

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND RESERVED EASEMENTS  
PURCELLVILLE GREEN HOMEOWNERS ASSOCIATION, INC.**

This Declaration of Protective Covenants, Conditions, Restrictions and Reserved Easements is made this 30<sup>th</sup> day of November, 2009 by TOLL LAND X LIMITED PARTNERSHIP, a Virginia limited partnership, referred to as "Declarant" in accordance with the Virginia Property Owners' Association Act, Chapter 26 of Title 55 of the Code of Virginia (1950) as amended (the "POA Act"); and PURCELLVILLE GREEN HOMEOWNERS ASSOCIATION, INC., a Virginia non-stock corporation, referred to as "Association".

**\*\* W I T N E S S E T H \*\***

**WHEREAS**, Declarant is the owner of certain land situate in Town of Purcellville, Loudoun County, Virginia more particularly described in Exhibit "A" attached hereto as a part hereof, and

**WHEREAS**, the Association is the owner of certain land situate in Town of Purcellville, Loudoun County, Virginia more particularly described in Exhibit "B" attached hereto as a part hereof, said Exhibit 'A' and Exhibit 'B', together with such additional lands as shall be subjected to this Declaration being referred to as the "Property," and

**WHEREAS**, the Declarant and the Association wish to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property.

**NOW, THEREFORE**, the Declarant and the Association declare that the Property is hereby subjected to and shall be held, sold, occupied and conveyed subject to this Declaration of Protective Covenants.

The Declarant and the Association further declare that this Declaration and all amendments and supplements thereto shall run with the land and shall be binding upon the Declarant, the Association, each Owner, their heirs, successors and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Declarant, the Association, each Owner and all claiming under each Owner.

Purcellville Green Homeowners Association, Inc., referred to herein, has been established as a community association for the Owners and Residents of the Property.



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Gary M. Clemons, Clerk

## ARTICLE 1 - Definitions

The words used hereinabove or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article 1 of this Declaration.

1.01     **"Annual Assessments"** shall mean and refer to the Annual General Assessment and Services Assessment levied by the Association in each of its fiscal years pursuant to Article 4 of this Declaration.

1.02     **"Annual General Assessments"** shall mean and refer to the annual charge shared by all Class "A" members established pursuant to Article 4 of this Declaration.

1.03     **"Assessable Property"** shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

1.04     **"Association"** shall mean and refer to Purcellville Green Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.05     **"Board of Directors"** or **"Board"** shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

1.06     **"Class A Members"** shall mean and refer to each Owner except for the Declarant, as long as it is the Class B member.

1.07     **"Class B Member"** shall mean and refer to the Declarant.

1.08     **"Common Area"** shall mean and refer to all real property and the improvements thereon from time to time owned or leased or maintained by the Association for the common use and enjoyment of the Members. Such property may (but need not) include any common areas, private streets, signage, other open space land, storm water management and drainage facilities, street lights, sidewalks, trails, landscape buffers, pond landscaping, fencing on Common Area and other buildings needed in connection with water supply, sewage disposal, gas, electric, or other utility lines, equipment or installations. The Association is responsible for management and maintenance of all Common Area.

1.09     **"Covenants Committee"** shall mean and refer to the Architectural Review and Covenants Committee so named and established in accordance with Article 5 of this Declaration.

1.10     **"Declaration"** shall mean and refer to this Declaration of Protective Covenants, Conditions, Restrictions and Reserved Easements, as it may from time to time be amended or supplemented in the manner provided herein.

1.11 **"Declarant"** shall mean and refer to TOLL LAND X LIMITED PARTNERSHIP, its successors and assigns. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment designating a party as the Declarant hereunder or which pass by operation of law.

1.12 **"Development Period"** shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the later of (a) December 31, 2025; or (b) the date all bonds or sureties posted or filed for the development of the Property are returned and/or released by the appropriate agency; or any earlier date specified by the Declarant in a written instrument signed by Declarant, specifically terminating the Development Period.

1.13 **"Dwelling Unit"** shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) townhouses, and single family detached as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

1.14 **"Exempt Property"** shall mean and refer to all land and structures and Common Area owned by the Association for so long as the Association shall be the owner thereof.

1.15 **"Federal Housing Administration"** ("FHA") shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America, which succeeds the Federal Housing Administration.

1.16 **"Land Development Activity"** shall mean and refer to any building, construction, reconstruction or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services or any other Structure on a Lot or any other portion of the Property by the Declarant, any Participating Builder, and/or by other persons regularly engaged in the building or construction business, if granted approval in writing by the Declarant and the appropriate governmental department.

1.17 **"Lot"** shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property which has been subjected to this Declaration and upon which a Dwelling Unit(s) could be constructed in accordance with Town of Purcellville, Virginia zoning ordinances. "Lot" shall not mean and refer to Common Area.

1.18 **"Member"** shall mean the Class A Members and Class B Member of the Association.

1.19 **"Mortgagee"** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deeds of trust. "First Mortgagee" as used herein,

shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

1.20 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of any Lots which are part of the Property but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.21 "**Participating Builder**" shall mean and refer to a person or entity designated in writing by the Declarant as a Participating Builder.

1.22 "**Person**" shall mean and refer to any individual, corporation, limited liability company, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other separate legal entity.

1.23 "**Property**" shall mean and refer to those certain lands in Town of Purcellville, Loudoun County, Virginia, more particularly described in Exhibit "A" and in Exhibit "B" attached hereto, together with such additional lands as may be subjected to this Declaration.

1.24 "**Resident**" shall mean and refer to (i) each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board of Directors, has delivered proof of such lease agreement to the Board of Directors; (ii) members of the immediate family of such individual or of an owner who actually resides within the Property and in the same household with each such individual or Owner; and (iii) any person who has a fixed place of habitation at a Dwelling Unit of any such individual or owner to which, whenever he is absent, he has the intention of returning.

1.25 "**Services Assessment**" shall mean and refer to the charge or charges imposed upon a lot, section of lots, neighborhood, housing type, or subdivided parcel of the Property for certain services rendered pursuant to Article 4 of this Declaration.

1.26 "**Special Assessment**" shall mean and refer to any special charge established pursuant to Article 4 of this Declaration.

1.27 "**Structure**" shall mean and refer to:

(a) Any thing or object (other than trees, shrubbery, landscaping and hedges less than two feet high) the placement of which upon any Lot may affect the

appearance of such Lot, including any building, garage, porch, shed, greenhouse, bathhouse, coop, cage, house trailer, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, signboard, wishing well, bird bath, statues or any other temporary or permanent improvement on such Lot; or

(b) Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any Lot; or

(c) Any change of more than six inches in the grade of any Lot.

## **ARTICLE 2 - Property Rights of Owners**

**2.01** Rights of Enjoyment of Common Area. Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area owned in fee simple by the Association which shall be appurtenant to and shall pass with the title to his Lot. Each Resident shall have a nontransferable right to use and enjoy the Common Area owned in fee simple by the Association, which right shall terminate when such person ceases to have the status of a Resident. Such easements and rights shall be subject to the following provisions:

(a) The right of the Board of Directors to adopt, promulgate, enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Common Area which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such rules and regulations may include limitations on the number of guests of Owners and Residents who may use the Common Area at any one time.

(b) The right of the Board of Directors to establish and charge reasonable admission and any other fees for certain types of uses of the Common Area.

(c) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use the Common Area (with the exception of any streets or access ways) for so long as any Annual Assessment for such Lot remains unpaid and overdue.

(d) The right of the Board of Directors to levy assessments, late fees, interest and penalties for violations of the provisions of this Declaration or any reasonable rules or regulations adopted by the Board of Directors pursuant to the provisions hereof and the Virginia Property Owners Association Act (the "POA Act").

(e) The right of the Board of Directors to grant easements or rights-of-way to any public utility corporation, public agency or to any other entity or person.

(f) The right of the Board of Directors, with the approval of a 66 2/3% vote of the Class A Members present at a meeting at which a quorum is present, to borrow such amounts as are required by the Association.

(g) The Association may at any time dedicate or transfer all or a part of the Common Area to any public agency, authority, or other entity including, without limitation, Town of Purcellville, Virginia, Loudoun County, or to any nonprofit organization upon such terms and conditions as shall be agreed upon by such agency, authority, entity or organization and the Board of Directors, including, without limitation, terms and conditions providing for the use of such Common Area by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Area and the assessments of Owners and/or Residents for the costs of such maintenance and repair.

(h) The right to regulate parking on Common Area through the granting of easements, licenses, or promulgation of rules and regulations. In areas where parking is provided on private streets owned by the Association, the Board shall have the right, but not the obligation, to assign and reserve parking spaces for the exclusive use of individual Owners.

### **ARTICLE 3- Association Membership, Voting Rights, Board of Directors**

**3.01** Organization of the Association. The Association has been organized as a nonprofit, nonstock corporation under the laws of Virginia (i) to provide for the acquisition, construction, management, maintenance and care of the Common Area and, at the discretion of the Association, portions of Lots; (ii) to obtain, manage and maintain services for the Property, or sections thereof including, as necessary, if deemed necessary by the Board of Directors, items such as refuse, trash and rubbish collection, grass mowing of Common Area and, at the discretion of the Association, portions of Lots; and (iii) to take other acts or action which would promote the health, safety or welfare of the Owners and Residents, including, if deemed necessary or beneficial by the Board of Directors, contracting with adjoining or nearby properties pertaining to the joint management, access and/or use of Common Areas and/or of common facilities of such other property. The Association is charged with such further duties and invested with such powers as are prescribed by law and set forth in the Articles of Incorporation and Bylaws of the Association and herein as all of the same may be amended from time to time. The Articles of Incorporation and Bylaws of the Association shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**3.02** Membership in the Association. The Association shall have the following classes of membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant. A person shall automatically become a Class A Member upon his becoming an Owner of a Lot, and shall remain a Class A Member for so long as he is an Owner.

Class B. The Class B Member shall be the Declarant.

### 3.03     Voting Rights of Members.

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(a)        Each Class A Member shall be entitled to one (1) vote on each matter submitted to the members for each Lot owned by such Class A Member. Any Class A Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Class A Member as to such Lot and shall collectively be entitled to a single vote for such Lot as to each matter properly submitted to the Members.

(b)        The Class B Member shall be entitled to 200 votes. The Class B membership shall terminate and become converted to Class A membership (if applicable) upon the happening of the later of the following:

(i)        December 31, 2025; or

(ii)       the release of all improvement and development bonds or sureties posted or filed with the State, County, Town or other governmental agencies in connection with the Property.

In addition, Class B membership may be terminated by the recordation among the Land Records of a written instrument signed by the Declarant, or its successors or assigns, specifically terminating such rights.

(c)        Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with this Declaration or the Articles of Incorporation or Bylaws of the Association.

### 3.04     Board of Directors.

The business and affairs of the Association shall be managed by a Board of Directors elected by the Members without regard to class of membership. There shall initially be a 3 member Board of Directors. As long as the Declarant has the status of a Class B Member, it shall have the right to appoint all three (3) Directors. Directors shall be elected by the Members in accordance with Article 4 of the Bylaws of the Association. The number of directors shall be determined in accordance with the provisions of the Bylaws of the Association.

3.05     Adoption of Further Rules and Regulations. The Board of Directors may make such rules and regulations consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote,

appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and other matters concerning the conduct of meetings and voting. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and other matters, including any matters requiring the approval of the Class A Members as provided in this Declaration, may be conducted by mail or by ballot.

3.06 Limitation of Liability. Neither the Declarant nor the Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or its facilities, or from any wire, pipe, drain, conduit or the like. Neither the Declarant nor the Association shall be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or its facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

#### **ARTICLE 4 - Covenant for Assessments**

4.01 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual General Assessments, Services Assessments, Special Assessments and any other assessment or monetary obligation as are established and are to be paid and collected as hereinafter provided. The Annual General Assessments, Services Assessments and Special Assessments, and any other assessment or monetary obligation, together with interest thereon, late fees and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment and/or obligation, together with interest thereon, late charges, and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Area or abandonment of his Lot, or any Dwelling Unit thereon.

4.02 Purpose of Assessments. The Annual Assessments levied by the Association shall be used exclusively to carry out the business and required obligations and responsibilities of the Association including, but not limited to (i) the acquisition, construction, management, maintenance and care, repair or replacement of the Common Area and services, and such portions of Lots as may be maintained by the Association, and such adjoining or nearby properties as may be the subjects of agreements with the Association pertaining to the joint management, access and/or use of Common Areas and/or of common facilities of such other properties; (ii) obtaining, managing and



maintaining services for the Property, or sections thereof including, as necessary, refuse, trash and rubbish collection; (iii) promoting the recreation, health, safety and welfare of the Members; and (iv) providing for grass cutting and lawn maintenance of all common areas, and such portions of Lots as may be maintained by the Association, maintenance of all landscaping required to be installed upon the Property pursuant to the Town of Purcellville, Virginia Zoning Ordinance, maintenance of all facilities, equipment, trails, sidewalks and other facilities not maintained by the Town of Purcellville, Virginia or the Virginia Department of Transportation, maintenance of any erosion control areas and/or drainage easements located on the Property, maintenance of lighting facilities, signage, and the street lighting system located on the Property.

4.03      Establishment of Annual General Assessment and Services Assessment.

(a)            The Association shall levy in each of its fiscal years an Annual General Assessment and a Services Assessment, if applicable, against each Lot which is owned or occupied by a person who is not the Declarant or a Participating Builder. The amounts of such Annual Assessments shall be established by the Board of Directors, subject to the limitations imposed by Section 4.04, at least thirty (30) days in advance of each annual assessment period. The first Annual Assessments on each Lot imposed pursuant to this Section 4.03(a) shall be adjusted according to the number of months remaining in the annual assessment period from the date of conveyance of a Lot to a Class A Member.

(b)            The Declarant shall have no obligation to pay any Annual Assessment, except the Declarant shall have the obligation to pay Annual Assessments in accordance with the provisions of Section 4.03(a) above on any Lot owned by Declarant upon which there is located a completed Dwelling Unit which is occupied as a residence.

(c)            The Declarant shall levy against any Participating Builder at the time of conveyance by Declarant, a one-time assessment equal to One Hundred Fifty and No/100 Dollars (\$150.00) for each Lot owned by the Participating Builder. Notwithstanding the foregoing, Participating Builders shall have the obligation to pay Annual Assessments on any Lot which is owned by said Participating Builder upon which there is located a completed Dwelling Unit which is occupied as a residence.

(d)            A Services Assessment may be levied by the Board of Directors against Lots in certain sections or neighborhoods of the Property. The amount of the Services Assessment shall be determined by the Board of Directors according to the estimated cost of providing services or rights of use to such sections, and may include both the cost of services or amenities provided exclusively to such section, and also services and amenities that are shared throughout the entire community. The amount of a Services Assessment shall be the same for each Lot in any section but need not be uniform with the Services Assessment imposed upon Lots in other sections.

4.04      Charges and Collection. The Board of Directors may increase the Annual Assessment as required.

**4.05 Special Assessments.** In addition to the Annual Assessments authorized above, the Board of Directors may levy, in any fiscal year of the Association, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area including fixtures and personal property related thereto, or for any other purpose for which the Association is responsible. Pursuant to Section 55-514 of the POA Act, such Special Assessment may be rescinded if, at a meeting called within 60 days of notice of the Special Assessment, the majority of the votes of each class of membership who are voting in person or proxy agrees. Special Assessments shall be imposed against Lots in the same proportions as Annual General Assessments, as provided in Sections 4.03(a), (b) and (c).

**4.06 Date of Commencement of Assessments.** The Annual Assessments provided for in this Article 4 shall commence for each Lot on the date of conveyance of the Lot to a Member. The first Annual Assessment shall be adjusted according to the number of months remaining in the assessment period.

**4.07 Repair and Replacement Reserve.** As a part of any Annual Assessment, the Board of Directors shall obtain from Owners contributions to capital on a regular basis, which contributions will be used to establish a replacement and repair reserve. Such contributions shall be paid monthly or at such time as regular assessments are due and be in an amount to be designated from time to time by the Board of Directors.

**4.08 Initial Contribution.** Association shall collect from each purchaser of a Dwelling Unit (including both the initial purchaser and all resale purchasers but excluding Participating Builders and the Declarant) at settlement a non-refundable contribution equal to an amount as may be determined by the Board, which payment shall be used by the Association for such purposes deemed appropriate or desirable by the Board.

**4.09 Notice and Due Dates.** Written notice specifying (i) the amount of each Annual Assessment and Special Assessment, if any, and (ii) the number and amounts of the installments by which each such Assessment is to be paid, shall be given to the Owners of each Lot subject thereto. Each installment of an Annual Assessment or Special Assessment, if any, shall be due on the first day of each assessment period as defined by the Board of Directors.

**4.10 Effect on Nonpayment of Assessments; Remedies of the Association.** Any Annual Assessment or Special Assessment not paid within fifteen (15) days after the due date shall be delinquent and the Association may exercise any or all of the following remedies: (a) upon notice to the Owner declare the entire balance of any assessment due and payable in full; (b) charge interest and a late fee of \$25.00 or such other amount as is determined by the Board from time to time, for assessments which are not received by the fifteen (15th) day of the assessment period; (c) bring an action at law or in equity against the Owners to collect the same; and (d) foreclose the lien against the Lot. Such lien may be enforced by the Association in the same manner and to the same extent and subject to the same procedures as in the case of a foreclosure of a real property mortgage under the laws of Virginia.

In any proceeding against an Owner or Lot, the amount which may be recovered by the Association shall include all costs of the proceeding, including reasonable attorneys' fees.

**4.11** Certificate of Payment. The Association shall, upon written request by Owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Annual Assessments and Special Assessments, if any, on a specified Lot have been paid. The Association shall furnish said Certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**4.12** Subordination of the Lien to Mortgages. The lien of the Annual Assessments provided for herein and Special Assessments, if any, shall be subordinate only to the lien of any First Mortgage or First Deed of Trust. The sale or transfer of any Lot shall not affect the lien of such assessments. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof for the benefit of any First Mortgagee shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any First Mortgagee shall be deemed to extinguish any mortgage or lien, which the Association has itself placed upon any property owned by the Association.

## **ARTICLE 5 - Architectural Review and Covenants Committee**

**5.01** Composition and Appointment. An Architectural Review and Covenants Committee (the "Covenants Committee") may be appointed by the Board of Directors. Such Committee shall initially consist of three (3) members, but may thereafter be increased or decreased in size by the Board of Directors, from time to time. Members of the Covenants Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Covenants Committee shall be filled by the Board of Directors to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Covenants Committee may continue to act until the vacancy has been filled. Any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate a covenants committee, the Board of Directors shall serve as the covenants committee.

**5.02** Powers and Duties.

(a) The Covenants Committee shall serve as an "Architectural Review Board" and shall regulate the external design, appearance and location of the Lots and Structures thereon so as to enforce the architectural provisions of this Declaration; to enforce the requirements of the recorded subdivision plats, deeds of subdivision; to

preserve and enhance values; and to maintain a harmonious relationship between and among Structures and the Property.

(b) The Covenants Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association.

5.03 Submission of Plans to Covenants Committee for Approval. Except for such structures as may be constructed by the Declarant or structures constructed by a Participating Builder which have first been approved by the Declarant, no Structure of any kind whatsoever shall be commenced, erected, placed, moved onto or permitted on any Lot, nor shall any existing Structure upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefor shall have been submitted to and approved in writing by the Covenants Committee. Such plans and specifications shall be in such form and shall contain such information as the Covenants Committee may reasonably require, such as the following:

(a) A site plan showing the location of all proposed and existing Structures on the Lot and all existing Structures on adjoining Lots, as applicable,

(b) Exterior elevations for the proposed Structures,

(c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed improvements, and

(d) Description of the plans or provisions for grading.

The provisions of this Section 5.03 shall not apply to Land Development Activity as defined in Section 1.27. Any plans and specifications of any Participating Builder which have been approved by the Declarant shall not be subject to any review or approval by the Covenants Committee following the termination of the Class B membership or the Development Period.

5.04 Initiation and Completion of Approved Changes. Construction or alterations in accordance with plans and specifications approved by the Board of Directors or the Covenant Committee pursuant to the provisions of this Article shall be commenced within six (6) months of such approval and completed within twelve (12) months of such approval. If construction is not commenced within the period aforesaid, then approval of the plans and specifications shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Board of Directors or the Covenant Committee without the prior consent in writing of the Board of Directors or the Covenant Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Board of Directors or the Covenant Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

5.05 Powers and Duties. Any approval or disapproval of a requested action by the Covenants Committee shall be in writing. In denying any application, the Covenants Committee shall specify the reasons for such denial. The Covenants Committee may approve an application subject to such conditions and qualifications as the Board deems appropriate to enforce the architectural provisions of these Covenants.

5.06 Failure of the Covenants Committee to Act. If the Covenants Committee shall fail to act upon any request submitted to it within forty five (45) days after submission thereof, such request shall be submitted to the Board of Directors for approval. If the Board of Directors shall fail to act within thirty (30) days after submission, then such request deemed to have been denied.

5.07 Rules, Regulations and Policy Statements. The Board of Directors shall adopt design guidelines for the Property. The Covenants Committee may recommend, from time to time, subject to the approval and adoption of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on. The Covenants Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

(a) The Covenants Committee shall hold regular meetings as necessary. Meetings of the Covenants Committee may be called by the Chairman of the Covenants Committee and by a majority of the members of said Covenants Committee.

(b) A majority of the members of the Covenants Committee present at any meeting shall constitute a quorum.

(c) The Covenants Committee shall maintain minutes of its meetings and a record of the votes taken thereat.

(d) All meetings of the Covenants Committee shall be open to the Members of the Association and any vote of the Covenants Committee shall be taken at an open meeting. Nothing contained herein, however, shall prevent the Covenants Committee from meeting in closed session or executive session in accordance with State and Federal laws or regulations.

(e) A copy of all minutes, rules, regulations and policy statements of the Covenants Committee shall be filed with the records of the Association and shall be maintained by the Association as a permanent public record. The Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations and policy statements available to any Member for copying.

5.08 Expenses of the Covenants Committee. The Covenants Committee may charge reasonable fees for the processing of any requests, plans and specifications including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Covenants Committee; provided, however, no member of the

Covenants Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association during the Development Period except upon authorization by the Board and upon approval by (i) 66 2/3% of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (ii) the Class B Member voting in person or by proxy at such meeting.

5.09 Right of Entry. The Association and the Covenants Committee through their authorized officers, employees and agents shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling or alteration of any Structure thereon is in compliance with the provisions of this Article and Article 6 without the Association or the Covenants Committee or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.10 Land Development. Notwithstanding any other provisions of this Declaration, any Land Development Activity shall not require the approval of or be subject to review by the Covenants Committee, but shall be subject to any and all applicable Town of Purcellville, Virginia approvals and regulations. This provision shall not be construed in any manner as a limitation upon the right of the Declarant to review and approve any plan or modification thereof of any Participating Builder.

## **ARTICLE 6- General Restrictions on the Use of the Property and Improvements to be Made Thereon**

**Declarant Exemption.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Property. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work on the Property. The restrictions of this Article shall therefore not be binding upon Declarant in the performance of any of the work required in order to complete construction on the Property.

6.01 Zoning Regulations. The Property shall not be used for any purpose other than as permitted in the Town of Purcellville, Virginia Zoning Ordinances or the laws, rules, or regulations of any governmental authority in force and effect on the date of recording of this Declaration as the same may be hereafter from time to time amended. No building shall be erected, altered, placed or permitted to remain on any Lot other than one used as a single family dwelling. This restriction shall not apply to any use for which a special exception under the Town of Purcellville, Virginia Zoning Ordinances or other governing regulations, as the same may be hereafter from time to time amended, is finally granted provided such use is approved in writing by the Covenants Committee. The right, however, to further limit or restrict the use of a particular Lot is reserved under the provisions hereof.

6.02 No Use Contrary to Law and No Nuisances. No noxious or offensive trade, services or activities shall be conducted on or upon any portion of the Property nor shall anything be done thereon which may be or become a continuing annoyance or

hazard or nuisance to the Owners or Residents of the Property. No use of any Lot or part thereof or any Structure thereon shall be made, nor shall any materials or products be manufactured, processed or stored thereon or therein, contrary to Federal, State or Local laws or regulations, or which shall cause an undue fire hazard to adjoining Lots. This provision shall not be construed to prohibit the conduct of such professional services in residential areas as are permitted by applicable laws approved by the Covenants Committee.

**6.03 Structures.** The architectural character of all Structures, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of a Structure) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Covenants Committee, harmonious in terms of type, size, scale, form, color and material. The repair, replacement, repainting, resurfacing or restoration of any Structure originally approved by the Covenants Committee or the Declarant shall not be subject to the review or approval of the Covenants Committee provided that, following any such repair, replacement, repainting, resurfacing or restoration of any such Structure, the external appearance and size of such Structure shall be substantially identical with the appearance of said Structure as originally approved. Except as otherwise herein provided, no Structure shall be painted, stuccoed or surfaced with any material unless and until approved in writing in accordance with guidelines established by the Covenants Committee.

**6.04 Screens and Fences.** Except for any fence installed by the Declarant, a Participating Builder, or the Association, no fence or screen shall be installed on a Lot except in accordance with the guidelines established by the Covenants Committee and with the prior written approval of the Covenants Committee. Fencing installed by the Declarant in the Common Area shall be maintained by the Association.

**6.05 Outside Storage or Operations.** No outside storage of lumber, metals, or bulk materials of any kind, except building materials stored during the course of construction of any approved Structure, shall be permitted and no refuse or trash shall be kept, stored or allowed to accumulate on any Lot, unless such item is visually screened in a manner approved in writing by the Covenants Committee. No outside storage and operations shall extend above the top of any such screening. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to the persons making such pick-up. At all other times, such containers shall be stored so as to be visually screened from all streets and adjacent and surrounding Lots. The Covenants Committee may formulate and adopt reasonable rules and regulations relating to the size, shape, color and type container permitted and the manner of storage of same on any Lot.

**6.06 Signs and Lighting.** The location, color, nature, size, design and construction of all signs or outdoor lights located on any portion of the Property shall be approved in writing by the Covenants Committee, and must be in keeping with the character of the Property and in accord with guidelines established by the Covenants Committee. No sign, banner, flag, billboard or advertisement of any kind, including, without

limitation, information signs, "for sale" or "for rent" signs and those of contractors and subcontractors, shall be erected on any Lot, without the said prior written consent of the Board of Directors. If permission is granted to any Owner to erect a sign, the Board of Directors reserves the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees. No clotheslines and no outdoor clothes drying or hanging shall be permitted on the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Units, and no awnings, canopies or shutters (except for those theretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of Units, or any part thereof, nor relocated or extended, without the prior written consent of the Board of Directors.

**6.07 Vehicles.** No commercial truck, commercial bus, taxicabs or other commercial vehicle of any kind, boats, trailers, campers, recreational vehicles and motor homes shall be parked in any visible location on the Property without the prior written approval of the Covenants Committee. 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. No disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be parked on any Lot or on Common Area. The repair or extraordinary maintenance of vehicles shall not be carried out on the exterior of any Lot or on the Common Areas; maintenance of vehicles within garages is permitted. The Association may enforce the provisions of this Section 6.07 by towing any non-complying vehicle at the vehicle owner's expense.

(a) Driveways, streets and other exterior parking areas on the property shall be used by Owners, occupants and guests for fully operable, inspected and registered four wheel passenger vehicles, two wheel motorized bicycles and standard bicycles only. No recreational vehicles, vans (other than non-commercial passenger vans), mobile homes, trailers, boats, trucks (unless licensed as a passenger vehicle and less than three-quarter ton capacity) or commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation) shall be permitted to be parked on the Property, except on a day-to-day temporary basis in connection with repairs, maintenance or construction work on the Unit or if entirely enclosed in an Owner's garage.

(b) Motor vehicles including, but not limited to, mini-bikes, snowmobiles and motorcycles, may not be driven by any Owner, occupant or guest on the portions of the Common Areas that do not contain private streets.

**6.08 Animals.** Owners shall not keep in any Dwelling Unit animals, wildlife, livestock, reptiles or poultry of any kind, other than domesticated household birds and fish, house dogs or domesticated house cats. All animals shall be leashed (if outdoors) or kept within the Dwelling Unit and shall not be permitted to roam free. The Association may restrict the walking of pets to certain areas. Owners who walk their pets on Common Area must clean up after their pets. Commercial activity involving pets, including, without



limitation, boarding, breeding, grooming or training is not allowed. The ability to keep a pet is a privilege, not a right. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property. Pets may not be left unattended or leashed in yards or garages or on porches or lanais. Pursuant to rules and regulations, the Board may further regulate pets, including but not limited to number and type of pets. Household pets are subject to the Town of Purcellville, Virginia regulations and the rules and regulations established by the Board of Directors. The Association hereby grants authority to the Town of Purcellville, Virginia to enforce Town leash and pet regulations.

6.09 Garages. No garage located on the Property shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. No garage located on the Property may be converted into or used for living space.

6.10 Air and Water Pollution. No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards applicable thereto to be established by the Covenants Committee, and approved by the Board of Directors which standards shall at a minimum meet the requirements of Federal and State law and any regulations thereunder applicable to the Property. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of the Town of Purcellville, Virginia or any private or public body having jurisdiction. No person shall dump garbage, trash or other refuse into any waterway on the Property.

6.11 Leases. No Owner of a Lot shall lease to another any such Lot or part thereof unless such lease shall be in writing for an initial term of not less than six (6) months and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under such lease. The Board shall be provided with copies of leases on request. None of the foregoing provisions of this subsection shall apply to any Lot owned by the Town or County for use as a group home.

6.12 Landscaping. The land area not occupied by Structures, hard-surfacing, vehicular driveways or pedestrian paths, shall be kept planted with grass, trees or shrubs or other ground covering or landscaping in conformance with the standards set by the Covenants Committee and approved by the Board of Directors. Such standards will take into consideration the need for providing effective site development to:

- (a) enhance the site and building,
- (b) screen undesirable areas or views,

(c) establish acceptable relationships between buildings, parking and adjacent properties, and

(d) control drainage and erosion.

The Covenants Committee reserves the right to require special treatment of slopes, construction of walls and wells, and use of stone fills and drains to preserve trees that cannot otherwise be saved. Notwithstanding the foregoing, any clearing, grading or other development work performed pursuant to any final site development plan by the Declarant and approved by all appropriate authorities of Loudoun County, Virginia for Declarant or for any Participating Builder shall not be subject to the review or approval of the Covenants Committee.

**6.13 Maintenance of Premises and Improvements.** Each Owner or Resident shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and in accordance with all applicable restrictions, conditions, ordinances, codes and any other rules and regulations which may be applicable hereunder or under law. Appropriate maintenance shall include, but not be limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements all in a manner and with such frequency as is consistent with good property management (with the exception of those Lots on which the Association may provide maintenance of landscaping). The Owner or Resident shall comply with all laws, ordinances and regulations pertaining to health, safety and pollution, and shall provide for storage and removal of refuse, trash and rubbish from his premises in a manner to be approved by the Covenants Committee.

The Association shall be responsible for maintenance of storm drainage and storm water management facilities located within the Property, and the Owner of any Lot on which there is located an easement for storm water drainage, management or control shall be responsible for the following items of maintenance, where applicable: grass mowing with reasonable frequency and the removal of debris and other matter to the best of said owner's ability where such debris or matter has impeded or threatens to impede the free flow of storm water through drainage structures. Notwithstanding the foregoing, at such time as the Town, through a department of public works, or some similar agency, by some clear and unequivocal act such as the recordation of a document among the land records of Loudoun County, Virginia, elects to maintain the storm drainage facilities contained within the easements, or elects to maintain all such easements within the watershed where such easements are located, the maintenance obligations identified in this paragraph shall cease and terminate.

**6.14 Enforcement of Maintenance.** The Covenants Committee, or its agent, during normal business hours, shall have the right to do any and all maintenance work reasonably necessary in the written opinion of the Covenants Committee, to keep such Lot, whether unimproved, improved or vacant, in neat and good order, such cost and expense to be paid to the Association upon demand and collected in accordance with Article 4 of this Declaration. Such action may be taken after 10 days' notice (notice to be provided by

regular or certified mail or posted on the door of the Dwelling Unit, with a witness, to the Owner or Resident of any Lot involved, setting forth the maintenance action to be taken) if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner or Resident. The Covenants Committee, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Owner or Resident, any hedge, tree or any other planting that, in the written opinion of the Covenants Committee, by reasons of its location on the Lot, or the height to or the manner in which it is permitted to grow, is detrimental to the adjoining Lots contrary to the rules and regulations of the Covenants Committee or is unattractive in appearance. The lien provided under this Section shall not be valid against a *bona fide* purchaser (or *bona fide* mortgagee) of the Lot in question unless a suit to enforce such lien shall have been filed in the court of record and notice thereof shall have been filed in the appropriate records of Loudoun County, Virginia prior to the recordation among the records of Loudoun County, Virginia of the deed (or mortgage or deed of trust) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage or deed of trust).

**6.15** Maintenance During Construction. During construction it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot.

**6.16** Residential Use. Except as used by the Declarant in connection and marketing of Dwelling Units in the community, each Dwelling Unit shall be used for residential purposes only; provided that occupations carried on in the Dwelling Unit are permitted only if such use is incidental to the Dwelling Unit's primary residential use; provided further that the Owners who pursue such incidental occupational use of their Dwelling Unit shall have no employees, customers or clients at the Dwelling Unit and shall obtain prior approval from all authorities having jurisdiction over the use of the Dwelling Unit.

**6.17** No Alteration of Common Areas. Except for work done by the Declarant in connection with the construction and marketing of Dwelling Units, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Areas without the prior written approval of the Board and the Declarant. The Declarant's approval shall be required until one (1) year after the conveyance by the Declarant of the last Dwelling Unit.

**6.18** No Obstruction of Common Areas. Owners or occupants may not obstruct the Common Areas in any way including, but not limited to, interfering with any storm water drainage. Owners or occupants may not store anything in or on the Common Areas without the prior written approval of the Board. The Board may prohibit or restrict the use of the Common Areas from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.

**6.19** No Dumping or Trash. No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal

scrap, garbage or other waste, except that such material may be kept in the Dwelling Unit or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or by the Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

6.20 Compliance. Each owner shall maintain his Lot and Dwelling Unit in a manner satisfactory to the Association and in accordance with this Declaration, the Bylaws and rules and regulations of the Association. In the event that a Lot or Dwelling Unit is not so maintained, the Association shall have the right to enter upon the Lot and Dwelling Unit to maintain the same, all in accordance with the terms of this Declaration.

6.21 No Subdivision or Exterior Work. Except for the Declarant, no Owner may subdivide or partition his Dwelling Unit nor may any Owner alter the exterior of his or her Dwelling Unit except with the prior approval of the Board.

6.22 Work on Dwelling Units. No Owner shall perform or permit to be performed any work to any portion of his Dwelling Unit, which work may require access to, over or through the Common Areas or other Lots or Dwelling Units without the prior consent of the Board except in case of an emergency. All such work may only be performed by a Person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board:

(i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;

(ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Areas or other Dwelling Units;

(iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and

(iv) all other information and protections which the Board may reasonably require.

6.23 Miscellaneous. Without prior approval of the Covenants Committee:

(a) no water pipe, gas pipe, sewer pipe, or drainage pipe, or industrial process pipe, except reasonable quantities of hoses and movable piping used for irrigation purposes, shall be installed or maintained on any Lot above the surface of the ground;

(b) no previously approved Structure shall be used for any purpose other than that for which it was originally designed;

(c) no Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise, unless by deed of resubdivision in accordance with the applicable Town of Purcellville, Virginia requirements;

(d) no facility, including but not limited to, poles, wires and conduits for transmission of electricity, telephone messages and the like shall be placed and maintained above the surface of the ground on any Lot and no external or outside antennas or satellite dishes of any kind no matter how disguised shall be maintained (provided, however, that the Association shall comply with all federal laws and regulations affecting antennas and satellite dishes);

(e) no Lot or portion thereof shall be used for any mining, boring, quarrying, drilling, removal of, or any other exploitation of subsurface natural resources, which would tend to conflict with the surface development in accordance with Federal, State or Local laws or regulations.

**6.24 Land Development Activity.** The foregoing provisions of Article 6 shall not be applicable to Land Development Activity. Without limiting the generality of the foregoing exclusion, the Declarant and Participating Builders shall have the right to carry on the following activities in connection with Land Development and construction and sale of Dwelling Units:

(a) to construct, install, operate and/or maintain on the Property one or more construction or management control offices on Lots, field office trailers or other temporary facilities; and

(b) to construct, install, operate and/or maintain one or more model homes and sales offices on the Property. Such models and offices may be owned or leased by the Declarant, by any Person designated by the Declarant or Participating Builders. Land Development Activity and sales operations shall in all events be subject to the local Zoning Ordinances, and all other applicable laws, rules and regulations of governmental authorities.

## **ARTICLE 7 - Annexations**

**7.01 Additions by the Declarant.** The Declarant hereby reserves the right (but not the obligation) at any time within the Development Period to submit, by recordation of a supplemental declaration (either in a separate document or within a deed of subdivision), or by reference in any deed of conveyance, any additional land in the vicinity of the Property. During the Development Period, any additional land not owned by the Declarant may be annexed only with the consent of the Declarant. Action under this Section shall not require the prior approval of any Class of Members or their Mortgagees. Any such land subjected to this Declaration shall be subject to the Declaration in accordance with the terms of the supplemental declaration, which may, by way of example, (a) include additional covenants that pertain only to the annexed property; (b) provide for the manner in which such annexed property shall be assessed; or (c) designate the additional property with a specific parcel designation as parcels are defined herein. By way of further example, additional covenants might include an "active adult" component for a specific portion of the Property.

**7.02 Additions by the Members.** After the Development Period, additional lands not owned by the Declarant may be subjected, annexed or submitted to this Declaration with the written consent of 66 2/3% of the Class A Members.

**7.03 Withdrawable Real Estate.** During the Development Period, the Declarant has the unilateral right, without the consent of the Association, any Owner or Mortgagee, to execute and record an amendment to the Declaration withdrawing any portion of the Property from the operation of this Declaration. If the Declarant does not own said portion, than the owner of such portion must also sign the amendment. This subsection shall not apply to any section of the Property for which a Zoning Permit has been issued by the Town.

## **ARTICLE 8 - Easements**

### **8.01 Development Easements.**

(a) **General Easement.** The Declarant reserves to itself, its successors and assigns and its designees a non-exclusive (except as provided below) blanket easement over and through the Property, except for dedicated rights-of-way, for all purposes reasonably related to the development and completion of the improvements on the Property, including, without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control and storm and sanitary sewer easements (including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; provided, however, that thereafter the Declarant shall restore the affected area as near as practicable to its original condition); (iii) easements for the storage (in a sightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvements; (iv) easements for the construction, installation and upkeep of improvements (e.g., buildings, landscaping, street lights, signage, roads, trails etc.) on the Property or reasonably necessary to serve

the Property; and (v) easements for ingress and egress as necessary to accomplish the foregoing purposes.

(b) Easement to Facilitate Sales. The Declarant hereby reserves to itself, its successors and assigns and its designees the right to: (i) use any Lots owned or leased by the Declarant, any other Lot with the written consent of the Owner thereof or any portion of the Common Area (including any buildings thereon) as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas (provided, however, that the Declarant or its designee, as appropriate, shall remain responsible for the upkeep of that portion of the Common Area used for the foregoing purposes); (ii) place and maintain in any location on the Common Area and on any Lot (for a distance of fifteen feet behind any boundary line which parallels a public or private street), street and directional signs, temporary promotional signs, plantings, street lights, entrance features, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features; provided, however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any affected Lot or of the Board of Directors if the Owner does not consent at the time the sign is erected; and (iii) relocate (in a permissible location) or remove all or any of the above from time to time at the Declarant's sole discretion. The Association is hereby granted an easement to perform upkeep of any permanent structure or landscaping installed pursuant to (ii) above.

(c) Utility Easements. The Declarant hereby creates, and there is hereby reserved to the Declarant, its successors and assigns and its designees, a blanket easement upon, across, over, and under all of the Property, except for dedicated rights-of-way, to create perpetual easements, rights and privileges of ingress and egress to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, wells, pumping stations, siltation basins, tanks, meters and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public or private conveniences, telecommunication systems or utilities, upon, in or over (including air rights, as applicable, for wireless utilities) those portions of the Property, including Common Area, as the Declarant may consider to be reasonably necessary (the "Utility Easements") for the development of the Property. The Utility Easements shall include the right of access to such facilities and the right to cut trees, bushes or shrubbery and such other rights as Declarant or its designees may reasonably require. The utility lines installed pursuant to the Utility Easements must be installed below ground unless approved by Declarant and except as otherwise provided in this Declaration; provided, however, that no utility line shall run beneath a dwelling other than the utility lines serving such dwelling. Declarant shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association and to any other party or parties. This reservation of Utility Easements is subject to easements granted in any deeds of subdivision.

(d) Specific Development Easement Areas. The Declarant hereby reserves to itself, its successors and assigns and its designees the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area, any

land conveyed to a Participating Builder, or over and through any Lot within ten feet of any boundary line for the installation and upkeep of the equipment for providing to any portion of the Property or any other adjacent land, any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone, television, telecommunications or other similar services, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property.

(e) Dedications and Easements required by Governmental Authority.

The Declarant hereby reserves to itself, its successors and its assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area. The Declarant also hereby reserves to itself and its successors and assigns an easement and a 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 company in connection with the release of bonds or the acceptance of streets for public maintenance with respect to the Property.

(f) Drainage and Erosion Control.

Declarant reserves a perpetual easement, right and privilege to enter upon any Lot, or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a Structure has been constructed thereon or during such construction, for the purpose of taking such drainage and erosion control measures as Declarant or the Association deems necessary to prevent or correct waterflow and soil erosion or siltation; provided, however, that Declarant or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least ten (10) days prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem (the notice provision shall not be required in the case of emergency situations). The cost incurred by the Association in undertaking such drainage and erosion control measures on any Lot shall, if reasonably attributable to an Owner, become an individual assessment upon the Lot and shall constitute a lien against the Lot shall be collectible in the manner provided herein for the payment of Assessments. This Section shall not apply to Lots owned by Declarant.

(g) Storm Water Management Easement.

The Declarant hereby reserves to itself and its successors and assigns an easement and the right to grant and reserve easements over and through the Property, except for dedicated rights-of-way, for the construction and upkeep of storm water management facilities.

(h) Specific Easements.

The Declarant hereby reserves to itself and its designees, easements over and through all or any portions of the Property, except for dedicated rights-of-way (and also excluding any areas occupied by a home, a structure or any other similar improvements) for the following purposes:

(i) Planting, replanting, maintaining, protecting, enhancing

and otherwise controlling (including all landscaping) the Property (reserving the right, but not the obligation, to perform such work on portions of Lots). The Declarant or the



Association, as appropriate, shall be solely responsible for selecting and maintaining all landscaping in the Common Area.

(ii) Locating, relocating, constructing, maintaining, protecting, enhancing and otherwise controlling all walkways or pathways located within the Property.

(iii) Locating, relocating, constructing, maintaining, protecting and otherwise controlling all electrical, oil, gas, solar, television, telephone, microwave, cable, telecommunication systems, sanitary and storm sewer, storm water management and public water facilities (including pipes, conduits, lines, wires, transformers, manholes, inlets and other appurtenances), but only where such facilities serve Lots other than the Lot on which the specific facilities in question are located and only to the extent permitted herein.

(iv) Locating, relocating, constructing, maintaining, protecting and otherwise controlling all project signage located on the Common Area or any other portion of the Property and controlling signage installed by Owners for other purposes. The Association shall have the right to exercise control over all signage.

(v) Controlling and regulating the use and enjoyment of all open spaces and facilities located in the Common Area.

The Declarant or the Association, as appropriate, or their agents and designees, shall have the mutual right and responsibility to perform the tasks and functions listed in Subsections (a) through (e) above to the exclusion of all others, including all Owners.

(i) Further Assurances. Any and all conveyances made by the Declarant to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested. If a designee requests recordation of a separate document evidencing such easement rights that are consistent with this Declaration, then the Declarant or the Association, as applicable, may sign and record such an easement instrument, without the consent, approval or joinder of any Owner or Mortgagee.

**8.02** Duration and Assignment of Easements and Rights. The Declarant may assign its rights, in part or in whole, under this Section to, or share such rights with, one or more other persons or entities, exclusively, simultaneously or consecutively. The Declarant shall notify the Association of any such assignment or designation by the Declarant. The rights and easements reserved by or granted to the Declarant pursuant to this Section shall continue until the end of the Development Period, and shall lapse and become null and void thereafter, unless specifically stated otherwise. The easements granted to the

Association or any other entity pursuant to the rights set forth herein shall survive the expiration of the Development Period.

8.03 Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants to the Association the rights, powers and easements reserved to the Declarant above. These rights, powers and easements may be exercised by the Association; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. However, the Association shall not exercise any such easement rights to the detriment of Declarant's rights reserved hereunder. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

8.04 Easement for Upkeep.

(a) Association Access. The Declarant, on behalf of itself and its successors and assigns, hereby grants the right of access over and through any portion of the Property, except for dedicated rights-of-way (and also excluding any areas occupied by a home, a structure or any other similar improvement) to the Association, the managing agent and any other Persons authorized by the Board of Directors in the exercise and discharge of their respective powers and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area, correct drainage, perform installations or upkeep of utilities, install landscaping or other improvements located on the Property for which the Association is responsible. The agents of the Association may also enter any portion of the Property, except for dedicated rights-of-way (and also excluding any dwelling) in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association. Each Owner shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness or failure to comply with this Declaration for which such Owner is responsible, and the costs incurred by the Association shall become an assessment against the Owner and upon the Owner's Lot, and shall be collectible in the manner provided herein for the payment of assessments.

(b) Declarant Access. Until the expiration of any applicable warranty period and the release of all of Declarant's development bonds, the Declarant hereby reserves to itself and its successors and assigns a right of access over and through any portion of the Property not within a dwelling to perform warranty-related work within the Common Area or the Lots. The Declarant may assign its rights under this Subsection to, or share such rights with, one or more other persons or entities, exclusively, simultaneously or consecutively.

#### 8.05 Limitations on Exercise of Rights and Easements.

(a) These easements are subject to all other easements and encumbrances of record (including those created by this Declaration).

(b) The Declarant, the Association or any Owner, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected Owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Area; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Area. Further, notwithstanding the easement rights established herein, neither the Declarant nor the Association shall exercise any such rights within the interior of a dwelling on a Lot without the prior written consent of the Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) If an easement is relocated, the cost of such relocation shall be paid by the party requesting the relocation.

(d) Any damage to property resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to its original condition to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party responsible for such damage. In either case, the cost of such repair and restoration shall be paid for by the party responsible for the damage.

(e) Nothing within this Article shall authorize the installation or maintenance of any equipment or facility, public or private, on any portion of the Property unless prior approval has been obtained from the Declarant during the Development Period, which approval may be withheld in the Declarant's sole discretion.

8.06 Crossover Easement. If the Owner (including the Declarant or any Participating Builder) of any Lot must, in order to make responsible repairs or improvements to a building on his Lot, enter or cross any area owned or to be owned by the Association, or a Lot of another Owner, such Owner shall have an easement to do so, provided that said Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition, at the expense of said Owner, and further provided that such easement shall not exist on the land of any other Owner if the purpose for the entrance or crossing is one requiring approval of the Board of Directors, unless such approval has been given.

8.07 Easement and Right of Law Enforcement Officials, Etc. An easement and right of entry through and upon the Property is hereby granted to law enforcement officers, rescue squad personnel, fire fighting, and other emergency personnel of Town of Purcellville, Virginia, and to vehicles operated by said personnel while in the pursuit of their duties. Said emergency personnel shall also have the right of enforcement of cleared emergency vehicle access on the roadways and driveways on the Property.

**8.08 Encroachment Easement.** Each Lot within the Property is hereby declared to have an easement, not exceeding two feet in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining or rain water from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful misconduct of said Owner or Owners. In the event a structure or any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

**8.09 Declarant as Attorney-in-Fact.** Each Owner, for such Owner and such Owner's successors and assigns, by acquisition of title to all or any portion of the Property, irrevocably appoints the Declarant as attorney-in-fact to grant, relocate and terminate all easements, rights-of-way and licenses which the Declarant has the power to grant pursuant to this Declaration and subject to the limitations set forth herein; provided, however, that any action taken by the Declarant as attorney-in-fact shall not materially, adversely affect any Owner's use and development of or access to the Lot owned by such Owner, and provided, further, that this appointment shall not authorize the Declarant to consent to its own actions or those performed on its behalf where the consent of an Owner is required to be procured pursuant to this Declaration. The Declarant shall act as such attorney-in-fact only in furtherance of its development of the Property, it being recognized that this grant of a power of attorney is required because the Declarant may not own the real estate which the Declarant has the power and authority to subject to easements, rights-of-way and licenses.

**8.10 Association as Attorney-in-Fact.** Each Owner, for such Owner and for such Owner's successors and assigns by acquisition of title to all or any portion of the Property, irrevocable appoints the Association as attorney-in-fact to grant, relocate and terminate all easements, right-of-way and licenses which the Association has the power to grant pursuant to this Declaration and subject to the limitations set forth herein; provided, however, that any action taken by the Association as attorney-in-fact shall not materially, adversely affect any Owner's use and development of or access to the Lot owned by such Owner, and provided, further, that this appointment shall not authorize the Association to consent to its own actions or those performed on its behalf where the consent of an Owner is required to be procured pursuant to this Declaration. The Association shall act as such attorney-in-fact only in furtherance of its responsibilities and duties as set forth in this Declaration, it being recognized that this grant of a power of attorney is required because the Association may not own the real estate which it has the power and authority to subject to easements, rights-of-way and licenses.

**8.11** For purposes of this Section 8.11, "Community Systems" shall mean and refer to any and all cable television, telecommunication, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes,

equipment, materials, and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant, or pursuant to any grant of easement or authority by Declarant within the Property.

The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of the Declarant. The Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to the Declarant, any affiliate of the Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of the Declarant unless transferred by the Declarant, whereupon any proceeds of such transfer shall belong to the Declarant. The Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of the Declarant with respect to the Community Systems installed by the Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by the Declarant without the prior written consent of the Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

**8.12** Light, Air and View. No owner or Person shall have an easement for light, air or view over the Lot or Dwelling Unit of another Owner and no diminution of light, air or view by any building or improvement now existing or hereafter erected shall entitle the Owner or any other Person to claim any easement for light, air or view within the Property.

### **ARTICLE 9- Party Walls and Party Fences**

The rights and duties of the Owners of Lots with respect to party walls and party fences shall be governed by the following:

**9.01** General Rules of Law to Apply. Each wall which is constructed as a part of the original construction on the Property and any part of which is placed on the dividing line between separate Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be subject to an easement for that portion of a party wall on his Lot, and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding

party walls and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

9.02     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, his agents, or family (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 condition as formerly, at equal expense.

9.03     Repairs Necessitated by Act of One Owner. If any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

9.04     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 his residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

9.05     Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article 9 shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.06     Party Fences. The provisions of this Article shall also apply to any fence, other barrier or shared improvement between Lots, which is installed by the Declarant and to any replacement thereof authorized by the Board of Directors. Otherwise the upkeep of any fence, barrier or improvement shall be the responsibility of the Owner who has had it installed.

9.07     Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or fence 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 its Board of Directors, who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

## **ARTICLE 10 - Mortgages**

10.01     Notices to Mortgagees, etc. Provided that such First Mortgagee has notified Association in writing of the existence of its mortgage, the Association shall promptly notify the First Mortgagee on any Lot for which any assessment levied pursuant to the Declaration, or any installment thereof, becomes delinquent for a period in excess of thirty (30) days and the Association shall promptly notify the First Mortgagee on any Lot with respect to which any default in any other provision of this Declaration remains uncured

for a period in excess of thirty (30) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Lot and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

10.02 Presumptive Approval. Notwithstanding the foregoing, all notices and rights of Mortgagees shall pertain only to those Mortgagees who have provided written notice to the Association of the Mortgagee's name and address, and the name of the Owner and description of the Lot encumbered by the Mortgage. If any notice is given or consent requested pursuant to this Article 10 and the Mortgagee does not respond within thirty (30) days of such notice, then such Mortgagee shall be deemed to have approved such notice or requested consent.

### **ARTICLE 11 - Insurance and Casualty Losses**

11.01 Insurance. The Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and if reasonably available, directors' and officers' liability insurance, and fidelity bond coverage in an amount not less than three (3) months regular Annual General Assessments plus the Association's reserves for all officers or employees of the Association having fiscal responsibility for and direct access to Association funds. The public liability policy shall have at least a Five Hundred Thousand (\$500,000.00) Dollar per person limit as respects bodily injury, a One Million (\$1,000,000.00) Dollar limit per occurrence, and a Two Hundred Fifty Thousand (\$250,000.00) Dollar minimum property damage limit. Premiums for all insurance on the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the Annual General Assessment, as defined in Article 4, Section 4.01.

All such insurance coverage obtained by the Board of Directors shall be in accordance with underwriting standards for similar community associations.

11.02 No Partition. Except as is permitted in the Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 11.04 of this Article in the case of damage or destruction, or unless the Property has been removed from the provisions of this

Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

11.03 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

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

(b) If it is determined as provided for in Section 11.04 of this Article that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 11.03(a) hereof.

11.04 Damage and Destruction.

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

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

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that



event the Property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

11.05 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's Members, levy a Special Assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

11.06 Declarant's Master Policy. Notwithstanding anything to the contrary contained herein, for so long as the Declarant controls the Board, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied.

## **ARTICLE 12 - Condemnation**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the votes of the Class A Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article 11 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## **ARTICLE 13 - Amendment**

13.01 General Amendments. Subject to Section 13.02, Section 13.03 and Section 14.08 and the other limitations set forth in this Declaration, this Declaration may be amended by an instrument approved by not less than sixty-seven percent (67%) of the

votes cast at a duly-called meeting of the Members. The amendment instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded.

Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

**13.02 Declarant Amendments.** Notwithstanding anything to the contrary herein contained and subject to Section 13.03 below, the Declarant reserves the right to amend this Declaration and convey Common Area without the consent of any Owners, or any other persons claiming an interest in the Property or the Association, if such amendment is necessary to (i) bring this Declaration into compliance with any rule, regulation or requirement of the Federal Housing Administration, The Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, and/or any similar lending entities; any governmental entities or agencies, including Town of Purcellville, Virginia, Virginia; (ii) make corrective changes; (iii) reflect the relocation of boundary lines between the Common Area and any Lots or among any Lots; (iv) annex land as described in Article 7.

**13.03 Town Approval.** A number of provisions are contained within this Declaration to comply with the conditions of rezoning approval and subdivision approval for the Property. Therefore, notwithstanding any other provision of this Declaration, no Supplementary Declaration or amendments shall modify or delete any such provision of this Declaration required by such rezoning approval and subdivision approval conditions, nor shall any Supplementary Declaration or amendment impair the right and authority of the Town to require compliance with the rezoning approval and subdivision approval conditions applicable to the Property without the prior written approval of the Town. Further, the Association may not be dissolved, except pursuant to a merger or consolidation with an entity formed for similar purposes, or the Declaration terminated, without the prior written approval of the Town.

#### **ARTICLE 14 - General Provisions**

**14.01 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated as provided in this Article.

**14.02 Enforcement.** The Association, the Declarant or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The provisions of this Section shall be in addition to and not in limitation of any rights or remedies provided in other Sections of this Declaration.

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

14.04 Construction. The Board of Directors shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

14.05 Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

14.06 Headings. The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

14.07 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

14.08 Dissolution. The Owners shall not dissolve or disband the Association, nor shall the Association dispose of any Common Area by sale, or otherwise, except to an organization conceived and organized to own and maintain the Common Area, without first offering to dedicate the same to the jurisdiction in which the Property is located, or such other appropriate governmental agency. No such dissolution or transfer of the obligations and responsibilities of the Association shall occur without the approval of the appropriate agency of Town of Purcellville, Virginia, Virginia.

14.09 Prohibited Areas. Despite any assumption of control of the Board by Owners other than the Declarant, until the Declarant has sold every home in the development, the Board is prohibited from taking any action which would discriminate against the Declarant, or which would be detrimental to the sale or leasing of homes owned by the Declarant, in the Declarant's sold discretion. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Association by owners other than the Declarant until the Declarant sells the last home owned by it in the ordinary course of business.

## **ARTICLE 15- General Requirements**

### **15.01 In General.**

(a) The Association shall be responsible for maintenance of easements on the Common Area.

(b) It shall be unlawful and no Owner shall dispose of petroleum products in the storm drainage system. The Association shall maintain "Do Not Dump Oil" markings on storm drainage inlet structures.

## **ARTICLE 16- ADDITIONAL COVENANTS**

**16.01** Legal Actions by Associations: No judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by fifty (50%) percent of all votes in existence at the time. The foregoing shall not apply to actions brought by the Association to enforce against homeowners the provisions of this Declaration, the imposition and collection of Assessments, proceedings involving challenges to real property taxes, or counterclaims brought by the Association in proceedings instituted against it, all of which may be pursued if approved by the Board of Directors (also referred to herein as the "Executive Board"). Any action brought by the Association against an Owner or against the Declarant shall be resolved by binding arbitration in accordance with the rules and procedures of Construction Arbitration Services, Inc. or its successor, or an equivalent organization selected by the Executive Board.

**16.02** Declarant's Right to Contribute to Revenues of the Association. Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of the Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to the Declarant, at the discretion of the Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

**16.03** Guesthouse. The Declarant expressly reserves the right to retain one or more Dwelling Units in the Property as a guest house, to be used and enjoyed by the Declarant, its affiliates, employees, invitees, and licensees for any lawful purpose.

**16.04** Legal Actions By Owners. No Owner shall have the right to object, to challenge, and/or to commence any legal proceeding under any act, power, or authority now in force or hereafter to be enacted except after following such procedures as may be established by the Executive Board by rule or regulation consistent with the provisions of this Declaration. The Executive Board, or a committee as may be appointed by the Executive Board, shall hear claims from Owners regarding alleged violations of the Declaration, Bylaws, and any rules and regulations (except for violations with respect to assessment obligations) of the Association. The Executive Board or such committee shall hold a hearing on any such claim within forty-five (45) days after receipt by the Executive Board of a written notice of claim and request for a hearing from an Owner. A decision shall be issued in writing by the Executive Board or such committee (which decision may at the Executive Board or committee's discretion, but shall not be required, to include the

rationale supporting the decision) within fifteen (15) days after the conclusion of the hearing, unless the parties involved agree to extend the timeframe for the decision.

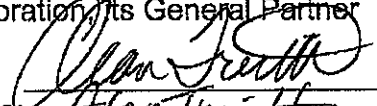
Unless the internal remedies provided by this section and any rules and regulations as may be promulgated by the Executive Board, shall be expressly waived by the Association, or the Association fails or refuses to act, no legal proceeding shall be commenced by any Owner until such internal remedy is pursued to exhaustion. Once all Association procedures are exhausted, any and all disputes arising out of the Declaration, Bylaws, and any rules and regulations (except for violations with respect to assessment obligations) of the Association and all other torts and statutory causes of action ("Claims") shall be resolved by binding arbitration in accordance with the rules and procedures of Construction Arbitration Services, Inc or its successor or an equivalent organization selected by Executive Board.

**[SIGNATURES ARE ON THE FOLLOWING PAGES.]**

**IN WITNESS WHEREOF**, the undersigned have executed this instrument as of the date above.

**TOLL LAND X LIMITED PARTNERSHIP, a Virginia limited partnership**

By: TOLL VA GP CORP., a Virginia corporation, its General Partner

By:  (seal)  
Name: Alan Truitt  
Title: Vice President

STATE OF VIRGINIA:  
CITY/COUNTY OF Lowdoun : to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of November, 2009, by Alan Truitt, VP of TOLL VA GP CORP., General Partner of TOLL LAND X LIMITED PARTNERSHIP

  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

**Lucy E. Burrows**  
**NOTARY PUBLIC**  
Commonwealth of Virginia  
My Commission Expires July 31, 2011  
Registration Number 242062

PURCELLVILLE GREEN HOMEOWNERS ASSOCIATION, INC.

By: [Signature] (seal)  
Name: Alan Truitt  
Title: Director

STATE OF VIRGINIA:  
CITY/COUNTY OF Loudoun : to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of November, 2009 by Alan Truitt, Director of Purcellville Green Homeowners Association, Inc.

Lucy E. Burrows  
My Commission Expires July 31, 2011  
Registration Number 242062

[Signature]  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_  
Virginia Notary Registration #: \_\_\_\_\_

Lucy E. Burrows  
NOTARY PUBLIC  
Commonwealth of Virginia  
My Commission Expires July 31, 2011  
Registration Number 242062

EXHIBIT A

To Declaration of Protective Covenants for PURCELLVILLE GREEN HOMEOWNERS ASSOCIATION, INC.

Lots 1 through 60, inclusive, Purcellville Green, as duly dedicated, platted and recorded immediately prior hereto in the Deed of Dedication, Subdivision, Easement, Conveyance and Declaration of Covenants for Purcellville Green.



EXHIBIT B

To Declaration of Protective Covenants for PURCELLVILLE GREEN HOMEOWNERS ASSOCIATION, INC.

Parcel A, Purcellville Green as duly dedicated, platted and recorded immediately prior hereto in the Deed of Dedication, Subdivision, Easement, Conveyance and Declaration of Covenants for Purcellville Green.