a vote of at least two-thirds of the Board of Directors, the Directors shall fix the Annual Assessments to be collected annually at an amount not in excess of the current maximum for Annual Assessments; provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and any Supplementary Declarations. The Board of Directors shall make reasonable efforts to fix the amount of the Annual Assessments against each Lot for each assessment period at least thirty (30) days in advance of the commencement of such period. The Board of Directors shall prepare a roster of the Lots and the Annual Assessments applicable thereto, which shall be kept in the office of the Association and

shall be open to inspection by any Owner upon reasonable notice to the Board of Directors.

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

(f) Date of Commencement of Annual Assessments. The first Annual Assessments provided for herein shall commence on the date of the conveyance of the first Lot to an Owner other than the Developer.

(g) Payment of Annual Assessments. The Annual Assessments, when assessed for each year, shall become a lien on the Assessable Unit for the entire Annual Assessment, but shall be payable in quarterly installments equal to one-fourth (1/4) of the Member's proportionate share of the Annual Assessment payable by such Member. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, semi-annual or annual basis, rather than on a quarterly basis.

(h) Surplus and Deficit. Any amount accumulated in excess of the amount required for actual expenses as set forth in Section 3(a) above and reserves established by the Board of

Directors for working capital, replacements and contingencies, shall, at the discretion of the Board of Directors, (i) be placed in reserve accounts, (ii) be placed in a special account to be expended solely for the general welfare of the Owners, (iii) be credited to the next periodic installment of Annual Assessments due from Owners under the current fiscal year's budget, until exhausted, or (iv) be distributed to each Owner (including the Developer) in proportion to the percentage (if any) of Annual Assessments paid by such Owner. The budget for the succeeding fiscal year may be adjusted to amortize the deficit from the preceding fiscal year.

Section 4. Special Assessments.

(a) Capital Improvement Assessment. The Association may levy in any assessment year a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or other specified purpose primarily for the maintenance and upkeep of the Common Areas, provided that any such assessment shall require the affirmative vote of at least two-thirds (2/3) of the Class A. Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if the Class B membership has not ceased to exist. A majority of votes cast, in person or by proxy, at a meeting of the Members convened in accordance with the provisions of the Bylaws within sixty (60) days of promulgation of the notice of the special assessment shall rescind or reduce the special assessment. No Director or officer of the Association shall be liable for failure to perform his

fiduciary duty if a special assessment for the funds necessary for the Director or officer to perform his fiduciary duty is rescinded by the Members, and the Association shall indemnify such Director or officer against any charges resulting from any claimed breach of fiduciary duty arising therefrom.

(b) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, Sections 2, and 3, or who fails to provide such maintenance funds as may be required by any Supplementary Declaration. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

Section 5. Effect of Nonpayment of Assessments: Remedies of the Association.

(a) Notice of Default; Remedies. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association, or the managing agent at the request of the Board of Directors, shall provide Notice of such delinquency and may, at its option, (i) declare the entire balance of such Annual or Special Assessment due and payable in full; (ii) charge interest from the due date at a percentage rate no greater than is permissible by law; such rate to be set by the Board of Directors for each assessment period; (iii) charge a late charge in an amount equal to Fifteen Dollars (\$15.00) or such other amount as may be set by Board of Directors; (iv) give Notice to the Owner that in the event payment with accrued interest and penalties is not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed or foreclosed, or both; and (v) upon Registered Notice to the Owner of the Lot, suspend the right of such Owner to vote and such Owner's right



(and the right of any Occupant of the Living Unit) to use the Common Areas until the assessment, accrued interest, penalties and costs of collection are paid in full. Once perfected, the lien for assessments provided for herein shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of this Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The lien evidenced hereby shall bind the Lot(s) or Living Unit(s) herein described in the hands of the then Owner or Occupant thereof, his heirs, devisees, personal representatives, and the personal obligation of the Member to pay such assessment shall, in addition, remain his personal obligation for the statutory period.

(b) Remedies Cumulative. No remedy reserved to the Association herein is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(c) Collection Costs. If default is made in the payment of any assessment payable hereunder, then the Owner who is so delinquent shall pay to the Association, upon demand, all costs of collection, including the Association's attorney's fees, whether suit is brought or not.

(d) Prepayment. Any member may prepay one or more installments on any Annual Assessments levied by the Association, without penalty or interest.

Section 6. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent

dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all properties exempted from taxation by the Commonwealth of Virginia, Falls Church, or any other political subdivision having jurisdiction over the Property upon the terms and to the extent of such legal exemption, provided that no property utilized for residential purposes shall be exempt.

Section 7. Working Capital Fund. At the time of the conveyance of each Lot which is improved by a Living Unit to an Owner, each such Owner shall pay to the Association a non-refundable contribution to the Association's working capital fund in an amount equal to One Hundred Fifty Dollars (\$150.00). The Association's working capital fund shall be used for the initial and forthcoming expenses of the Association.

## ARTICLE VI

### USE OF PROPERTY

Section 1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist or operate upon the Property, or any portion thereof, so as to jeopardize property values or be detrimental to the well-being of the Members. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emissions, products, storage or discharge may adversely affect the use or intended use of any portion of the Property or may adversely affect the health, safety or comfort of any person. No waste nor any

substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer.

(b) Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, and easements to public agencies or authorities or for utilities; and further provided, that the Developer shall have the unilateral right, without the consent of any other party, to resubdivide the Lots owned by the Developer.

(c) Residential Use: Leasing.

(1) All Living Units shall be used for private residential purposes exclusively, except that a professional office may be maintained in a Living Unit, provided that

(A) such maintenance and use is limited to the person actually residing in the Living Unit;

(B) such professional office shall not adversely impact the Common Areas (including, without limitation, the private streets and private alleys, access aisles, and parking areas), nor adversely impact the access to or parking for any other Lots, and parking shall be in compliance with the provisions set forth in this Declaration, (C) the hours of operation of such professional office shall be limited to 8:30 a.m. to 6:00 p.m., (D) the maintenance and use of such professional office shall not disturb any other Owner's quiet enjoyment of his or her Living Unit, and (E) such

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maintenance, use and signage of a professional office shall be in strict conformity with the provisions of any applicable zoning laws, ordinances, or regulations, and subject to review by the Architectural Review Board. As used in this paragraph, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics.

Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Developer from the use of any Lots or Living Units for promotional, marketing, display or customer service purposes, or as "model homes", a sales office, construction office, management office, or the like. The Developer may assign its rights under this section to, or share such rights with, one or more other parties, exclusively, simultaneously or consecutively with respect to Lots or Living Units owned or leased by the Developer or such assignees of the Developer.

(2) Any lease or rental agreement for the lease of a Lot and the improvements thereon shall be in writing and shall be subject to the conditions, restrictions and requirements of this Declaration. No Lot or Living Unit shall be leased or subleased as a rooming house or boarding house, nor shall any lease be for a period of less than thirty (30) days and the initial term of such lease shall be for a minimum period of one (1) year. The Board of Directors may suggest or require a standard form of lease or certain standard form language to be incorporated into any lease agreement to be used by Owners for the leasing of Living Units, in order to assure compliance with the terms, conditions, covenants, restrictions, rules and regulations under this Declaration. Each Owner shall, promptly after entering into any lease or

sublease of a Living Unit, forward a conformed copy of the lease or sublease to the Board of Directors.

(d) Conditions for Architectural Control. No improvements, alterations, repairs, excavations, changes in grade or other work which in any way alters the exterior of any Lot or Common Areas or the improvements located thereon from its natural or improved state, existing on the date such property was first subjected to this Declaration (except as shown on the site plan for the Property approved by Falls Church), shall be made or done without the prior approval of the Architectural Review Board as provided in Article III, Section 4 of this Declaration. No building, residence, or other structure, fence, wall, deck or landscaping in lieu thereof, shall be commenced, erected, maintained, improved, altered, made, or done on such property without the prior written approval of the Architectural Review Board, and no exterior improvements, other than those approved as part of the site plan for the Property approved by Falls Church, shall encroach into space above ingress/egress or emergency vehicle easements or shall be constructed without the prior written consent of the Architectural Review Board. At no time will a deck or balcony be constructed or permitted to be constructed on Lots 14 through 33 in accordance with the approved site plan for the Property. All improvements made on any Lot, including, without limitation, those improvements approved by the Architectural Review Board, shall conform to any design guidelines promulgated by the Architectural Review Board for the entire Property. No changes of paint, stain, brick or roof colors on the exterior of any Living Unit, or on any other improvement on a Lot, or on improvements in the Common Areas, shall be made without the prior written approval of the Architectural Review Board.

(e) Fences. No fences shall be constructed upon the Property other than those provided by the Developer, fences to connect the existing fences constructed along the lot lines along Lots 14 through 33 in order to enclose the rear yards of such Lots (and then the fences shall be of the same materials as the fences along the lot lines), or those fences specifically approved by the Architectural Review Board.

(f) Parking. Parking upon the Common Areas and private streets and private alleys may be regulated or prohibited by the Board of Directors. No parking shall be permitted along the private streets and alleys within the Common Areas, except as shown on the site plan approved by the City of Falls Church for the Property. No vehicle shall be parked on a rear parking pad, in a driveway, in a garage, or elsewhere on the Property in a manner which unreasonably interferes with access to or along, or encroaches upon, the public streets, the private streets or private alleys, or the pedestrian walkways or emergency vehicle ingress/egress easements within the Property. No vehicle shall park across the entrance to any driveway or parking pad. All garages shall be used for passenger vehicle parking only. The driveways and parking pads, if any, included on a Lot shall be used for passenger vehicle parking only, and only in conformance with the requirements of this Section. Except in connection with the construction activities of the Developer, no commercial vehicle, truck, boat, recreational vehicle or trailer, whether owned by the Owner or any other person, shall be permitted to remain on or be parked on the Common Areas overnight. No junk or derelict vehicle on which current registration plates are not displayed shall be kept on any portion of the Property. Nothing shall

be stored upon any of the private streets or private alleys or walkways, nor shall the same be permitted to accumulate trash or debris.

(g) Pets. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. Any Owner or Occupant who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each of the other Owners, Occupants, the Developer and managing agent free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet at the Property. All pets shall be registered, inoculated and tagged as required by law. Each owner of a pet shall be responsible for picking up and properly disposing of materials deposited by its pet, whether on the Common Areas or any Lot. The Board of Directors shall have the right to order any person whose pet is a nuisance to remove such pet from the Property and the Board of Directors, after affording the right to a hearing to the Owner or Occupant affected, shall have the exclusive authority to declare any pet a nuisance.

(h) Refuse. Except in connection with the construction activities of the Developer, no burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used materials, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot or upon any of the Common Areas. All refuse shall be deposited with care in covered containers for such purpose. Trash containers, recycle containers and other refuse disposal systems must be maintained in garages or other enclosures or screened as approved by the Architectural Review Board and shall not be permitted to remain in public view from another

Lot except on days of trash collection. Each Owner shall be responsible for bringing his or her trash containers to the curb on the days of trash collection and such containers shall be removed by the responsible Owner from public view on the same day as the trash collection occurs.

(i) Temporary Structure. Except for temporary structures for the construction activities of the Developer at the Property and the Developer's sales activities (including sales/marketing signs), no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel or stable, shall be maintained upon any Lot or upon the Common Areas at any time. Outdoor clothes dryers or clotheslines shall not be maintained upon any of the Lots or the Common Areas at any time. No clothing, laundry or the like shall be hung from any part of any Living Unit which may be visible from the exterior of the Living Unit or upon any of the Common Areas or from or upon any balcony or patio.

(j) Outdoor Antennas. No exterior antenna or satellite dish for the transmission of radio or television signals or for the reception of direct broadcast satellite service which exceed one meter in diameter and/or exterior antenna for receiving video programming services via MMDS (wireless cable) that exceed one meter in diameter may be maintained upon the exterior of any Unit or upon the Common Areas without the prior written consent of the Board of Directors. The Board of Directors may adopt reasonable regulations as to screening and possibly location of any exterior antenna or satellite dish.

(k) Landscaping; Utility Lines. 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 private streets or alleys. All landscaping and screening required by the site plan



approved by Falls Church shall be maintained in good condition. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities, (ii) in violation of the requirements of such easements, or (iii) if such materials may unreasonably change, obstruct, or retard direction or flow of any drainage channels. Falls Church will maintain the trees located within the tree easement area granted to Falls Church for such purpose along Cherry Street. In no event shall any Owner cut, remove or intentionally damage any tree within such easement area without the prior written consent of Falls Church.

(l) Signs. Except for sales/marketing signs posted at the Property in connection with the sales activities of the Developer, and except for "No Parking" along the streets or alleys in the Property, and except for the Entrance Features, and except as permitted under Article VI, Section 1(c) hereof, no signs of any character shall be erected, posted, or displayed in a location that is visible from another Lot that does not comply with the rules established by the Board of Directors. All signs posted under Article VI, Section 1(c) of this Declaration shall be subject to approval by the Architectural Review Board. In that regard, no sales/marketing signs for the resale of Living Units shall exceed two (2) feet in width and/or two (2) feet in height, such signs shall be posted only on Saturdays and Sundays, and only one sign shall be posted on a Lot.

(m) Wren's Parking Easement. Parking within the Wren's Parking Easement area is for the exclusive use of the owners and visitors of the Wren's Subdivision. No parking by the Owners of Living Units in the Property, or their tenants, invitees, contractors or licensees, shall be permitted within the Wren's Parking Easement.

(n) Compliance with Laws. No unlawful, improper or offensive use shall be made of any Living Unit, Lot, or any portion of the Common Areas and all laws, zoning and other ordinances, regulations of governmental and other municipal bodies and the like shall be observed at all times. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over the Property shall be complied with by, and at the sole expense of, the Owner, the Association, or the Developer, whichever party shall have the obligation for the upkeep of such portion of the Property, and if the Association is the responsible party, then the cost of compliance shall be a common expense included in the Annual Assessment.

(o) Rules. From time to time the Board of Directors shall adopt additional general rules, including, but not limited to, rules to regulate potential problems relating to the use of property and well-being of the Members, such as visitor parking, storage and use of machinery, signs, maintenance and removal of vegetation on the Property, and the type and manner of application of fertilizers or other chemical treatments to the Property in accord with non-point source pollution control standards. Ninety (90) days after conveyance of the first Lot to an Owner, such general rules may only be adopted or amended by a vote of at least two-thirds (2/3) of the Board of Directors, following a hearing for which due notice has been provided to all Members. A majority of votes cast, in person or by proxy, at a meeting of the Members convened in accordance with the Bylaws and called for that purpose, shall have the ability to repeal or amend any Rules adopted by the Board of Directors. All such general rules and any subsequent amendments thereto shall be placed in the Rules and shall be binding on all Members, except where expressly provided otherwise in such Rule.

(p) Exceptions. The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board of Directors can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Developer is engaged in developing or improving any portion of the Property, the Developer shall be exempted from Rules affecting movement, disposition, and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Living Units, temporary structures and parking. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Property.

(q) Storm Water Management Facilities. The Association shall be obligated to maintain the Storm Water Management Facilities pursuant to Article IV, Section 1 of this Declaration. Such maintenance shall be performed in accordance with the customary practices for such facilities in the northern Virginia area.

Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in a Supplementary Declaration, each Owner shall keep all Lots owned by him or her, and all improvements therein or thereon, including, without limitation, the Living Unit, garage, steps, stoops, fences (including privacy fences located on the Lot or on Common Areas), patios, parking pad, individual driveways (whether in the front or rear of the Lot), rear yards, including without limitation, rear yard mowing and landscaping, in good order and repair, in a clean and sanitary condition, free of debris, all in a manner and with such frequency as is consistent with

good property management. Unless specifically provided in Article IV, Section 1 of this Declaration, the Association shall have no responsibility for the maintenance of any Living Unit, and each Owner shall be responsible for the maintenance, repair and replacement of his or her Living Unit. In addition, the Owner shall be responsible for keeping the front yard in a clean and sanitary condition, free of debris. The Association's responsibility with respect to the mowing of grass, pruning and trimming of shrubbery in the front yards, mulching, and the replacement of shrubbery in the front yards is set forth in Article IV, Section 1. Each Owner shall be responsible for the exterior maintenance of his or her Living Unit, including, without limitation, painting of the exterior of the Living Unit from time to time to maintain the exterior paint in good condition, and the color of the exterior paint shall not be altered without the prior written consent of the Architectural Review Board. Any obligations not specifically stated to be the Association's as described in said Article IV, Section 1, shall be the obligation of the Owners. Each Owner shall be solely responsible for watering all front and rear yard areas and shrubbery, trees and landscaping in the front and rear yard areas of his or her Lot. After one year following conveyance of a Lot by the Developer to an Owner, the Association shall continue to be responsible for the replacement of dead shrubbery and trees in the front yard of a Lot, but the cost of such replacement (materials and labor) shall be charged by the Association to the Owner of such Lot as a Special Assessment. If any lights are attached to a Living Unit which provide lighting for the Lots or the Common Areas, or both, the Owners of the Living Units to which such lights are attached will maintain them in operating order with photocell lights. No Owner shall disconnect or otherwise impair the use of such lights. Each Owner shall perform his or her

responsibility in such a manner as shall not unreasonably interfere with the other Owners or Lots. If a master service panel (as described in Article VII, Section 1) is attached to any Living Unit, the Association shall be responsible for the maintenance of the box or other enclosure for the master service panel.

(b) Failure to Maintain - Right to Remove or Correct Violations. If any Owner shall fail to keep such Owner's Lot or Living Unit, including, without limitation, the exterior paint on the Living Unit, in good repair and condition, and in a neat and orderly condition consistent with the covenants set forth in this Declaration (including all sections of this Article) and such Rules as may be promulgated by the Board of Directors, or in the event of any violation or attempted violation of any of the covenants or restrictions contained in this Article or the Rules, or in the event of any other conduct in violation of any of the provisions or requirements of this Declaration or the Rules, then the same shall be considered to have been undertaken in violation of this Declaration and without the approval of the Architectural Review Board or the Board of Directors required herein, and, upon written notice from the Architectural Review Board or the Board of Directors, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such Notice) after Notice of such violation is delivered to the Owner of the Lot upon which such violation exists, or to the Member responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such Member, then the Association shall have the right, through its agents and employees, to enter upon such Lot and Living Unit and take such steps as may be necessary to

remove or otherwise terminate or abate such violation and the cost thereof may be assessed as a Restoration Assessment against the Lot upon or in which such violation occurred. When so assessed, a statement for the amount thereof shall be rendered to the Owner of said Lot, at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot, in all respects as provided in Article V of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions or requirements of this Declaration exists on such Lot or in such Living Unit, and neither the Association nor any such agent, employee or committee member shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Notwithstanding anything else contained in this paragraph to the contrary, the Association shall initiate judicial proceedings before any item of construction can be altered or demolished.

(c) Assignment of Insurance Proceeds. Each Owner covenants and agrees, by acquisition of title to a Lot, that if any insurance proceeds are payable by reason of any event or circumstances causing a condition rectified by the Association pursuant to this Article, those proceeds are hereby assigned to the Association to the extent not assigned to the First Mortgagee for such Lot. Each Owner shall, promptly upon request of any Director or Officer of the Association, execute such documents as may be necessary to effect or confirm such assignment. The amount thereof received by the Association in rectifying that condition and any amount in

excess of those costs shall be returned by the Association to the Owner, subject to the rights of any First Mortgagee having a lien upon such Owner's Lot.

Section 3. Party Walls.

(a) General Rules of Law to Apply. Each wall (including any fence and any extension of such wall beyond the end of a Living Unit, whether or not the wall serves one or more Living Units) built as a part of the original construction of the Living Unit upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party wall (including, without limitation, any party wall fence or extension of such wall as described in Section 3(a) above is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the Owners or Occupants, or the agents, guests or family of any Owner or Occupant (including ordinary wear and tear and deterioration from lapse of time), or if a party wall or party wall fence requires repair or replacement, or general maintenance (such as painting), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair or paint the same to as good condition (and same color) as was formerly existing and they shall share equally the costs of repairing or rebuilding or painting the party wall or party wall fence. An easement is hereby established across the Lot of each Living Unit sharing a party wall for purposes of repairing, replacing and maintaining the party wall. If any retaining wall on the

Property, whether located on a Lot or on the Common Areas, is damaged or destroyed other than by the act of one of the Owners or Occupants, or the agents, guests or family members of any Owner or Occupant, then in such event the Association shall be responsible for rebuilding or repairing the retaining wall to as good condition as was formerly existing.

(c) Damage Caused by One Owner. If any such party wall or retaining wall is damaged or destroyed through the act of one adjoining Owner or Occupant or any of the agents, guests, or members of the family such Owner or Occupant (whether or not such act is negligent or otherwise culpable), or if one adjoining Owner or Occupant fails to maintain the party wall or retaining wall in good repair and condition (including painting and pointing) so as to deprive the other adjoining Owner or Occupant of the full use and enjoyment of the wall, then the Owner who is at fault (or the Owner of the Lot whose Occupant is at fault) shall forthwith proceed to rebuild and repair (or repaint in the previous color) the same to as good condition as formerly existed at its sole cost and expense, without cost to the adjoining Owner or Occupant.

(d) 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 or Occupant proposing to modify, make additions to or rebuild a residence in any manner which requires the extension or other alteration of any party wall (including party wall fences) shall first obtain the written consent of the adjoining Owner.

(e) Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section 3 shall be appurtenant to the land and shall pass to the successors in title to the Owner entitled to such contribution.



(f) Dispute. In the event of a dispute between Owners with respect to the repair, maintenance or rebuilding of a party wall, or with respect to the sharing of the cost thereof, then, upon written request of any one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties. If any Owner fails to repair, replace or maintain any party wall in good repair and condition after a decision by the Board of Directors that such work is required, then such failure by an Owner shall be deemed a violation of this Declaration and the rights of the Association pursuant to Article VI, Section 2(b) shall apply.

Section 4. Upkeep by Association.

(a) Common Areas. The Association shall be responsible for the management, maintenance, repair and replacement of the Common Areas including, without limitation, all Common Area landscaping, all perimeter fencing around the Property, if any, the Entrance Features, the Storm Water Management Facilities and all retaining walls (whether located on a Lot or on the Common Areas), and those obligations of the Association described in Article IV, Section 1 of this Declaration. The cost of upkeep of the Common Areas shall be assessed against all Lots as part of the Annual Assessments. The Association shall not have any responsibility for the upkeep, maintenance, repair and replacement of the Lots, except as expressly set forth in Article IV, Section 1 of this Declaration. If the Board of Directors determines that certain maintenance, repairs or replacements were necessitated by the negligence, misuse or neglect of an Owner or Occupant, the cost of such repairs or replacements shall be assessed against such Owner's Lot as a Restoration Assessment pursuant to Article V, Section 4 of this Declaration.

(b) Shared Maintenance. Upon a vote of fifty-one percent (51%) of the Class A Members and the Class B Member, the Board of Directors may enter into shared maintenance agreements with adjoining property owners to maintain areas whether or not located within the Property, including, but not limited to, storm water management easements and facilities, landscaping, entrance features, signage and sidewalks. The Association's share of expenses incurred under such agreements shall be assessed against all Lots as a common expense and included in the Annual Assessments.

Section 5. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the Covenants and Restrictions set forth in this Declaration and in any applicable Supplementary Declaration. The resale of certain Lots (the "ADU Lots") is governed by a separate declaration made by the Developer regarding affordable dwelling units (the "ADU Covenant"), and the deed or instrument transferring title to any ADU Lot shall contain a provision incorporating the ADU Covenant. The resale of the ADU Lots shall be made in strict accordance with the terms of the ADU Covenant.

(b) Notification. The contract seller of a Lot shall notify the Association of the contract purchaser and the scheduled date and place conveyance will be accomplished.

(c) Statement of Assessments. Upon receipt of the notification described in Section 5(b) of this Article VI, the Board of Directors or the managing agent shall prepare a written statement which shall set forth any assessments and charges due upon such Lot at the time of conveyance (or a statement that the amount of unpaid assessments and charges is zero) and shall

certify as to whether there are any violations of the Governing Documents remaining on the Lot as of the date of preparation of such statement. This statement shall be delivered to the place of closing, and outstanding assessments, if any, shall be deducted from the Seller's account at the closing and transmitted directly to the Association. The Board of Directors may charge a reasonable fee for the preparation of this statement.

## ARTICLE VII

### EASEMENTS

#### Section 1. Utility Easements; Structural Easements; Easements for Encroachments.

There is hereby created a perpetual easement upon, across, over, through, and under the Property for ingress, egress, and for the location, installation, replacement, repair, and maintenance of all utility and service lines and systems, including, but not limited to, water, sanitary sewers, storm water drainage, gas, telephones, electricity, television cable, and communication lines and systems, whether public or private, and all pipes, wires, lines, ducts, shafts, conduits and equipment related thereto. By virtue of this easement, it shall be expressly permissible for the Developer, or the providing utility or service company with the consent of the Developer, to install and maintain facilities and equipment on the Property, to excavate for such purposes, and to affix and maintain wires, circuits, and conduits underground and on, in, and under the roofs and exterior walls of Living Units, provided that such company restores as nearly as is practicable all disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (1) no sanitary sewers, storm water drainage facilities, electrical lines, water lines, gas lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Developer prior to the conveyance of the first Lot to an Owner or approved by the Developer and the Association thereafter, and (2) this Section 1 of Article VII shall not be construed to apply to the relocation, installation or removal of utility lines within a Living Unit which serve only that unit. This easement shall in no way affect, avoid, extinguish or modify any other recorded easements on the Property.

There is also hereby created across, through and under each Lot and the Common Areas, a perpetual, non-exclusive easement of support in and to all structural members, columns, footings and foundations which are necessary for support of improvements in adjacent Lots and the Common Areas. To the extent that any Living Unit on a Lot or the Common Areas encroaches in any other Lot or on the Common Areas, whether by reason of settling or shifting of any land as Improvement, or by deviation in the construction, repair, restoration or replacement of any improvements, a valid easement shall exist for the encroachment and for the maintenance of same so long as the encroaching Living Unit or Common Areas exist. In the event that any Living Unit shall be partially or totally destroyed as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, and then such Living Unit is reconstructed or repaired, encroachment of parts of the Common Areas upon any Living Unit or any Living Unit upon the Common Areas resulting from such reconstruction or repair shall be permitted, and valid easements for such encroachment shall exist so long as the encroaching improvements shall exist.

Section 2. Developer's Easements to Correct Drainage. For a period of five years (5) from the date of submission of each Lot to this Declaration, the Developer reserves for itself an easement and right on, over, and under the ground within each Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, to remove sod or existing grass, perform any grading of the land, and to take any other similar action which may be reasonably necessary, following which the Developer shall restore the affected property to its original condition as nearly as practicable. The Developer shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Developer, an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer is engaged in developing, constructing or improving any portion of the Property, and so long as any warranty obligations of the Developer shall remain outstanding, the Developer and its employees, agents, and assigns shall have a non-exclusive easement and right-of-way of ingress, egress, and use over any portion of the Property not conveyed as a Living Unit to an Owner for occupancy for (a) the movement and storage of building materials and equipment, (b) the location, installation, construction, replacement, maintenance, reconstruction and repair of all utility and service lines and systems, including, but not limited to, water, sanitary sewer lines, cables, storm drains, gas lines, telephone lines, electric lines, communication lines and systems, and appurtenances to any of same, (c) the construction, installation, maintenance and repair of improvements, including

buildings, landscaping, street lights, directional and promotional signs, (d) the conduct of sales activities, including, but not limited to, the maintenance of model Living Units, (e) all other purposes reasonably related to the completion of development and construction of the Property, and (f) the furnishing of warranty services. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Property.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress over any Lot (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, for compliance with architectural standards and approved plans for alterations and improvements and (b) to perform such maintenance as is required by this Declaration or the Supplementary Declaration for such Lot, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

Section 5. Easement for Maintenance. The right of access over, across and through any portion of the Property (excluding occupied Living Units) is hereby granted to the Association, the Developer, the managing agent and any other persons authorized by the Board of Directors in its exercise and discharge of their respective powers and responsibilities, including, without limitation, performance of repairs and maintenance of the Common Areas or other improvements located on the Property for which the Association is responsible for upkeep, or to correct any condition which violates the Governing Documents. The agents, contractors,

officers and Directors of the Association may also enter any portion of the Property (excluding any occupied Living Unit) in order to provide for the upkeep or maintenance of the areas subject to easements granted to the Association by this Declaration. Each Owner shall be liable to the Association for the maintenance, repairs and replacements performed or made by the Association and necessitated by any act, neglect, carelessness or failure to comply with the Governing Documents and the costs incurred by the Association shall be assessed against such Lot Owner in accordance with the provisions of Article V, Section 4(b) hereof.

Section 6. Easement for Governmental Personnel. A right of entry on any Lot or Common Areas is hereby granted to the Association, its Directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all law enforcement officers, fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 7. Easement for Landscaping, Signs, and Related Purposes. There shall be and is hereby reserved to the Developer for so long as it retains its rights as Developer or the Class B membership exists, a non-exclusive easement over all Lots and Common Areas for a distance of twenty-five (25) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features, related landscaping, or any combination of the foregoing. Exercise of this easement will be with the consent of the Owner of the affected Lot, or the Architectural Review Board if the said Owner does not consent.

Section 8. Buffer Easement. The Association shall have the right to inspect and maintain any area which lies within a buffer easement, if any, conveyed to the Association, and to remove any improvements or other items which are constructed or located within the buffer easement in contravention of the terms of said easement. Where the buffer easement lies within any Lot, any cost incurred by the Association in maintaining the easement or removing any improvements or other items shall be chargeable to the Lot Owner as a Restoration Assessment, as is set forth in Article V, Section 4(b) above.

Section 9. Access Easements. There is hereby created a perpetual easement and right-of-way upon, across, over, and through those portions of the Property (including the Lots) designated on the final site plan for the Property approved by Falls Church as private streets or alleys and walkways (the "Access Easements") for the benefit of the Owners and Occupants of the Property, and their respective invitees, contractors, agents, and employees and their successors and assigns. The Access Easements shall be for the purpose of ingress and egress to and from the Property and ingress and egress to and from each of the Lots, and Living Units. The Access Easements shall be maintained, repaired and replaced by the Association. There is also hereby created a perpetual easement over, across and upon the sidewalks throughout the Property for the benefit of the public.

Section 10. Easement for Emergency Access. An easement is hereby granted to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies.



Section 11. Easements for Access and Parking. The Wren's Parking Easement has been granted for the exclusive benefit and use of the owners, occupants, licensees, invitees, heirs and successors and assigns of the unit owners in the Wren's Subdivision, and no parking by any Owner, Occupant or their respective licensees, invitees, contractors, heirs, successor or assigns, shall be permitted within the Wren's Parking Easement area.

Section 12. Reservation of Right to Grant Easements. The Developer hereby reserves the right, for a period of five (5) years after the conveyance of the last Lot to an Owner, to grant easements across the Lots and the Common Areas, or any portion or portions thereof, as may be required by any governmental authority or agency, or by any utility company or other provider of utility services or as are otherwise in accordance with the site plan for the Property approved by Falls Church.

Section 13. Open Space Easement. The Declarant has established a perpetual easement for the benefit of Falls Church and the public over and across that portion of the Property designated as Parcel "C" for open space purposes only.

#### ARTICLE VIII

#### RIGHTS OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

Section 1. Consents. Subject to the right of the Developer to annex additional properties and subject them to this Declaration, as provided in Section 2(a) of Article II, the Association shall not, without the consent of (i) at least sixty-seven percent (67%) of the Class A Members, (ii) the Class B Member, so long as the Class B membership exists, and (iii) subject to the provisions of Article IX, Section 2 hereof, at least fifty-one percent (51%) of the First

Mortgagees, take any of the following actions unless the action is required by one or more of the Federal Mortgage Agencies or Falls Church, in which case none of these consents shall be required:

(a) By act or omission seek to abandon, partition, encumber, sell, or transfer the Common Areas or other property owned by the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Property, or in accordance with Article VII, shall not be deemed a transfer within the meaning of this clause.

(b) Fail to maintain fire and extended coverage insurance on insurable parts of the Common Areas or other Association property on a current replacement-cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value.

(c) Use hazard insurance proceeds for other than the repair, replacement, or reconstruction of such property.

(d) Add or amend any material provisions of this Declaration or related Association documents concerning the following:

- (i) voting rights of any Member;
- (ii) assessments, assessment liens, collection of assessments or subordination of such liens for assessments;
- (iii) reserves for maintenance, repair, and replacement of those parts of the Common Areas that may be replaced or require maintenance on a periodic basis;

- (iv) insurance or fidelity bond coverages;
- (v) responsibility for maintenance and repair of the Property;
- (vi) architectural controls;
- (vii) annexation or withdrawal of property to or from the Property, subject to the provisions of Article II;
- (viii) leasing of Living Units;
- (ix) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his property;
- (x) a decision by the Association to establish self-management when professional management had been required previously by a First Mortgagee;
- (xi) restoration or repair of the Common Areas or any improvements thereon after a hazard, damage, or partial condemnation;
- (xii) termination of this Declaration after substantial destruction or condemnation occurs; or
- (xiii) any provisions that are for the express benefit of First Mortgagees.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A First Mortgagee who receives a written request to approve material additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 2. Notice and Other Rights. The Association shall maintain a file of all First Mortgagees of which it receives notice that the First Mortgagee holds an interest in any Lot, with a proper designation of the property in which they have an interest; and shall send a copy of such list to any First Mortgagee who makes a written request for such list at least once every twelve months.

If requested in writing by a First Mortgagee, the Association shall provide to such First Mortgagee:

- (a) Written notification of any default in the performance of any obligation under the Governing Documents by the owner of a Lot which is the security for the indebtedness due the First Mortgagee, which is not cured within thirty (30) days; and
- (b) Written notice of any condemnation or eminent domain proceeding or other proposed acquisition by a condemning authority of any portion of the Common Areas or of a Lot which is the security for the indebtedness due to the First Mortgagee; and
- (c) Written notice of, with the right to attend, all meetings of the Association; and
- (d) Any casualty loss that affects a material portion of the Lot that is the security for the indebtedness due to the First Mortgagee; and
- (e) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 3. Books and Records. All Institutional Lenders who have an interest in the Property or any portion thereof shall have the right to examine the books and records of the Association during normal business hours. The Association shall provide an unaudited financial

statement for the preceding fiscal year to any Institutional Lender requesting such statement in writing.

Section 4.     Notice of Actions. The Board shall give to such First Mortgagees as may request it, expeditious notice of any civil action or liens lodged against the Association or officers or Directors regarding their conduct in administering the affairs of the Association.

Section 5.     Payment of Taxes and Charges. A First Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy for such Common Areas. The First Mortgagee or First Mortgagees making such payments shall be owed, upon demand, reimbursement therefor by the Association.

Section 6.     Approvals. So long as the Class B voting rights shall exist, the following actions shall require the prior approval of the Federal Mortgage Agencies: (a) annexation of additional properties not within the initial Property; (b) dedication of the Common Areas; (c) mergers and consolidations; (d) mortgaging of the Common Areas; and (e) amendment of this Declaration and any Supplementary Declaration.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1.     Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded,

after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless the covenants and restrictions are expressly terminated by an instrument signed by (i) not less than seventy-five percent (75%) of the Class A Members, (ii) the Class B Member, if Class B membership still exists, (iii) and sixty-seven percent (67%) of the First Mortgagees. A termination must be recorded among the Land Records of Arlington County, Virginia in order to become effective.

Section 2.     Amendment. Notwithstanding any other provision, express or implied, of this Declaration to the contrary, for a period of five (5) years after the recordation of this Declaration, the Developer may unilaterally make any amendment to this Declaration, in the exercise of its sole discretion and with the irrevocable power as attorney-in-fact on behalf of all Owners (which power shall be deemed coupled with an interest) which is required by any of the Federal Mortgage Agencies or Falls Church as a condition of approval of the Founding Documents, or which is required in connection with any changes in the governmental approvals which exist as of the date of this Declaration with respect to the Property, or to reflect the grant and conveyance of any easements reserved to the Developer, or to correct a mathematical mistake, an inconsistency or a scrivener's error, or to clarify an ambiguity in this Declaration with respect to an objectively verifiable fact. Any such amendment shall be made by the execution and recordation of such amendment and Registered Notice of such amendment shall be provided to all Owners. After such five (5) year period, or to make any amendment which is not one required by the Federal Mortgage Agencies or Falls Church, or which is not otherwise permitted above to be made unilaterally by the Developer, any amendment shall be accompanied

by (a) a document signed by (i) not less than sixty-seven percent (67%) of the Class A Members, (ii) the Class B Member, if Class B membership still exists, and (iii) the Association, and (b) evidence of the approval required in Article VIII above. Any amendment must be recorded in the Land Records of Arlington County in order to become effective.

Section 3. Enforcement. The Association, the Developer, any Owner, and any First Mortgagee, as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration and any Supplementary Declarations. Failure to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Developer. For such time as the Developer (or an assignee or successor to the Developer as described in Article III, Section 2(c) hereof), the rights and interests of the Developer shall not be prejudiced by any amendment to the Founding Documents which results in any of the following actions unless it shall, in writing, join in such actions:

- (a) Discriminates or tends to discriminate against its rights as an Owner;
- (b) Changes Article I, Definitions, in a manner which alters its rights or status;
- (c) Alters its rights under Article II with respect to the annexation of additional properties;
- (d) Alters the character and rights of membership or the rights of the Developer as set forth in Article III;

(e) Alters previously recorded or written agreements with public or quasi-public agencies with respect to easements and rights-of-way;

(f) Denies the right to convey Common Areas to the Association so long as such Common Areas lie within the land area represented in the Property;

(g) Alters its rights as set forth in Article III relating to design controls;

(h) Alters the basis for assessments;

(i) Alters the provisions of the protective covenants as set forth in Article VI;

(j) Alters the number or selection of Directors as established in the Bylaws; or

(k) Alters the Developer's rights as they appear under this Article.

Section 5. Management Contracts. Until such time as the Class B membership expires, the Developer shall have the right to enter into professional management contracts for the management of the Property; provided, however, that such contracts shall not be for more than three (3) years, and the Association shall have the right to terminate such contracts, with or without cause, upon ninety (90) days written notice given to the other party, or upon the expiration of the rights of the Developer as set forth in Article IX, Section 4.

Section 6. Limitations. As long as the Developer has an interest in developing the Property as defined in Article I hereof, the Association may not use its financial resources to defray any costs of opposing the development activities of the Developer. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.



Section 7. Limitation of Liability. The Association shall not be liable to any Member for loss or damage, by theft of otherwise, of articles which may be stored upon the Common Areas 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 Areas or the facilities thereon, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

Section 8. Severability. Each provision of a Founding Document is severable from every other provision, and the invalidity of any one of the provisions of a Founding Document by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect. To the extent that any provision of the Founding Documents is determined to be overly broad or unenforceable, and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent practicable, the provision shall be enforced.

Section 9. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then any Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws, and then the Rules; provided, however, that in all cases where the Governing Documents are found to be in conflict with any statute, the statute shall control.

Section 10. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 11. Adjacent Properties. The Developer makes no representations regarding the development, use or operation of any properties adjacent to the Property.

## ARTICLE X

### DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved with the written consent of (i) at least seventy-five percent (75%) of the Class A Members (ii) and the consent of the Class B Member, if any, and the consent of at least sixty-seven percent (67%) of the First Mortgagees. Prior to the dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to Falls Church. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to similar purposes.

IN WITNESS WHEREOF, the Developer, Whittier Park, L.L.C., has caused this Declaration to be duly executed this 14th day of December, 1998.

WHITTIER PARK, L.L.C., a Virginia limited liability company

ATTEST:

[Corporate Seal]

By: WHITTIER PARK, INC., a Virginia corporation, Managing Member

Rita J. Bamberg  
Name: Rita J. Bamberg  
Secretary

Wallace F. Holladay, Jr.  
By: Wallace F. Holladay, Jr.  
Name: Wallace F. Holladay, Jr.  
President

DISTRICT OF COLUMBIA )

ss:

I, Ernestine S., the undersigned Notary Public, in and for the aforesaid jurisdiction, do hereby certify that Wallace F. Holladay, Jr., President of Whittier Park, Inc., a Virginia corporation, said Whittier Park, Inc. being the Managing Member of Whittier Park, L.L.C., a Virginia limited liability company, whose name is signed to the foregoing Declaration of Covenants and Restrictions, personally appeared before me and acknowledged that he executed said instrument as the act and deed of said corporation on behalf of the limited liability company.

GIVEN under my hand and seal this 14th day of December, 1998.

[Notarial Seal]

Ernestine S.  
Notary Public

My commission expires: 4/30/2000

IN WITNESS WHEREOF, The Whittier Park Homeowners Association, Inc. has caused this Declaration to be executed by Rita J. Bamberger, its President, this 1<sup>st</sup> day of December, 1998.

WITNESS:

THE WHITTIER PARK HOMEOWNERS  
ASSOCIATION, INC., a Virginia non-stock  
corporation

Jonathan B. Cox  
Name: Jonathan B. Cox  
Secretary

By: Rita J. Bamberger  
Name: Rita J. Bamberger  
President

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of December, 1998 by Rita J. Bamberger, President of The Whittier Park Homeowners Association, Inc., a Virginia non-stock corporation, on behalf of said association.

[Notarial Seal]

Rita J. Bamberger  
Notary Public

My commission expires: 9/30/2001

The undersigned Beneficiary and Sole Acting Trustee under that certain Credit Line Deed of Trust and Security Agreement made by Whittier Park, L.L.C., recorded in Deed Book 2893 at page 1581 among the Land Records of Arlington County, Virginia, securing United Bank, hereby consent to the within Declaration and hereby subordinate the lien of said Deed of Trust to the lien, legal effect and operation of said Declaration.

IN WITNESS WHEREOF, the Beneficiary and Trustees have caused this instrument to be executed, delivered and sealed on this 14 day of December, 1998.

WITNESS:

[Signature]

BENEFICIARY

UNITED BANK, a Virginia corporation

By: [Signature] (SEAL)  
Name: Scott Ritter  
Title: Vice President

WITNESS:

[Signature]

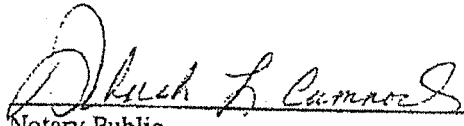
TRUSTEES

By: [Signature] (SEAL)  
Kendal E. Carson,  
Sole Acting Trustee

COMMONWEALTH OF VIRGINIA )  
COUNTY OF FAIRFAX )

ss:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 1998 by Scott Ritter, Vice President of United Bank, a Virginia corporation, on behalf of said corporation.

  
Notary Public

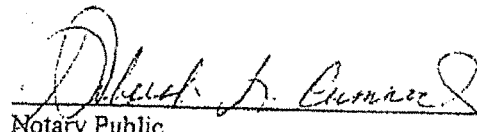
[Notarial Seal]

My commission expires: 3/31/01

COMMONWEALTH OF VIRGINIA )  
COUNTY OF FAIRFAX )

ss:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 1998 by Kendal E. Carson, in his capacity as Sole Acting Trustee under the above-described Deed of Trust.

  
Notary Public

[Notarial Seal]

My commission expires: 3/31/01

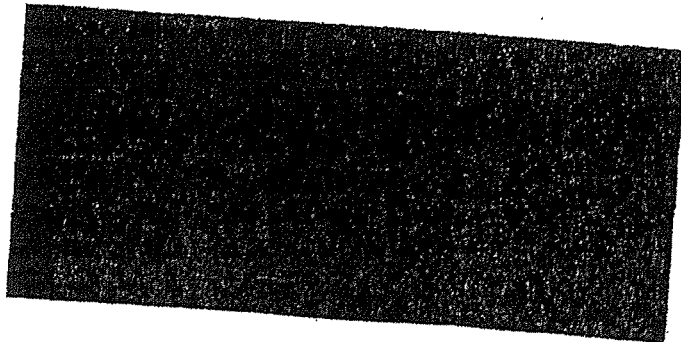
[79582]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All of those parcels of land situated in the City of Falls Church, Virginia and described as follows:

Lot 25 through 61, inclusive, and Parcels, "B-1", "C", "D" and "E-1", as the same are duly dedicated, platted and recorded in Deed Book 2893 at page 1533 among the Land Records of Arlington County, Virginia.



**FIRST SUPPLEMENTARY DECLARATION**



RECORD AND RETURN TO:  
REGIONAL TITLE INCORPORATED  
1020 L STREET, N.W., SUITE 900  
WASHINGTON, D.C. 20036-5505

Part of RPC No. 53-115-001

ATTENTION: JR / Whit

**FIRST SUPPLEMENTARY DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WHITTIER PARK**

**THIS FIRST SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHITTIER PARK** (the "First Supplementary Declaration") is made as of the 4th day of May, 1999 by **WHITTIER PARK, L.L.C.**, a Virginia limited liability company (the "Developer") and **THE WHITTIER PARK HOMEOWNERS ASSOCIATION, INC.**, a Virginia non-stock corporation (the "Association").

**WITNESSETH:**

WHEREAS, the property known as Lots 25 through 61, inclusive, and Parcels "B-1", "C", "D" and "E-1", "JAMES WREN ESTATE" in the City of Falls Church, Virginia, is held, improved, sold or otherwise conveyed, hypothecated and encumbered subject to the provisions of that certain Declaration of Covenants, Conditions and Restrictions of Whittier Park dated as of December 11, 1998 and recorded on December 14, 1998 in Deed Book 2946 at page 1083 among the Land Records of Arlington County, Virginia (the "Declaration"); and

WHEREAS, the property known as Lots 2 through 24, both inclusive, and Lots 62 through 75, both inclusive, and Parcels "A", "B-2A", "B-2B" and "E-2", "JAMES WREN ESTATE" in the City of Falls Church, Virginia was acquired by the Developer pursuant to a Deed dated as of May 3, 1999 and recorded May 7, 1999 in Deed Book 2981 at page 290 among the Land Records of Arlington County, Virginia; and

WHEREAS, in accordance with the rights reserved to the Developer under Section 2 of Article II of the Declaration, the Developer intends to expand the application and effect of the Declaration to additional property, and pursuant to the provisions of Section 2 of Article II of the Declaration, the Developer wishes to modify the Declaration in connection with such expansion; and

WHEREAS, on or about the date hereof, Parcels "A", "B-2A", "B-2B" and "E-2", "JAMES WREN ESTATE" are being conveyed by the Developer to the Association.

NOW, THEREFORE, in consideration of the foregoing, and in accordance with the rights granted to the Developer under the terms of the Declaration, the Developer, together with the Association, hereby modify and amend the Declaration to expand the application and effect of the Declaration to those parcels of land, as more fully described in Exhibit B attached hereto and incorporated herein by this reference, and said parcels of land are, and shall be, held, improved, sold or otherwise conveyed, hypothecated, and encumbered subject to the provisions of the Declaration, as amended hereby.


FURTHERMORE, Exhibit A to the Declaration is hereby amended by replacing said Exhibit A in its entirety by Exhibit A attached hereto and made a part hereof, and all references to the Property shall mean and refer to the real property described on Exhibit A attached to and made a part of this Supplementary Declaration.

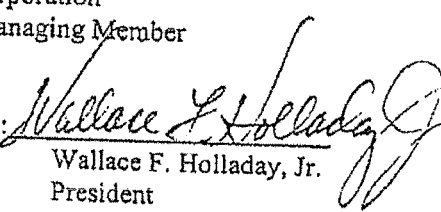
IN WITNESS WHEREOF, WHITTIER PARK, L.L.C. has, on this 4th day of May, 1999, caused this Declaration to be executed, acknowledged and delivered by WHITTIER PARK, INC., a Virginia corporation, its Managing Member, and said WHITTIER PARK, INC. has caused this Deed to be executed by Wallace F. Holladay, Jr., its President, for the purposes herein contained.

WITNESS:

WHITTIER PARK, L.L.C., a Virginia limited liability company

By: WHITTIER PARK, INC., a Virginia corporation  
Managing Member

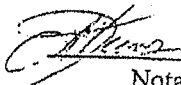
  
Name: \_\_\_\_\_

By:   
Wallace F. Holladay, Jr.  
President

DISTRICT OF COLUMBIA ) ss:

The foregoing instrument was acknowledged before me this 4th day of May, 1999 by Wallace F. Holladay, Jr., President of WHITTIER PARK, INC., a Virginia corporation, on behalf of such corporation, as Managing Member of WHITTIER PARK, L.L.C., a Virginia limited liability company.

[Notarial Seal]

  
Notary Public

My commission expires: 9/29/2000

IN WITNESS WHEREOF The Whittier Park Homeowners Association, Inc. has on this 4th day of May, 1999 caused this instrument to be executed and acknowledged by Rita J. Bamberger, its President.

WITNESS:

THE WHITTIER PARK HOMEOWNERS  
ASSOCIATION, INC., a Virginia  
non-stock corporation

S. Lee Weber  
Name: S. Lee Weber

By: Rita J. Bamberger  
Rita J. Bamberger  
President

DISTRICT OF COLUMBIA ) SS:

The foregoing instrument was acknowledged before me this 4th day of May, 1999 by Rita J. Bamberger, President of THE WHITTIER PARK HOMEOWNERS ASSOCIATION, INC., a Virginia corporation, on behalf of such corporation.

[Signature]  
Notary Public

[Notarial Seal]

My commission expires: 11/2/2000

CONSENT AND JOINDER

The undersigned Beneficiary and Sole Acting Trustee under that certain Credit Line Deed of Trust and Security Agreement made by Whittier Park, L.L.C., recorded in Deed Book 2893 at page 1581 among the Land Records of Arlington County, Virginia, securing United Bank, hereby consent to the within Declaration and hereby subordinate the lien of said Deed of Trust to the lien, legal effect and operation of said Declaration.

IN WITNESS WHEREOF, the Beneficiary and Trustees have caused this instrument to be executed, delivered and sealed on this 16th day of May, 1999.

WITNESS:

BENEFICIARY

UNITED BANK, a Virginia corporation

Robert A. Cannon

By: [Signature] (SEAL)

Name: Scott Ritter

Title: Vice President

WITNESS:

TRUSTEES

Robert A. Cannon

By: [Signature] (SEAL)

Kendal E. Carson,  
Sole Acting Trustee

COMMONWEALTH OF VIRGINIA )

COUNTY OF FAIRFAX )

ss:

The foregoing instrument was acknowledged before me this 16th day of May, 1999 by Scott Ritter, Vice President of United Bank, a Virginia corporation, on behalf of said corporation.

[Notarial Seal]

Debra L. Carson  
Notary Public

My commission expires: 3/31/01

COMMONWEALTH OF VIRGINIA )

COUNTY OF FAIRFAX )

ss:

The foregoing instrument was acknowledged before me this 16th day of May, 1999 by Kendal E. Carson, in his capacity as Sole Acting Trustee under the above-described Deed of Trust.

[Notarial Seal]

Debra L. Carson  
Notary Public

My commission expires: 3/31/01

(114926)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 75, both inclusive, "JAMES WREN ESTATE" and PARCELS "A", "B-1", "B-2A", "B-2B," "C", "D," "E-1" and "E-2", "JAMES WREN ESTATE," as the same is duly dedicated, platted and recorded in Deed Book 2893 at page 1533 among the Land Records of Arlington County, Virginia.

EXHIBIT B

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

Lots 1 through 24, both inclusive, and Lot 62 through 75, both inclusive, "JAMES WREN ESTATE," and Parcels "A", "B-2A", "B-2B" and "E-2", "JAMES WREN ESTATE," as the same is duly dedicated, platted and recorded in Deed Book 2893 at page 1533 among the Land Records of Arlington County, Virginia.