

4 MARCH 1974

1170

BOOK 1853 PAGE 287

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by <sup>XA</sup>FOREST <sub>623-6</sub>  
HILLS ASSOCIATES, a limited partnership, hereinafter referred to as "Declarant,"  
the party hereto.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Arlington  
County, State of Virginia, which is more particularly described on Schedule  
"A," attached hereto and incorporated herein by reference; and

WHEREAS, it is the desire of the Declarant to convey said property  
subject to certain covenants, conditions, restrictions, reservations, liens  
and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the properties  
described above shall be held, sold and conveyed subject to the following  
easements, restrictions, covenants and conditions, which are for the purpose  
of protecting the value, desirability, and attractiveness of the real property.  
These easements, covenants, restrictions and conditions shall run with the  
real property and be binding on all parties having any right, title and  
interest in the described properties or any part thereof, their heirs,  
successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Forest Hills  
Community Association, (a non-stock, non-profit Virginia corporation, its  
successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real  
property hereinbefore described, and such additions thereto as may hereafter  
be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the  
Association for the common use and enjoyment of the members of the Association.

JA [Signature]

Section 4. "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of The Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of The Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean and refer to Forest Hills Associates, a limited partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II - ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast sixty per cent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. In the event the Declarant should develop additional lands or parcels zoned for use of greater density than single-family detached homes which make up a portion of that certain tract acquired by the Declarant by Deed recorded in Deed Book 1800, page 570, aforesaid records, from

Army-Navy Company, a limited partnership, such additional lands may be annexed to said properties without the assent of Class A members.

#### ARTICLE III - MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separate from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

#### ARTICLE IV - VOTING RIGHTS

The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

**Class B.** Class B members shall be the Declarant. The Class B members shall be entitled to five (5) votes for each lot in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership when the total authorized votes of the Class A membership equals or exceeds the total authorized votes of the Class B membership.

#### ARTICLE V - PROPERTY RIGHTS

**Owners' Easements of Enjoyment.** Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

- (1) the right of the Association to limit the number of guests of members.
- (2) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (3) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, with the assent of 2/3 of each class of membership, to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;
- (4) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (5) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance.

**ARTICLE VI - COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of**

**Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such 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 such interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to

his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be Forty Dollars (\$40.00) per lot, per month, for Class A members.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (Published by the Department of Labor, Washington, D.C.) for the preceding month of October.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding three (3) years and at the end of each such period of three (3) years, for each succeeding period of three (3) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and further



needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount

of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent if the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight per cent (8%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant to a decree of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all properties dedicated to and accepted by a local public authority;
- (b) the Common Areas;
- (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Virginia.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments;

- (d) all lots owned by Declarant which are not occupied as a residence.

ARTICLE VII - PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties 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.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

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

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.



ARTICLE VIII - PROTECTIVE COVENANTS AND RESTRICTIONS

In order to conserve the natural beauty of the subdivided property, to insure its best use and most appropriate development, and to prevent the erection of poorly designed or constructed improvements, the entire area hereinabove described shall be subject to the following protective covenants and restrictions hereinafter referred to as The General Covenants.

(1) No building, accessory building, or structure, shed, awning, porch or porch covering, garage, trailer, tent, driveway, fence, hedge, mailbox, screen, barn, driveway, wall or other structure shall be allowed, constructed or altered upon any lot or house thereon without the plans and specifications of such having been approved by the Architectural Control Committee as to quality of workmanship, design, colors and materials and harmony of same to the project as a whole. No structure built upon any of the said lots shall have the exterior painted without the proposed color thereof having been approved by the said Architectural Control Committee.

(2) The Architectural Control Committee shall be appointed by the Board of Directors and shall consist of three (3) or more members. The members of the Committee shall not be entitled to any compensation in connection with the performance of their functions as such, unless otherwise agreed upon between the Board of Directors of said Association and the members of said Committee.

(3) No lot shall be used except for residential purposes, or for professional offices, or for a builder's construction or sales office during the construction and sales period.

(4) No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no tree of a diameter of more than four inches measured two feet above ground level, lying without the approved building driveway and parking areas, shall be removed without the approval of the Architectural Control Committee.

(5) No noxious or offensive activity shall be carried on upon any portion of The Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a lot or other parcel of The Properties.

(6) Easements for the installation and maintenance of underground utilities, supply and transmission lines and drainage facilities are reserved to the Declarant through The Properties, whether within the boundaries of residential lots or in common properties until such time as the Common Area is conveyed to the Association. Such easements shall include the right of ingress and egress, provided that any damage resulting from the installation, maintenance or repair of an underground utility, supply or transmission line, or drainage facility shall be promptly repaired or replaced at the expense of the Association or authority which directed the entry. And, further the Association shall have the right to establish easements over the Common Area as needed for utility purposes after such time as the Common Area has been conveyed to the Association. Easements for individual lots for utilities may be established only by the recorded plan of the subdivision, or as granted thereafter by the individual lot owners.

(7) No exterior clothesline, or clothes hanging device, except that of an umbrella-type nature with a diameter not exceeding seven (7) feet,

shall be allowed upon any lot. Wash~~ing~~ton may be dried only between 9 A.M. and 5 P.M., Monday through Saturday.

(8) No sign of any kind larger than one foot square shall be displayed to the public view on any lot, except temporary signs of more than four square feet advertising the said lot for sale or rent and except for temporary signs erected by the Declarant in connection with the construction, lease, or sale of buildings and lots or other parcels of The Properties.

(9) No livestock, including horses, cattle and hogs, nor fowl such as chickens or pigeons shall be kept on the property. The breeding of animals for commercial use is prohibited, but nothing contained herein shall be construed to prohibit the keeping of the usual domestic pets. No more than two domestic pets shall be kept at any one time. Pets shall be restrained and controlled as required by ordinance now or hereafter promulgated by Arlington County, Virginia.

(10) The Association shall have the right (if after 20 days' notice to the Owner of the lot or lots involved, setting forth the action intended to be taken, such action has not been taken by the Owner) to trim or prune, at the expense of the Owner, any hedge or other planting that in the opinion of the Architectural Control Committee, by reason of its location or the height to which or the manner in which it is permitted to grow, is detrimental to adjoining property or is unattractive in appearance. The Association shall further have the right, upon like notice and conditions to care for any vacant or unimproved lot, and to remove grass, weeds, and rubbish therefrom and do any and all things necessary or desirable in the opinion of the Architectural Control Committee to keep such lot in neat and good order, all at the cost and expense of the Owner.

(11) No antenna for the transmission or reception of radio or television signals shall be erected or permitted on any building or lot or other parcel of The Properties except upon approval of the Architectural Control Committee.

(12) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No material or refuse or any container for the same shall be placed or stored in the front of any house, or on the patio or stoop at any time, except for normal pick-up. Forest Hills Community Association shall have the right to impound any trash can or garbage receptacle which is placed in violation of this paragraph and to enter onto any lot for this purpose.

(13) No commercial truck, commercial bus, or other commercial vehicle of any kind shall be permitted to be kept or parked overnight upon any portion of The Properties.

(14) No portion of The Properties shall be used for the repair of automobiles nor shall any vehicle other than a private automobile be parked on any portion of The Properties. After ten (10) days' written notice to the owner of any vehicle parked in violation of this covenant, Forest Hills Community Association may remove such vehicle at the expense of the owner thereof.

(15) No baby carriages, velocipedes, bicycles or other articles of personal property shall be deposited, allowed or permitted to remain on any lot except in the enclosed rear area. Forest Hills Community Association may impound all such articles and make a charge for their return.

(16) No boats, trailers, tent or structure of a temporary

character, or portable vehicle other than automobiles shall stay parked forward of any dwelling for a period exceeding four (4) calendar days.

(17) Open space not contained in lots and streets shall not be denuded, defaced or otherwise disturbed in any manner, at any time without the approval of the appropriate County Departments and in concurrence with the County Planning Engineer.

The Declarant hereby grants to members of the Association in good standing, who are owners of townhouses, and their agents and employees an easement upon and across any lot adjacent to a lot owned by said member for the purpose of temporary support of ladders during cleaning, painting, and maintenance operations on said member's lot, and all members are granted an easement over and across all walkways and sidewalks not dedicated to public use.

#### ARTICLE IX - GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, 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. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date this Declaration is recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty-five (25) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be properly recorded. Any

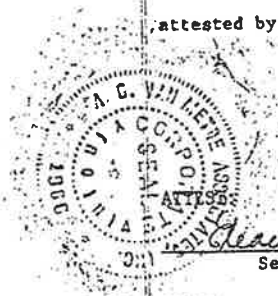
amendment to Articles I, III, IV, V, VI and IX must also be approved by the appropriate officials of Arlington County, Virginia.

Section 4. FHA/VA Approval. As long as there is a Class B membership and if any of The Properties described in Article I, Section 2 and Article II, Section 2, have been developed in accordance with a general plan submitted to Federal Housing Administration and the Veterans Administration, or similar governmental agency, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties (other than those described in Article II, Section 2), Mergers or Consolidations, Mortgaging of Common Area, Dedication of Common Area, Dissolution and Amendment to this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be signed in its partnership name by its General Partner which has caused said Declaration to be signed in its corporate name by its President, and its corporate seal to be hereto affixed, duly attested by its Secretary, this 4<sup>th</sup> day of March, 1974.

FOREST HILLS ASSOCIATES, a Limited Partnership  
By: A. G. VAN METRE ASSOCIATES, INC.,  
General Partner

By: Arthur M. Neuman  
President



Arthur M. Neuman  
Secretary

STATE OF VIRGINIA

COUNTY OF Fairfax, to wit:

I, Sally H. Smith, a Notary Public, for the County aforesaid, in the State of Virginia, whose commission expires on the 18<sup>th</sup> day of January, 1974, do certify that A. G. Van Metre and Arthur M. Neuman whose names as President and Secretary of A. G. VAN METRE ASSOCIATES, INC., General Partner of FOREST HILLS ASSOCIATES, a Limited Partnership, are signed to the foregoing writing, bearing date on the 4<sup>th</sup> day of March, 1974 have acknowledged the same before me in my State and County aforesaid.

GIVEN under my hand and seal this 4<sup>th</sup> day of March, 1974  
Sally H. Smith  
Notary Public





SCHEDULE "A"

ATTACHED TO AND INCORPORATED BY  
REFERENCE IN  
DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS  
MADE BY  
FOREST HILLS ASSOCIATES, A LIMITED PARTNERSHIP,  
DATED THE 4<sup>th</sup> DAY OF March, 1978

All that certain land situate in Arlington County, Virginia, and more particularly described as follows:

All of Parcel "A" of the Chaiken Subdivision as the same is duly dedicated, platted and recorded in Deed Book 1401 at page 133, among the land records of Arlington County, Virginia;

AND BEING part of the property conveyed to Forest Hills Associates by deed of Army-Navy Company, a Limited Partnership, dated October 24, 1972, and recorded in Deed Book 1800 at page 570, among the land records of said County.

VIRGINIA: In the Clerk's office of the Circuit Court of Arlington County the deed was received and with the annexed certificate admitted to record at 12 o'clock P. M.

MAR 5 1974

*Joseph C. Smith, Clerk*