

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**050028824**

**HAMILTON COURT**

Frederick County, Virginia

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**GRANTOR: THE RYLAND GROUP, INC.**

**GRANTEE: HAMILTON COURT HOMEOWNERS ASSOCIATION**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HAMILTON COURT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of December 13, 2005 by and between THE RYLAND GROUP, INC., a Maryland corporation (the "Declarant"); and HAMILTON COURT HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation (the "Association").

**RECITALS:**

A. The Declarant is the owner of **Lots 1 through 42, HAMILTON COURT** as the same are duly subdivided, platted and recorded by the "**Plat of Subdivision**" recorded with Instrument No. 050018348, and resubdivided by the "**Revised Final Plat of Subdivision**" recorded contemporaneously herewith among the Frederick County, Virginia land records.

B. The Association is the owner of the **Open Space, HAMILTON COURT** as the same is duly subdivided, platted and recorded by the Plat of Subdivision and resubdivided by the Revised Final Plat of Subdivision.

C. The Declarant desires to create on the Property (as hereinafter defined) a residential community which shall have permanent open spaces and other common facilities for the benefit of the community.

D. The Declarant and the Association desire to provide for the preservation of the values of the community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

E. The Declarant has deemed it desirable for the efficient preservation of the values of said community to create an association to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.

F. The Declarant has incorporated as a non-stock corporation under the laws of the Commonwealth of Virginia, **HAMILTON COURT HOMEOWNERS ASSOCIATION** for the purpose of exercising the functions of the Association.

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NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of a Lot, with the express concurrence of the Association, mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any Common Area and facilities; and further, the Declarant and the Association declare the Property to be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

Section 1. "Act" shall mean and refer to the Virginia Property Owners Association Act.

Section 2. "Association" shall mean and refer to Hamilton Court Homeowners Association, a Virginia non-stock corporation, its successors and assigns.

Section 3. "Board of Directors" shall mean and refer to the executive and administrative entity established by the Articles of Incorporation of the Association as the governing body of the Association.

Section 4. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include any private streets shown on an approved plat of the Property and located within the Common Area's boundaries.

Section 5. "County" shall mean Frederick County, Virginia.

Section 6. "Declarant" shall mean and refer to The Ryland Group, Inc. and its successors or assigns (i) to whom The Ryland Group, Inc. assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the appropriate land records, or (ii) who is a purchaser at foreclosure of the Property or a grantee in a deed in lieu of foreclosure from the Declarant. Such an assignment shall only operate as to the land which is owned by such successor or assign. If the Declarant consists of more than one (1) person or entity, unless otherwise agreed in writing between the co-Declarants, the rights and obligations of the Declarants shall be several and shall be based upon and apportioned in accordance with the number of Lots owned by each Declarant.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Property, which Declaration is recorded in the Office of the Clerk of the Circuit Court of Frederick County, Virginia.

Section 8. **"Developer"** shall mean and refer to The Ryland Group, Inc. and its assignees if such assignees receive a written assignment from the Developer.

Section 9. **"Dwelling Unit"** shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household for which a residential use permit has been issued by the County, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) patio or zero lot line homes, townhouses and detached homes.

Section 10. **"Lot"** shall mean and refer to any plot of land created by and shown on a lawfully recorded subdivision plat of the Property upon which a Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use.

Section 11. **"Member"** shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 12. **"Mortgagee"** shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing.

Section 13. **"Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term "Owner" as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 14. **"Participating Builder"** shall mean and refer to a person or entity (other than the Declarant) who is regularly in the homebuilding business and who purchases land or two (2) or more Lots within the Property for the purpose of constructing improvements for resale or rental.

Section 15. **"Property"** shall mean and refer to that certain real property described as **Lots 1 through 42 and the Open Space, HAMILTON COURT** as duly subdivided, platted and recorded by the Plat of Subdivision and resubdivided by the Revised Final Plat of Subdivision, and such additions thereto which, from time to time, may be brought within the jurisdiction of the Association.

## ARTICLE II MEMBERSHIP

Every Owner of a Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association. Except for the Class B Member,

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 Class A membership. No Class A Member shall have more than one (1) membership in the Association for each Lot it owns.

### ARTICLE III VOTING RIGHTS

Section 1. Classes. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by the Article entitled "Membership" herein.

Class B: The Class B Member(s) shall be the Declarant. The Class B Member shall have forty-four (44) votes. Class B membership shall cease on the happening of any of the following events, whichever occurs first:

- (a) ten (10) years from the date of recordation of this Declaration;
- (b) the completion of construction of all homes within the Property by the Declarant and Participating Builders and the release of all improvement bonds posted with the State, County or other municipal agency by the Declarant or a Participating Builder in connection with the Property; or
- (c) the recordation among the Land Records of a written instrument signed by the Declarant or its successors or assigns, specifically terminating such rights.

Section 2. Annexation. Upon annexation of additional properties pursuant to this Declaration, the Declarant shall have forty-four (44) votes plus one (1) additional vote for each annexed lot. In the event that Class B membership shall have ceased as hereinabove provided, Class B membership shall be revived and the number of votes the Class B Member shall have shall be the number of Lots already subject to this Declaration plus the number of annexed Lots plus one. The Class B membership shall cease on the happening of any of the following events, whichever occurs first:

- (a) ten (10) years from the date of annexation of the property;
- (b) the completion of construction of homes within the Property by the Declarant and Participating Builders and the release of all improvement bonds posted with the State, County or other municipal



agency by the Declarant or a Participating Builder in connection with the Property; or

- (c) the recordation among the Land Records of a written instrument signed by the Declarant or its successors or assigns, specifically terminating such rights.

Section 3. Multiple ownership interests. If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

#### ARTICLE IV PROPERTY RIGHTS

Section 1. Member's 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 Lot, subject to:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility located on the Common Area to Members or non-Members;

- (b) the right of the Association to limit the number of guests of Members or non-Members on the Common Area;

- (c) the right of the Association, subject to Virginia Code Section 55-513, as amended from time to time, to adopt and enforce rules and regulations governing the use of the Common Area and such other areas of responsibility assigned to the Association by this Declaration;

- (d) the right of the Association, subject to the limitations and requirements of Virginia Code Section 55-513 as amended from time to time, to (i) suspend the voting rights and/or the right to run for office within the Association for any period during which any assessment against such Member's Lot remains unpaid, (ii) suspend a Member's right to use facilities or services, including utility services, provided directly through the Association for nonpayment of assessments, to the extent that access to the Lot through the Common Areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (iii) assess charges against any Member for any violation of the

Declaration or rules and regulations for which the Member or its family members, tenants, guests or other invitees are responsible;

(e) the right of the Association to borrow money for the improvement, maintenance or repair of the Common Area or facilities and in aid thereof, with the assent of at least two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, to mortgage the Common Area, subject to this Declaration and the easement of enjoyment created hereby, and to acquire property encumbered by a lien or liens of a mortgage or deed of trust; provided that any such mortgage of the Common Area must state that it is subject to this Declaration and the easement of enjoyment created hereby and shall not be in conflict with its designation as "open space";

(f) the right of the Association at any time or upon dissolution or termination of the Association, and consistent with the then-existing zoning ordinances of the County and its designation of the Common Area as "common open space", to dedicate or transfer all or any part of the Common Area for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution or termination, any such dedication or transfer shall have the assent of at least two-thirds (2/3) of the Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which shall be sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents. The resubdivision or adjustment of the boundary lines of the Common Area, the dedication to the County for public purposes, and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(g) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the Common Area;

(h) the right of the Association to lease the Common Area to Members or non-Members;

(i) the right of the Declarant or the Association to resubdivide and/or adjust the boundary lines of the Common Area as either deems necessary for the orderly development of the subdivision;

(j) all rights reserved by the Declarant in the Article herein entitled "Easements";

(k) the right of the Declarant and Participating Builders to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes;

(l) the right of the Declarant or the Association to dedicate the Common Area or portions thereof to the County or Commonwealth for public street purposes; and

(m) the right of the Association to assign parking spaces, which need not be assigned to all Lots, and need not be the same number of spaces for each Lot.

Section 2. Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

## ARTICLE V ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant covenants, for each Lot owned, 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 instrument of conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual General Assessments (as hereinafter defined) or charges, (b) Annual Service Assessments (as hereinafter defined), and (c) Special Assessments (as hereinafter defined) for capital improvements or other specified items. Such assessments are to be established and collected as hereinafter provided. The Association's Annual and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, late fees, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual and Special Assessments, when assessed for each year, shall become a lien on the Lot in the amount of the entire Annual or Special Assessment, but shall be payable upon resolution of the Board of Directors, in equal installments collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents and Owners of the Property, for the improvement and maintenance of the Common Area, including but not limited to the payment of taxes, construction of improvements and maintenance of services and facilities devoted to these purposes or related to the use

and enjoyment of the Common Area or other property which the Association has the obligation to maintain, and for such other purposes as the Board of Directors may determine to be appropriate.

Section 3. Annual General Assessment and Annual Service Assessment.

(a) The Association must levy in each of its fiscal years an annual assessment (the "**Annual Assessment**"), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots within a Section of the Property (as such Section is shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot within that Section to an Owner who is not the Declarant or a Participating Builder. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual General Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots or which the Board of Directors determines shall be shared equally by all the Lots.

(c) The Association may also, but shall not be required to, levy in each of its fiscal years a separate annual assessment (the "**Annual Service Assessment**") against specified Lots within the Property. The amount of the Annual Service Assessment shall be determined by the Board of Directors according to its estimated cost of providing services, reserves or rights of use to the benefited Lots, which services or rights are not enjoyed by all of the Members and are primarily for the benefit of the Members owning the benefited Lots.

Section 4. Special Assessment. In addition to the Annual Assessment 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, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "**Special Assessment**"). The Special Assessment shall be levied against all of the benefited Lots. To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members, who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5. Quorum for any Action Authorized Under Section 4. At the first calling of a meeting under Section 4 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of

Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 4 and to applicable law, 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.

Section 6. Working Capital Assessment. In addition to the Annual and Special Assessments authorized above, the Association shall establish and maintain a working capital fund. At each settlement on the initial sale by a Declarant or a Participating Builder of a Lot for which a use permit has been issued, both the seller (either the Declarant or Participating Builder, as applicable), and the purchaser of such Lot shall pay to the Association a one-time working capital assessment of One Hundred Twenty-Five Dollars (\$125.00). Such working capital assessment shall not be considered an advance payment of an Annual Assessment.

Section 7. Rate of Assessment. The Annual General Assessment shall be fixed at a uniform rate for all Lots, except for unoccupied Lots owned by the Declarant or a Participating Builder, and the Annual Service Assessments and Special Assessments shall be fixed at a uniform rate for all Lots benefited by the particular assessment, except for unoccupied Lots owned by the Declarant or a Participating Builder. Any unoccupied Lots owned by the Declarant or a Participating Builder shall be exempt from assessment.

During the period of time the Declarant has appointed the members of the Association's Board of Directors, the Declarant and Participating Builder(s) shall fund any budget deficits, including reserves, up to the amount the Declarant or Participating Builder would have paid had it been assessed at the full rate. The Declarant and Participating Builder's obligation under this Section does not include any expenses that the Association is unable to meet because of non-payment of any Owner's assessment or because of unusual or extraordinary expenses. If there are two (2) or more Declarants and Participating Builders, the funding of such budget deficit shall be shared pro rata according to the following formula:

The sum of all of a particular Declarant/Participating Builder's "Lot Days" divided by the sum of all of the Declarant/Participating Builders' "Lot Days". A "Lot Day" shall be the number of days in the period of time the Declarant has appointed the members of the Association's Board of Directors.

Section 8. Notice of Assessment and Certificate. Written notice of the Annual Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments 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 or authorized agent 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 9. Remedies of the Association in the Event of Default. Subject to the limitations and requirements of Virginia Code Section 55-513, if any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the judgment rate provided for in the Code of Virginia. In addition, in its discretion, the Association may:

- (a) impose a penalty or late charge as previously established by rule;
- (b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;
- (c) suspend a Member's voting rights, right to hold an office within the Association, and right to use recreational facilities or nonessential services offered by the Association to the extent that access to the Member's Lot through the Common Area is not precluded. No assessment shall be refunded in the event of suspension; and
- (d) accelerate the due date of the unpaid assessment so that the entire balance shall become due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any properly recorded first trust or mortgage if such first trust or mortgage was recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of a first trust or mortgage, or any conveyance in lieu thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for or the lien of any assessments which thereafter become due or from the lien thereof.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, no land or improvements devoted to dwelling use shall be exempt from said assessments.

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Section 12. Reserves for Replacements. The Association shall establish and maintain a reserve fund for the maintenance, repair and replacement for those parts of the Common Area and improvements located thereon which may be replaced or require maintenance on a periodic basis by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual General Assessment. Such reserves shall be payable in regular installments rather than by Special Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to the underground storm sewer detention system, play equipment, sidewalks, parking areas, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

#### ARTICLE VI RESTRICTIVE COVENANTS

Section 1. The Property shall be used exclusively for residential purposes except as provided in Section 20 hereof. The Declarant reserves the right, for itself and any Participating Builder, pursuant to a recorded subdivision or resubdivision plat, to alter, amend, and change any lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate County authorities, for use solely by the occupant of the Dwelling Unit.

Section 2. No structure or addition to a structure shall be erected, placed, altered or externally improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate County authorities and, where required, appropriate construction permits obtained. "Structure" shall include, but not be limited to, any temporary or permanent building or portion thereof, storage shed, storage container, wall, deck, garden or yard decoration, play equipment, sign, greenhouse, skylight, solar panel, mailbox, fence, pool, pavement,

driveway or appurtenances to any of the aforementioned. If the structure is to be temporary, the amount of time desired shall be included in the application.

Section 3. No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 4. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 5. An Owner shall, at all times, maintain its property and all appurtenances thereto in good repair and in a state of neat appearance. All grassy areas of a lawn shall be kept mowed and shall not be permitted to grow beyond a reasonable height. Except as required for proper sight lines, no tree of a diameter of more than four (4) inches measured two (2) feet above ground level shall be removed without the approval of the Architectural Review Board. Any County-required approvals must also be obtained before the removal of a tree.

Section 6. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot.

Section 7. The only signs permitted on the Property shall be customary home and address signs, security system signs, and real estate sale or lease signs which have received the prior written approval of the Architectural Review Board ("**Permitted Signs**"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable.

Section 8. No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable governmental ordinances. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 9. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.



Section 10. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and screened from view; provided, however, that all such rules relating to antennae and satellite dishes shall not unreasonably delay installation, interfere with reception or increase the cost. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 11. No person shall paint or re-side the exterior of any building, or portion thereof, a color different than the original color of said building or portion thereof without the proposed color having been first approved in writing by the Architectural Review Board.

Section 12. The exteriors of all structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board of Directors in writing.

Section 13. No fence or enclosure shall be erected or built on any Lot until first approved in writing by the Architectural Review Board as to location, height, material and design. Any fence or wall built on any Lot shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property. No fence or wall shall be permitted within the ingress/egress and utility easements created in Article VIII, Section 10.

Section 14. No inoperable, junk, unregistered, unlicensed or uninspected vehicle shall be kept on the Property or on public streets within the development. No portion of the Property shall be used for the repair of a vehicle.

Section 15. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board. Commercial vehicles shall be deemed to include cars and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names or containing visible commercial materials.

Section 16. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, travel trailers, camping vehicles or camping equipment shall be

parked on the Property, other than within a garage, without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

Section 17. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 18. No garage shall be converted to living space or altered or used for purposes which would prevent the use of the garage for the parking of the intended number of vehicles for which it was constructed without the prior written approval of the Architectural Review Board and the County.

Section 19. Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of such documents shall be a default under the rental agreement, and the Owner shall be responsible for enforcing this provision.

Section 20. The provisions of this Article shall not apply to the development of or construction of improvements on the Property by the Declarant or a Participating Builder or their assigns. The Declarant or its assigns may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon.

Section 21. The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

## ARTICLE VII ARCHITECTURAL REVIEW BOARD

Section 1. Composition. The Architectural Review Board shall be comprised of three (3) or more members. Members shall serve staggered three (3) year terms as determined by the Board of Directors. As long as the Declarant or a Participating Builder owns a Lot within the Property, the Architectural Review Board shall consist of two (2) committees: the New Construction Committee and the Modification and Change Committee. When neither the Declarant nor a Participating Builder owns a Lot within the Property, the New Construction Committee shall be terminated.

Section 2. Method of Selection. The Developer shall appoint the persons to serve on the New Construction Committee. The Board of Directors shall appoint the persons to serve on the Modification and Change Committee. After the termination of the

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Class B membership, no member of the Modification and Change Committee may be a Director. The Developer may assign its rights under this Article to a Declarant or non-Declarant by a written assignment.

Section 3. Removal and Vacancies. Members of the Modification and Change Committee of the Architectural Review Board may be removed by the Board of Directors at any time with or without cause. Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment.

Section 4. Officers. At the first meeting of the Modification and Change Committee of the Architectural Review Board following each annual meeting of Members, the Modification and Change Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

Section 5. Duties. The Committees of the Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among structures and the natural vegetation and topography. During the period the Architectural Review Board is comprised of the two (2) committees described above, the New Construction Committee shall regulate all initial construction, development or improvements on the Property. The Modification and Change Committee shall regulate all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board shall:

- (a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;
- (b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;
- (c) adopt and publish architectural standards subject to the confirmation of the Board of Directors;
- (d) adopt procedures for the exercise of its duties; and
- (e) maintain complete and accurate records of all actions taken by the Architectural Review Board.

Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by applicable governmental authorities nor a waiver of the applicant's obligation to obtain any required governmental approvals or to comply with applicable local ordinances.

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Section 6. Failure to Act. In the event the Architectural Review Board fails to approve or disapprove a correctly filed application within forty-five (45) days of the receipt of the application sent by Registered Mail or Certified Mail-Return Receipt Requested, approval by the Architectural Review Board shall be deemed granted, except for those applications for additions or alterations prohibited by this Declaration or the architectural standards adopted by the Association, in which case no disapproval is necessary to uphold the prohibition. Failure of the Architectural Review Board or the Board of Directors to enforce the architectural standards or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of the enforcement of this Declaration at any later date.

Section 7. Enforcement. Any exterior addition, change or alteration made without application to, and approval of, the Architectural Review Board shall be deemed to be in violation of these covenants and may be required by the Board of Directors to be restored to its original condition at the offending Owner's sole cost and expense.

Section 8. Appeal. Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

#### ARTICLE VIII EASEMENTS

Section 1. The Declarant grants and the Association reserves a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

Section 2. When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of, any Owner or tenant directly affected.

Section 3. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any driveway which encroaches over a Lot's boundary line and draining of rainwater from roofs, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for both the encroachment and its maintenance for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the

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limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 4. The Declarant and Participating Builders and their agents and employees shall have a right of ingress and egress over the Common Area as required for construction on and development of the Property.

Section 5. Until all bonds posted by either the Declarant or a Participating Builder are released, there is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or a Participating Builder or their assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof.

Section 6. There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

Section 7. Until all bonds posted by either the Declarant or a Participating Builder are released, there is reserved to the Declarant a right to grant non-exclusive easements over all Lots and the Common Area for the purposes of correcting drainage, re-grading, maintenance, landscaping, mowing, erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and any other purposes the Declarant deems necessary or desirable for the development of the Property, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein.

Section 8. The Declarant grants a blanket easement to the Association and its agents and employees to enter upon the Lots to mow the grass and/or to care for, spray, trim, mulch or otherwise protect trees, shrubs and other landscaping on the Lots or specified parts thereof (e.g. front yards) if such is authorized by the Board of Directors.

Section 9. The Declarant grants the Association and its Members and their tenants and guests an ingress and egress easement over each community sidewalk located along the front of a Lot. The Declarant grants the Association a maintenance easement over and across each Lot over the seven feet (7') extending from the front Lot line for the maintenance of the sidewalks. Such Association maintenance shall not include snow removal. Snow removal shall be the responsibility of each homeowner

upon whose Lot a sidewalk is located and/or whose Lot abuts a sidewalk located on the Common Area.

Section 10. The Declarant grants the Association an ingress/egress and utility easement over the rear five feet (5') of **Lots 6 through 21 and Lots 29 through 42** for ingress and egress by the Members and for the installation and maintenance of utilities. The Association can assign the utility easement, in its sole discretion, to public or private utilities providing utility services to the Property. No fences, structures or other obstructions shall be constructed or placed within these easements.

#### ARTICLE IX PARKING

The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any parking areas that may be constructed or authorized on the Common Area for the benefit of the Owners, which rules and regulations may include assignment of parking spaces for visitors and/or to Lots, which need not be assigned to all Lots and need not be the same number of spaces to each Lot, and the towing of any vehicles parked in violation of such assignment, in fire lanes and in designated "No Parking" spaces, with no notice of towing required and at the vehicle owner's sole expense.

#### ARTICLE X 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 Property and placed on the dividing line between 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 and Destruction by Fire or Other Casualty. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly, in proportion to their respective uses of the party wall.

Section 3. Repairs for Damage Caused by One Owner. If any such party wall is damaged or destroyed through the act of one adjoining Owner, its agents, family, household or guest, whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the former shall forthwith proceed to rebuild and repair the same to as good a condition as formerly, without cost to the adjoining Owner.

Section 4. Other Changes. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of the request, such consent of the adjoining Owner shall be deemed received.

Section 5. Fences and other Barriers. The provisions of this Article pertaining to party walls shall also govern any fence, other barrier or shared improvement originally installed by the Declarant or Participating Builder (except for fences or barriers installed in connection with construction activities) and to any replacement thereof authorized by the Board of Directors or the Architectural Review Board; otherwise the maintenance of any fence, other barrier or improvement shall be the responsibility of the Owner installing such fence, barrier or improvement unless different arrangements are agreed to by the adjoining Owner.

Section 6. Right to Contribution Runs with the 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 7. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

## ARTICLE XI POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Discretionary Powers and Duties. The Board of Directors, on behalf of the Association, shall have all powers for the conduct of the affairs of the Association which are enabled by law and not specifically reserved to Members or the Declarant, including but not limited to the following powers and duties, which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall

have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

(b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, structures or facilities which may exist or be erected from time to time on the Common Area;

(c) to build facilities upon the Common Area;

(d) to use the Common Area and any improvements, structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(e) to mow and re-sow the grass and to care for, spray, trim, protect, plant and replant trees, shrubs and other landscaping on the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order;

(f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article entitled "Easements" herein;

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(h) to create subsidiary corporations in accordance with Virginia law;

(i) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(j) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(k) to enter (or have the Association's agents or employees enter) on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, and to assess the Owner of the Lot the



costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in the Article entitled "Creation of the Lien and Personal Obligation of Assessments" herein;

(l) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in the Article entitled "Creation of the Lien and Personal Obligation of Assessments" herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry;

(m) to resubdivide and/or adjust the boundary lines of the Common Area but only to the extent such resubdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(n) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to (i) suspend the voting rights and/or the right to run for office within the Association for any period during which any assessment against such Member's Lot remains unpaid, (ii) suspend a Member's right to use facilities or services, including utility services, provided directly through the Association for nonpayment of assessments, to the extent that access to the Lot through the Common Areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (iii) assess charges against any Member for any violation of the Declaration or rules and regulations for which the Member or its family members, tenants, guests or other invitees are responsible;

(o) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(p) to mow the grass and/or to care for, spray, trim, mulch or otherwise protect trees, shrubs and other landscaping on the Lots or specified parts thereof (e.g. front yards).

Section 2. Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to the Declarant, a Participating Builder or to another entity at the direction of the Declarant, for the purpose of adjusting boundary lines, dedicating the Common Area for public purposes, or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such resubdivision, adjustment, dedication or conveyance does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall, at a minimum, be equal to the sum of three (3) months' Annual Assessment of all Lots in the Property plus the Association's reserve funds, if any;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area and easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance of any and all (i) improvements, structures or facilities which may exist or be erected from time to time on the Common Area, including but not limited to underground storm sewer detention system, tot lot, bike trail, street lights (including the payment of utility costs therefor), recreational facilities, entrance ways and entrance areas, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (iv) street lights, sidewalks and landscaping that may be constructed within the rights-of-way of any public streets within or adjacent to the Property and which the Commonwealth of Virginia or the County requires the Association to maintain (including the payment of utility costs therefor);

(f) to pay all proper bills, taxes, charges and fees on a timely basis; and

(g) to maintain its corporate status.

Section 3. Board Authority to Act. Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the

contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the By-Laws.

Section 4. Litigation. No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Members entitled to cast at least seventy-five percent (75%) of the votes of the Class A Members and the consent of the Class B Member, if one exists. This section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, a suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration or to foreclose a lien for unpaid assessments), or (b) counterclaims brought by the Association in proceedings instituted against it, or (c) claims the Association is required to bring pursuant to an insurance contract, or (d) actions against a contractor for the breach of the contract.

## ARTICLE XII RIGHTS OF MORTGAGEES

All Mortgagees shall have the following rights:

Section 1. Notice. A Mortgagee shall be given written notice from the Association of the following:

(a) any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot that is the security for the indebtedness due the Mortgagee;

(b) any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default;

(c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association

(d) any proposed action that would require the consent of a specified percentage of Mortgagees.

Section 2. Unpaid Assessments. Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust or foreclosure of the mortgage or deed of trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

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Section 3. Books and Records. A Mortgagee shall have the right to examine and copy at its expense the books and records of the Association during normal business hours and upon reasonable notice to the Association.

ARTICLE XIII  
GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 2. Severability; Headings; Conflict. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation or the By-Laws and this Declaration, the Declaration shall control.

Section 3. Duration; Amendment. The covenants and restrictions of this Declaration shall run with and bind 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, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each. The covenants and restrictions of this Declaration may be amended in whole or in part with the assent of more than two-thirds (2/3) of the votes of the Members. Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 4. Special Amendment. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration to make any amendment (a) as it deems necessary to make a non-material, clarifying or corrective change, or (b) required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by a local governmental

agency, as a condition of the approval of this Declaration or any subdivision documents, plats or plans, or (c) it deems necessary or desirable for the development of the Property or the administration of the Association, by the execution and recordation of such amendment, and shall give written notice to the Members of any amendments made pursuant to clauses (b) or (c). This right of the Declarant to amend this Declaration as aforesaid shall survive the termination of the Class B membership.

Section 5. Waiver. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered.

Section 6. Annexation of Additional Property. So long as there is a Class B Member, the Declarant may annex additional areas and provide for maintenance, preservation and architectural control of Lots and Common Area within such areas. After the termination of the Class B membership, the Association may annex additional areas and provide for maintenance, preservation and architectural control of Lots and Common Area within such areas, and so may add to its membership under the provisions of the Article entitled "Membership" herein, with the written consent of at least sixty-seven percent (67%) of the Class A Members.

Section 7. Withdrawable Real Estate.

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members, the Association, any Mortgagee, or any other entity, to execute and record an amendment to this Declaration withdrawing any portion of the Property; provided, however, that not more than five (5) years have lapsed since the date such property was subjected to this Declaration.

(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 8. Management Contracts. For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

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Section 9. Dissolution. The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Title 13.1, Chapter 10, Article 13 of the Code of Virginia.

[SIGNATURE PAGE FOLLOWS]

WITNESS the following signatures and seals:

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THE RYLAND GROUP, INC.  
a Maryland corporation

By: [Signature] (SEAL)  
Name: John Dec  
Title: Assistant Vice President

HAMILTON COURT HOMEOWNERS ASSOCIATION  
a Virginia non-stock corporation

By: [Signature] (SEAL)  
Name: David A. Ostrander  
Title: President

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 13 day  
of December, 2005 by John Dec as Assistant Vice President of  
The Ryland Group, Inc.

[Signature]  
Notary Public

My commission expires: October 31, 2008

COMMONWEALTH OF VIRGINIA,  
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 13 day  
of December, 2005 by David Ostrander as President of  
Hamilton Court Homeowners Association.

[Signature]  
Notary Public

My commission expires: October 31, 2008

StoRylandHamilton CourtDeclaration X. (12/11/05)

VIRGINIA: FREDERICK COUNTY, SCT.

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This instrument of writing was produced to me on

12-13-05 at 11:48 am  
and with certificate of acknowledgement thereto annexed  
was admitted to record. Tax imposed by Sec. 58.1-802 of

§ 114, and 58.1-801 have been paid, if assessable

[Signature], Clerk