

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS

TWIN LAKES OVERLOOK

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the 10th day of March, 2010, by and between TOLL VA IV, L.P., a Virginia Limited Partnership, its successors and assigns (the "Declarant") (Grantor for indexing purposes), and Twin Lakes Overlook Community Association, Inc. a Virginia non-stock corporation, its successors and assigns (the "Association") (Grantee for indexing purposes) and amends and supercedes all previous Declarations of Covenants, Conditions, and Restrictions for Twin Lakes Overlook, Phase 9, Sections 1 and 2.

RECITALS:

A. The Declarant previously formed the Association and recorded among the land records of Frederick County, Virginia at Instrument No. 060000768, page 0252, et seq., a Declaration of Covenants, Conditions, and Restrictions (the "Prior Declaration") for Twin Lakes Overlook, and the Declarant is or was the owner of certain real property which is being developed as single family detached residential units in accordance with the Frederick County Zoning Ordinance, located in Frederick County, Virginia, known as Lots 1 through 149, Twin Lakes Overlook, Phase 9, Section 1 and Phase 9 Section 2, as the same are duly subdivided, platted and recorded by the Plats and Deeds of Subdivision recorded at Instrument No.s 050008830, and 050022857, in the records of the Circuit Court of Frederick County.

B. The Association is, or at the time of recordation of the Prior Declaration or this Declaration will be, the owner of certain real property located in Frederick County, Virginia, known as Twin Lakes Overlook, Phase 9, Section 1 and Section 2, as the same is duly subdivided, platted and recorded by the Plat and Deed of Subdivision at Instrument No.s 050008830, and 050022857, in the records of the Circuit Court of Frederick County.

C. The Declarant is creating on the Property a residential community, which shall have permanent open spaces and other common facilities for the benefit of the community.

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

E. The Declarant has deemed it desirable for the efficient preservation of the values of said community to create an association to which shall be delegated and assigned the powers

of owning, maintaining and administering the Common Area and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration, and collecting and disbursing the Assessments and charges hereafter created.

F. The Declarant has incorporated as a non-stock corporation under the laws of the Commonwealth of Virginia, the Twin Lakes Overlook Community Association, Inc., for the purpose of exercising the functions of the Association.

G. Pursuant to Section 55-515.2 of the Virginia Property Owners' Association Act and Article XI, Section 10 of the Declaration, the Declarant may unilaterally execute and record a corrective amendment or supplement to the Declaration to correct mistakes, inconsistencies, scrivener's errors and ambiguities in the Declaration; and the Declarant is hereby exercising that authority to make corrections to the Prior Declaration by executing and recording this Declaration.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Twin Lakes Overlook Community Association, Inc., a Virginia non-stock corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" or "Directors" shall mean and refer to the executive and administrative entity established by the Articles of Incorporation of the Association as the governing body of the Association.

Section 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members.

Section 4. "Community" shall mean and refer to the Twin Lakes community developed now or in the future on the Property.

Section 5. "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.

Section 6. “**Declarant**” for these Articles shall mean and refer to Toll VA IV, L.P., and its successors or assigns (i) to whom Toll VA IV, L.P. assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the appropriate land records, or (ii) who is a purchaser at foreclosure of the Property or a grantee in a deed in lieu of foreclosure from the Declarant. Such an assignment shall only operate as to the land which is owned by such successor or assign. If the Declarant consists of more than one (1) person or entity, the rights and obligations of the Declarants shall be several and shall be based upon and apportioned in accordance with the number of Lots owned by each Declarant.

Section 7. “**Declaration**” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions applicable to the Property, and any amendments hereto, which Declaration is recorded in the Office of the Clerk of the Circuit Court of Frederick County, Virginia.

Section 8. “**Developer**” shall mean and refer to Toll VA IV, L.P., and its assignees if such assignees receive a written assignment from the Developer.

Section 9. “**Federal Agencies**” shall mean the Veterans Administration (“VA”), Federal Housing Authority (“FHA”), Fannie Mae and Freddie Mac.

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

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

Section 12. “**Mortgagee**” shall mean and refer to any person or entity secured by a first mortgage or first Deed of Trust on any Lot or the Common Area who has notified the Association of this fact in writing. An “Eligible Mortgagee” shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article X.

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

Section 14. “**Property**” shall mean and refer to that certain real property described as Twin Lakes Overlook, Phase 9, Section 1 and Section 2, as duly subdivided, platted and recorded by the Plats of Subdivision recorded with the Prior Declaration, and such additions thereto which, from time to time, have or may be brought within the jurisdiction of the Association, which property shall be identified as part of Frederick County Tax Parcel Nos. containing approximately 98.22 acres (by subtraction).

Section 15. “**Unit**” shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) patio or zero lot line homes, carriage houses, townhouses and detached homes.

## ARTICLE II

### MEMBERSHIP

Every Owner of a Lot which is subject to assessment under this Declaration 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 under this Declaration. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

## ARTICLE III

### VOTING RIGHTS

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

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

Class B: The Class B Member(s) shall be the Declarant. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership, pursuant to Article II. Class B membership shall cease and a Class A membership with one (1) vote for each Lot in which it holds an interest shall issue on the happening of any of the following events, whichever occurs first:

(a) within four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) seven (7) years from the date of recordation of this Declaration; or

(c) sixty (60) days after the Declarant abandons construction in the annexed

property (i.e., no new dwelling construction has been initiated for a period of ten (10) months in the annexed property, unless there is evidence of continuing construction).

Section 2. Annexation. Upon annexation of additional properties pursuant to this Declaration, and in the event that Class B membership shall have ceased as hereinabove provided, Class B membership shall be revived with respect to all Lots owned by the Declarant. Such Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

- (a) within four (4) months after the total votes outstanding in Class A membership in the annexed property equal the total votes outstanding in the Class B membership in such annexed property; or
- (b) five (5) years from the date of recordation of the document annexing such property; or
- (c) sixty (60) days after the Declarant abandons construction in the annexed property (i.e., no new dwelling construction has been initiated for a period of ten (10) months in the annexed property, unless there is evidence of continuing construction).

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

ARTICLE IV

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility located on the Common Area;
- (b) the right of the Association to limit the number of guests of Members on the Common Area or to make any recreational facility available to occupants of adjacent real estate or members of the general public;
- (c) the right of the Association to adopt and enforce rules and regulations

governing the use of the Common Area and facilities and the personal conduct of Owners, residents and guests thereon, including, without limitation, the imposition of fines for the violation thereof;

(d) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any recreational facilities or nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. The right to suspend use of recreational facilities shall occur once the Member is more than 60 days past due in their assessment;

(e) the right of the Association, subject to this Declaration and the easement of enjoyment created hereby, to mortgage the Common Area subject to the approval of such Members, Mortgagees and Federal Agencies as may be provided in the Declaration and to acquire property encumbered by a lien or liens of a mortgage or Deed of Trust; provided that any such mortgage of the Common Area must state that it is subject to this Declaration and the easement of enjoyment created hereby and shall not be in conflict with its designation as "open space." In the event of default upon any mortgage or deed of trust on the Common Area, after taking possession of such Common Area, a lender's rights are limited to charging reasonable admission and other fees as a condition of continued enjoyment by Members, and if necessary, to a wider range of users. Upon satisfaction of the mortgage or deed of trust, such Common Area shall be returned to the Association with full restoration of the Members' rights;

(f) the right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of Frederick County, Virginia (the "County") and its designation of the Common Area as "open space," to transfer all or any part of the Common Area to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which it was required to be devoted by the Association. In the event that such offer of dedication is refused, such Common Area shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Virginia law. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present; written notice of which shall be sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting, setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents. The resubdivision or adjustment of the boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

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

(h) the right of the Association to lease the Common Area, provided however that such lease(s) must:

- (i) be only to non-profit organizations;
- (ii) prohibit assignment and subleasing;
- (iii) require the prior, written approval of the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration;
- (iv) be consistent with the then-existing ordinances of the County; and
- (v) be consistent with the open space designation of the Common Area;

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

(j) all rights reserved by the Declarant in Article VIII; and

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

The Association, acting through the Board of Directors, may exercise these rights without the approval of Members, Mortgagees or Federal Agencies, unless provided otherwise in this Declaration.

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

Section 3. Declarant's Right of First Offer. Any Owner who decides to sell, market or list their Unit within one (1) year from the settlement date with the Declarant, shall first offer to the Declarant the right to repurchase the Unit at the Purchase Price paid by the Owner to the Declarant at settlement. Any improvements made to the Unit following the date of settlement shall not be included in the purchase price that the Declarant pays to the Owner if the Declarant elects to exercise its first right of offer. All notices from Owner and Declarant shall be in writing and sent certified mail return receipt requested. The Declarant shall have thirty (30) days from the date of receipt of the Owner's notice to elect to exercise the Declarant's first right of offer.

(a) Notwithstanding the provisions of this Section, if the Owner is required to offer their Unit for sale within one (1) year from the date of their settlement with the Declarant due to the permanent disability or death of the Owner or change of employment necessitating relocation, then in that event, the Declarant’s first right of offer shall not apply. If the Owner provides the Declarant evidence that they met the qualifications of this Section, the Declarant agrees to provide a written waiver to the Owner of its first right of offer.

(b) In the event that the Owner is a corporation, partnership, limited liability company or other business entity, any transfer of interest in the entity which results in an effective change in control of such entity shall require compliance with this Section.

ARTICLE V

ASSESSMENTS

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

Section 2. Purpose of Assessment. The Assessments levied by the Association shall be used to promote the recreation, health, and welfare of the residents and Owners of the Property, including but not limited to, the maintenance of street lights, the improvement and maintenance of the Common Area, including any storm water detention facilities, drainage facilities, and lighting facilities, payment of taxes, construction of improvements and maintenance of services and facilities devoted to these purposes or related to the use and enjoyment of the Common Area or other property, which the Association has the obligation to maintain, and for such other purposes as the Board of Directors may determine to be appropriate.

Section 3. Establishment of Annual Assessment.

(a) The Association must levy in each of its fiscal years an annual assessment (the “Annual Assessment”) against each Lot. The amount of such Annual Assessment shall be



established by the Board of Directors. Written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable to all Lots within a Section of the Property (as such Section is shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot within that Section to an Owner who is not the Declarant. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

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

Section 4. Special Assessment. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "Special Assessment"). The Special Assessment shall be levied against all of the Lots in each Section which benefit from the Special Assessment, pro rata, according to each Section's benefit. The amount of the Special Assessment shall be the same for each Lot in any Section, but need not be uniform with the Special Assessment imposed on Lots in other Sections.

Section 5. Working Capital Assessment. In addition to the Annual and Special Assessments authorized above, the Association shall establish and maintain a working capital fund. At each settlement on the initial sale by a Declarant of a Lot for which a residential use zoning permit has been issued, and at each settlement of a resale of a Lot by a Member, the purchaser of such Lot shall pay to the Association a one-time working capital assessment of Three Hundred Dollars (\$300.00).

Section 6. Rate of Assessment. The Annual Assessment shall be fixed at a uniform rate for all Lots, except for Lots owned by the Declarant. Any model home, or unoccupied Lot owned by the Declarant shall be exempt from assessment.

Section 7. Notice of Assessment and Certificate. Written notice of the Annual Assessment shall be sent to every Member. The due dates for payment of the Annual Assessment shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 8. Remedies of the Association In the Event of Default. There shall be a Twenty dollar (\$20.00) late fee, or such other amount as established by the Board of Directors, for any Assessment pursuant to this Declaration which is not paid within fifteen (15) days after its due date. The Assessment shall bear interest at the rate of the prime interest rate, as stated in the Wall Street Journal, plus ten percent (10%) from the date of delinquency, through the date of collection. In addition, in its discretion, the Association may utilize any or all of the following:

(a) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such Assessment. A suit to recover a money judgment for non-payment of any Assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;

(b) suspend a Member's voting rights, right to hold an office within the Association, and once sixty (60) days past due, suspend a Member's right to use recreational facilities or non-essential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. No Assessment shall be refunded in the event of suspension; and

(c) accelerate the due date of the unpaid Assessment so that the entire balance shall become due, payable and collectible.

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

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any properly recorded first trust or mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of a first trust or mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for or the lien of any Assessments which thereafter become due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 11. Reserves for Replacements. The Association shall establish and maintain a reserve fund for the maintenance, repair and replacement of the Common Area and improvements located thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance

of any improvements within the Common Area, including but not limited to sidewalks, parking areas, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VI

RESTRICTIVE COVENANTS

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 to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in 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 of the Property.

Section 1. Use. Except as used by the Declarant in connection and marketing of Lots in the Community, each Lot shall be used for residential purposes only; provided (subject to Sections 9 below) that occupations carried on in the Unit are permitted only if such use is incidental to the Unit's primary residential use; provided further that the Owners who pursue such incidental occupational use of their Unit shall have no employees, customers or clients at the Unit and shall obtain prior approval from all authorities having jurisdiction over the use of the Unit.

Section 2. Occupancy. Units shall be occupied by no more persons than the maximum permitted by law for the Unit.

Section 3. Common Area Alteration. Except for work done by the Declarant in connection with the construction and marketing of 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 Area without the prior written approval of the Board of Directors and the Declarant. The Declarant's approval shall be required until one (1) year after the conveyance by the Declarant of the last Unit.

Section 4. Maintenance. Each Owner or occupant shall maintain his Lot in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any Rules or Regulations which may be applicable hereunder or under law.

Section 5. Quite Enjoyment. No Owner or occupant of any Unit shall carry on, or permit to be carried on, any practice on his Lot or on the Property which unreasonably interferes

with the quiet enjoyment and proper use of another Lot or the Common Area by the Owner or occupant of any other Lot, or which creates or results in a hazard or nuisance on the Property.

Section 6. Signs. No sign, banner, flag, billboard or advertisement of any kind, including, without limitation, informational signs, "for sale" or "for rent" signs and those of contractors and subcontractors, shall be erected on the Lot, without the prior written consent of the Board of Directors. If permission is granted to any Owner to erect a sign within the Lot, 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. Owners may not erect any sign on a Unit or on any of the Common Area.

Section 7. Obstructions. Owners or residents may not obstruct the Common Area in any way including, but not limited to, interfering with any storm water drainage. Owners or residents may not store anything in or on the Common Areas without the prior written approval of the Board of Directors.

Section 8. Laundry and Windows. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Community, 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 heretofore 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. Window air conditioners are prohibited.

Section 9. Permitted Uses. No commercial, industrial, recreational or professional activity not permitted by the present zoning or other applicable laws or ordinances, shall be pursued on any Lot, at any time. If zoning regulations change to expand the scope of activities that Owners may pursue lawfully within the Lot, an Owner may apply to the Board of Directors for approval to commence the permitted use of his Lot. Each application shall be considered by the Board of Directors on an individual basis. Once the Board of Directors has given its approval to a particular use of a Lot, it may not revoke the approval as long as the nature and scope of the approved use remains unchanged. No Owner shall permit his Lot to be used or occupied for any prohibited purpose.

Section 10. Animals. Owners shall not keep on any Lot 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 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 Areas 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 Community. 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.

Section 11. 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 Unit or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or by the Board of Directors, 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.

Section 12. Antenna. To the extent permitted by law, a DBS antenna, MDS antenna or transmission-only antenna may be erected on a Lot provided it is not greater than one (1) meter in diameter and prior approval of the Board of Directors is obtained. No television broadcast antenna of any size or masts of any size attached to any of the above-listed antennas may be erected. Qualified antennas must be erected on the rear of the Unit, unless such placement impedes reception in which event such antenna may be erected in another location on the Lot provided that it is screened by landscaping or other material where reasonable.

Section 13. Maintenance by Association. Each Owner shall maintain his Lot in a manner satisfactory to the Association and in accordance with the Declaration, Bylaws and rules and regulations of the Association. In the event that a Lot is not so maintained, the Association shall have the right to enter upon the Lot to maintain the same, after giving the Owner at least fifteen (15) days written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Owner for the cost of such maintenance. The Association, by its Board of Directors, shall have the right to establish Rules and Regulations governing the maintenance of any Lot.

Section 14. Parking and Vehicles. Driveways, streets and other exterior parking areas on the Property shall be used by Owners, residents 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 Property or if entirely enclosed in a Owner's garage.

Section 15. Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 16. Motor Vehicles Prohibited From Certain Common Areas. Motor vehicles including, but not limited to, mini-bikes, snowmobiles and motorcycles, may not be driven on

the Common Area recreational facilities (or other areas not designed or intended for vehicular use) by any Owner, resident or guest.

Section 17. Subdivision. Except for the Declarant, no Owner may subdivide or partition his Lot, except as set forth in the Declaration and Bylaws of the Association.

Section 18. Access Through Common Area. No Owner shall perform or permit to be performed any work to any portion of his Lot, which work may require access to, over or through the Common Area or other Lots without the prior consent of the Board of Directors except in case of an emergency. All such work may only be performed by a Person who shall deliver to the Board of Directors prior to commencement of such work, in form satisfactory to the Board of Directors:

- (a) releases of the Board of Directors and the Association for all claims that such Person may assert in connection with such work;
- (b) indemnities of the Board of Directors 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 Area or other Lots;
- (c) certificates of insurance, including liability and workmen’s compensation coverage, in amounts and with companies reasonably acceptable to the Board of Directors; and
- (d) all other information and protections which the Board of Directors may reasonably require.

Section 19. Alteration of Common Area Facilities. No Owner may alter the Common Area or the facilities or other improvements thereon.

Section 20. Declarant’s Rights. Nothing herein shall give the Board of Directors authority to regulate, control or determine external design, appearance, use or location of portions of the Property under development, or to be developed, or Units under construction, or to be constructed, marketed or sold by the Declarant if and when such design, appearance, use and location shall have received any required approvals by the appropriate departments or officials of the County.

Section 21. Prohibition of Use – Common Areas. The Board of Directors may prohibit or restrict the use of the Common Area from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.

Section 22. Lot Alteration. An Owner may not alter the exterior of his Lot except with the prior approval of the Board of Directors.

Section 23. Accessory Structures and Uses. No Owner shall erect or permit to be erected on any Lot any fence, in-ground pool, tennis court or other outdoor game court, storage shed or other exterior building, addition or improvement, without the prior written consent and

design approval of Declarant until such time as Declarant no longer owns a Lot in the Community and, thereafter, of the Association per Article VII. **Current zoning regulations prohibit all storage sheds and exterior buildings.** Under no circumstances may any fences, hedges, fountain or mass plantings of any type be erected or planted in front of the front wall line of the Dwelling. No aboveground pools may be erected or maintained at any time. Each Owner shall act to insure that the Property and each Unit remain open to light and air. As an example, no stockade fence or similar fence that blocks one's view or any other structure that will in any way prohibit free view of the Property will be permitted. The grading of any Lot shall not be changed in any manner that will cause an adverse effect on any adjacent Lot.

Section 24. The foregoing use restrictions are not intended to and do not expand permitted uses under the applicable zoning code of the County in effect at the time of the final approval of the Community.

Section 25. Sanitation Authority Easements. In accordance with the County's conditions of subdivision approval, no landscaping is permitted within five (5) feet of the fire hydrants and meter crock locations, nor within Frederick County Sanitation Authority easements.

Section 26. Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

## ARTICLE VII

### ARCHITECTURAL REVIEW BOARD

Section 1. Composition. The Architectural Review Board shall be comprised of three (3) or more members. Members shall serve staggered three (3) year terms as determined by the Board of Directors.

Section 2. Method of Selection. The Board of Directors shall appoint the persons to serve on the Architectural Review Board. After termination of the Class B membership, no member of the Architectural Review Board may be a Director. The Declarant may assign its rights under this Article to a non-Declarant by a written assignment.

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

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

Section 5. Duties. The Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the

improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among structures and the natural vegetation and topography. Further, the Architectural Review Board shall regulate all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board shall:

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

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

The Architectural Review Board shall have no oversight of improvements made to the Property by the Declarant.

Section 6. Enforcement. Any exterior addition, change or alteration made without application to, and approval of, the Architectural Review Board shall be deemed to be in violation of these covenants and may be required by the Board of Directors to be restored to its original condition at the offending Owner's sole cost and expense.

Section 7. Appeal. Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any Director within twenty (20) days of the adverse ruling.

ARTICLE VIII

EASEMENTS

Section 1. Blanket Easements. The Declarant grants and the Association reserves a blanket easement to the Association, its Directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel, and all similar persons, to enter upon the Property, except within the limits of those portions of the Property that are intended to be dedicated to the County for public rights-of-way and accepted into the State secondary system for maintenance, in the exercise of the functions provided for by this Declaration, the Articles of Incorporation, By-Laws, and rules of the



Association, and in the event of emergencies and in the performance of governmental functions.

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

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

Section 4. Development. Subject to the limitations and restrictions of this Declaration, the Declarant, its agents and employees shall have a right of ingress and egress over the Common Area as required for construction on the development of the Property.

Section 5. Utilities. There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, street light lamps and poles, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

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

Section 7. Declarant-Retained Easement Rights. There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of correcting drainage, regrading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall

automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

Section 8. Community Systems Easements. 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 Units 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. **(However, the provision of the services available through the Community Systems installed by the Declarant shall be non-exclusive, and the Association may permit any third party to install and provide Community Systems and services through the Community provided the Community Systems shall be constructed and installed by such third party and on such non-exclusive terms and conditions as the Association may determine; provided, however, that such other Community Systems and services shall not affect or modify the rights of the Declarant.)**

Section 9. Sidewalk, Trail Public Access Easements. There is reserved to the Declarant a right to grant non-exclusive public access easements over any Common Area for the installation and maintenance of a trail to be maintained by the Association. There is reserved to the Declarant a right to grant public access easements over any Lot or Common Area for the installation and maintenance of a sidewalk; the easement shall be located within six (6) feet nearest the adjacent rights-of-way. Additionally, the Declarant reserves the right to grant sidewalk maintenance easement extending an additional two (2) feet from the sidewalk onto any Lot or Common Area for maintenance of the sidewalk.

ARTICLE IXPOWERS AND DUTIES OF THE ASSOCIATION

Section 1. Discretionary Powers and Duties. Subject to the limitations and restrictions of this Declaration, the Association shall have the following powers and duties, which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restrictions or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceeding shall be paid out of the general fund of the Association as stated herein; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

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

(c) to build facilities upon the Common Area;

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

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

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

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Areas, including but not limited to easements for the installation,

replacement, repair and maintenance of utility lines serving the Property;

- (h) to create subsidiary corporations in accordance with Virginia law;
- (i) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;
- (j) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;
- (k) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property;
- (l) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Unit and any other improvements located thereon if such is not performed by the Owner of the Lot and to assess the Owner with the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in the Article entitled "Assessments"; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fifteen (15) days prior to such entry;
- (m) to resubdivide and/or adjust the boundary lines of the Common Area but only to the extent such resubdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;
- (n) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use recreational facilities or non-essential services for non-payment of Assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations, as provided for in the Virginia Property Owners' Association Act (the "Act");
- (o) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and
- (p) to negotiate a trash service contract on behalf of some or all of the Owners, the cost of which shall be a common expense.

Section 2. Mandatory Powers and Duties. Subject to the limitations and restrictions of this Declaration, the Association shall exercise the following powers, rights and duties:

- (a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and residents of Lots, and to cause

the Common Area and facilities to be maintained in accordance with the standards adopted by the Board;

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

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

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

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

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

(g) to maintain its corporate status; and

(h) to maintain all stormwater management detention, drainage, and lighting facilities serving the Property.

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

## ARTICLE X

### RIGHTS OF MORTGAGEES

Unless a right is waived by the appropriate Federal Agency, all Mortgagees shall have the following rights:

Section 1. Veterans Administration. If any of the Lots are security for a loan guaranteed by the VA and if there is a Class B Member:

- (a) The Declarant must provide a copy of all amendments to the VA. The Association may not make any Material Amendment (as defined in Article XI) or take any Extraordinary Action (as defined in Article XI) without the approval of the VA.
- (b) Eligible Mortgagees shall have the following rights:
  - (i) the right to inspect Association documents and records on the same terms as the Members;
  - (ii) notice of any Material Amendment to the Association documents;
  - (iii) notice of any Extraordinary Action of the Association;
  - (iv) notice of any property loss, condemnation or eminent domain proceeding affecting the Common Area resulting in a loss greater than ten percent (10%) of the annual budget or affecting any Lot insured by the Association in which the Eligible Mortgagee has an interest;
  - (v) notice of any termination, lapse or material modification of an insurance policy held by the Association;
  - (vi) notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible Mortgagee in paying Assessments or charges to the Association, which remains uncured for sixty (60) consecutive days;
  - (vii) notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any action is taken;
  - (viii) the right of a majority of the Eligible Mortgagees to demand professional management; and

(ix) the right of a majority of the Eligible Mortgagees to demand an audit of the Association's financial records.

Section 2. Federal Housing Authority. If any of the Lots are security for a loan insured by FHA and if there is a Class B Member, the following actions will require the prior approval of the FHA:

- (a) annexation of additional properties, except the land described in the Article entitled "General Provisions";
- (b) mergers, consolidations, and dissolution of the Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) amendment of this Declaration.

Section 3. Freddie Mac.

(a) Unless at least two-thirds (2/3) of the first mortgages (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A Members have given their prior written approval, the Association shall not take any of the following actions:

- (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The resubdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer or subdivision within the meaning of this clause;
- (ii) change the method of determining the obligations, Assessments, dues, or other charges that may be levied against an Owner;
- (iii) by act or omission, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units and their appurtenances, the exterior maintenance of Units and their appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property;
- (iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value; or
- (v) use hazard insurance proceeds for losses to the Common Area or

other Association property for other than the repair, replacement or reconstruction of such property.

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

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee making such payments shall be owed immediate reimbursement therefore from the Association.

(d) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by Special Assessment.

Section 4.     Fannie Mae.

(a) A Mortgagee shall be given written notification from the Association of the following:

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

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

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

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

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Association that it has relied on the value of the improvements in making a loan on a portion or all of the Property, then subject to the right of the Declarant to annex additional areas as provided in the Article entitled "General Provisions", unless at least sixty-seven percent (67%) of the Members and Mortgagees representing at least fifty-one percent (51%) of those Lots that are subject to mortgages or deeds of trust have given their prior written approval, the Association shall not add or amend any



material provision of this Declaration or related Association documents concerning the following:

- (i) voting rights of any Member;
- (ii) Assessments, Assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;
- (iv) responsibility for maintenance and repair of the Property;
- (v) reallocation of interests in the Common Area or rights to its use, except as provided in the Articles entitled "Voting Rights" and "Property Rights";
- (vi) converting Lots into Common Area or vice versa;
- (vii) annexation or withdrawal of property to or from the Property (other than annexation of those properties referred to in the Article entitled "General Provisions");
- (viii) insurance or fidelity bonds;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey its property;
- (xi) a decision by the Association to establish self-management when professional management has been required previously by a Mortgagee;
- (xii) restoration or repair of the Property after a hazard damage or partial condemnation;
- (xiii) any provisions that are for the express benefit of Mortgagees; and
- (xiv) termination of the legal status of the Association after substantial destruction or condemnation of the subdivision occurs.

(c) An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of clarification or correcting errors. A Mortgagee who receives a written request to approve additions or amendments, who does not deliver or post to the requesting party a negative response within thirty (30) days of receipt of such request, shall be deemed to have approved such request.

Section 5. General.

(a) Condemnation. In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.

(b) Unpaid Assessments. Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or Deed of Trust or foreclosure of the mortgage or Deed of Trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrued prior to the acquisition of title to the Lot by the Mortgagee.

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

(d) Notice. As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (i) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by the Federal National Mortgage Association); (ii) any material amendment to the Declaration, the By-Laws or the Articles of Incorporation; and (iii) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management.

(e) Excess Proceeds. Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Virginia law.

(f) Audited Financial Statement. The Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.

(g) Termination. Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

(h) Damage to Common Area. The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by a majority of the Mortgagees.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Legal Actions By Association. No judicial or administrative proceedings shall be commenced or prosecuted by the Association unless approved by fifty percent (50%) of all Lot Owners in the Community. The foregoing shall not apply to actions brought by the Association to enforce against Owners 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. Not including those actions excepted above, any action brought by the Association against one of its Owners or against the Developer (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 Board of Directors.

Section 2. 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 Board of Directors by rule or regulation consistent with the provisions of this Declaration. The Board of Directors, or a committee as may be appointed by the Board of Directors, 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 Board of Directors or such committee shall hold a hearing on any such claim within forty-five (45) days after receipt by the Board of Directors of a written notice of claim and request for a hearing from an Owner. A decision shall be issued in writing by the Board of Directors or such committee (which decision may at the Board of Directors 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 Board of Directors, 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 Board of Directors.

Section 3. 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.

Section 4. Water Bodies. By acceptance of a deed to a Unit or a Lot, each Owner acknowledges that the water levels of all water bodies may vary. There is no guarantee by the Developer or the Association that water levels will be constant or aesthetically pleasing at any particular time. In fact, water levels may be non-existent from time to time.

Section 5. Managing Agent. The Declarant (or an entity controlled by the Declarant) may be engaged by the Association to act as the managing agent for the Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Association and the Declarant (or an entity controlled by the Declarant). Any management agreement entered into by the Association prior to the Turnover Date (cessation of Class B Membership) shall have a term of not more than two (2) years and shall be terminable by the Association without payment of a termination fee on ninety (90) days written notice.

Section 6. Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies, and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 7. Severability; Headings; Conflict. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Articles of Incorporation shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 8. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each.

Section 9. Material Amendment/Extraordinary Action.

(a) In accordance with Federal Agencies' requirements, material amendments ("**Material Amendments**") or extraordinary actions ("**Extraordinary Actions**") must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the By-Laws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting.

(b) A Material Amendment includes adding, deleting, or modifying any provision regarding the following:

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of Common Area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use the Common Area except as provided in the Articles entitled "Voting Rights" and "Property Rights";
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of Common Area improvements;
- (ix) the annexation or withdrawal of land to or from the Property other than annexation or withdrawal of those properties referred to in the Article entitled "General Provisions";
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

(c) An Extraordinary Action includes:

- (i) merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to this Association);
- (ii) determining not to require professional management if that management has been required by the Association documents, a majority of eligible Mortgagees, or a majority vote of the Members;
- (iii) expanding the Association to include land not previously described as annexable, which increases the overall land area of the project or number of Lots by more than ten percent (10%);
- (iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Common Area except for (A) granting easements; (B) dedicating Common Area as required by a public authority; (C) resubdividing or adjusting the boundary lines of the Common Area; or (D) transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association;
- (v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or
- (vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.

(d) Any Material Amendment which changes the rights of any specific class of Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the By-Laws.

(e) The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Class A Members:

- (i) termination of this Declaration or the termination of the project;
- (ii) dissolution of the Association except pursuant to a consolidation or merger; and
- (iii) conveyance of all Common Area.

(f) If the Veterans Administration has guaranteed any loans secured by a Lot, so long as there is a Class B Member, all Material Amendments and Extraordinary Actions must

have the approval of the Veterans Administration.

Section 10. Amendment. Amendments other than Material Amendments or Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and convened meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members. Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records. Provided, however, that within seven (7) years after the recordation of this Declaration or within five (5) years after the most recent recordation of an annexation document, whichever is later, no such consent is required for the annexation by the Declarant of all or any part of the real property adjacent or contiguous to the Property, or separated from it only by a public street; and provided further, that within seven (7) years after the recordation of this Declaration or within five (5) years after the most recent recordation of an annexation document, whichever is later, no such consent is required for the Declarant to correct errors or omissions from these documents, and to resubdivide and/or adjust the boundary lines of the Common Area to the extent such resubdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property

Section 11. Special Amendment. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant and thereafter may make any amendment required by any of the Federal Agencies or by the County, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 12. Waiver. The Declarant, as the party currently most interested in maintaining the high quality of development, which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded among the land records of Frederick County, Virginia; provided, however, that no such waiver or alteration shall be permitted which would impair the ability of the Association to adequately perform all of its powers and duties as set forth in this Declaration.

Section 13. Annexation of Additional Property. The Association may annex additional areas and provide for maintenance, preservation and architectural control of Units, Lots and Common Area within such areas, and so may add to its membership under the provisions of the Article entitled "Membership", with the written consent of more than fifty percent (50%) of each class of Members. Provided, however, that within seven (7) years after the recordation of this Declaration or within five (5) years after the most recent recordation of an annexation document, whichever is later, no such consent is required for the annexation by the Declarant of all or any part of the real property adjacent or contiguous to the Property, or

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separated from it only by a public street.

Section 14. Withdrawable Real Estate.

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration. This paragraph shall not apply to any withdrawals prior to the date of the recordation of this Declaration. This paragraph shall not apply to any section of the Property for which any zoning permit has been issued by the County.


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

Section 15. Dissolution. Subject to Section 12 below, the Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to a charitable organization or organizations of the kind described in Section 501 of the Internal Revenue Code of 1954, as amended, to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall then be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Virginia law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space."

Section 16. County Approval. Some provisions are contained within this Declaration to comply with the conditions of subdivision approval applicable to the Property. No supplementary declaration or amendment shall impair the right and authority of the County to require compliance with the subdivision approval conditions applicable to the Property without the prior written approval of the County. In addition, the Association shall not be dissolved nor the Declaration terminated, except pursuant to a consolidation or merger with an entity formed for similar purposes, without the prior written approval of the County.

WITNESSETH, the following signatures and seals:

TOLL VA IV, L.P.  
A Virginia Limited Partnership

By:  (Seal)

Its: VICE PRESIDENT



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STATE OF VIRGINIA  
COUNTY OF FREDERICK, TO-WIT

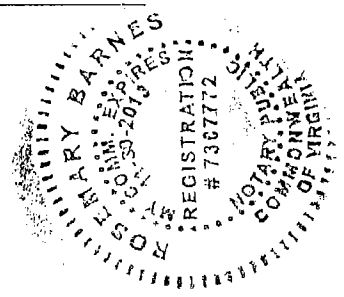
I, Rose Barnes, Notary Public in and for the State and Jurisdiction aforesaid, do hereby certify that Eric Anderson, Vice President of Toll VA, IV, L.P. whose name is signed on the foregoing AMENDED AND RESTATED DECLARATION OF COVENENANTS, CONDITIONS, AND RESTRICTIONS dated the 10<sup>th</sup> day of March, 2010, has personally appeared before me and acknowledged the same in my State and jurisdiction aforesaid.

Given under my hand this 10<sup>th</sup> day of MARCH, 2010

ROSEMARY BARNES  
NOTARY PUBLIC  
REGISTRATION # 7307772  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
NOVEMBER 30, 2013

Rosemary Barnes  
Notary Public

My commission expires: 11/30/2013  
My Notary Registration No.: 7307772



VIRGINIA: FREDERICK COUNTY.SCT.  
This instrument of writing was produced to me on  
3-18-10 at 1:42 Pm  
and with certificate acknowledgement thereto annexed  
was admitted to record. Tax imposed by Sec. 58.1-802 of  
\$ NA, and 58.1-801 have been paid, if assessable.

Rebecca P. Hagan, Clerk