

**BY-LAWS OF  
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **HUPP'S RIDGE HOMEOWNERS ASSOCIATION** (the "**Association**"). The principal office of the Association shall be located at 205 N. Cameron Street, Winchester, Virginia 22601, but meetings of Members and directors may be held at such places within the Commonwealth of Virginia as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

All words defined in the Declaration of Covenants, Conditions and Restrictions applicable to the Property, which Declaration has been or shall be recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, or in the Articles of Incorporation of the Association, shall have the same definitions when used herein.

**ARTICLE III  
MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the Members shall be held after the termination of the Class B membership and each subsequent regular annual meeting of the Members shall be held approximately twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president of the Association, the Board of Directors, or upon written request of Members who are entitled to vote at least one-fourth (1/4) of all of the votes of either class of Members. Only business within the purpose or purposes described in the written notice of special meeting may be conducted at the special meeting of the Members.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting, by delivering or mailing a copy of such notice, postage prepaid, at least fifteen (15) but no more than sixty (60) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Waiver of Notice. A Member may waive any notice required by the Articles of Incorporation of the Association, these By-Laws or the Virginia Non-Stock Corporation Act (the "**Act**") before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the Member entitled to such notice and be delivered to the Secretary for inclusion in the minutes or filing with the Association's records. A Member who attends a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 5. Quorum. The presence at the meeting of Members or their proxies entitled to cast at least ten percent (10%) of the votes of each class of Members shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting and to call another meeting without notice other than announcement at the meeting prior to adjournment, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, in the form required by law, and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

Section 7. Action Taken without Meeting. Action required or permitted pursuant to the Act to be taken at a meeting of the Members may be taken without a meeting and without action of the Board if the action is evidenced by written consent describing the action taken, signed by all of the Members entitled to vote on the action and delivered to the Secretary for inclusion in the minutes of the meeting or filing with the Association's records in accordance with Section 13.1-841 of the Act.

#### ARTICLE IV BOARD OF DIRECTORS; SELECTION; OFFICE

Section 1. Number and Qualification. The affairs of this Association shall be managed by a Board of Directors (the "**Board**") who need not be Members. No Member whose Lot's Assessment (as defined in the Declaration) is more than thirty (30) days past due shall be eligible to be a Director. Any Director whose Lot's Assessment is more than thirty (30) days past due shall be subject to removal by a majority vote of the other

Directors. The initial Directors shall be appointed by the Declarant' or its designee, and shall serve until the first annual meeting of Members after the termination of the Class B membership. The initial number of Directors shall be three (3), which number may be increased to five (5) by a majority vote of the Directors so long as there is a Class B membership, or after the termination of the Class B membership may be changed in accordance with the Act.

Section 2. Election. At the first annual meeting of Members after the termination of the Class B membership, the Members shall elect one (1) director for a term of one (1) year; one (1) director for a term of two (2) years; and one (1) director for a term of three (3) years; and, as the terms of such directors expire, new directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 3. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee, if one is formed. Nominations may also be made from the floor at the annual meeting. If a Nominating Committee is created, it shall consist of a Chairperson, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors sixty (60) to ninety (90) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 4. Replacement. Any Director may be removed from the Board in accordance with Section 13.1-860 of the Act, with or without cause, by a majority vote of the Members in accordance with Virginia law. In the event of death, resignation or removal of a Director, that Director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 5. Compensation. No Director shall receive compensation for any service he/she may render to the Association in his/her capacity as a Director. However, any Director may be reimbursed for his/her actual, reasonable expenses incurred in the performance of his/her duties as a Director, as permitted by Virginia law.

Section 6. Action Taken Without a Meeting. The Board shall have the right, in the absence of a meeting, to take any action which they could take at a meeting by obtaining the written approval of all of the Directors in accordance with Virginia law. Any action so taken shall have the same effect as though taken at a meeting of the Board.

Section 7. Indemnification. Each Director, in consideration of his/her services as such, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he/she may be a party by reason of his/her past or present role in the Association, unless such action was a result of gross neglect or willful misconduct of the Director.

## ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held on a regular basis and at least four (4) times per year without notice and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to exercise for the Association all powers, duties and authority vested in or delegated to the Association, not reserved to the Members by other provisions of these By-Laws, the Articles of Incorporation or the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) to cause to be kept a complete written record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting, when such statement is requested in writing by at least one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) to supervise all officers, agents and employees of the Association in the performance of their respective duties;

(c) as more fully provided herein and in the Declaration:

(i) to fix the amount of the Assessments (as defined in the Declaration) against each Lot at least thirty (30) days in advance of the annual assessment period; and

(ii) to send or cause to be sent written notice of each such Assessment to every Owner subject thereto at least thirty (30) days in advance of the annual assessment period;

(d) at the request of a Member or Mortgagee, to issue, or cause an appropriate officer or authorized agent to issue, a certificate setting forth whether any such Assessment has been paid. A reasonable charge may be made by the Board for the issuance of such a certificate. Such certificate shall be conclusive evidence that any Assessment therein stated to have been paid has been paid.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice-president, who shall at all times be a member of the Board of Directors, a secretary, and a treasurer and such other officers as the Board may elect from time to time.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, be removed or otherwise be disqualified or unable to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall be effective on the date of receipt of such notice or at any later date and time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies: A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President: The President shall preside at all meetings of the Board of Directors, see that orders and resolutions of the Board are carried out, and sign all contracts, leases, mortgages, promissory notes, deeds and other written instruments on behalf of the Association;

(b) Vice President: The Vice President shall act in the place and stead of the President in the event of the latter's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the Association and affix it to all papers requiring said seal, serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members, together with their addresses, and perform such other duties as required by the Board;

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors, sign all checks of the Association, keep proper books of account, cause an audit of the Association books to be made by a public accountant if so required by a Mortgagee, and prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

Section 9. Delegation. The officers may delegate any of their duties to an agent hired for that purpose.

## ARTICLES VIII COMMITTEES

The Board of Directors shall appoint an Architectural Review Board as provided in the Declaration and may appoint a Nominating Committee as provided in these By-Laws.

In addition, the Board of Directors may appoint other committees as it deems appropriate in carrying out its responsibilities. It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

**ARTICLE IX**  
**BOOKS AND RECORDS**

The books, records and papers of the Association shall be subject to inspection by any Member or Mortgagee at the principal office of the Association during reasonable business hours. Copies may be purchased at a reasonable cost.

**ARTICLE X**  
**CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the name of the Association.

**ARTICLE XI**  
**AMENDMENTS**

These By-Laws may be amended at a duly noticed regular or special meeting of the Members where a quorum is present by a majority vote of Members entitled to vote and voting at the meeting in person or by proxy.

**ARTICLES XII**  
**SPECIAL AMENDMENTS**

Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these By-Laws to make any amendment required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by the Town of Strasburg, Virginia, as a condition of the approval of these By-Laws, and shall give written notice of any such amendments to the Members.

**ARTICLE XIII**  
**MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation of the Association. The dates fixing the fiscal year may be adjusted at the discretion of the Board.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

IN WITNESS WHEREOF, we, being all of the initial Directors of Hupp's Ridge Homeowners Association, have hereunto set our hands this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
David B. Holliday, Director

\_\_\_\_\_  
Davina D. Kline, Director

\_\_\_\_\_  
Jennifer H. Loy, Director



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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### HUPP'S RIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "**Declaration**") is made as of \_\_\_\_\_, 2003 by and between **TRI-L DRD, L.L.C.**, a Virginia limited liability company (the "**Declarant**"); and **HUPP'S RIDGE HOMEOWNERS ASSOCIATION**, a Virginia non-stock corporation (the "**Association**").

#### **RECITALS:**

A. The Declarant is the owner of **Lots 1 through 29 and Lots 31 through 127, HUPP'S RIDGE** as the same are duly subdivided, platted and recorded by the Deed of Dedication (the "**Deed of Dedication**") recorded in Deed Book 1037 at Page 362 among the Shenandoah County, Virginia land records.

B. The Association is the owner of **Lot 30 and Parcels A through F, HUPP'S RIDGE** as the same are duly subdivided, platted and recorded by the Deed of Dedication.

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 or intends to incorporate as a non-stock corporation under the laws of the Commonwealth of Virginia, **HUPP'S RIDGE HOMEOWNERS ASSOCIATION** for the purpose of exercising the functions of the Association.

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. "**Association**" shall mean and refer to Hupp's Ridge Homeowners Association, a Virginia non-stock corporation, its successors and assigns.

Section 2. "**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 3. "**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 4. "**Declarant**" shall mean and refer to TRI-J DRD, L.L.C. and its successors or assigns (i) to whom TRI-J DRD, L.L.C. 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 5. "**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 Shenandoah County, Virginia.

Section 6. "**Developer**" shall mean and refer to TRI-J DRD, L.L.C. and its assignees if such assignees receive a written assignment from the Developer.

Section 7. "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 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 8. "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 9. "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 10. "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 11. "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 12. "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 13. "Property" shall mean and refer to that certain real property described as **Lots 1 through 27 and Parcels A through F, HUPP'S RIDGE** as duly subdivided, platted and recorded by the Deed of Dedication, 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 One Hundred Twenty-Eight (128) 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) when neither the Declarant nor a Participating Builder owns a Lot within 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, and 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 One Hundred Twenty-Eight (128) 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) when neither the Declarant nor a Participating Builder owns a Lot within 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;

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

(c) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and facilities, including, without limitation, the imposition of fines for the violation thereof;

(d) the right of the Association, subject to the limitations and requirements of Virginia Code Section 55-513, to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any 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, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(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 of the Association, and consistent with the then-existing zoning ordinances of the Town of Strasburg, Virginia (the "**Town**") and its designation of the Common Area as "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, 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 Town 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;

(i) the right of the Declarant, a Participating Builder or the Association to resubdivide and/or adjust the boundary lines of the Common Area as they deem 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; and

(l) the right of the Declarant, a Participating Builder or the Association to dedicate the Common Area or portions thereof to the Town or Commonwealth for public street purposes.

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, including the maintenance of the areas within the Parking Easements as shown on the subdivision plat (the "**Subdivision Plat**") attached to the Deed of Dedication, and for such other purposes as the Board of Directors may determine to be appropriate.

Section 3. Annual 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.

(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 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 residential use permit has been issued, the purchaser of such Lot shall pay to the Association a one-time working capital assessment of **One Hundred Fifty Dollars (\$150.00)**. 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.

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.

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 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 19 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 Town 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 Town authorities and, where required, appropriate construction permits obtained. "Structure" shall include, but not be limited to, any building or portion thereof, storage shed, wall, deck, play equipment, greenhouse, skylight, solar panel, fence, pool, pavement, driveway or appurtenances to any of the aforementioned.

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.

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 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 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.

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. 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 19. The provisions of this Article shall not apply to the development of or construction of improvements on the Property by the Declarant, a Participating Builder or their assigns. The Declarant, a Participating Builder or their assigns may, during their 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 20. 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 any 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 own 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 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.

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, a Participating Builder or their 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 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, 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. So long as the Declarant or a Participating Builder owns a Lot within the Property, there is reserved to the Declarant and Participating Builders 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, 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 and Participating Builders 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, the acceptance of public streets for state maintenance with respect to the Property, or to provide public or private utilities to adjacent property that may be necessary or desirable for the development of such property.

Section 7. So long as the Declarant or a Participating Builder owns a Lot within the Property, there is reserved to the Declarant and Participating Builder a non-exclusive easement over all Lots and the Common Area for the purposes of correcting drainage, re-grading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein.

ARTICLE IX  
PARKING

All Owners shall have a parking easement over the Lots in the areas labeled "**Parking Easement**" on the Subdivision Plat. The Association shall maintain the areas within the Parking Easements in a safe and good condition. 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 or within the Parking Easements shown on the Subdivision Plat for the benefit of the Owners, which rules and regulations may include assignment of parking spaces for Owners and/or visitors 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 Articles 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 suspend a Member's voting rights and the Member's right to use recreational facilities or non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations, as provided for in the Virginia Property Owners Association Act; and

(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.

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 or a Participating Builder or to another entity at the direction of the Declarant or a Participating Builder, 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, including the area within Parking Easements as shown on the Subdivision Plat, 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. The Association shall have the owners of Lots named as additional insureds for the coverage of the Parking Easement areas;

(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 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, including the areas within the Parking Easements as shown on the Subdivision Plat, (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 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 Town 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. 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.

Section 4. 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.

## 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.

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 fifty percent (50%) 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 required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by the applicable local governmental agencies, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

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 or any Mortgagee, 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.

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:

TRI-J DRD, L.L.C.  
a Virginia limited liability company

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HUPP'S RIDGE HOMEOWNERS ASSOCIATION  
a Virginia non-stock corporation

By: \_\_\_\_\_ (SEAL)  
Name: David B. Holliday  
Title: President

COMMONWEALTH OF VIRGINIA,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by \_\_\_\_\_ as  
\_\_\_\_\_ of TRI-J DRD, L.L.C.

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

My commission expires: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by David B. Holliday as President of Hupp's  
Ridge Homeowners Association.

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

My commission expires: \_\_\_\_\_

Sto\Ryland\Hupp's Ridge\Declaration X (12/04/03)

**ARTICLES OF INCORPORATION  
OF  
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

In compliance with the requirements of Chapter 10 of Title 13.1 of the Code of Virginia (the "**Act**"), the undersigned hereby forms a non-stock corporation, not for profit, and certifies:

**ARTICLE I**

The name of the corporation is **Hupp's Ridge Homeowners Association** (the "**Association**").

**ARTICLE II**

The principal office of the Association is located at 205 N. Cameron Street, Winchester, Virginia 22601, in the City of Winchester, Virginia.

**ARTICLE III**

The Association's initial registered office is located at 205 N. Cameron Street, Winchester, Virginia 22601 in the City of Winchester, Virginia. David B. Holliday, who is a resident of Virginia and a director of the corporation and whose business address is the same as that for the registered office, is the initial registered agent of the Association.

**ARTICLE IV**

**PURPOSE AND POWERS OF THE ASSOCIATION**

The Association does not contemplate pecuniary gain or profit to its members, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of residential lots, and to own, improve, maintain and preserve the Common Area within the Hupp's Ridge Subdivision in the Town of Strasburg, Virginia, and to promote the health, safety and welfare of the owners and residents within such areas as may come within the jurisdiction of the Association and any additions thereto as may be brought within the jurisdiction of the Association by annexation, as provided for herein, and for these purposes shall have the power:

1. to exercise all of the powers, rights and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration of Covenants, Conditions and Restrictions for the Association, recorded or to be recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, and as the same may be amended from time to time (the "**Declaration**"), and as set forth in the By-Laws of the Association, said Declaration and By-Laws being incorporated herein by reference;

2. to fix, levy, collect, and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses including all licenses, taxes, or governmental charges levied or imposed against the Association or the property of the Association;

3. to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, encumber, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property;

4. to borrow money;

5. to build facilities upon land owned or controlled by the Association;

6. to create subsidiary corporations in accordance with Virginia law; and

7. to have and to exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

#### ARTICLE V MEMBERSHIP

Every Owner (as defined in the Declaration) of a Lot (as defined in the Declaration) 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 VI VOTING RIGHTS

Section 1. 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 One Hundred Twenty-Eight (128) 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 the Declaration;

- (b) when neither the Declarant nor a Participating Builder owns a Lot within 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 the Declaration, and 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 One Hundred Twenty-Eight (128) plus the number of Lots annexed 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) when neither the Declarant nor a Participating Builder owns a Lot within 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 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.

## ARTICLE VII BOARD OF DIRECTORS

The affairs of the Association shall be managed by a board of directors, who need not be members of the Association. The initial number of directors shall be three (3), which number may be increased to as many as five (5) or to another number pursuant to the Association's By-Laws. The names of the persons who are to act in the capacity of the initial board of directors of the Association until the selection of their successors are David B. Holliday, Davina D. Kline and Jennifer H. Loy.

At the first annual meeting of Members after the termination of the Class B membership, the Members shall select one (1) director for a term of one (1) year; one (1)

director for a term of two (2) years; and one (1) director for a term of three (3) years; and as the terms of such directors expire, new directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each.

ARTICLE VIII  
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 Article 13 of the Act.

ARTICLE IX  
DURATION

The Association shall exist perpetually.

ARTICLE X  
AMENDMENTS

Amendment of these Articles shall require the assent of at least sixty-seven percent (67%) of the Members in accordance with the statutory requirements of the Act and any approvals required by these Articles.

ARTICLE XI  
SPECIAL AMENDMENTS

Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these Articles to make any amendment required by any of the federal mortgage agencies such as the Veterans Administration, the Federal Housing Administration, Fannie Mae or Freddie Mac, or by the applicable local governmental agencies, as a condition of the approval of these Articles, by the filing of Articles of Amendment with the Virginia State Corporation Commission following notice to all Members.

ARTICLE XII  
CONFLICT

In the case of any conflict between the Declaration and these Articles, the Declaration shall control, and in the case of any conflict between the By-Laws and these Articles, these Articles shall control.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sara T. O'Hara, Incorporator

**BY-LAWS OF  
HUPP'S RIDGE HOMEOWNERS ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **HUPP'S RIDGE HOMEOWNERS ASSOCIATION** (the "**Association**"). The principal office of the Association shall be located at 205 N. Cameron Street, Winchester, Virginia 22601, but meetings of Members and directors may be held at such places within the Commonwealth of Virginia as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

All words defined in the Declaration of Covenants, Conditions and Restrictions applicable to the Property, which Declaration has been or shall be recorded in the Office of the Clerk of the Circuit Court of Shenandoah County, Virginia, or in the Articles of Incorporation of the Association, shall have the same definitions when used herein.

**ARTICLE III  
MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the Members shall be held after the termination of the Class B membership and each subsequent regular annual meeting of the Members shall be held approximately twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president of the Association, the Board of Directors, or upon written request of Members who are entitled to vote at least one-fourth (1/4) of all of the votes of either class of Members. Only business within the purpose or purposes described in the written notice of special meeting may be conducted at the special meeting of the Members.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting, by delivering or mailing a copy of such notice, postage prepaid, at least fifteen (15) but no more than sixty (60) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.



Section 4. Waiver of Notice. A Member may waive any notice required by the Articles of Incorporation of the Association, these By-Laws or the Virginia Non-Stock Corporation Act (the "**Act**") before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the Member entitled to such notice and be delivered to the Secretary for inclusion in the minutes or filing with the Association's records. A Member who attends a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 5. Quorum. The presence at the meeting of Members or their proxies entitled to cast at least ten percent (10%) of the votes of each class of Members shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting and to call another meeting without notice other than announcement at the meeting prior to adjournment, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, in the form required by law, and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

Section 7. Action Taken without Meeting. Action required or permitted pursuant to the Act to be taken at a meeting of the Members may be taken without a meeting and without action of the Board if the action is evidenced by written consent describing the action taken, signed by all of the Members entitled to vote on the action and delivered to the Secretary for inclusion in the minutes of the meeting or filing with the Association's records in accordance with Section 13.1-841 of the Act.

#### ARTICLE IV BOARD OF DIRECTORS; SELECTION; OFFICE

Section 1. Number and Qualification. The affairs of this Association shall be managed by a Board of Directors (the "**Board**") who need not be Members. No Member whose Lot's Assessment (as defined in the Declaration) is more than thirty (30) days past due shall be eligible to be a Director. Any Director whose Lot's Assessment is more than thirty (30) days past due shall be subject to removal by a majority vote of the other

Directors. The initial Directors shall be appointed by the Declarant' or its designee, and shall serve until the first annual meeting of Members after the termination of the Class B membership. The initial number of Directors shall be three (3), which number may be increased to five (5) by a majority vote of the Directors so long as there is a Class B membership, or after the termination of the Class B membership may be changed in accordance with the Act.

Section 2. Election. At the first annual meeting of Members after the termination of the Class B membership, the Members shall elect one (1) director for a term of one (1) year; one (1) director for a term of two (2) years; and one (1) director for a term of three (3) years; and, as the terms of such directors expire, new directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 3. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee, if one is formed. Nominations may also be made from the floor at the annual meeting. If a Nominating Committee is created, it shall consist of a Chairperson, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors sixty (60) to ninety (90) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 4. Replacement. Any Director may be removed from the Board in accordance with Section 13.1-860 of the Act, with or without cause, by a majority vote of the Members in accordance with Virginia law. In the event of death, resignation or removal of a Director, that Director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 5. Compensation. No Director shall receive compensation for any service he/she may render to the Association in his/her capacity as a Director. However, any Director may be reimbursed for his/her actual, reasonable expenses incurred in the performance of his/her duties as a Director, as permitted by Virginia law.

Section 6. Action Taken Without a Meeting. The Board shall have the right, in the absence of a meeting, to take any action which they could take at a meeting by obtaining the written approval of all of the Directors in accordance with Virginia law. Any action so taken shall have the same effect as though taken at a meeting of the Board.

Section 7. Indemnification. Each Director, in consideration of his/her services as such, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he/she may be a party by reason of his/her past or present role in the Association, unless such action was a result of gross neglect or willful misconduct of the Director.

#### ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held on a regular basis and at least four (4) times per year without notice and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

#### ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to exercise for the Association all powers, duties and authority vested in or delegated to the Association, not reserved to the Members by other provisions of these By-Laws, the Articles of Incorporation or the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) to cause to be kept a complete written record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting, when such statement is requested in writing by at least one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) to supervise all officers, agents and employees of the Association in the performance of their respective duties;

- (c) as more fully provided herein and in the Declaration:
- (i) to fix the amount of the Assessments (as defined in the Declaration) against each Lot at least thirty (30) days in advance of the annual assessment period; and
  - (ii) to send or cause to be sent written notice of each such Assessment to every Owner subject thereto at least thirty (30) days in advance of the annual assessment period;
  - (d) at the request of a Member or Mortgagee, to issue, or cause an appropriate officer or authorized agent to issue, a certificate setting forth whether any such Assessment has been paid. A reasonable charge may be made by the Board for the issuance of such a certificate. Such certificate shall be conclusive evidence that any Assessment therein stated to have been paid has been paid.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice-president, who shall at all times be a member of the Board of Directors, a secretary, and a treasurer and such other officers as the Board may elect from time to time.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, be removed or otherwise be disqualified or unable to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall be effective on the date of receipt of such notice or at any later date and time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies: A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President: The President shall preside at all meetings of the Board of Directors, see that orders and resolutions of the Board are carried out, and sign all contracts, leases, mortgages, promissory notes, deeds and other written instruments on behalf of the Association;

(b) Vice President: The Vice President shall act in the place and stead of the President in the event of the latter's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the Association and affix it to all papers requiring said seal, serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members, together with their addresses, and perform such other duties as required by the Board;

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors, sign all checks of the Association, keep proper books of account, cause an audit of the Association books to be made by a public accountant if so required by a Mortgagee, and prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

Section 9. Delegation. The officers may delegate any of their duties to an agent hired for that purpose.

## ARTICLES VIII COMMITTEES

The Board of Directors shall appoint an Architectural Review Board as provided in the Declaration and may appoint a Nominating Committee as provided in these By-Laws.

In addition, the Board of Directors may appoint other committees as it deems appropriate in carrying out its responsibilities. It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

#### ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall be subject to inspection by any Member or Mortgagee at the principal office of the Association during reasonable business hours. Copies may be purchased at a reasonable cost.

#### ARTICLE X CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the name of the Association.

#### ARTICLE XI AMENDMENTS

These By-Laws may be amended at a duly noticed regular or special meeting of the Members where a quorum is present by a majority vote of Members entitled to vote and voting at the meeting in person or by proxy.

#### ARTICLES XII SPECIAL AMENDMENTS

Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these By-Laws to make any amendment required by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by the Town of Strasburg, Virginia, as a condition of the approval of these By-Laws, and shall give written notice of any such amendments to the Members.

#### ARTICLE XIII MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation of the Association. The dates fixing the fiscal year may be adjusted at the discretion of the Board.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

IN WITNESS WHEREOF, we, being all of the initial Directors of Hupp's Ridge Homeowners Association, have hereunto set our hands this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
David B. Holliday, Director

\_\_\_\_\_  
Davina D. Kline, Director

\_\_\_\_\_  
Jennifer H. Loy, Director

**CONSENT AND PARTIAL RELEASE**

THIS CONSENT AND PARTIAL RELEASE is made as of \_\_\_\_\_, 2003 by **TRI-J DRD, L.L.C.**, a Virginia limited liability company (the "Owner"), Grantor (for indexing purposes only); **HUPP'S RIDGE HOMEOWNERS ASSOCIATION**, a Virginia non-stock corporation (the "Association"), Grantor (for indexing purposes only); **RON F. MILLER, TRUSTEE** and **CYNTHIA J. LAYMAN, TRUSTEE** (the "Trustees"), Grantor; and **SHENANDOAH VALLEY NATIONAL BANK** (the "Lender"), Grantor.

**RECITALS:**

A. The Owner is the owner of **Lots 1 through 29 and Lots 31 through 127, HUPP'S RIDGE** (the "**Lots**") as the same are duly subdivided, platted and recorded by the Deed of Dedication (the "**Deed of Dedication**") recorded in Deed Book 1037 at Page 362 among the Shenandoah County, Virginia land records (the "**Land Records**").

B. The Association is the owner of **Lot 30 and Parcels A through F, HUPP'S RIDGE** (the "**Common Area**") as the same are duly subdivided, platted and recorded by the Deed of Dedication. The Lots and the Common Area are sometimes collectively referred to herein as the "**Property**".

C. The Property is subject to the Declaration of Covenants, Conditions and Restrictions recorded immediately prior hereto (the "**Declaration**").

D. The Property is subject to the lien of the deed of trust recorded in Deed Book 1053 at Page 451 (the "**Deed of Trust**"), whereby the Property was conveyed to the Trustees, to hold in trust for the benefit of the Lender.

E. The parties desire and intend that the Trustees release the Common Area from the lien of the Deed of Trust and consent to the subjection of the Property to the Declaration.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Trustees, authorized to act by the Lender as evidenced by its signature hereto, hereby release the Common Area from the lien of the Deed of Trust and consent to the subjection of the Property to the Declaration.

TO HAVE AND TO HOLD the Common Area unto the Association, fully released and discharged from the lien and operation of the Deed of Trust.

It is expressly understood that this release shall not affect the lien of the Deed of Trust upon the other land conveyed by the Deed of Trust and not released hereby, and the Deed of Trust shall remain in full force and effect as to that land conveyed and not released hereby.

[SIGNATURE PAGES FOLLOW]

**O'HARA & O'HARA, PLC**  
131 E. Broad Street, Suite 208  
Falls Church, Virginia 22046



IN WITNESS WHEREOF, the Trustees and Lender have, signed, sealed and delivered these presents as their own free act and deed.

TRUSTEES:

\_\_\_\_\_  
RON F. MILLER, TRUSTEE (SEAL)

\_\_\_\_\_  
CYNTHIA J. LAYMAN, TRUSTEE (SEAL)

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by Ron F. Miller, Trustee.

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

My commission expires: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by Cynthia J. Layman, Trustee.

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

My commission expires: \_\_\_\_\_

LENDER:

SHENANDOAH VALLEY NATIONAL BANK

By: \_\_\_\_\_(SEAL)

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by \_\_\_\_\_ as \_\_\_\_\_ of Shenandoah Valley National Bank.

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

My commission expires: \_\_\_\_\_

## CONSENT AND PARTIAL RELEASE

THIS CONSENT AND PARTIAL RELEASE is made as of \_\_\_\_\_, 2003 by **TRI-J DRD, L.L.C.**, a Virginia limited liability company (the "Owner"), Grantor (for indexing purposes only); **HUPP'S RIDGE HOMEOWNERS ASSOCIATION**, a Virginia non-stock corporation (the "Association"), Grantor (for indexing purposes only); **DONALD L. UNGER, TRUSTEE** and **MICHAEL L. BRYAN, TRUSTEE** (the "Trustees"), Grantor; and **MARATHON BANK** (the "Lender"), Grantor.

### RECITALS:

A. The Owner is the owner of **Lots 1 through 29 and Lots 31 through 127, HUPP'S RIDGE** (the "**Lots**") as the same are duly subdivided, platted and recorded by the Deed of Dedication (the "**Deed of Dedication**") recorded in Deed Book 1037 at Page 362 among the Shenandoah County, Virginia land records (the "**Land Records**").

B. The Association is the owner of **Lot 30 and Parcels A through F, HUPP'S RIDGE** (the "**Common Area**") as the same are duly subdivided, platted and recorded by the Deed of Dedication. The Lots and the Common Area are sometimes collectively referred to herein as the "**Property**".

C. The Property is subject to the Declaration of Covenants, Conditions and Restrictions recorded immediately prior hereto (the "**Declaration**").

D. The Property is subject to the lien of the deed of trust recorded in Deed Book 1015 at Page 112 and modified in Deed Book 1031 at Page 604 among the Land Records (collectively, the "**Deed of Trust**"), whereby the Property was conveyed to the Trustees, to hold in trust for the benefit of the Lender.

E. The parties desire and intend that the Trustees release the Common Area from the lien of the Deed of Trust and consent to the subjection of the Property to the Declaration.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Trustees, authorized to act by the Lender as evidenced by its signature hereto, hereby release the Common Area from the lien of the Deed of Trust and consent to the subjection of the Property to the Declaration.

TO HAVE AND TO HOLD the Common Area unto the Association, fully released and discharged from the lien and operation of the Deed of Trust.

It is expressly understood that this release shall not affect the lien of the Deed of Trust upon the other land conveyed by the Deed of Trust and not released hereby, and the Deed of Trust shall remain in full force and effect as to that land conveyed and not released hereby.

[SIGNATURE PAGES FOLLOW]

**O'HARA & O'HARA, PLC**  
131 E. Broad Street, Suite 208  
Falls Church, Virginia 22046

IN WITNESS WHEREOF, the Trustees and Lender have, signed, sealed and delivered these presents as their own free act and deed.

TRUSTEES:

\_\_\_\_\_  
DONALD L. UNGER, TRUSTEE (SEAL)

\_\_\_\_\_  
MICHAEL L. BRYAN, TRUSTEE (SEAL)

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by Donald L. Unger, Trustee.

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

My commission expires: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2003 by Michael L. Bryan, Trustee.

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

My commission expires: \_\_\_\_\_

LENDER:

MARATHON BANK

By: \_\_\_\_\_ (SEAL)

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by \_\_\_\_\_ as \_\_\_\_\_ of Marathon Bank.

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

My commission expires: \_\_\_\_\_

**DEED OF GIFT**

THIS DEED OF GIFT is made as of \_\_\_\_\_, 2003 by and between TRIJ DRD, L.L.C., a Virginia limited liability company, GRANTOR; and HUPP'S RIDGE HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation, GRANTEE.

**WITNESSETH:**

That for and in consideration of the mutual promises made, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants and conveys to Grantee, in fee simple and with Special Warranty of Title, the following described parcel of land located in Shenandoah County, Virginia:

Lot 30 and Parcels A through F, HUPP'S RIDGE as the same are duly subdivided, platted and recorded in Deed Book 1037 at Page 362 among the Shenandoah County, Virginia.

AND BEING a portion of the same land conveyed to Grantor by deed recorded in Deed Book 1053 at Page 449 among the Shenandoah County, Virginia land records.

THIS CONVEYANCE is made subject to the restrictions and conditions contained in the deeds and other documents forming the chain of title to this property.

[SIGNATURE PAGE FOLLOWS]

Consideration: \$0

Exempt from recordation tax pursuant to Va. Code Sec. 58.1-811(D)

Tax Identification No.

Grantee's address: Hupp's Ridge Homeowners Association  
205 N. Cameron Street  
Winchester, VA 22601

Prepared by: Sara T. O'Hara  
O'Hara & O'Hara, PLC  
131 E. Broad Street, Suite 208  
Falls Church, Virginia 22046

WITNESS the following signature and seal:

TRI-J DRD, L.L.C..  
a Virginia limited liability company

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged and sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 2003 by \_\_\_\_\_ as  
\_\_\_\_\_ of TRI-J DRD, L.L.C.

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

My commission expires: \_\_\_\_\_