

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
ZACHIA MANOR COMMUNITY ASSOCIATION

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
ZACHIA MANOR COMMUNITY ASSOCIATION, INC.

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THIS DECLARATION is made this 12<sup>th</sup> day of July, 1994 by  
BRYANTOWN FARM PARTNERSHIP ("the Declarant").

**EXPLANATORY STATEMENT:** The Declarant is the legal or beneficial owner of the real property ("the Property") located in the Eighth Election District of Charles County, Maryland, which is more particularly described in the Exhibit A attached hereto, which said Exhibit A is herein incorporated by reference.

The parties to this Declaration desire to create a planned residential community ("Zachia Manor") upon the Property pursuant to a general plan of development for the benefit of all owners of residential property within this planned residential community. The Declarant desires to provide maintenance of said common areas and community facilities, and to provide for the preservation of values and amenities within Zachia Manor. Further, the Declarant desires to provide a flexible and reasonable procedure for the overall development of Zachia Manor and to establish a method for the administration, maintenance, preservation, use and enjoyment of all real property now or may hereafter subjected to this Declaration. To these ends, the declarant desires to subject the real property described in Exhibit A (as well as other real property which it intends to hereafter subject to the legal operation and effect of this Declaration) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which shall be for the benefit of the Property and the subsequent owners thereof.

In conjunction herewith, the declarant has caused to be incorporated, under the laws of the State of Maryland, a nonprofit Maryland corporation without stock named "Zachia Manor Community Association, Inc." (the "Association").

**NOW, THEREFORE,** the parties hereto hereby declare that all of the real property described in the Exhibit A attached hereto is and hereafter shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitude, charges and liens (all of which are sometimes hereinafter collectively referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of the Property and such additional real property as shall hereafter be subjected to the legal operation and effect of this Declaration and all of which shall be deemed to run with and bind the land submitted to this

Declaration and to inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an interest in the Property or such additional real property, including, without limitation, any person who holds such interest solely as securing for the performance of an obligation.



## ARTICLE I: Definitions

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When used in this Declaration the word or words listed below within quotation marks shall be deemed to have the meanings which follow them in the same section:

Section 1. "the Association" shall mean and refer to Zachia Manor Community Association, Inc., a nonprofit Maryland corporation without stock, and its successors and assigns.

Section 2. "the Articles" shall mean and refer to the Articles of Incorporation of the Association, as such may be duly amended from time to time.

Section 3. "assessments" shall mean the regular or special assessments payable by Owners to the Association.

Section 4. "the Board" shall mean the Board of Directors of the Association.

Section 5. "the Bylaws" shall mean and refer to the duly adopted bylaws of the Association, as such may be amended from time to time.

Section 6. "the Common Areas" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners of the Lots, together with the improvements located thereon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining. "The Common Areas" shall, without limitation, specifically include all areas designated as "Open Space" on the Plat, if any, which are subjected to the legal operation and effect of this Declaration.

Section 7. "common expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this declaration, the Articles and/or the Bylaws.

Section 8. "the Declarant" shall mean and refer to Bryantown Farms Partnership established pursuant to the laws of the State of Maryland, and its successors and assigns; provided, however that the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant pursuant to this Declaration, the Articles, or the Bylaws shall not inure to the benefit or burden of the successors and assigns of the said Bryantown Farm Partnership except to the extent that any of the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant are specifically assigned or transferred to any successors or assigns by a recorded writing.

Section 9. "Zachia Manor" shall mean and refer to that certain planned residential community being developed or intended to be developed by the Declarant at the Property.

Section 10. "Lot" or "Lots" shall mean and refer to those bonded and numbered lots or parcels of land other than the Common Areas as shown on the Plat.

Section 11. "mortgagee" shall mean and refer to the holder of any recorded mortgage, or the party secured by or the beneficiary of, any recorded deed of trust, encumbering one or more of the Lots. The word "mortgage", as used herein, shall include a deed of trust. "First mortgage", as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, the Federal National Mortgage Association ("the FNMA"), the Federal Home Loan Mortgage Corporation ("the FHLMC"), all corporations, and the Federal Housing Administration ("the FHA"), the Veterans Administration ("the VA") and any other agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "hold" shall include the parties secured by any deed of trust or any beneficiary thereof.

Section 12. "Member" and "Members" shall mean and refer to the person, or the combination of persons, including contract sellers, holding the record fee simple or perpetually renewable leasehold title to a Lot in the Property. The term "Member" shall not mean any contract purchaser, or the owner of any redeemable ground rent reversion issuing out of any Lot, nor shall it include any mortgagee or other person holding an interest in a Lot as security for the performance of any obligation.

Section 13. "Owner" and "Owners" shall mean and refer to the person or the combination of persons, including contract sellers, holding the record fee simple or perpetually renewable leasehold title to a Lot in the Property. The term "Owner" shall not mean any contract purchaser, or the owner of any redeemable ground rent reversion issuing out of any Lot, nor shall it include any mortgagee or other person holding an interest in a Lot as security for the performance of any obligation.

Section 14. "person" shall mean and refer to a natural person, a corporation, a partnership, an unincorporated association, a trust, an estate, or any other type of entity, or any combination thereof.

Section 15. "the Plat" shall mean and refer to those certain plats by Norris, Gass & Ocker Engineering, Inc. entitled "Zachia Manor SubDivision", said plats being recorded among the Plat Records of Charles County, Maryland at Plat Book 45, pages 172.173, as well as such other plats as are recorded among the said Land Records with regard to the Property or any other real property subjected to the legal effect and operation of this Declaration. In the event that all or any of the said record plat or plats is amended by the Declarant, its successors or assigns by a subsequent recorded plat or plats, "the Plat" shall refer to the said plat or plats as so amended.



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Section 16. "the Property" shall mean and refer to all that real property situate, lying and being the Eighth Election District of Charles County, Maryland and more particularly described in the Exhibit A attached hereto. In the event that other real property is hereafter submitted and subjected to the legal effect and operation of this Declaration, such other real property shall thereupon become a part of the "the Property".

Section 17. "Rules and Regulations" shall mean such rules and regulations as may be adopted by the Board governing (i) use of the Common Areas, including any improvements and amenities located thereon; (ii) additions, alterations, and improvements on or to the Lots; (iii) reasonable interpretation and construction of the provisions of the Declaration, the Articles, and the Bylaws; and (iv) such other matters as are specified as the subjects for such Rules and Regulations in this Declaration, the Articles or the Bylaws.

## **ARTICLE II: Property Subject to this Declaration**

Section 1. **Initial Property.** The real property initially subject to this Declaration is the Property as more particularly described in the Exhibit A attached hereto.

## **ARTICLE III: Property Rights**

Section 1. **Members' Easements of Enjoyment.** Subject to the provisions of this Declaration and any restrictions or limitations contained in any deed conveying such property to the Association or subjecting such property to the legal operation and effect of this Declaration, each Owner shall have a non-exclusive right and easement of enjoyment in and to, and ingress and egress into and from the Common Areas. Such easements shall be appurtenant to and shall pass with the title to such Owner's Lot.

Section 2. **Title to Common Areas; Easement for Completion.** The Declarant shall cause to be conveyed to the Association, and the latter shall take and accept legal title to, all Common Areas and improvements thereon included within the Property. In the event that any improvements on any Common Areas included in or added to the Property are not completed at the time such area is conveyed to the Association, the Declarant reserves an easement on, over, under, across and through such area to complete construction of the improvements thereon. The Association shall hold the Common Areas conveyed to it subject to the property rights described herein.

Section 3. **Limitations on Owners' Easements.** The rights and easements of enjoyment for Owners created hereby shall be subject to the following rights of the Association:

(a) the right to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage the Common Areas, but the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the Members hereunder;

(b) the right to take such steps as are reasonably necessary to protect the Common Areas against mortgage default foreclosure;

(c) the right to dedicate or transfer all or any part of the Common Areas or community facilities to any public or municipal agency, authority or utility; provided, however, that no such dedication or transfer shall be effective unless two-thirds (2/3) of each class of the then Members of the Association consent to such dedication or transfer at any special meeting of the Members duly called for such purpose;

(e) the right to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such licenses, rights-of-way or easements shall be unreasonably or permanently inconsistent with the rights of the owners to the use and enjoyment of the Common Areas and community facilities;

(f) the right to suspend the enjoyment rights of any Owner in the Common Areas and the recreational facilities thereof for any period in excess of thirty (30) days during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published Rules and Regulations;

(g) the right to enter into the Common Areas for the purpose of completing, repairing or maintaining such Areas or the improvements thereon;

(h) the right to require the display of membership cards, automobile stickers or other means of identification as a prerequisite to entry to the Common Areas or community facilities, or any part or facility thereof; and

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Areas.

The rights and easements of Owners are also subject to the right of Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Areas for display and exhibit purposes, which right the Declarant hereby reserves for so long as it owns any Lot.

Section 4. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas and community facilities to the members of his family of any tenant or contract purchasers (and the members of the family of any tenant or contract purchaser) who reside within Zachia Manor or to such other persons as may be permitted by the Association. To the extent that an Owner shall delegate his right of enjoyment of the Common Areas and community facilities to his tenants, he and members of his family shall not thereafter be privileged to use the areas or facilities in question.



**Section 5. Utility and Road Easements.** The Declarant, for itself, its successors and assigns, hereby expressly reserves easements and rights-of-way through, under, over, on and across the Property, (including, without limitation, in and over the lots) for the installation, maintenance, replacement and inspection of (a) lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable television, street lights and other utilities, (b) for public or private vehicular, pedestrian or equestrian roads, rights-of-way, bikeways, sidewalks, and pathway; (c) for the storm water management areas (d) for the recreational areas and (e) entrance signs placed upon the front lots. The Declarant further expressly reserves, for itself, its successors and assigns, the right to grant licenses, rights-of-way and easements through, under, over, on and across the Property for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency or public utility.

**Section 6. Easement Rights Reserved by the Declarant.** The Declarant, for itself, its successors and assigns, hereby expressly reserves an easement and right-of-way in, through, over, and across the Common Areas for the purpose of (a) storage of building supplies and materials; (b) installation, construction, maintenance, reconstruction and repair of improvements and/or landscaping upon the Lots or any other parcel included within the real property described in Exhibits A or B hereto; and (c) advertising or otherwise accomplishing the sale or rental of any such Lots, property, or improvements.

**Section 7. Easement Rights of the Association.** The Association, and its Management Agent, employees and other agents, successors, and assigns shall have such easements in and over the Property (including, without limitation, in and over the Lots) as may be reasonably necessary to perform the duties and obligations of the Association as set forth in this Declaration, the Articles, or the Bylaws.

**Section 8. Easements of Encroachment.** Reciprocal appurtenant easements of encroachment shall exist as between each Owner of a Lot and the Association as to such portion or portions of the Common Areas adjacent thereto or as between Owners of adjacent Lots, for the purpose of accommodating any encroachments which may result from engineering errors, errors in original construction, roof overhangs, gutters, architectural or other appendages, or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the provisions of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred as the result of willful conduct on the part of an Owner, members of his family, his invitees or tenants, or the Association.

**Section 9. Maintenance Easements.** Any Owner (including the Declarant) of a Lot on which improvements have been or are being, constructed, reconstructed or altered (in accordance with the provisions of this Declaration) within three (3) feet of the common boundary or that Lot



with an adjacent Lot or with an adjacent portion of the Common Areas shall have an easement upon and over such portions of such adjacent other Lot and/or such adjacent portion of the Common Areas as shall be within three (3) feet of such improvements as so constructed, reconstructed or altered for the limited purposes of construction, reconstructing, repairing, maintaining, or painting said improvements; provided, however, that if any Owner or his family members, tenants, agents or employees shall damage, demolish or otherwise alter any improvements or landscaping located on such adjacent Lot or adjacent portion of the Common Areas during the course of exercising his rights held pursuant to the easement granted in this section, such Owner shall, at his expense, promptly replace the same with improvements or landscaping of comparable size and quality.

**Section 10. Right of Entry.** The Association shall have the right to enter into any Lot and the improvements thereon for emergency, security and safety purposes, which right may be exercised by the Board or the Association's officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner of the Lot. This right of entry shall include the right of the Association to enter into a Lot and any improvements thereon to cure any condition which may increase the possibility of a fire or other hazard or to abate any violation of any provision of this Declaration or the duly adopted Rules and Regulations of this Association as provided for herein.

#### **ARTICLE IV: Membership and Voting Rights in the Association: Administration**

**Section 1. Membership.** Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Voting Rights.** The Association shall have two classes of voting membership:

**Class A:** The Class A Members shall be all Owners with the exception (initially) of the Declarant or any other Class B Member. Class A. Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be entitled to participate in the Association as Members; provided, however, that persons holding any such interest solely as contract purchasers or as security for the performance of an obligation shall not be Members solely on account of such interests; and provided, further, that, for purposes of voting and determining the existence of a quorum, all such persons so holding an interest in any one Lot shall be treated as a single member. The vote for any such Lot shall be exercised as determined by the members holding interests therein, but in no event shall more than one vote be cast with respect to any Lot.

**Class b:** The class B Members shall be (1) the Declarant and (b) any successor, assignee, or designee of the Declarant who holds or takes title to a Lot or Lots and who is designated as such in a recorded instrument. The Class B Members shall be entitled to three (3) votes for each



lot, all of which shall initially be exercised as determined by the Declarant but any (or all) of which shall be thereafter exercisable as assigned by the Declarant to any other person who is a Class B Member. The Class B membership shall cease and become converted to Class A Membership upon the happening of any of the following events, whichever occurs first:

- (i) when the total votes outstanding in the Class A membership equal or exceed the total votes in the Class B Membership or
- (ii) December 31, 2001; or
- (iii) when, at such time as may be before the events specified in (i) and (ii) above, the Declarant, in its sole discretion so determines.

From and after the happening of these events, whichever occurs first, the Class B Member shall become Class A Members entitled to cast one (1) vote for each Lot in which such members hold an interest. At such time, the Declarant shall call a meeting of the Members of the Association as provided in the Bylaws for special meetings to advise the membership of the termination of Class B status.

**Section 3. Administration.** The affairs and business of the Association shall be managed and conducted as provided in the Articles and the Bylaws.

**Section 4. Management Agent.** The Board may employ for the Association a management agent or management agent or manager (the "Management Agent") at a rate of compensation established by the Board to perform such duties and services as the Board shall from time to time authorize in writing, including, without limitation:

- (a) to provide for the care, upkeep, maintenance and surveillance of the Common Areas and community facilities; and
- (b) to designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas and community facilities; and
- (c) to provide for such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration; and
- (d) provide for the collection of assessments and any other obligations provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with law of the provisions of this Declaration; and
- (e) to provide for the enforcement of the provisions of this Declaration and the Rules and Regulations.

Any cost incurred by the Association for the employment of the Management Agent shall be deemed and construed to be a part of the common expenses of operating the Association. The Board may employ as Management Agent any person of its choosing, including the Declarant or any person affiliated with the Declarant or any other Class B Member.

**Section 5. Limitation of Liability.** The Association shall not be liable for any failure of any services to be obtained by the Association or paid for as a part of the common expenses, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or community facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Owner or his family members, tenants, employees, or invitees, for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or in 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 or repairs or improvements to the Common Areas or community facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

## **ARTICLE V: Maintenance Responsibilities**

**Section 1. Association Responsibility for Common Areas.** The Association shall be responsible for the maintenance, repair and replacement of all Common Areas and all improvements thereon, including landscaping and equipment related thereto, (unless the repair or replacement is necessitated by the negligence, misuse or neglect of an Owner, his family members, his tenants, employees and invitees in which case the expense of such repair or replacement shall be borne by such Owner), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall also be responsible for the maintenance repair and replacement of all Association owned improvements on private lots including, but not limited to, signs, jogging trail, trees and shrubbery purchased by the Association. In furtherance of such obligations, the Board may contract for management and maintenance services to be provided to the Association with persons or entities of its choosing, including the Declarant and affiliates thereof. Any cost incurred by the Association in the course of such maintenance, repair or replacement as for which it is responsible shall be deemed and construed to be a part of the common expenses of operating the Association.

### **Section 2. Owner Responsibilities.**

(a) **Common Areas.** Each Owner, and his tenants, and the family members, employees and invitees of either shall be responsible for using the Common Areas in a safe and orderly manner consistent with the purpose for which each Common Area is intended, and shall be personally liable for any damage caused to person or property by reason of their misuse or neglect. Each Owner shall be jointly and severally liable for any such damage caused by his tenants, family members, employees and invitees.



(b) **The Owner's Lot.** The Owner of each Lot shall keep the Lot, and the landscaping, buildings, and other improvements thereon, in good order and repair, and free of debris. Lawns shall be seeded and moved, shrubbery trimmed, and painted or stained exterior surfaces repainted or restained, all in a manner and with such frequency as is consistent with good property management. In the event the Owner of a Lot shall fail to maintain the Lot and the landscaping, buildings and other improvements thereon as provided herein, the Association, its agents or employees, after notice to the Owner and with the approval of the Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the landscaping, buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed such costs, together with interest, reasonable attorney's fees and costs of collection as hereinafter provided, shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid maintenance assessment levied in accordance with other provisions of Section 14 of Article XIII of this Declaration. As determined by the Board, interest or unreimbursed costs so incurred by the Association shall accrue at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland. In the event of litigation to collect such unreimbursed costs, the Owner obligated to pay such costs shall further be obligated to pay to the Association reasonable attorney's fees of not less than Two hundred fifty dollars (\$250.00) and any costs of collection incurred in connection therewith.

**Section 3. Manner of Repair and Replacement.** Except as otherwise authorized by the Board, all repairs and replacements shall be substantially similar in appearance and materials to the original construction and installation, shall be performed in a good and workmanlike manner, and shall be of first class quality and in compliance with the guidelines of the Architectural Review Board.

## **ARTICLE VI: Insurance and Casualty Losses**

**Section 1. Hazard and Liability Insurance.** The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on or with the Common Areas against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the association or any of its Members, employees or agents. Premiums for all insurance on the Common Areas shall be common expenses of the Association. The policy may contain a reasonable deductible, and in the amount thereof shall be added to face amount of policy in determining whether the insurance at least equals the full replacement cost.

**Section 2. Policy Provisions.** All such insurance coverage obtained by the Board shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions

hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Maryland and holding a rating of A or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Areas shall be for the benefit of the Owners and their mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided however, no mortgagee having an interest in such losses may be prohibited from participating the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available.

(f) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board, the Management Agent, the Owners, and their respective tenants, servants, agents, and guests; and

(ii) a waiver by the insurer of its rights to repair, and reconstruction, instead of paying cash; and

(iii) that no policy may be canceled, invalidated or suspended on account of the action of any one or more individual Owners; and

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized Management Agent without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Management Agent; or Owner, or mortgagee; and

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.



**Section 3. Other Insurance.** In addition to the other insurance required by this article, the Board shall obtain, if available, and approved by the Board of Directors, as a common expense, workman's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling the Board's best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion or persons serving within compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

**Section 4. Disbursement of Proceeds.** Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs or repairs or reconstruction to the Common Areas or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with an affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 5 of this Article, that the damage or destruction to the common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 4(a) hereof.

**Section 5. Damage and Destruction.** (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the properties covered by insurance written in the name of the Association, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this subsection, means repairing or restoring the properties to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless at least seventy-five (75%) percent of each class of Members of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.



(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected area of the Property shall be restored to its natural state and maintained as an undeveloped portion of the Common Areas by the Association in a neat and attractive condition.

(d) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed; provided, however, that any such reconstruction or repair shall be done in accordance with current building code requirements and may be done with contemporary building materials and achieved by utilizing updated construction systems and technology.

(e) Encroachments upon or in favor of Lots which may be created as result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with the plans and specifications under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed improvements on the Property shall stand.

**Section 6. Special Assessments for Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a special assessment for the additional amount required to defray such costs against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. In any fiscal year, the Board may not, however, without the vote or written assent of a majority of each class of Members of the Association, levy special assessments which exceed \$500.00 per Lot.

#### ARTICLE VII: No Partition

This Article left intentionally blank.

#### ARTICLE VIII: Condemnation

**Section 1. Notice and Award Disbursement.** Whenever all or any part of the Common Areas shall be taken (or conveyed by the Board in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Areas on which improvements have



been constructed, then, unless within sixty (60) days after such taking at least seventy five (75%) percent of the each class of the Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article VI hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### **ARTICLE IX: Rights and Obligations of the Association**

**Section 1. Common Areas and Rights-of-Way.** The Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all landscaping and improvements thereon (including equipment related thereto).

**Section 2. Personal Property and Real Property for Common Use.** The Association, through action of the Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests conveyed to it by the Declarant.

**Section 3. Rules and Regulations.** The Association, through the Board, may adopt reasonable Rules and Regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Association, through the Board, shall enforce these Rules and Regulations and the provisions of this Declaration through the imposition of sanctions, which said sanctions may include monetary fines as hereinafter provided and suspension of the right to vote and the right to use the Common Areas. The Board shall, in addition, have the power to seek relief in any court for such violations or to abate nuisances. Imposition of sanctions shall be in accordance with such due process as is provided in the Bylaws. Prior to any decision to suspend voting rights or rights to use the Common Areas, or to impose monetary fines, the Board shall grant notice and hearing to any alleged violator.

**Section 4. Additions to Common Areas.** The Association, through action of the Board, may make any addition, alterations or improvements to the Common Areas; provided, however, that if any such addition, alteration or improvements shall require an expense of Association funds in excess of One Thousand Five Hundred Dollars (\$1,500.00), such addition, alteration or improvement shall only be authorized if approved by the affirmative vote of a majority of each class of the Members. For the purposes of this section, limitation, repairs paid for through the use of reserves, shall never be deemed to be additions, alterations or improvements such that any



authorization from the Members is required before such repairs may be undertaken.

**Section 5. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles, or the Bylaws, and ever other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### **ARTICLE X: Use of the Property**

**Section 1. Protective Covenants.** Except for the activities of the Declarant or any other Class B Member in connection with the activities related to the extraction of sand and gravel and with the sale of Lots or the construction of improvements on such Lots or in the Common areas, or except as may be reasonable and necessary in connection with the maintenance, improvement, repair and reconstruction of any portion of the Common Areas by the Declarant or the Association, or the performance of any other right or responsibility herein reserved by or delegated to the Declarant or the Association, or except as otherwise authorized in advance by the Board:

(a) **Residential Use.** No part of the Property shall be used for purposes other than residential housing and the ancillary accessory common purposes to residential housing for which Zachia Manor was designed; provided, however, that a professional office may be maintained in any dwelling if such maintenance and use is limited to the person actually residing in the dwelling and if such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this section, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession including doctors, dentists, lawyers, architects, clergymen, writers, manufacturers representatives, businessmen, computer programmers, realtors, and the like, but not including medical or dental clinics or any professional uses where the professional regularly entertains or sees patients, clients, or customers in such office.

(b) **Prohibited Activities.** No noxious, improper, unlawful, or offensive activity shall be carried on in any part on the Property, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to others, or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots, or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Lots, or which shall in any way increase the rate of insurance on the Common Areas. Residents and their guests are expected to reduce noise levels between the hours of 11:00 p.m. and 8:00 a.m., so that neighbors are not disturbed. In general, no Owner shall make or permit to be made any noise that will disturb or annoy the other residents of the Property, or do or permit to be done anything therein which will interfere with the rights, comfort or convenience of other residents. All valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner of the Lot or the Association, which shall have the obligation



to maintain or repair such portion of the Property.

(c) **Signs.** Except for such signs as may be posted by the Declarant or the Board for promotional or marketing purposes, traffic control or the like, no signs of any character shall be erected, posted or displayed upon, in, from or about any Lot or the Common Areas without prior consent in writing of the Board and compliance with such conditions as it may establish. The Board of Directors may, at its sole discretion, erect recreational area signs or a community bulletin board upon the common elements. In general, it shall be the policy of the Board to allow one temporary "for sale" sign of reasonable dimensions not exceeding three (3) square feet in area (per side) to be erected on each Lot, but the prior consent of the Board as to size, and the Board shall be privileged to withhold or revoke its consent as to any such sign when, in its sole discretion, the erection or maintenance of such sign shall be contrary to the best interests of the Owners. The provisions of this subsection shall not be applicable to the hold of any first mortgage which comes into possession of any Lot by reason of any remedies provided by law or in such mortgage or as a result of a foreclosure sale or other judicial sale or other proceeding, arrangement, assignment or deed in lieu of foreclosure, with respect to reasonable "for sale" signs.

(d) **Common Areas.** Except as otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on any Common Area except: (i) structures or improvements designed exclusively for community use, including, without limiting the generality of the foregoing, docks, piers, shelters, benches, chairs or other seating facilities, fences and walls, walkways, roadways, playground equipment, swimming pools and tennis courts, (ii) landscaping, and (iii) drainage, storm water and utility systems and structures. The Common Areas may be graded, and trees, shrubs or other plants may be placed and maintained thereon for the use, comfort and enjoyment of the Owners, or the establishment, retention or preservation of the natural growth or topography of the common Areas, or for aesthetic reasons. No portion of any Common Areas or facilities may be used for other than private uses. There shall be no use of the Common Areas and landscaped areas except natural recreational uses which do not injure the Common Areas or the vegetation thereon, increase the maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in the enjoyment of the Common Areas and landscaped areas in the vicinity of their Lots.

(e) **Tree Protection.** No trees measuring in excess of four (4) inches in diameter two (2) feet above the ground shall be cut or removed the Common areas without written approval of the Board. Any tree which was purchased by the Association and planted upon with the common areas or a lot may not be cut or removed regardless of the size of the tree. The foregoing restriction shall not, however, be construed to prohibit pruning and trimming activities consistent with sound and reasonable tree husbandry practices. The Board may from time to time adopt and promulgate such additional Rules and Regulations regarding the preservation of such trees and other natural resources and wildlife as it may consider appropriate. Any member who violates this provision shall be required to pay the Association to replace the trees with trees of a similar size and age to the extent possible.



(f) **Excavations.** Except by the Declarant, neither the Common Areas nor any Lot shall be used for the purposes of excavating, boring, mining, quarrying, exploring for, or removing oil or other hydrocarbons, minerals, gravel, topsoil, or earth without approval of the Board.

(g) **Protection of Easements and Natural Drainage.** No structure, planting, or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance or utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels.

(h) **Underground Utilities Required.** No water pipe, sewer pipe, gas pipe, drainage pipe, electric line, television cable or similar transmission line shall be installed or maintained on any Lot above the surface of the ground.

(i) **Free-Standing and Temporary Structures Prohibited.** Except for previous existing structures on Lot #15, no structure of a temporary character, and no tent, shed, shack, barn, pen, kennel, run, stable, or other such accessory or freestanding building shall be erected, used or maintained on any Lot at any time without first obtaining the approval of the Architectural Review Board.

(j) **Clothes Drying Equipment.** No permanent clothes lines or other exterior clothes drying apparatus shall be permitted on any Lot.

(k) **Refuse Accumulations Prohibited.** No burning of any trash and no accumulation or storage of litter, lumber, scrape metals, refuse, bulk materials, waste, new or used building materials, or trash of any kind shall be permitted on any Lot or on the Common Areas. Lumber and supplies delivered for construction must be stacked neatly and used within one week of delivery. All firewood must be stacked and maintained in a neat manner.

(l) **Trash Receptacles and Storage.** Garbage, trash and other refuse shall be placed in covered containers. Trash and garbage containers shall not be permitted to remain anywhere in view from public roadways except on days of trash collection.

(m) **Objectionable Vehicles.** Except as elsewhere herein provided, no junk or inoperable vehicle or other vehicle on which currently valid registration plates are not displayed, vehicles which exceed twenty-five (25) feet in length and/or have three axles, trailer, camper, Winnebagos, house trailer, or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas) shall be kept upon any part of the Property nor shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Notwithstanding the foregoing, boats are allowed upon each lot only if the boat is kept on a paved or graveled area adjacent to the garage. The Board may, in its discretion, provide and maintain a suitable area designated for the parking of such vehicles, trailers, boats, or the like.



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EXHIBIT 0008 FULL 426

(n) **Parking and Traffic Restrictions.** No automobile, motorcycle, bicycle, tricycle, or other wheeled vehicles or toys shall be parked or left unattended on any sidewalk, pathway, or walkway or on any part of the roadways or other Common Areas of the Property so as to interfere with or obstruct the use thereof or ingress and egress to any Lot, such roadways, or the Common Areas. Except as expressly designated by the Board of Directors, no boats or trailers shall be parked or left unattended on any part of the roadways or other Common areas of the Property. The Board may, in its discretion, from time to time adopt and promulgate such additional Rules and Regulations regarding vehicular traffic and parking as it may consider appropriate including the issuing of parking stickers for all residents.

(o) **Antennae.** No radio antenna, satellite dish, or other aerial, antennae, or dish for either reception or transmission, shall be maintained upon the Property, provided, however, that such aerials, satellite dishes or antennae may be erected and maintained if completely located upon the Property and outside of public view and whose installation was subject to approval by the Architectural Review Board.

(p) **Animals.** The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited in the common Areas and on any Lot of less than 3 acres, within any dwelling, except that this shall not prohibit the keeping of dogs, cats, fish, or caged animals as domestic pets provided they are not kept, bred or maintained for commercial purposes and provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other residents of the Property. The Board shall have the authority, after hearing, to determine whether a particular pet is a nuisance or source of annoyance to other residents, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered by law. Pets shall not be permitted upon Common Areas unless accompanied by a responsible person and unless they are carried or leashed. The Board shall have the right to adopt such additional Rules and Regulations regarding pets as it may from time to time consider necessary or appropriate.

(g) **Subdivision of Lots Prohibited.** No Lot shall be partitioned, divided, or subdivided; and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Declarant or any other person for any purpose, nor to prohibit the subdivision of lots for transfer between adjacent lot owners to accomodate, adjust or connect lot lines as may from time to time be reasonably necessary.

(r) **Personal Property.** All personal property placed in any part of the Property outside a dwelling shall be at the sole risk of the owner of such property, and neither the Declarant, the Association, the Board, nor the Management Agent shall be liable for the loss, destruction, or theft or, or damage to, such property.

(s) **Leases.** Any lease agreement between an Owner and a lessee shall provide that the



terms of the lease are subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of the Zachia Manor Homeowners Association. Every lease shall be subordinate to any lien filed by the Zachia Manor Homeowner's Association, whether before or after lease was entered into.

(t) **Rules and Regulations.** There shall be no violation of the Rules and Regulations which may from time to time be adopted by the Board and promulgated by it in writing; and the Board is hereby and elsewhere in the Declaration authorized to adopt such rules.

(u) **Owner Liability for Violations.** Owners will be jointly and severally liable and responsible for the actions of their children, pets, tenants, guests, employees, invitees, and licensees.

(v) No home shall be permitted on any Lot, the habitable finish floor area of which, exclusive of basements, porches, patios, and garages is less than 1,800 square feet in the case of a one story residential structure or less than 2,200 square feet in the case of a one and one-half story structure. For purposes of this Declaration a basement shall be deemed any floor area 55% or more of which is below grade. Homes of more than two and one-half stories shall require the prior approval of the Architectural Committee.

(w) All building sites, before the improvements are completed, must contain at least 4 flowering trees; either Dogwood, Bradford Pear, Cherry or a combination thereof.

**Section 2. Implementation and Construction Guidelines.** The Board may from time to time adopt general rules consistent with and to implement the purposes set forth in this article and to interpret the covenants in this article, which general rules may apply to the Property as a whole or to any part thereof.

**Section 3. Exceptions.** The Board may issue temporary permits or variances to except any prohibitions expressed or implied by this Declaration provided the Board find good cause to exist therefore and acts in accordance with adopted guidelines and procedures.

**Section 4. Enforcement - Right to Remove or Correct Violations.** In the event any violation or attempted violation of any of the covenants or restrictions contained in this article shall occur or be maintained upon the Common Areas or any Lot, or in the event of any other conduct in violation of any of the provisions or requirements of this article, then the same shall be considered to have been undertaken in violation of this article and without the approval of the Board as required hereby and, upon written notice from the Board, 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 ten (10) 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, then the Association shall have the right, through its agents and employees to enter upon such Lot or Common Area and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the



lot upon which such violation occurred and the Owner thereof, and 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 (and subject to the same limitations) as a maintenance assessment provided for in Article XIII of this Declaration. The Association shall have the further right, through its agents, employees or committees and after reasonable notice, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this article or any of the other provisions or requirements of this Declaration exist on such Lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 5. Construction and Sale.** Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and any other Class B Member to maintain and carry on upon portions of the Lots and the common Areas such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots and residences thereon, including, but not limited to, business offices, signs, model units, and sales offices, and trailers for any sales, construction or business purposes, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant or any other Class B Member as models and sales offices. This section may not be amended without the unanimous express written consent of all Class B Members of the Association.

#### **ARTICLE XI: Architectural Control**

**Section 1. Additions, Alterations and Improvements by Owners.** Except for construction or development by, for or under contract with the Declarant or any other Class B Member, except for any improvements to any Lot or to the Common Areas accomplished by the Declarant or any other Class B Member, and except for purposes of proper maintenance and repair, no building, fence, wall, above ground swimming pools, or other exterior improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Property, nor shall any exterior additional to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications shown 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 Board) shall have been submitted to and approved in writing by the Board as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for Zachia Manor. Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, patio covers, fences, walls, slabs, sidewalks, curbs, gutter, patios, balconies, porches, driveways or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any dwellings or other improvements constructed upon any Lot or upon any of the Common Areas, or to combine