

WAKEFIELD CHAPEL WOODS HOMES ASSOCIATION

WAKEFIELD CHAPEL WOODS  
Fairfax County, Virginia  
Restrictions

**FIRST AMENDMENT TO DECLARATION**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 11th day of January, 1999, by Paul Krumhaus, President and principal officer of Wakefield Chapel Woods Homes Association ("the Association").

**WITNESSETH:**

WHEREAS, the Declarant, Paramount Construction Corp., caused a Declaration to be recorded among the land records of Fairfax County, Virginia, in Deed Book 3474 at Page 35 thereby creating a residential community with permanent open spaces and facilities for recreational purposes and the benefit of such community; and

WHEREAS, the property described in Exhibit A of said Original Declaration (the "Property") was subjected to certain covenants, conditions, restrictions, easements, charges and liens, established for the benefit of the Property and each Owner thereof for the preservation of the value of the Property, the amenities in said community and the maintenance of said common lands and facilities; and

WHEREAS, the requisite percentage of the Members of Wakefield Chapel Woods Homes Association, the non-profit corporation established for the purpose of exercising the powers of maintaining and administering the common facilities, administering and enforcing the Covenants and Restrictions and authorized by said Original Declaration, desire to further amend the Original Declaration, as evidenced by the Certification attached hereto and incorporated herein.

NOW, THEREFORE, Paul Krumhaus, President and principal officer of Wakefield Chapel Woods Homes Association, for and on behalf of the Association, hereby further amends the text of the Original Declaration and its amendments in total and substitutes therefor the following provisions as the Amended and Restated Declaration of Covenants, Conditions and Restrictions:

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Wakefield Chapel Woods Homes Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property more particularly described in Exhibit "A", attached hereto, 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.

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

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 7. "Declarant" shall mean and refer to Paramount Construction Corp., the original developer of the community.

ARTICLE II

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 any obligation. No Owner shall have more than one membership. Membership shall be

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

### ARTICLE III

#### VOTING RIGHTS

Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. 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.

### ARTICLE IV

#### PROPERTY RIGHTS

Section 1. Members' 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:

(a) The right of the Association to limit the number of guests of Members using any recreational facilities situated on the Common Area;

(a) The right of the Association to establish and charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association, subject to any restrictions contained within the Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in the aid thereof to mortgage said property and to acquire property encumbered by Deed or Deeds of Trust securing improvements on said property provided that the rights of the mortgagee in the Common Area shall be subordinate to the rights of the Members hereunder;

(c) The right of the Board of Directors 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 the period during any infraction of its published rules and regulations remains uncured after notice and an opportunity for a hearing; and

(d) The right of the Association at any time or upon dissolution to sell, dedicate or transfer, subject to approval of the Fairfax County Planning Commission or its successor, 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 approved by more than two-thirds (2/3) of the votes of the Members. The granting of an easement in the Common Areas to any public agency, authority, or utility is not be considered the dedication, sale or transfer of any or all of the Common Areas.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Lot.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the above mentioned properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefore, 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:

(a) Annual assessments or charges, and

(b) 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 cost 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 attorney's fees shall also be the personal obligation of the person who was the record Owner of such property at the time when the assessment fell due. He and his successors in title shall be jointly and severally liable for all assessments unpaid at the time title is recorded.

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 payment of taxes and improvements and maintenance of services and

facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

Section 3. Basis and Maximum 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 Thirty-five Dollars (\$35.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, (base year), 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.) since the base year.

(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 Prince 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 (3) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes 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 that sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitation 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 future 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 Board of Directors 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 capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. The authority for imposition of a special assessment is provided in the Virginia Property Owners' Association Act, as is the procedure that can be used by the membership to overturn imposition of a special assessment.

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 or otherwise as determined by resolution of the Board of Directors.

Section 6. 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 of Directors for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment is not paid when it is due, such assessment shall be delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, and assignees. If any assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late fee in an amount as prescribed by the By-Laws and shall bear interest from the date of delinquency at the rate prescribed by the By-Laws, and the Association may bring an action at law against the Owner personally obligated to pay the same, or his successors in title, or foreclose the lien against the property, and interest, costs, and reasonable attorney's 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 nonuse of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to any bona fide and duly recorded First Trust lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to such Deed of Trust, pursuant to a decree of foreclosure under such Deed of Trust, or any proceeding in lieu 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.

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 Area; and
- (c) all properties owned by a charitable or not profit organization exempt from taxation by the laws of the Commonwealth of Virginia. However, no land upon which a dwelling is constructed shall be exempt from said assessments.

## ARTICLE VI

### ARCHITECTURAL COMMITTEE

Types of modifications required specific Board or Architectural Committee approval are those which would materially affect or change the appearance of the house or lot as viewed from the Common Area, streets or other lots. These include, but are not necessarily limited to: buildings, structural additions or alterations to the exterior of the house, garage or carport; changes in color or existing structures; fences; walls; sheds; decks; raised patios; antennas of a type not specifically permitted by law; swimming pool; hot tubs; Jacuzzis; walks; driveways; exterior light fixtures; statuary; and grading or other alterations of existing topography. No building, fence, wall, antenna of a type not specifically permitted by law, swimming pool or other structure shall be commenced, erected or maintained upon the Properties, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been received by the Committee, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE VII

### MAINTENANCE OF COMMON AREA

Each Owner shall permit the Association's officers, directors, agents and employees to enter upon the Owner's Lot, at reasonable times and upon reasonable notice, to maintain the Common Area. Such entry shall include the right to the use of the Owner's water, from an outside spigot in reasonable amounts, without compensation to the Owners.

## ARTICLE VIII

### PROTECTIVE COVENANTS AND RESTRICTIONS

Section 1. Rules and Regulations. Subject to the provisions of this Declaration, the Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

Section 2. Lot Use.

a. No portion of a Lot created by this instrument shall be used for any professional, industrial, mining or commercial activities, except as can be and are in fact conducted from a single family residence as currently defined in Zoning Code of Fairfax County, Virginia.

b. No clothing, laundry or wash shall be aired or dried on any portion of the Properties in any area other than in the rear yards of the Lots.

c. No tree, hedge or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

d. No noxious or offensive activity shall be carried on upon any portion of the residential property, nor shall anything be done thereon or permitted to remain on any Lot which may be or become a nuisance or annoyance to the neighborhood.

e. No sign of any kind that is illuminated and/or larger than two square feet shall be displayed to the public view on any Lot, except temporary real estate signs not more than four square feet in area advertising the property for sale or rent.

f. Trash and garbage containers shall not be permitted to remain in public view except on evenings before and days of trash collection. No accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot, which shall be maintained in a neat and attractive manner, so as not to detract from the appearance of



the entire property. All trash containers other than recycling containers provided by the local vendor and yard debris containers should be covered.

g. No person shall paint the exterior of any building a color different than the existing approved color of said building without the proposed color having been approved by the Board of Directors of the Association, or by an Architectural Committee appointed by the Board.

h. No junk vehicle, house trailer, or commercial vehicle shall be kept on any Lot. No storage of boats, boating equipment, travel trailer or camping equipment shall be visible from the street. The location and design of enclosures for boating, camping, traveling (other than automobiles) and related equipment shall be approved by the Architectural Committee as required under Article VI.

## ARTICLE IX

### EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities, as have been established prior to the subjecting of the Properties to the original Declaration.

The Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

## ARTICLE X

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. The Association may, at any time, annex contiguous Common Areas and/or residential properties in addition to the Properties described in Exhibit A attached hereto and provide for maintenance, preservation and architectural control of residence Lots, and so add to its membership under the provisions of Article II, provided that any such annexation shall have the assent of two-thirds (2/3) of the Members.

## ARTICLE XI

## 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.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of the covenants or restrictions contained herein can not be adequately remedied by action at law or exclusively by recovery of damages. The prevailing party in litigation to enforce the covenants shall be entitled to recover the cost of preparing the action and such additional attorney's fees involved in such proceeding.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, and shall inure to the benefit of and be enforceable the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs successors and assigns. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly executed and will be effective upon recordation in the land records of Fairfax County.

Section 4. Condemnation. In the event that any part of the Common Area is appropriated or otherwise taken under the power of eminent domain, the proceeds of the condemnation action shall be used as the Board of Directors deems proper under the circumstances, and in accordance with the purposes for which the Association is incorporated, including the acquisition of additional lands (if available) to be used in the place and stead of the lands so condemned.

Nothing herein contained shall prevent any Owner, whose Lot is directly damaged by such condemnation, from contesting the same and seeking an award for the impairment of the rights and easements immediately appurtenant to such Lot.

WITNESSETH THE FOLLOWING SIGNATURES AND SEALS.

WAKEFIELD CHAPEL WOODS HOMES  
ASSOCIATION

By: \_\_\_\_\_  
Paul Krumhaus, President  
Board of Directors

ATTEST:

\_\_\_\_\_  
Brian Kiviat, Secretary

STATE OF Virginia:  
COUNTY OF Fairfax:

I, the undersigned Notary Public of and for the County and State aforesaid, do certify that Paul Krumhaus and Brian Kiviat, President and Secretary, respectively, of Wakefield Chapel Woods Homes Association, whose names are signed to the foregoing Declaration of Covenants, Conditions, and Restrictions, bearing the date of the 11<sup>th</sup> day of January, 1999, have acknowledged the same before me in my County aforesaid on behalf of said Association.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

Dec Draft  
September 24, 1998

CERTIFICATION

I, Paul Krumhaus, President and principal officer of the Wakefield Chapel Woods Homes Association, hereby certify that Members owning Lots within Wakefield Chapel Woods Homes Association to which are assigned more than seventy-five percent (75%) of the total votes of all Members within Wakefield Chapel Woods Homes Association, have executed ratifications to the Amended and Restated Declaration of Covenants, Conditions and Restriction for Wakefield Chapel Woods Homes Association which was adopted at a duly constituted meeting of the Board of Directors of Wakefield Chapel Woods Homes Association.

\_\_\_\_\_  
Paul Krumhaus, President

STATE OF Virginia:  
COUNTY OF Fairfax:

I, the undersigned Notary Public of and for the County and State aforesaid, do certify that Paul Krumhaus, President of Wakefield Chapel Woods Homes Association, whose name is signed to the foregoing Certification to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions, bearing the date of the 11th day of January, 1999 have acknowledged the same before me in my County aforesaid on behalf of said Association.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_