

**DECLARATION
OF COVENANTS,
CONDITIONS AND
RESTRICTIONS**

Note to Clerk: This document was prepared outside of the Commonwealth of Virginia.

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "**Declaration**") is made this January 21, 2005, by Ashbrook Homeowners Association, a Virginia nonstock corporation formed pursuant to the Virginia Property Owners Association Act ("**Owner**").

WITNESSETH:

WHEREAS, Owner is the fee simple owner of one (1) or more parcels of real property located in Loudoun County, Virginia, and more particularly described on Exhibit A attached hereto and made a part hereof (the "**Property**"), such parcel(s) having been conveyed to Owner by instruments recorded among the land records of Loudoun County, Virginia (the "**Land Records**") as instruments numbers 20030519-0059370, 20031223-0166103, and 20040520-0049324; and

WHEREAS, in order to assure that the aquatic impacts pursuant to Virginia Water Protection Permit No. 00-B0920 (the "**Permit**") are minimal, Owner desires to subject the Property to certain restrictive covenants expressing Owner's intent to preserve in perpetuity in its natural state and as more particularly described below those portions of the Property described as "Wetland Preservation Area" on that certain plat entitled "Wetland Preservation Areas Subject to Restrictive Covenant on the Property of Ashbrook Subdivision, Broad Run Election District, Loudoun County, Virginia", prepared by William H. Gordon Associates, Inc., and dated November 30, 2004 (the "**Plat**"), which plat is attached hereto and made a part hereof (such portions of the Property being hereinafter referred to as the "**Preservation Area**").

NOW, THEREFORE, Owner does hereby declare, covenant, and agree, for itself and its successors and assigns, that the portion of the Preservation Area located on the Property shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions, which shall run with the land comprising the Preservation Area and be binding on all parties and persons claiming under Owner.

1. Covenants and Restrictions. The Preservation Area shall be preserved in its natural state in perpetuity by prohibiting the following activities:

(a) destruction or alteration of the Preservation Area, other than those alterations authorized by the Norfolk District of the U.S. Army Corps of Engineers ("**ACE**") and/or the Virginia Department of Environmental Quality ("**DEQ**") under the Permit;

(b) construction, maintenance, or placement of any structures or fills, including without limitation buildings, mobile homes, fences, and signs (other than those which exist as of the date hereof); provided, however, that boardwalks, wildlife management structures,

observation decks, informational signs, and unpaved foot trails may be placed within the Preservation Area, provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and has been approved in writing by ACE;

(c) ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding, ponding, mining, drilling, placing trash or yard debris, removing or adding topsoil, sand, or other materials, except as may be necessary on a case-by-case basis with the prior written approval of ACE;

(d) permitting livestock to graze, inhabit, or otherwise enter the Preservation Area;

(e) cultivating, harvesting, cutting, logging, planting, or pruning trees or plants, using fertilizers, or spraying with biocides, except as may be necessary on a case-by-case basis with the prior written approval of ACE; or

(f) any activity performed within the Preservation Area that would involve the discharge of "dredged or fill material," as such phrase is interpreted and applied by DEQ pursuant to its authority under Section 401 of the Clean Water Act, as amended (33 USC 1251 et seq.), unless specifically authorized by DEQ through the issuance of an individual permit or a modification or waiver of the Permit.

2. Amendment. This Declaration and the restrictive covenants contained herein shall not hereafter be altered in any respect without the written approval of Owner (or any successor fee simple owner of the Property), ACE, and DEQ. Owner (or any such successor) may apply to ACE and DEQ for the vacation or modification of this Declaration; provided, however, that after the recordation of this Declaration among the Land Records, this Declaration and such restrictive covenants may only be vacated or modified pursuant to a written agreement executed on behalf of ACE, DEQ, and Owner (or such successor) and recorded among the Land Records.

3. Compliance Inspections and Enforcement. ACE, DEQ, and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take such actions as may be necessary to verify compliance with the restrictive covenants contained herein, which restrictive covenants shall be enforceable by any legal, equitable, or administrative proceeding by ACE or DEQ. The failure by ACE or DEQ to enforce any such restrictive covenant on any occasion shall not be deemed or otherwise construed as a waiver of the right to enforce such restrictive covenant on any subsequent occasion.

4. Severability. The provisions hereof shall be deemed individual and severable, and the invalidity or partial invalidity or unenforceability of the entirety or any portion of any provision hereof shall not affect the validity or enforceability of any other provision hereof or of the remainder of such provision, as the case may be.

WITNESS the following signature as of the day and year first above written.

OWNER:

ASHBROOK HOMEOWNERS
ASSOCIATION,
a Virginia nonstock corporation

By:


Name: Mark D Trostle
Title: President

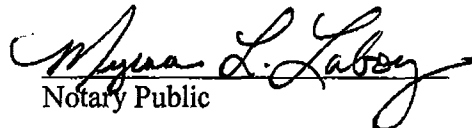
STATE/Commonwealth of Virginia

CITY/COUNTY OF Fairfax

} to wit:
}

The undersigned, a notary public for the jurisdiction aforesaid, does hereby certify that MARK D. TROSTLE, who is the PRESIDENT of Ashbrook Homeowners Association, whose name is subscribed to the foregoing document, acknowledged such document before me.

Given under my hand and seal this January 21, 2005.


Notary Public

My commission expires: Oct 31, 2009

EXHIBIT A

Legal Description of the Property

All of the following real property located in Loudoun County, Commonwealth of Virginia:

Parcels A and C, Section 1A, Ashbrook Village.

Parcels L, Section 2A, Ashbrook Village.

Parcels G, Section 3, Ashbrook Village.

FIRST AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
OF
ASHBROOK HOMEOWNERS ASSOCIATION

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ("Amendment") is made this 31 day of March, 2003, between **RICHMOND AMERICAN HOMES OF VIRGINIA, INC.**, a Virginia corporation (hereinafter referred to as "Richmond American" or the "Declarant"); and **ASHBROOK HOMEOWNERS ASSOCIATION**, an owners association formed pursuant to the Virginia Property Owners Association Act (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, Richmond American is the owner of certain land situate in Loudoun County, Virginia, more particularly described as Phase II, ASHBROOK (the "Ashbrook Property"), as the same was duly subdivided, platted and recorded by deed recorded in Deed Book 2192 at Page 809, among the land records of Loudoun County, Virginia (the "Land Records") by Richmond American's predecessor in interest, Loudoun Intertech Development Corporation, a Delaware corporation ("Loudoun Intertech"); and

WHEREAS, Richmond American acquired the Property by deed recorded in Deed Book 2212 at Page 1175; and

WHEREAS, Loudoun Intertech and the Association recorded a Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens in Deed Book 2192 at Page 822, among the Land Records (the "Declaration"), which subjected the Property to certain covenants, conditions, restrictions, easements, charges and liens, as set forth in the Declaration; and

WHEREAS, pursuant to an Assignment Of Declarant's Status, recorded in Deed Book 2212 at Page 1179, among the Land Records (the "Assignment"), and as permitted pursuant to Section 11.2 of the Declaration, Loudoun Intertech assigned, transferred, delegated and set over unto Richmond American, all of Loudoun Intertech's rights, obligations and responsibilities as declarant under the Declaration, and Richmond American accepted and

RECORDED/W/CERT ANNEXED

2003 MAY 13 PM 3:19

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TESTE: *[Signature]* .CLERK

assumed all of Loudoun Intertech's rights, obligations and responsibilities as Declarant under the Declaration; and

WHEREAS, pursuant to Section 11.3.3 of the Declaration, the Declarant may amend the Declaration without obtaining the consent of any Owner, if such amendment is required by Loudoun County, Virginia, as a condition of approval of the Property, the Association documents, or Property plat, provided that proper notice is given to all owners of the intent to make such amendment and that such amendment is recorded within three (3) years after the recording of the Declaration; and

WHEREAS, the Declarant, desiring to amend the Declaration, has given proper written notice to all owners.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby amends the Declaration and subjects the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting and enhancing the character, appearance, quality and value of, and shall run with the Property and shall be binding on and inure to the benefit of all parties having any right, title or interest in the Property, their heirs, successors and assigns; provided, however, that to the extent not modified herein, all covenants, conditions, restrictions, easements, charges, liens set forth in the Declaration, as conditioned, modified and qualified in accordance with the provisions of the Declaration, shall remain in full force and effect.

Section 11.13, Notices, shall be amended to add the following language:

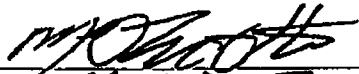
Section 11.13. Notices.

11.13.3. Airport. In accordance with Section 4-1404(A) of the Loudoun County Zoning Ordinance, prospective purchasers are hereby advised that the Property is located within an area that will be impacted by aircraft overflights and aircraft noise.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the date shown above.

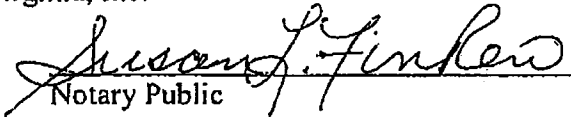
[SIGNATURE PAGES FOLLOW]

RICHMOND AMERICAN HOMES OF
VIRGINIA, INC., a Virginia corporation

By:  (SEAL)
Name: Mark D. Trostle
Title: V.P. - Land Devel.

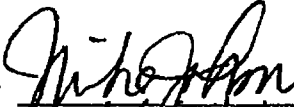
COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged and sworn to before me this 31st day of March, 2003 by Mark D. Trostle as V.P. Land Devel. of Richmond American Homes of Virginia, Inc.


Notary Public

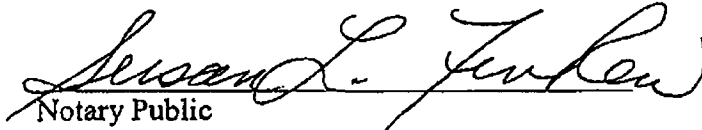
My commission expires: February 28, 2005

ASHBROOK HOMEOWNERS
ASSOCIATION, a Virginia non-stock
corporation

By:  (SEAL)
Name: MICHAEL JOHNSON
Title: VP

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

The foregoing instrument was acknowledged and sworn to before me this 2nd day of April, 2003 by Michael Johnson as V.P. of Ashbrook Homeowners Association.


Notary Public

My commission expires: Feb. 28, 2005

The Foregoing Declaration Is Hereby Accepted and Approved.

APPROVED AS TO LEGAL FORM:

[Signature]
ASSISTANT COUNTY ATTORNEY
Assistant County Attorney

BOARD OF SUPERVISORS OF LOUDOUN
COUNTY, VIRGINIA

By: *Terrance D. Wharton/mh* (SEAL)
Name: *Terrance D. Wharton*
Title: *Director, Building Department*

COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that *Michael Seigfried for Terrance Wharton* as *Director* of the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this *13th* day of *May*, 2003.

My commission expires:

7/31/05

Jeanette J. Klenck (SEAL)
Notary Public

DATE 12/10/02

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ("Declaration"), made as of the 13 day of March, 2002, by LOUDOUN INTERTECH DEVELOPMENT CORPORATION, a Delaware corporation, having an address at _____ (hereinafter referred to as the "Developer"); BRIAN F. KENNEY, TRUSTEE, and JOHN E. PROMINSKI, JR., TRUSTEE, either of whom may act, ("Trustee"); and ASHBROOK HOMEOWNERS ASSOCIATION, a Virginia nonstock corporation, having an address in care of the Developer ("Association").

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Exhibits

A	Description of Parcel
B	Lots in Parcel
C	Proffers
D	Description of Multi-Family Parcel

W I T N E S S E T H

WHEREAS, the Developer is the owner of all of that land in Loudoun County, Virginia commonly known as Ashbrook, which is more particularly described on Exhibit A attached hereto, and which is expected to be subdivided into the lots and common area which are hereinafter referred to, together with the improvements thereon and the appurtenances thereto; and

WHEREAS, the Developer intends to create on such land a residential community consisting of such residential lots and common area, the latter containing common improvements

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and other facilities for the benefit of such community; and

WHEREAS, the Developer intends by this Declaration to provide for the preservation of such community's values and amenities and the maintenance of such lots, common areas, common improvements and other facilities, by (1) insuring their proper development, improvement and use, including the satisfaction of proffered conditions specifically related to the general plan of development; (2) protecting respective owners against development or other use which may depreciate value; (3) guarding against the erection on any such lot or common area of any building or other improvement containing improper or unsuitable materials; (4) securing and maintaining proper setbacks of such buildings or other improvements from the roadways and sidewalks within such Property; (5) enforcing high standards of maintenance and operation for such common areas, common improvements and other facilities which are set aside for the benefit of the owners of such lots and any other residents of such Property or other permitted beneficiaries; and (6) granting and reserving rights, easements, licenses and other privileges, and creating a means for the accumulation and use of funds to further such purposes, all in order to provide adequately for a residential Property of the highest quality and character; and

WHEREAS, to further such purposes, and to provide a means for meeting the intents and requirements of the County of Loudoun ("County") and the statement of proffered development conditions designated ZMAP 1994-0012, including revisions and clarifications, dated January 11, 1996, as revised (the "Proffers"), a copy of which, along with applicable letters of clarification, is attached hereto and incorporated herein as Exhibit C, the Developer (i) intends by this Declaration, with the consent of the Association, to subject the Multi-Family Parcel (herein defined), the residential lots and common area, together with the improvements thereon and the appurtenances thereto, to certain covenants, easements, charges and liens, all as are hereinafter set forth, and (ii) has caused the Association to be incorporated as a nonstock corporation to which are to be delegated the powers and duties of assessing, collecting and applying all of the charges imposed by the provisions of this Declaration, maintaining and operating such common areas, common improvements and other facilities, and administering and enforcing such covenants, conditions, restrictions, easements, charges and liens; and

WHEREAS, the Developer desires to reserve the right hereafter to subject certain additional land, together with the improvements thereon and the appurtenances thereto, if any, to the operation and effect of this Declaration, thereby expanding the land, improvements and appurtenances which are hereby subjected thereto;

NOW, THEREFORE, the Developer hereby subjects to the operation and effect of the provisions of this Declaration all of that land in the said County (a) which is described in Exhibit A, the outline of which is set forth on that certain plat prepared by William H. Gordon Associates consisting of six (6) sheets being entitled "Record Plat of Phase II Ashbrook", dated February 14, 2001, and revised through April 23, 2002, which plat is intended to be recorded among the Land Records contemporaneously with, and immediately before the recordation of, this Declaration, as an exhibit to that certain Deed of Subdivision, Dedication, Easement, Supplementary Declaration and Vacation granted by the Developer, and (b) which is described in Exhibit D and referred to herein as the Multi-Family Parcel.

TOGETHER WITH all of the improvements thereon and all of the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any way appertaining (all of which tract, improvements and appurtenances are hereinafter referred to collectively as the "Property"),

SUBJECT TO the operation and effect of any and all instruments recorded among the said Land Records before the recordation thereamong of this Declaration,

UPON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth, to wit:

SECTION 1. DEFINITIONS

1.1. As used in the provisions of this Declaration, the following terms have the following meanings:

1.1.1. "Act" means the Virginia Nonstock Corporation Act, Chapter 10 of Title 13.1 of the Code.

1.1.2.a. "Annual Assessment" has the meaning given it by the provisions of Subsection 6.3.

1.1.2.b. Intentionally Deleted.

1.1.3. "the Architectural Committee" means the entity referred to in the provisions of Section 8.

1.1.4. "the Articles of Incorporation" means the Articles of Incorporation of the Association, as from time to time amended.

1.1.5. "Assessment" means an Annual Assessment, an Initial Assessment, a Limited Assessment, or a Special Assessment.

1.1.6. "Assessment Lien" means a lien imposed under the provisions of Subsection 6.5.

1.1.7. "the Association" means the entity referred to in the provisions of Section 4.

1.1.8. "the Association Documents" means this Declaration, the Articles of Incorporation and the By-Laws, as amended from time to time. Any exhibit, schedule or amendment to an Association Document is an integral part of that document

1.1.9. "Association Property" means any and all real property, personal property or other assets which are beneficially owned by the Association, including, by way of example rather than of limitation, the Commons.

1.1.10. "Board of Directors" means the board of directors of the Association.

1.1.11. "Builder" means each person who acquires a Lot from the Developer or another Builder, not to occupy it as a residence, but to construct, in the ordinary course of such person's business, a Dwelling on such Lot and sell or lease it to another person for such other person to occupy as a residence.

1.1.12. "By-Laws" means the by-laws of the Association, as from time to time amended.

1.1.13. "Class A Member" has the meaning given it by the provisions of Subsection 4.3.

1.1.14. "Class A Membership" means all of the Class A Members.

1.1.15. "Class B Member" has the meaning given it by the provisions of Subsection 4.3.

1.1.16. "Class B Membership" means all of the Class B Members.

1.1.17. "Code" means the Code of Virginia (1950) (in each instance referring to whichever edition contains the most recent codification of the statute referred to), as from time to time amended, supplemented or replaced.

1.1.18. "Commons" has the meaning given it by the provisions of Subsection 3.1.

1.1.19. "Contract Purchaser" means any person who enters into a contract which, at the time in question, entitles such person to purchase a Lot from the Developer, a Builder or any other person, but who does not hold the legal title of record to such Lot.

1.1.20. "County" shall mean and refer to Loudoun County, Virginia.

1.1.21. "Declaration" means this instrument, as from time to time amended.

1.1.22. "Dedicated Roadway" means each portion of the Property (a) which, by the Property Plat or otherwise, is dedicated to the said County or another governmental body for public use as a roadway, either (i) before or simultaneously with the recordation of this Declaration among the Land Records or (ii) thereafter pursuant to the provisions of Section 5, and (b) the dedication of which has been accepted by such entity.

1.1.23. "Detached Single Home Lot" means any of those certain Lots so designated in Exhibit B.

1.1.24. "Developer" means (a) the person hereinabove named as such, (b) such person's successors, (c) each person to whom such named person or any other person who the

Developer expressly assigns its rights as the Developer hereunder in the manner set forth in the provisions of Subsection 11.2, and (d) each such assignee's heirs, personal representatives and successors; provided, that no Owner, Builder, Mortgagee, Lessee or Contract Purchaser shall, merely by virtue of its status as such, be deemed to be the Developer.

1.1.25. "Development Period" has the meaning given it by the provisions of Section 4.

1.1.26. "Dwelling" means a "dwelling", as that term is defined by the provisions of Article 10 of the Zoning Ordinance.

1.1.27. "Future Parcel" has the meaning given it by the provisions of Section 7.

1.1.28. "Initial Assessment" has the meaning given it by the provisions of Subsection 6.2.

1.1.29. "Land Records" means the Land Records of Loudoun County, Virginia.

1.1.30. "Lessee" means any lessee or sublessee of a Lot from the Developer or another Owner or person.

1.1.31. "Limited Assessment" has the meaning given it by the provisions of Paragraph 6.3.1.

1.1.32. "Lot" has the meaning given it by the provisions of Subsection 3.1.

1.1.33. "Majority" means more than fifty percent (50%).

1.1.34. "Member" has the meaning given it by the provisions of Section 4.

1.1.35. "Membership" means all of the Members.

1.1.36. "Memorandum of Lien" has the meaning given it by the provisions of Subsection 6.5.

1.1.37. "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Commons, and any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the locality of the Property (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records.

1.1.38. "Mortgagee" means the person secured by a Mortgage.

1.1.39. "Mortgagee in Possession" means any person who is either (a) a Mortgagee which has possession of a Lot as a result of a default under a Mortgage held by such person, or (b) the Owner of a Lot as the result of the conveyance to such person of the Mortgagor's equity of redemption therein either through a foreclosure proceeding under a Mortgage securing such person and covering such Lot, or in lieu of such foreclosure proceeding.

1.1.40. "Mortgagor" means the Owner of a Lot, title to which is encumbered by a Mortgage.

1.1.41.a. "Multi-Family Assessment" has the meaning given it by the provisions of Section 6.1.

1.1.41.b. "Multi-Family Parcel" shall mean that certain portion of the Property designated for the development of approximately five hundred (500) units of garden-style apartments, as set forth on Exhibit D attached hereto.

1.1.42. "Notice Address" has the meaning given it by the provisions of Section 11.

1.1.43. "Notice of Lien" has the meaning given it by the provisions of Subsection 6.5.

1.1.44. "Owner" means any person or combination of persons (including, by way of example rather than of limitation, the Developer and any Builder but specifically excluding the owner(s) of the Multi-Family Parcel) who (a) holds the legal title to a Lot under a deed or other instrument, or (b) is the purchaser of a Lot under a land installment contract, if and only if such deed, other instrument or land installment contract is recorded among the Land Records at the time in question; provided, that (a) no Lessee or Contract Purchaser shall, merely by virtue of its status as such, be deemed an Owner; and (b) no Mortgagee shall be deemed the Owner of a Lot unless and until it acquires of record the Mortgagor's equity of redemption therein.

1.1.45. "Parcel" means all that certain real property described in Exhibit A hereto as may hereafter be expanded, pursuant to Section 7 hereof, to include Future Parcels.

1.1.46. "Permitted User" has the meaning given it in the provisions of Subsection 5.3.1.

1.1.47. "Person" means any natural person, trustee, corporation, partnership, limited liability company, or other legal entity.

1.1.48. "Plans" has the meaning given it by the provisions of Section 8.

1.1.49 "Property" means all that certain real property referenced in Exhibit A.

1.1.50. "Property Plat" means the plat referred to in Exhibit A, together with (a) any additional subdivision, resubdivision or boundary line adjustment plat for the Property, or a portion thereof, and recorded among the Land Records, (b) any plat of any Future Parcel (or portion thereof) added to the Property through an expansion thereof, and (c) any amendatory plat, which plats at any time hereafter become incorporated as a part of and/or effective pursuant to the provisions of this Declaration and applicable law.

1.1.51. "Rules and Regulations" means the rules and regulations properly adopted by the Association, including pursuant to the provisions of Paragraph 5.3.3, as from time to time amended.

1.1.52. "Special Assessment" has the meaning given it by the provisions of Subsection 6.3.

1.1.53. "Structure" means anything which constitutes a "Structure" for purposes of the provisions of the Zoning Ordinance; provided that, in addition, each of the following shall be deemed a Structure for purposes of the provisions of this Declaration:

(a) any thing or device, the placement of which upon any Lot might affect the physical appearance thereof (including, by way of example rather than of limitation, any building, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, fence or wall, sign or signboard);

(b) any excavation or fill, the volume of which exceeds ten (10) cubic yards; and

(c) excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or the flow of any water in any natural or artificial stream, wash or drainage channel on or across any Lot.

1.1.54. "Townhouse Lot" means any of those certain Lots so designated in Exhibit B.

1.1.55. "Use" has the meaning given it in the provisions of Article 10 of the Zoning Ordinance; provided, that without limiting the generality of the foregoing provisions of this sentence, (a) any activity or purpose deemed by any governmental authority charged with enforcing such regulations to be a "use" for purposes of such regulations, and (b) any purpose for which any Structure or land is used or occupied, and (c) any activity, occupation, business or operation carried on in a Structure or on any land, shall be deemed a "Use".

1.1.56. the "Zoning Ordinance" means applicable provisions of the Zoning Ordinance of Loudoun County, Virginia, as from time to time amended, and the Proffers of ZMAP 1994-0012.

1.2. Any other term to which meaning is specifically given by any provision of this Declaration shall, for purposes of this Declaration, have such meaning.

SECTION 2. NAME

The Property shall be known as "Ashbrook."

SECTION 3. LOTS AND COMMONS

3.1. The Property shall be comprised of (a) all of those areas referred to in the provisions of Subsection 3.2 as Townhouse Lots and Detached Single Home Lots (each of which is hereinafter referred to as a "Lot"), (b) the Multi-Family Parcel, and (c) all of those areas referred to in the provisions of Subsection 3.3 (hereinafter referred to collectively as "the Commons").

3.2 Lots.

3.2.1. Number of Lots.

(a) In its initial phase, prior to being expanded pursuant to the provisions of Section 7, the Property shall contain Twelve (12) Townhouse Lots and Sixty (60) Detached Single Home Lots.

(b) Upon further expansion pursuant to the provisions of Section 7, the Property shall contain that number of Lots equaling the total of (i) the number of Lots contained therein immediately before such expansion, and (ii) the number of lots contained in their entirety within the land thereby added to the Property (as set forth on such subdivision, resubdivision, boundary line adjustment or other plat as is recorded among the Land Records in connection with such expansion or the subdivision of such land), and designated as Lots in the amendatory instrument by which, pursuant to such provisions, such expansion is effected.

3.2.2. Location of Lots. The location, dimensions and configuration of each Lot within the Parcel are shown on the Property Plat, as same may be amended from time to time.

3.2.3. Designation of Lots. Each Lot shall have and be known by its Lot type (Townhouse Lot or Detached Single Home Lot) and a number corresponding to the number shown with respect to it on the Property Plat, as same may be amended from time to time.

3.2.4. Party walls. Each wall or fence, a portion of the thickness of which is included within a Lot and the balance of the thickness of which is included within a contiguous Lot, and which therefore is a party wall or party fence, shall be used and enjoyed as such by the Owners thereof jointly with each other. Each such Lot shall have the benefit of and be burdened with an easement for the support and maintenance of such party wall or fence in accordance with the following provisions of this paragraph:

(a) Subject to the operation and effect of the following provisions of this paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) If any such party wall or fence is deliberately or negligently damaged or destroyed by the act or omission of one (but not both) such Owners (or his agent, employee, invitee, family member, visitor or guest), such Owner shall promptly repair it at his expense.

(c) If any such party wall or fence is damaged or destroyed in any other manner or otherwise requires maintenance, such Owners shall repair it at their joint expense.

(d) If either surface of any party wall is at any time exposed to the elements, the Owner of the Lot on which such surface stands shall promptly and at his expense take such action as is reasonably necessary to protect such surface against the elements.

3.2.5. Boundary Adjustments. The Board of Directors has the power at any time or times, consistent with the then existing zoning ordinances of the applicable governmental authority, and pursuant to a recorded subdivision, resubdivision or boundary line adjustment plat, to make minor boundary line adjustments between Lots, at the direction of the Developer, in connection with the orderly subdivision and development of the Property, including, without additional consent from members, the recording of related supplements and/or amendments to this Declaration, which may be made as a part of any such deed of subdivision, resubdivision or boundary line adjustment; provided, however, that: (i) as necessary the appropriate governmental authorities approve such Lot line adjustments; and (ii) documents showing each such Lot line adjustment are submitted to the Department of Veterans Affairs ("VA") if the VA is guarantying a loan on a Lot affected by the adjustment.

3.3. Commons.

3.3.1. The Commons shall consist of all of the land from time to time within the Property but not within any Lot, Dedicated Roadway, or the Multi-Family Parcel, together with all of the improvements thereon (including, by way of example rather than of limitation, all streets and sidewalks not within a Dedicated Roadway, curbs, buildings, fencing, multi-purpose courts, tot lots, trails and recreational fields, and other, similar facilities from time to time existing on such land), and all of the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any way appertaining.

3.3.2. Boundary Adjustments. The Board of Directors has the power at any time or times, consistent with the then existing zoning ordinances of the applicable governmental authority, and pursuant to a recorded subdivision, resubdivision or boundary line adjustment plat, to transfer part of the Commons to or at the direction of the Developer for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Property, including, without additional consent from Members, the recording of related supplements and/or amendments to this Declaration, which may be made as a part of any such deed of subdivision, resubdivision or boundary line adjustment; provided, however, that: (i) such transfer shall not reduce the portion of the Property designated as "open space" below the minimum level of "open space" required in the subdivisions comprising the Property at the time

of the transfer; (ii) the Developer shall transfer to the Association as "open space" such portion of the Property as is necessary to maintain the total acreage designated as "open space" at that level existing at the time of the transfer; (iii) as necessary, the appropriate governmental authorities approve such Lot line adjustments; and (iv) documents showing each such Lot line adjustment are submitted to the VA if the VA is guarantying a loan on a Lot affected by the adjustment. The Board of Directors also has the power at any time or times, consistent with the then existing ordinances and statutes of the applicable governmental authorities, to subdivide or resubdivide a portion of the Commons in connection with the orderly subdivision and development of the Property consistent with the approved plans therefor and record, without additional consent from Members, a related supplement and/or amendment to this Declaration, which may be made as a part of any such deed of subdivision, resubdivision or boundary line adjustment.

3.4. Multi-Family Parcel. The Multi-Family Parcel is included within the scope of this Declaration to allow for the creation of various easements which may benefit the entire Property and may benefit and/or burden the Multi-Family Parcel, and to facilitate the intended uses (and related items, such as the integration of the stormwater management facilities and trail systems) for the Property. In connection therewith, the Association is authorized to levy the Multi-Family Assessments (defined in Section 6.1 hereof) against the Multi-Family Parcel owner(s), all as set forth herein.

SECTION 4. THE ASSOCIATION

4.1. Authority. The Property's affairs shall be governed by Ashbrook Homeowners Association, a nonstock corporation organized and existing under the law of Virginia.

4.2. Membership. The Association's membership shall be comprised of and limited to all of those persons (each of whom is herein referred to as a "Member") who, either alone or in combination with one or more other persons, is an Owner (including, by way of example rather than of limitation, the Developer and any Builder during such times as the Developer or such Builder is an Owner). An Owner's membership in the Association shall be appurtenant to his or her Lot, and may not be separated from his or her ownership thereof.

4.3. Voting.

4.3.1. Classes of Membership.

(a) Development Period.

(i) During the Development Period, the Membership shall be comprised of the Class A Membership and the Class B Membership.

(ii) The Class A Membership shall consist of all of the Members other than the Developer and any Builder, and the Class B Membership shall consist of the Developer and each Builder.

(b) After the Development Period, the Membership shall be all of one class, consisting of all of the Members.

4.3.2. Number of Votes.

(a) During the Development Period each Class A Member, and thereafter each Member,

(i) who alone is the Owner of a Lot shall be entitled to cast one vote in the Association's affairs for each such Lot; or

(ii) who with any other person is the Owner of a Lot shall, jointly with such other persons, be entitled to cast one vote in the Association's affairs for each such Lot (which vote shall be exercised as such persons determine among themselves, provided that in no event may such persons cast fractional votes or cast with respect to any such Lot more than one such vote) .

(b) During the Development Period,

(i) each Class B Member shall be entitled to cast three (3) votes in the Association's affairs for each vote which it would be entitled to cast were it a Class A Member; and

(ii) each Builder shall be conclusively presumed, by its having accepted the conveyance of the legal title to a Lot from the Developer or another Builder,

(1) to have given the Developer an irrevocable and exclusive proxy entitling the Developer, at each meeting of the Membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;

(2) to have agreed with the Developer that such proxy is given to and relied upon by the Developer in connection with the Developer's development, construction, marketing, sale and leasing of any or all of the Property (including any Future Parcel), and is coupled with an interest; and,

(3) to have agreed to promptly execute such documents and take such further actions as may be from time to time reasonably required to effectuate the terms and intent of this Part (b) of Paragraph 4.3.2.

4.3.3. Commencement and Termination of Development Period.

(a) The Development Period shall consist of the period commencing on the date hereof and terminating on the date on which the total number of votes held by the Class A Membership becomes equal to or greater than the total number of votes held by the

Class B Membership; provided, that anything contained in the foregoing provisions of this subparagraph to the contrary notwithstanding, if at any time or from time to time after such termination the Property is expanded pursuant to the provisions of Section 7, in each instance the Development Period shall re-commence as of the time at which such expansion occurs, and shall terminate thereafter on the date on which the total number of votes held by the Class A Membership becomes equal to or greater than the total number of votes held by the Class B Membership.

(b) Anything contained in the provisions of this Declaration to the contrary notwithstanding, the Development Period shall, if not then already terminated, terminate, without thereafter recommencing, on the earlier to occur of (i) the Developer's termination thereof by executing and recording among the Land Records an instrument expressly providing for such termination and making specific reference to this paragraph, or (ii) the tenth (10th) anniversary of the recording date hereof.

4.4. Fidelity bonds. Each director, officer and employee of the Association, any manager of the Commons, and any director, partner, officer, member or employee of such manager, whose duties as such require him or her to handle or be responsible for funds of the Association or in its possession or control through any trust or other arrangement, shall, if demanded in writing by the Association before commencing such duties, furnish the Association with a fidelity bond covering said activities, in form and amount and with a corporate surety which are reasonable and appropriate under the circumstances and are satisfactory to the Board of Directors. The premium for any such bond shall be paid by the Association.

4.5. Actions taken by the Association. Whenever the Association is required or permitted by the provisions of this Declaration to take any action, it shall do so only in accordance with the provisions of the Articles of Incorporation and the By-Laws.

4.6. Dissolution of Association. The Membership shall not dissolve or disband the Association, nor shall the Association dispose of all or substantially all of the Commons by sale, or otherwise, except to an organization conceived and organized to own and maintain the Commons, without first offering to dedicate the same to the jurisdiction in which the Property is located, or such other appropriate governmental agency. Dissolution of the Association may occur pursuant to the Articles of Incorporation.

SECTION 5. OWNERSHIP OF, AND RIGHTS IN, COMMONS AND THE PROPERTY; OTHER EASEMENTS

5.1 Property rights in and to the Commons and the Property.

5.1.1. (a) The Developer shall be entitled to convey to the Association the legal title to any or all of the Commons at any time hereafter; provided, that the Developer shall convey to the Association the legal title to all of the Commons within any Parcel, or Future Parcel, or portion thereof by not later than the date on which the Developer or any Builder conveys to any person (other than the Developer or a Builder) the legal title to any Lot within such Parcel or portion thereof.

(b) The title to the Commons to be conveyed to the Association, as aforesaid, shall be good and marketable and insurable at regular rates by a title insurer authorized to do business in Virginia, and shall be conveyed in fee simple by a deed containing covenants by the Developer that it is seized of and has done nothing to encumber such title and will give such further assurances of the same as may be requisite, all subject to the operation and effect of (i) each instrument recorded among the Land Records before the recordation thereamong of this Declaration; (ii) this Declaration; and (iii) each instrument or matter of the types listed in the provisions of Paragraph 5.1.2 which is then recorded among the Land Records.

(c) Subject to the operation and effect of the provisions of Paragraph 5.1.2 and Subsections 3.3, 5.3 and/or 11.15, the Association shall not convey to any person the legal title to, or any easement, leasehold or other right of use or enjoyment in, any of the Commons, without the express written consent thereto of the Owners of at least two-thirds (2/3) in number of the Lots.

5.1.2. Anything contained in the foregoing provisions of this subsection to the contrary notwithstanding, while the Developer or the Association holds the legal title to any or all of the Commons, it may take any or all of the following actions:

(a) make an express confirmatory conveyance to any Owner of such easements in and other rights with respect to the Commons as under the provisions of this Declaration are held by such Owner.

(b) grant, convey or dedicate (i) to any one or more public or quasi-public governmental bodies or utility companies, any and all licenses, easements and/or rights-of-way in, over and through the Commons for the construction, installation, use, operation, maintenance, repair and replacement of any and all sanitary, sedimentary control or storm sewer lines, drains, culverts, ponds or pumping stations, water lines, mains or pumping stations, electrical lines or cables, telephone, television or telecommunications lines or cables, gas lines or mains, and other similar facilities, for similar or other purposes, all as the Association considers appropriate for the provision of any utility or utility service to any Parcel or any portion thereof (whether or not it then or thereafter is part of the Property), and (ii) to the said County or any other governmental body, any land then forming part of the Commons which is improved or to be improved by a roadway, sidewalk or similar public improvement; provided, that no such grant, conveyance or dedication shall be made unless the Association and the person to which it is to be made have agreed upon the manner in which the thing granted will be operated and maintained for the use and enjoyment of the Owners and any other members of the general public who are thereafter entitled to use and enjoy the same. After such grant, conveyance or dedication, that portion of (or interest in) the Commons which is the subject thereof shall not be part of the Commons.

(c) grant a Mortgage pursuant to the provisions of Paragraph 5.3.1.

(d) convey the legal title to, or any interest in, any or all of the Commons to or at the direction of any governmental or quasi-governmental authority either (i)

through the condemnation thereof or the exercise of any power of eminent domain with respect to the same, or (ii) under threat of such condemnation or exercise and in lieu thereof (after which grant, conveyance or dedication, that portion of the Commons which is the subject of the same shall not be part of the Commons).

(e) grant a leasehold interest in, or a license with respect to, any or all of the Commons to any person for a period terminating not later than the third (3rd) anniversary of the date of such grant.

(f) grant or reserve, by or to the Developer, for the benefit of any Future Parcel or portion thereof (whether or not it then or thereafter is part of the Property), an easement in, over and through the Commons for the construction, installation, use, operation, maintenance, repair and replacement of any facility or roadway of the types enumerated in the provisions of this Paragraph 5.1.2.

(g) grant to any one or more Owners, for the benefit of such Owners' respective Lots, an exclusive license to use any respective portion of the Commons which is improved as an automotive vehicle parking space and is, at the time in question, designated by the Association, acting in its sole discretion (by painted numbering on the curbing or pavement for such space or in any other manner) by the same street address number as that of such Lot, for and only for the noncommercial parking of automotive vehicles (excluding recreational vehicles if the Association so desires), if and to the extent that such parking is permitted by the provisions of Paragraph 9.2.1 in the case of Lots. In such event, such Lot shall not have, and the Association shall not grant for the benefit of such Lot or any other portion of the Property, any license or other right to use such space in any other manner or for any other purpose.

(h) enter into contract(s) with (i) the owner of any land not within the Property, or (ii) any property association or homeowner's association having jurisdiction over such land, or (iii) any council of unit owners having jurisdiction over such land, pursuant to which such owner, the members of such association or council, or any other occupants of such land, and their families and guests, may use and enjoy any or all of the Commons for such consideration, during such period, upon such terms and subject to such conditions as are set forth in the provisions of such contract, all as the Developer or the Association considers appropriate.

5.1.3. Easement and license benefiting Lots and burdening Commons or other Lots.

(a) Each Lot shall have the benefit of a non-exclusive easement for the use of

(i) each main, duct, stack, wire, conduit, drain, pipe, meter or other device located within the Commons or another Lot and used in providing any utility or service to the first such Lot

(ii) each street, walkway and trail which from time to time is within the Commons, or which crosses any Lot and affords intended access to the Commons or

another Lot.

(b) Each Lot shall have the benefit of a non-exclusive license for the use of the remainder of the Commons, provided that

(i) such use is in accordance with applicable law and the applicable provisions of or actions taken pursuant to this Declaration, the Articles of Incorporation, the By-Laws and/or the Rules and Regulations;

(ii) any admission or other fee which the Association then charges for such use, if any, is paid;

(iii) no person other than the Association may construct, reconstruct, alter or maintain any Structure or make or create any excavation or fill upon, or plant or remove any tree, shrub or other vegetation from, or otherwise damage, the Commons; and

(iv) no person shall, without first obtaining the Association's consent, do anything on the Commons which will cause an increase in any premium paid by the Association for liability or other insurance with respect to the Commons, or the cancellation of any such insurance.

5.1.4. Development easements. The Developer shall have (and, if and to the extent that any one or more easements are expressly granted by the Developer to any Builder by an instrument recorded among the Land Records, such Builder shall have), and the Developer hereby reserves, unto itself, its successors and assigns, the following non-exclusive easements in, over, under and through the Property, except for dedicated rights of way, for so long as it has continuing obligations to public authorities for public and/or Property improvements:

(a) for pedestrian and vehicular ingress and egress to and from each public roadway which at any time abuts the Property, from and to each Parcel (whether or not it then is part of the Property), for access by (i) the Developer and its successors and assigns as owner of each respective Parcel or Lot or other portion thereof, (ii) any Builder, (iii) any contractor, subcontractor, real estate agent or broker utilized by the Developer or by any Builder, and (iv) their respective agents, officers, employees, and invitees, all for any purpose, consistent with reasonable standards of safety and cleanliness and applicable law, in connection with the construction, replacement, repair, maintenance, development, marketing or leasing of such respective Parcel or Lot, including (by way of example and not in limitation hereof) movement and temporary storage of building materials and equipment;

(b) for the construction, installation, maintenance, repair, replacement and use of any or all utility lines and facilities of the types enumerated in the provisions of Paragraph 5.1.2, to and from their respective points of connection with those respective public utility lines and facilities to which they are to be connected, from and to each Parcel (whether or not it then is part of the Property), for the benefit of (i) the Developer and its successors and assigns as owner of any Parcel or Lot or other portion thereof, (ii) any Builder, (iii) each resident or other occupant of such Parcel or Lot or other portion, and (iv) their respective agents,

[illegible]

(d) for maintenance and/or correction of surface water drainage so that reasonable standards of health, safety and appearance are maintained, including (by way of example and not in limitation hereof) trimming, cutting or removing any trees, bushes or shrubbery, grubbing and grading of land, or any similar action determined by Developer to be reasonably necessary; provided, however that, to the extent reasonably foreseeable, prior to taking any action pursuant to this easement Developer shall give advance written notice of its intentions to all immediately affected Owners (except in event of emergency), at their Notice Address, and upon completing its activity Developer shall restore the affected property to its prior condition as near as is practicable;

5.1.5. Emergency Access Easement. The Developer, on behalf of itself and its successors and assigns, hereby grants an easement (i) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies and (ii) to the Association over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

5.1.7. Encroachment Easement. Each Lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, sidewalks, draining of rain water from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights

and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

5.2. Maintenance of Commons and other portions of the Property.

5.2.1. The Association shall regularly maintain, in good order and repair,

(a) the Commons (including, by way of example rather than of limitation, all of the common areas and improvements being contained within the Commons such as sidewalks, trails, lighting, recreational facilities, children's play areas, adult exercise facilities, paved roadways, any multi-purpose recreation or similar courts, recreational fields, tot lots, open space, and any landscape buffer easements);

(b) private streets fronting any Lot and any portion of any Dedicated Roadway fronting any Lot which is not paved as a public road or devoted to any other public purpose, if and to the extent that it is not the practice of the said County or any other governmental body having jurisdiction over such Dedicated Roadway to maintain the same;

(c) all storm water management, storm drainage easements and facilities in the Property; and

(d) each street, walkway or utility line or facility which crosses any Lot and over which any other Lot has the benefit of an easement for ingress and egress, or for any utility or other service, under the provisions of this Declaration.

5.2.2. Without limiting the generality of the foregoing provisions of this paragraph, the Association shall (unless such maintenance duty is assumed by any governmental authority having jurisdiction thereover) keep all grass growing within the Commons regularly mowed.

5.3. Control of Commons. Anything contained in the foregoing provisions of this Section to the contrary notwithstanding, the Association may

5.3.1. borrow money to improve the Commons in accordance with the provisions of this Declaration, and secure its repayment by subjecting any or all of the Commons which it owns to the lien of a Mortgage; provided, that anything contained in the provisions of such Mortgage to the contrary notwithstanding, if there is a default in the performance of the borrower's obligations thereunder the Mortgagee's remedies on account of such default shall, with respect to the property covered by such lien, be limited to those of (a) taking possession of any or all of the same, (b) thereafter charging admission or other fees, to the extent permitted by applicable law, as a condition to the continued use thereof by the Owners, their family members

and guests, and such other persons so permitted to use the Commons, or a portion thereof pursuant to contract(s) entered into pursuant to this Declaration ("Permitted Users"), and (c) if necessary and if permitted by applicable law, opening the enjoyment thereof to the general public or any segment thereof until such debt is satisfied;

5.3.2. take such steps as are reasonably necessary to protect such property against foreclosure under such Mortgage (including, by way of example rather than of limitation, that of opening the enjoyment thereof to the general public or any segment thereof, as aforesaid);

5.3.3. adopt reasonable rules and regulations governing the use of the Association Property by Owners, their family members and guests or any other person;

5.3.4. charge reasonable admission and other fees, to the extent permitted by applicable law, for use of the Commons (other than those streets, walkways and utility lines and facilities which are subject to the easement created by the provisions of Subparagraph 5.1.3(a)); and

5.3.5. suspend the right of any Owner or his family members and guests to use the Commons (except for such streets, parking areas, walkways and utility lines and facilities),

(a) for so long as any Assessment levied against such Owner's Lot remains unpaid, and

(b) for any period (not exceeding in length sixty (60) days plus the time during which such infraction continues) for any infraction of the Rules and Regulations.

5.3.6. suspend the right of any Permitted User or his family members and guests to use the Commons, or any portion thereof,

(a) for so long as any admission and/or other fees for use of any portion of the Commons by such Permitted User remain unpaid, and

(b) for any period (not exceeding in length sixty (60) days plus the time during which any infraction continues) for any infraction of the Rules and Regulations.

5.4. Management of Commons.

5.4.1. The Association may enter into an agreement with any person for such person to provide management services to the Association for the Commons, so long as such agreement

(a) expressly provides that either party thereto may, without the consent of any other party thereto, terminate such agreement without cause at any time and without payment of a termination fee, provided that it has given to each other party thereto written notice of its intention to do so by not later than thirty (30) days before the effective date of such termination;

(b) is for a term of not longer than one (1) year;

(c) if provision is made therein for a renewal of such agreement from time to time by agreement of the parties thereto, provides that no such renewal provision and no such renewal or combination of renewals made pursuant thereto shall be effective to bind the Association to such agreement for longer than one (1) year from the date of such renewal or combination of renewals (and, to the extent that any such agreement does not expressly so provide, it shall be deemed to do so).

5.4.2. Anything contained in the foregoing provisions of this subsection to the contrary notwithstanding, the Association shall not effectuate any decision by it both (a) to terminate any such management agreement, and (b) thereafter to assume or undertake the management of the Commons without utilizing or employing professional management services with respect to the same without obtaining each first Mortgagee's prior written approval thereof.

5.5. Disclaimer of Liability/Insurance.

5.5.1. The Board of Directors, the Association, any Owner and the Developer shall not be considered a bailee of any personal property stored or placed on the Commons (including personal property located in vehicles parked on the Commons), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

5.5.2. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a common expense, or for personal injury or property damage caused by the elements or by any Owner, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Property, or Future Parcel, or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any portion of the Property by the Association or from any action by the Association to comply with any law, ordinance or with the order or directive of any governmental authority. This section is not intended nor shall it be construed to relieve any insurer of contractual obligations under any policy benefiting the Association or an Owner.

5.5.3. The Association may, in the sole discretion of the Board of Directors, provide additional services to Owners (including the Developer), located within the Property on a contractual basis at the request of such Persons. The charges for such services shall be assessed against each such Lot so serviced.

5.5.4. The Association is authorized to (i) purchase and maintain a comprehensive policy of public liability and hazard insurance covering the Commons and any facilities within a Dedicated Roadway for which the Association is responsible for maintenance,

and (ii) increase the amount of such coverage from time to time as it may deem necessary.

SECTION 6. ASSESSMENTS

6.1. Right to levy Assessments. The Association shall obtain funds (i) to pay its current, future, and/or capital expenses incurred in performing its obligations under the provisions of this Declaration, and (ii) to create adequate reserves for the maintenance, repair and replacement of those portions, if any, of the Commons which must be replaced on a periodic basis, by from time to time levying an assessment (each of which is hereinafter referred to as an "Assessment") against each Owner and his or her respective Lot, all upon the terms, for the purposes and subject to the conditions which are set forth in the provisions of this Declaration, the Articles of Incorporation and the By-Laws. The Association shall also have the right, exercisable at the Association's discretion, to levy a special assessment against the owner(s) of the Multi-Family Parcel in order to obtain funds to defray any reasonable and appropriate cost incurred by the Association in constructing, reconstructing, repairing or replacing any of the infrastructure serving the Multi-Family Parcel (such as trails, stormwater management facilities, or any other related item) if such expense is incurred by the Association for work done or payments made in respect of the Multi-Family Parcel or on behalf of its owner(s) ("Multi-Family Assessment").

6.2. Initial Lot Assessments. Each initial purchaser of a Lot other than the Developer or a Builder, shall pay at settlement an Initial Assessment equal to Two Hundred and 00/100 Dollars (\$200.00). The Initial Assessment shall be in addition to, and not in lieu of, any other Assessments levied against a Lot, and the proceeds thereof may be used by the Association in accordance with the provisions of Subparagraph 6.3.1(b) (i) below. Notwithstanding such purchaser's obligation to pay the Initial Assessment, the Developer, or a Builder, at its option, may pay such Initial Assessment on behalf of any purchasers.

6.3. Procedure for levying Assessments other than the Initial Assessment. The Association shall levy Assessments in the following manner:

6.3.1. Classes of Assessments.

(a) Assessments shall consist of annual (each of which is hereinafter referred to as an "Annual Assessment"), special Assessments (each of which is hereinafter referred to as a "Special Assessment"), limited Assessments (each of which is hereinafter referred to as a "Limited Assessment") and the Multi-Family Assessment. Annual Assessments, Special Assessments and Limited Assessments shall apply only to the Owners and their respective Lots, while the Multi-Family Assessment shall apply only to the owner(s) of the Multi-Family Parcel.

(b) (i) The proceeds of the Annual Assessments may be used by the Association to defray any cost incurred by it in accordance with, or for any other purpose permitted by, the provisions of this Declaration, the Articles of Incorporation and/or the By-

Laws.

(ii) The proceeds of any Special Assessments shall be used by the Association to defray any cost incurred by it either in constructing, reconstructing, repairing or replacing any of the Commons or any other Association Property, or as the result of any expansion of the Property pursuant to the provisions of Section 7, or any other extraordinary expense incurred by the Association.

(iii) The proceeds of any Limited Assessments shall be used for the purposes set forth in the provisions of Subparagraph 6.3.3(d).

6.3.2. Period of Assessments.

(a) Each Assessment, including but not limited to the Multi-Family Assessment, shall be levied for one of those calendar years (each of which is hereinafter referred to as an "Assessment Year") during which this Declaration remains in effect; provided, that the initial Assessment Year shall commence on the date on which this Declaration is recorded among the Land Records, and shall terminate on the thirty-first (31st) day of December next succeeding such date.

(b) Not more than one Annual Assessment shall be levied against a Lot for any Assessment Year.

6.3.3. Allocation of Assessments among Lots.

(a) Except as is otherwise provided in this Paragraph 6.3.3 and in Subparagraph 6.3.5(a) below, (i) the respective amounts of any Annual Assessments levied for an Assessment Year shall be equal to all other amounts levied for the same type of Lot, (ii) the respective amounts of any Special Assessments levied for an Assessment Year shall be equal to all other amounts levied for the same type of Lot, (iii) the respective amounts of any Limited Assessments levied for an Assessment Year shall be equal to all other amounts levied for the same type of Lot, and (iv) no Assessment of one class may be levied for an Assessment Year against one Lot unless an Assessment of such class is at the same time levied for such Assessment Year against each Lot of the same type not exempt from such levy under the provisions of this Paragraph 6.3.3.

(b) If during an Assessment Year a Lot is added to the Property through an expansion thereof,

(i) the Association shall be deemed, automatically and without the necessity of further action, to have levied against such Lot for such Assessment Year each Assessment which the Association has levied against the other Lots for such Assessment Year; and

(ii) the respective amount of each such Assessment shall be determined in accordance with the foregoing provisions of this Paragraph 6.3.3 as if such Lot

formed part of the Property at the commencement of such Assessment Year, but shall then be reduced to a fraction thereof, the numerator of which shall be the number of days remaining in such Assessment Year as of the date of such expansion, and the denominator of which shall be three hundred sixty-five (365).

(c) Until the earliest to occur of (i) the acquisition of the legal title to a Lot hereafter by a person other than the Developer or any Builder, (ii) the issuance by the County of a certificate of occupancy/non-residential use permit for the first Dwelling hereafter constructed on such Lot, or (iii) the fifth (5th) anniversary of the date on which such Lot is first subjected to the operation and effect of this Declaration, each Annual Assessment, Limited Assessment or Special Assessment levied against such Lot shall be in an amount equaling twenty-five percent (25%) of the amount which such Assessment would be, but for the provisions of this Subparagraph 6.3.3(c).

(d) Notwithstanding the provisions contained in Subparagraph 6.3.3(c) above, during the Development Period the Developer shall pay the full amount, if any, by which the expenses of the Association exceed the total budgeted income of the Association; provided, however, that the Developer's obligation under this Subparagraph 6.3.3(d) does not include any expenses that the Association is unable to meet because of nonpayment of any Class A Member's Assessments and shall not exceed the amount the Developer would be obligated to pay if Lots owned by the Developer were assessed in accordance with Subparagraphs 6.3.3(a) and (b) hereof.

6.3.4. Adoption by Board of Directors; notice of Assessment; when Assessments are due and payable.

(a) By not later than the thirtieth (30th) day before an Assessment Year commences, the Board of Directors shall adopt a budget for the Association for such Assessment Year, setting forth for such Assessment Year (i) the aggregate amount of the Annual Assessments to be levied, (ii) the respective amount of the Annual Assessment to be levied against each Lot, and (iii) the amount of any Multi-Family Assessment to be levied against the Multi-Family Parcel.

(1) By not later than the fifteenth (15th) day before such Assessment Year commences, the Association shall provide a copy of such budget to each Owner at its Notice Address. Until such action is taken each Member shall pay to the Association on account of the Annual Assessment for the next Assessment Year, on the date or dates on which such Annual Assessment would have been due had the Association taken such action before such date, an amount equal to the Annual Assessment for the preceding Assessment Year (or the initial installment thereof, if such Annual Assessment was payable in installments).

(2) By not later than the fifteenth (15th) day before such Assessment Year commences, the Association shall provide a notice of the amount due, if any, for the Multi-Family Assessment for such Assessment Year to the owner(s) of the Multi-Family Parcel at its Notice Address.

(b) If the Association so permits, any Assessment may be paid to the Association in monthly or other installments in accordance with a schedule determined by the Association.

(c) So much of an Annual Assessment as does not exceed the maximum amount which the Association may levy without obtaining the consent of the Membership in accordance with the provisions of Subparagraph 6.3.5(b) (or one installment of Assessment, if payable in installments) shall be due on the first (1st) day of such Assessment without the necessity of further action by the Association (and any subsequent installment shall be due on the respective dates set forth in such schedule); provided, that if the amount of an Annual Assessment exceeds such maximum amount, as aforesaid, no portion in excess shall be due unless and until the Membership has consented to the levying of such

(d) Any Special Assessment or Limited Assessment (or the initial installment thereof, if payable in installments) shall be due on the later of (i) the first (1st) day of the Assessment Year for which it is levied, or (ii) any later date specified therefor by the Association (and any subsequent installments thereof shall be due on the respective dates set forth in such schedule).

(e) Any Multi-Family Assessment (or the initial installment thereof, if payable in installments) shall be due on the later of (i) the thirtieth (30th) day after notice was given to the Multi-Family Parcel owner(s), as set forth in Section 6.3.4(a)(2), or (ii) any later date specified therefor by the Association (and any subsequent installments thereof shall be due on the respective dates set forth in such schedule).

(f) Anything contained in the foregoing provisions of this paragraph to the contrary notwithstanding, if a Lot is exempt from such levy at the commencement of an Assessment Year but during such Assessment Year becomes eligible for such levy, the Assessment thus levied shall be due on the later of (i) the date on which such Assessment would have been due were such Lot part of the Property at the commencement of such Assessment Year or (ii) the date on which such Lot becomes eligible for such levy.

6.3.5. Limitations on certain Assessments.

(a) Without Membership's approval. Other than pursuant to the provisions of Subparagraph 6.3.5(b), the Association may not levy against any Lot any Special Assessment, any Limited Assessment or any Annual Assessment in an amount which,

(i) for the initial Assessment Year, exceeds Seven Hundred Sixty and no/100 Dollars (\$756) for Townhouse Lots, and Six Hundred Sixty and no/100 Dollars (\$660) for Detached Single Home Lots;

(ii) for any Assessment Year thereafter, exceeds one hundred percent (110%) of the maximum amount permitted to be levied as an Annual Assessment for

Corporation
Assessment
Base
866-80

Resolution
10th of 11
\$25

the immediately preceding Assessment Year.

(b) With Membership's approval.

(i) The Association may levy against each Lot for an Assessment Year that portion of an Annual Assessment which exceeds the maximum sum which the Association may levy for such Assessment Year without approval by the Membership, as aforesaid, after and only after having been authorized to do so by two-thirds (2/3) of the votes cast on such question by those Members of each Class of Membership who are present and voting on such question at a Membership Meeting held in accordance with the following provisions of this Subparagraph 6.3.5(b) .

(ii) The Association shall send to each Member at its Notice Address a written notice of the date, time and place of any Membership Meeting at which such question is to be considered by not later than the thirtieth (30th) and not more than the sixtieth (60th) day before such date. The presence at such date, time and place, in person or by proxy, of Members holding at least sixty percent (60%) of the total number of votes then held by, respectively, each class of the Membership shall be required to constitute a quorum for such Membership Meeting. If such quorum does not exist thereat, the Association may call another Membership Meeting for such purpose for a date not more than sixty (60) days after the first said date, by sending to each Member at its Notice Address a written notice of the date, time and place thereof in the same manner as that set forth hereinabove. The presence at such date, time and place, in person or by proxy, of Members holding at least thirty percent (30%) of the total number of votes then held by, respectively, each class of the Membership shall be required to constitute a quorum for such Membership Meeting.

(c) Multi-Family Assessment. The Association may not levy a Multi-Family Assessment without first notifying the owner(s) of the Multi-Family Parcel in writing, and in reasonable detail, of the purpose of the Multi-Family Assessment.

6.4. Owners' personal liability for Assessments.

6.4.1. Each Owner shall be personally liable for payment of each Assessment (or each installment thereof, if payable in installments) which becomes due for a Lot while he is its Owner. An Owner may not avoid such liability by waiving any right to use the Commons or other right which he holds under the provisions of this Declaration or otherwise, abandoning or otherwise terminating his use of such Lot, or conveying the title to such Lot after the same becomes due.

6.4.2. An Owner shall not be personally liable for payment of any Assessment or installment thereof which becomes due for a Lot (a) before he becomes its Owner (notwithstanding that an Assessment Lien for such Assessment may be imposed upon the title to such Lot while held by such Owner, pursuant to the provisions of Subsection 6.5), or (b) after he ceases to be its Owner.

6.5. Assessment Lien; priority thereof.

6.5.1. Each Assessment (or installment thereof, if payable in installments and not accelerated) levied against a Lot, and any other sum duly levied (including without limitation charges, interest, late charges, etc.), made pursuant to the Association Documents, is hereby declared to be a lien ("Assessment Lien") against the title of any Lot owned by any Owner or the Multi-Family Parcel, as applicable. In any case where an Assessment is payable in installments, upon a default by such Owner, or the owner(s) of the Multi-Family Parcel, as applicable, in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such Assessment may be accelerated, at the option of the Board of Directors, and the entire balance of the Assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner or Multi-Family Parcel owner(s), as applicable. The acceleration of any such Assessment shall not affect the validity of any other or future Assessments, and interest on the accelerated amount shall accrue at the rate set forth in Subsection 6.6 herein.

6.5.2 At any time after an Assessment is due and payable, and before it is paid in full to the Association, the Association may give notice to the Owner thereof, or the Multi-Family Parcel owner(s), as applicable, in accordance with the provisions of Subsection 11.13, of the Association's intent to perfect a lien against such Lot (hereinafter referred to as a "Notice of Lien"). The form and timing of the Notice of Lien shall be determined by the Association in the exercise of its sole discretion, provided that the Notice of Lien complies with the requirements of Code Section 55-516, as amended.

6.5.3. The Association may execute and record among the Land Records in accordance with the provisions of Code Section 55-516, as amended, a memorandum (hereinafter referred to as a "Memorandum of Lien") for such Assessment Lien. The form of such Memorandum of Lien shall be determined by the Association in the exercise of its sole discretion, so long as it constitutes a "memorandum of lien" for purposes of the provisions of Code Section 55-516, as amended.

6.5.4. An Assessment Lien shall be subordinate to the lien of any Mortgage covering the Lot, or the Multi-Family Parcel, as applicable, against which such Assessment Lien is imposed, if and only if such Mortgage is recorded among the Land Records before the Memorandum of Lien perfecting such Assessment Lien is recorded thereamong.

6.5.5. An Assessment Lien may be enforced and foreclosed in any manner permitted by the laws of Virginia, including by an action in the name of the Board of Directors, or if permitted by law, the managing agent of the Association acting on its behalf. During the pendency of any such action to enforce the Assessment Lien to the extent permitted by law, the plaintiff in such proceeding shall have the right to the appointment of a receiver. Notwithstanding the above, a suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the Assessment Lien, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

6.6. Interest on unpaid Assessments. Each Assessment (or installment thereof, if payable in installments) shall bear interest on its unpaid balance from the thirtieth (30th) day

after it becomes due, until paid, at the lesser of (a) the rate of twenty percent (20%) per annum, or (b) the highest rate from time to time permitted by applicable law to be charged upon the same. In addition to such interest, the Association shall be entitled to levy against the Owner and Lot in question, or the owner(s) of the Multi-Family Parcel, as applicable, a late charge of \$20.00, or such other amount as may be predetermined by the Board of Directors for each Assessment or installment thereof which is not paid within thirty (30) days after it becomes due, which late charge shall automatically become part of such Assessment or installment for all purposes of the provisions of this Declaration. Payments made on account of Assessments shall be applied first to the payment of expenses and attorneys' fees incurred by the Association in attempting to recover unpaid Assessments, next to late fees, then to accrued and unpaid interest, and the remainder credited to Assessments in the order in which same (or installments thereof) became due and payable.

6.7. Recovery of unpaid Assessments.

6.7.1. The Association shall be entitled to recover in actions at law or in equity, from any person liable for payment of any or all of an Assessment, and without waiving the Assessment Lien therefor, a money judgment for both (a) such Assessment (including, by way of example rather than of limitation, the amount of any deficiency resulting from any foreclosure of such Assessment Lien), and (b) any and all interest accrued thereon through the date of such recovery, and costs incurred by the Association in obtaining such recovery (including, by way of example rather than of limitation, that of reasonable attorneys' fees).

6.7.2. Anything contained in the foregoing provisions of this subsection to the contrary notwithstanding, no such action to foreclose upon such Assessment Lien or otherwise to recover any of such Assessment may be brought after twenty-four (24) months from the time when the Memorandum of Lien was recorded, or such longer period as may be permitted by law.

6.8. Certificate as to payment of Assessments. The Association shall, upon written request at any time by any person liable for payment of any Assessment or installment thereof, or who holds any interest in a Lot against which an Assessment has been levied, deliver to such person a certificate signed by an officer of the Association setting forth whether such Assessment or installment has been paid. Any such certificate so delivered shall be conclusive evidence of the payment of each Assessment or installment therein stated to have been paid.

SECTION 7. EXPANSION OF THE PROPERTY

7.1. The Developer hereby reserves, for a period of ten (10) years after the date hereof, the right (which shall be exercisable at its sole discretion—which to avoid any confusion in this Declaration means, without any requirement to seek approval or consent from any Member, Owner or the Association—but only in accordance with the provisions of this Section) to expand the Property from time to time by subjecting to the operation and effect of this Declaration, and thereby adding to the Property, all or any portion or portions of land in the County, together with all of the respective improvements on such portions and all of the respective rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any way appertaining (which parcel or any portion thereof, together with such improvements thereon and

es thereto, is hereinafter sometimes referred to as a "Future Parcel"). The right to expand the Property reserved in this Subsection 7.1 shall be exercisable, for any such portion or portions of a Future Parcel, irrespective of whether the owner has legal title to the Future Parcel at the time such right is exercised.

Any such expansion shall be accomplished by, and become effective upon and with the amendment of this Declaration by the recordation among the Land Records of an amendatory instrument which,

7.2.1. sets forth a legal description of each Future Parcel or portion thereof added to the Property by such expansion;

7.2.2. expressly subjects the same to the operation and effect of this Declaration;

7.2.3. if such Future Parcel or portion thereof has been subdivided into lots and/or open spaces and/or other parcels in accordance with applicable law governing the subdivision of land in the said County,

(a) describes such residential lots, open spaces, and other parcels by reference to them as designated on the plat which, pursuant to such law, is recorded among the Land Records in connection with such subdivision,

(b) designates each such residential lot as a Lot and the remainder of the Future Parcel or portion thereof (other than any Dedicated Roadway therein) as either a Future Parcel, or part of the Commons for purposes of this Declaration, and

(c) designates such plat (if such plat is other than the original Property Plat) as an amendatory plat to the Property Plat for purposes of this Declaration.

Form of instrument.

7.3.1. Except to the extent that the form and contents of any such amendatory subdivision plat are dictated by applicable law, they may be determined by the Developer at the exercise of its sole discretion, and the effectiveness of neither any such instrument nor the execution or recordation of any such instrument or plat shall be conditioned or contingent thereon or joinder therein by any person (including, by way of example rather than limitation, the Association or any Owner) other than the Developer. The Developer shall execute and/or record any such instrument or plat, and/or to take any other action necessary hereto, to the extent that such action is, in the opinion of the Developer and its legal counsel, necessary or desirable to effectuate the provisions of this Section.

7.3.2. Without limiting the generality of the foregoing provisions of this Section, the Developer may by the provisions of any such amendatory instrument or plat, or at the time of the conveyance to the Association of such land, if any, as is added to the Property by such expansion, reserve for the benefit of any Future Parcel or portion thereof

(regardless of whether it is ever part of the Property) such easement rights of the type reserved by the Developer by the provisions of this Declaration as the Developer determines to reserve in the exercise of its sole discretion, all without the necessity of obtaining any other person's consent thereto or joinder therein.

7.4. Upon any such expansion of the Property, the title to each Future Parcel or portion thereof which is thereby added to the Property shall be and thereafter remain subject to the operation and effect of the provisions of this Declaration, to the same extent as if it formed part of the Property on the date hereof.

SECTION 8. ARCHITECTURAL COMMITTEE AND CONTROL

8.1. Architectural Committee.

8.1.1. The Board of Directors shall from time to time designate three or more individuals to constitute a committee to be known as "the Architectural Committee", which shall have the powers and duties conferred upon it by the provisions of this Section.

8.1.2. The affirmative vote of a Majority of the membership of the Architectural Committee shall be required for it to (a) recommend to the Board of Directors the adoption or promulgation of any of the Rules and Regulations which are hereinafter in this Section referred to; (b) make any finding, determination, ruling or order; or (c) issue any permit, authorization or approval pursuant to the provisions of this Section.

8.1.3. Unless such decision is reversed or modified by the Board of Directors upon the written application of any Owner made to the Board of Directors within ten (10) days after the date on which the Architectural Committee makes a decision on any matter referred to in the provisions of Subparagraphs 8.1.2(b) and (c), such decision shall be final.

8.2. Architectural control.

8.2.1. No Structure may be commenced, constructed, erected, placed, maintained or permitted to remain on a Lot, and no Structure existing on a Lot may be altered in any way including (a) exterior painting and (b) interior painting or other modifications which are visible from the exterior thereof which, in the judgment of the Architectural Committee, materially changes the exterior appearance thereof, and no Use may be commenced on a Lot, unless prior thereto plans and specifications therefor, and a description of any such use (herein referred to collectively as "Plans"), have been submitted to and approved in writing by the Architectural Committee.

8.2.2. Such Plans shall (a) designate by reference to the Property Plat each Lot for which such Plans are submitted; (b) include a plan of each such Lot showing the nature, exterior color scheme, kind, shape, height, materials and location (both with respect to each such Lot and with respect to Structures located on adjoining portions of the Property) of all Structures then existing or proposed by such Plans to be placed thereon, any existing or proposed front, rear and side setbacks from such Structures, and the location of any existing or proposed parking

spaces and driveways upon such Lot; and (c) be in such form and contain such other information as are required by the Architectural Committee.

8.3. Certain Rules and Regulations, and statements of policy.

8.3.1. The Architectural Committee may propose to the Board of Directors, and the Board of Directors may cause the Association to adopt, (a) certain Rules and Regulations governing the form and content (and number of copies) of any Plans to be submitted to the Architectural Committee for its consideration, and (b) statements of policy with respect to its approval or disapproval of the architectural styles or details, or other matters, reflected in such Plans.

8.3.2. Such Rules and Regulations may be amended or revoked by the Board of Directors at any time in the same manner as the Rules and Regulations may be amended or revoked generally, and any such statement of policy may be amended or revoked by the Architectural Committee at any time.

8.3.3. The inclusion or omission of any matter in or from, or the amendment of, any of such Rules and Regulations, or statement of policy, shall not be deemed to bind the Architectural Committee to approve or disapprove any Plans or to constitute a waiver of the exercise of the Architectural Committee's discretion as to any such matter; provided, that no such amendment or revocation shall affect the finality of any such approval granted before such amendment or revocation.

8.4. Basis for disapproval.

8.4.1. The Architectural Committee may disapprove any Plans submitted to it whenever, in its opinion, any of the following circumstances exist:

(a) such Plans, or any Structure or Use covered by such Plans, are not in accordance with the provisions of this Declaration, or of the said Rules and Regulations and statements of policy;

(b) such Plans do not contain information which the Architectural Committee may reasonably require to be contained therein;

(c) any Structure covered by such Plans is incompatible with any Structure on or Use of any Lot, due to the former's exterior design, height, bulk, shape, color scheme, finish, style of architecture, configuration, appearance, materials, location or relative cost;

(d) any Use covered by such Plans is incompatible with any Structure on or Use of any Lot;

(e) the existence, size, configuration or location of any parking area proposed for such Lot is incompatible with, or insufficient, inadequate or inappropriate in

relation to, any existing or proposed Use or Structure on such Lot or elsewhere within the Property; and

(f) any other set of circumstances which, in the reasonable judgment of the Architectural Committee, would render any Structure or Use which is the subject of such Plans inharmonious with the general plan of development of the Property.

8.4.2. (a) If the Architectural Committee disapproves any Plans or approves them only upon the satisfaction of any specified condition requiring the modification of such Plans or the taking of any other action, thereafter it shall [reasonably] promptly notify the applicant thereof in writing, and shall furnish with such notice a statement of the grounds on which the disapproval or conditional approval was based.

(b) If the Architectural Committee approves any Plans without conditioning such approval on the satisfaction of any such condition, thereafter it shall promptly notify the applicant thereof in writing.

(c) Unless the Architectural Committee, by written notice to the applicant, disapproves any Plans submitted to it or approves them only upon the satisfaction of any specified condition, as aforesaid, within forty-five (45) days after such Plans are submitted to it, the Architectural Committee shall conclusively be deemed for all purposes of this Declaration to have approved such Plans unconditionally for each Lot for which they were so submitted.

8.5. Effect of approval. The Architectural Committee's approval of Plans for any Lot for which such Plans are submitted to it shall not constitute a waiver of its right, in its sole discretion, to disapprove such Plans or any of the features or elements included therein if such Plans are subsequently submitted to it for any other Lot; but (subject to the operation and effect of the provisions of Paragraph 8.1.3.), as to any Lot for which such Plans are so approved, such approval shall be final and irrevocable unless such Plans are subsequently modified, in which case such modified Plans must be submitted to the Architectural Committee for approval.

8.6. Inspection of Lots. Any agent of the Association may at any reasonable time (but only after having given written notice of the same to the Owner thereof by not later than five (5) days prior thereto) enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Lot or Structure, and any Use thereof, are in accordance with the provisions hereof, and neither the Association nor such agent shall be deemed to have committed any trespass or other wrongful act by reason of such entry or inspection.

8.7. Certificate of compliance and approval.

8.7.1. After the completion on a Lot of the construction or alteration of any Structure, or the commencement of any Use thereon, the Association (or the Developer, as to Plans approved by the Developer pursuant to the provisions of subsection 8.9) shall, on written request by the Owner or any Mortgagee thereof, issue a certificate in a form suitable for recordation among the Land Records, (a) identifying such Lot and such Structure or Use; and (b)

stating that the Architectural Committee (or the Developer, as the case may be) has approved Plans covering such Structure or Use in the manner set forth in the provisions of this Section, and believes that such Structure or Use complies therewith.

8.7.2. The Association may charge such Owner a reasonable fee for the issuance of such certificate, the payment of which at the time of the request for such certificate shall be a condition to its obligation hereunder to issue the same.

8.7.3. Such Owner shall bear the cost of recording such certificate among the Land Records.

8.7.4. No approval of any Plans, no certificate of compliance, nor any other act of the Architectural Committee, the Association, or any of their respective agents, shall be deemed in any way to be a representation or warranty, express or implied, of any kind as to Structure, the improvements, or anything thereto related. All such representations and warranties are expressly disclaimed, and each Member and Owner, all third parties and all of their respective agents are hereby deemed on notice of such disclaimer. Each Owner and Member, for itself, its agents, heirs, successors and assigns, acknowledges such disclaimer and waives any claims it ever may have had with respect thereto or potentially arising thereby.

8.8. Removal.

8.8.1. If any Structure is altered, erected, placed or maintained, or any new Use commenced, on any Lot other than in accordance with Plans approved by the Architectural Committee pursuant to the foregoing provisions of this Section, such action shall be deemed to be a violation of the provisions of this Section and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such Use shall cease, so as to terminate such violation.

8.8.2. If within fifteen (15) days after having been given such notice such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and the Association shall have a lien therefor which is enforceable in the same manner as an Assessment Lien imposed upon such Lot.

8.9. Developer's Plans. Nothing in the foregoing provisions of this Section shall be deemed in any way to require that the Developer submit to the Architectural Committee, or obtain its approval of, Plans for any Structure to be constructed upon a Lot (or any Use or condition thereof) before the initial conveyance of record of the title to such Lot to a person other than the Developer, if and only if Plans therefor have been approved in writing by the Developer, it being the Developer's intention that, where the Developer has approved such Plans, the provisions of this Section which require approval of such Plans, Use or condition by the Architectural Committee not be applicable to a Lot until the title thereto is hereafter first acquired of record by a person other than the Developer.

SECTION 9. USE OF LOTS

9.1. Uses prohibited absolutely. Anything contained in (a) any instrument of record or otherwise having priority over the operation and effect of this Declaration, or (b) any zoning ordinance or other applicable law, to the contrary notwithstanding,

9.1.1. Subject to the operation and effect of the provisions of Paragraph 9.1.2,

(a) no Lot shall be devoted to a principal Use other than a residential Use;

(b) no Lot may contain more than one residential Structure at any time (which Structure must be either a detached or an attached residential Structure, depending upon and in accordance with its respective Lot designation, may constitute not more than one Dwelling, and may be used as a residence at any one time by not more than one family);

(c) no Lot or Dwelling may be used for transient or hotel purposes; and,

(d) no trailer, basement, tent, shack, garage, barn, other outbuilding or other Structure of a temporary character located on any Lot shall be used as a temporary or permanent residence.

9.1.2. Nothing in the provisions of this Declaration shall be deemed in any way to prohibit

(a) the temporary placement by the Developer on the Commons, or on any Lot of which it is then the Owner, or by any Builder on any Lot of which it is then the Owner, of a trailer for construction and/or sales purposes relating to any Lot (or of any portion of a Future Parcel which, by an expansion of the Property pursuant to the provisions of Section 7, would become a Lot), so long as such trailer placement is approved by the Architectural Committee.

(b) the use by the Developer, any Builder, and their respective agents, employees, officers, contractors and invitees, of the improvements on each Lot of which the Developer or such Builder is then the Owner (i) as offices or as speculative or sample dwellings in connection with its development, construction, replacement, repair, maintenance, marketing, sale or leasing of any Lot (or of any portion of a Future Parcel which, by an expansion of the Property pursuant to the provisions of Section 7, would become a Lot), or (ii) in any other manner, unless any other person would, were he the Owner thereof, be prohibited or restricted in the same manner; or

(c) (provided that in each instance of such use the Architectural Committee has approved the same in the manner set forth in the provisions of Section 8) for the maintenance and operation of a multi-purpose court, tot lot, or similar facility, open space and any related structure, if owned and operated by the Association or any nonprofit entity or

governmental body.

9.2. Uses prohibited without approval by Architectural Committee. Subject to the foregoing provisions of this Section, and unless the Architectural Committee has approved the same in the manner set forth in the provisions of Section 8,

9.2.1. no (a) house trailer, trailer, tractor trailer or other truck (other than a non-commercial van or "pick-up" truck with current and valid license plates affixed thereto), boat, boat trailer, camper, recreational bus or any similar item, or (b) (unless current and valid license plates are affixed thereto) automobile, shall be temporarily or permanently parked or stored in the open on any Lot or on any street or parking area within, or other portion of, the Commons.

9.2.2. no machinery shall be placed or operated on any Lot, except for such machinery as is customarily utilized in occupying a private residence.

9.2.3. no profession or home industry shall be conducted on any Lot.

9.2.4. no lumber, metals, bulk materials, refuse, recycling or trash shall be kept, stored or allowed to accumulate on any Lot; provided, that (a) if trash or other refuse from such Lot is disposed of by being collected and carried away on a regular and recurring basis, containers containing the same may be placed in the open on any day on which a collection is to be made (and not prior thereto), at a place on or adjacent to such Lot which affords access thereto to the person making such collection (but further provided, that (i) such containers shall be stored at all other times so that they are not visible from elsewhere within the Property, and (ii) the Association may, in its discretion, adopt reasonable Rules and Regulations relating to the size, shape, color, number, type and manner of storage of such containers), and (b) building materials being utilized in the construction, reconstruction or repair of any Structure in accordance with the provisions of Section 8 may be properly stored thereon while such activities are being carried on. This provision shall not be construed as forbidding any work involved in the construction or upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Board of Directors and other provisions of this Declaration. The Board of Directors may approve temporary structures for construction purposes which may otherwise be in violation of the Association Documents or the Rules and Regulations.

9.2.5. no tree having a diameter of three inches or more, as measured at a point two feet above the ground level, shall be removed from any Lot.

9.2.6. no tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines to vehicular traffic on public streets.

9.2.7. (a) no chain link fence shall be erected or maintained on any Lot, other than around a swimming pool (excluding above-ground pools) or tennis court located thereon.

(b) no fence or wall shall (i) exceed forty-eight (48) inches in height unless it fully or partially encloses any swimming pool, tennis court, patio or open garden court, or is a retaining wall required by the topography of such Lot or any adjacent portion of the Property, or (ii) interfere with any underground or surface drainage structure, pipe or ditch, or (iii) be located in the front yard of a Lot.

9.2.8. no livestock, poultry, or other animal, bird or insect of any kind shall be raised, bred or kept on any Lot, either temporarily or permanently (except that two (2) or fewer dogs, cats or other household pets may be kept on a Lot if not kept, bred or maintained thereon for any commercial purpose).

9.2.9. no Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth except with the prior written approval of the Board of Directors.

9.2.10. no Lot shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple Owners, cooperators, licensees, or timesharing participants.

9.2.11 no junk vehicles, inoperable vehicles, unlicensed or uninspected vehicles, recreational vehicles, trailers, or commercial industrial vehicles, such as but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, hearses, buses, boats, boating equipment, travel trailers or camping equipment shall be regularly or habitually parked within the Property except (a) upon the written approval of the architectural committee or (b) if property garaged. The Association shall not be required to provide a storage area for these vehicles. After ten (10) days' written notice to the owner of any vehicle parked in violation of this section, the Association may remove such vehicle at the expense of the owner thereof.

9.2.12. no commercial truck, commercial bus or other commercial vehicle of any kind shall be permitted to be kept or parked overnight upon any portion of the Property except if properly garaged. Unless garaged, no vehicle bearing signage shall be permitted to be kept or parked overnight on any portion of the Property.

9.2.13. no portion of the Property shall be used for repair of automobiles, nor shall any vehicles other than a private automobile, property licensed and inspected and in an operable condition, be parked on the Property. After ten (10) days' written notice to the owner of any vehicle parked in violation of this section, the Association may remove such vehicle at the expense of the owner thereof.

9.2.14. except as otherwise then permitted by law, no exterior antenna or satellite "dish" with a diameter or diagonal measurement greater than thirty-nine and thirty-seven hundredths inches (39.37") shall be erected or permitted on any Lot or other part of the Property.

9.3. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, no odor shall be permitted to emanate therefrom, and no condition shall be maintained thereon, so

SECTION 9. USE OF LOTS

9.1. Uses prohibited absolutely. Anything contained in (a) any instrument of record or otherwise having priority over the operation and effect of this Declaration, or (b) any zoning ordinance or other applicable law, to the contrary notwithstanding,

9.1.1. Subject to the operation and effect of the provisions of Paragraph 9.1.2,

(a) no Lot shall be devoted to a principal Use other than a residential Use;

(b) no Lot may contain more than one residential Structure at any time (which Structure must be either a detached or an attached residential Structure, depending upon and in accordance with its respective Lot designation, may constitute not more than one Dwelling, and may be used as a residence at any one time by not more than one family);

(c) no Lot or Dwelling may be used for transient or hotel purposes; and,

(d) no trailer, basement, tent, shack, garage, barn, other outbuilding or other Structure of a temporary character located on any Lot shall be used as a temporary or permanent residence.

9.1.2. Nothing in the provisions of this Declaration shall be deemed in any way to prohibit

(a) the temporary placement by the Developer on the Commons, or on any Lot of which it is then the Owner, or by any Builder on any Lot of which it is then the Owner, of a trailer for construction and/or sales purposes relating to any Lot (or of any portion of a Future Parcel which, by an expansion of the Property pursuant to the provisions of Section 7, would become a Lot), so long as such trailer placement is approved by the Architectural Committee.

(b) the use by the Developer, any Builder, and their respective agents, employees, officers, contractors and invitees, of the improvements on each Lot of which the Developer or such Builder is then the Owner (i) as offices or as speculative or sample dwellings in connection with its development, construction, replacement, repair, maintenance, marketing, sale or leasing of any Lot (or of any portion of a Future Parcel which, by an expansion of the Property pursuant to the provisions of Section 7, would become a Lot), or (ii) in any other manner, unless any other person would, were he the Owner thereof, be prohibited or restricted in the same manner; or

(c) (provided that in each instance of such use the Architectural Committee has approved the same in the manner set forth in the provisions of Section 8) for the maintenance and operation of a multi-purpose court, tot lot, or similar facility, open space and any related structure, if owned and operated by the Association or any nonprofit entity or

as to render any Lot or portion thereof unsanitary, unsightly, unreasonably offensive or detrimental, or a nuisance, to any of the Property, any occupant thereof or any property.

9.4. Repair of Structures. Each Owner shall at all times keep his Lot and the exterior of all Structures thereon in good condition and repair and adequately painted or otherwise finished.

9.5. Landscaping. Except for patios, walkways, flower gardens, hedges and trees, which shall be neatly maintained, all unimproved open areas on any Lot shall be maintained in lawns, which shall be kept mowed to a height not exceeding four inches.

9.6. Right of entry. The Association and the Developer shall each have the right to enter on any Lot and (a) trim or prune any tree, hedge or other planting whose height or location on such Lot is, in the Association's judgment, unreasonably detrimental to any adjoining property, is unattractive or obscures the view of street traffic from any Lot, or (b) cure any violation of the provisions of this Section, all provided that such Owner is given fifteen (15) days' prior written notice of such action, except in the case of an emergency, in which event only such notice need be given as is reasonable under the circumstances. In such event, such Owner shall pay to the Association the amount of any and all reasonable expenses incurred by the Association in taking such action, within ten (10) days after such Owner's receipt of written demand therefor from the Association.

SECTION 10. RIGHTS OF MORTGAGEES

10.1. General.

10.1.1. Regardless of whether a Mortgagee in Possession of a Lot is its Owner, (a) such Mortgagee in Possession shall have, in addition to its rights hereunder as a Mortgagee, all of the rights under the provisions of this Declaration, the Property Plat, the Articles of Incorporation, the By-Laws and applicable law which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (b) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in Possession as if it were the Owner thereof.

10.1.2. Any Mortgagee in Possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Paragraph 10.1.2 shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee in Possession, on account of any failure by such Owner to satisfy any of the same.

10.2. Rights of first refusal. Any Mortgagee in Possession shall be exempt from any right of first refusal or similar restriction held by the Association, to and only to the extent that it arises under the provisions of this Declaration, the Articles of Incorporation or the By-Laws, it being the Developer's intention that nothing in the foregoing provisions of this section be

deemed in any way to alter or impair the operation and effect of any right of first refusal or similar restriction given by an Owner or any other person to the Association or any other person but not arising under the provisions of this Declaration, the Articles of Incorporation or the By-Laws.

10.3. Priority over Assessment. A Mortgagee's interest in a Lot under its Mortgage shall be

10.3.1. free of any claim or lien for any Assessment levied against such Lot before such Mortgage is recorded among the Land Records (unless before such recordation a Memorandum of Lien covering such Assessment is recorded among the Land Records pursuant to the provisions of Subsection 6.4), other than any claim for a pro-rata share of the amount represented by such Assessment which results from any pro-rata reallocation of such Assessment among all of the Lots, including such Lot; and

10.3.2. free of any such claim or lien arising after such recordation of such Mortgage, and before such Mortgagee becomes a Mortgagee in Possession of such Lot.

10.4. Actions conditioned on Mortgagee's approval. Unless two-thirds (2/3) of the first Mortgagees of all Lots then within the Property have given their prior written approval thereof, the Association shall not by act or omission

10.4.1. seek to abandon, partition, subdivide, encumber, sell or transfer the Commons (provided, that (i) the granting of easements for public utilities or other public purposes consistent with the intended use of the Commons and (ii) any boundary adjustment or resubdivision made pursuant to Paragraphs 3.2.5 or 3.3.2. herein, shall not be deemed to be prohibited by the foregoing provisions of this subsection);

10.4.2. use any proceeds derived from hazard insurance and paid to the Association on account of any damage to or destruction of any of the Commons for other than the repair, replacement or reconstruction thereof;

10.4.3. fail to maintain fire and extended coverage insurance on so much of the Commons as is insurable, on a current replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value thereof (based on its current replacement cost);

10.4.4 change the method of determining the Assessments; or,

10.4.5. change, waive or abandon any scheme of regulations, or enforcement thereof, set forth in the provisions of this Declaration, pertaining to the architectural design or the exterior appearance or maintenance of Lots or improvements thereon, or the maintenance and upkeep of the Commons.

10.5. Inspection: statement and notice. A Mortgagee shall, upon request of the Association, and provided that it has furnished the Association with the information referred to in the provisions of Subsection 11.13, be entitled to

10.5.1. inspect the Association's books and records during normal business hours;

10.5.2. receive the latest annual financial statement of the Association;

10.5.3. be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;

10.5.4. be given timely written notice of the occurrence of any substantial damage to or destruction of the Commons, or if the Commons are made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and

10.5.5. be given written notice by the Association of any default by the Owner of such Mortgagee's Lot in performing such Owner's obligations under the provisions of this Declaration, the Articles of Incorporation or the By-Laws which is not cured within thirty (30) days after such default commences.

10.6. Taxes on Commons. The first Mortgagees may, jointly or singly, pay any or all taxes or other charges which are in default and which may or have become a charge against any of the Commons, and may pay any or all overdue premiums on hazard insurance policies for the Commons, or secure new hazard insurance coverage on the lapse of any such policy. Any first Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Association.

SECTION 11. GENERAL

11.1. Effectiveness. This Declaration shall become effective on and only on its having been executed and acknowledged by the Developer, and recorded among the Land Records.

11.2. Assignment.

11.2.1. The Developer shall be entitled at any time to assign to any person any or all of its right, title and interest as "the Developer" hereunder (including, by way of example rather than of limitation, the Developer's rights under, or held pursuant to, any of the provisions of Sections 4, 5, 7 and 8) by an instrument which makes specific reference to this subsection, and is executed and delivered by the Developer and such assignee and recorded among the Land Records.

11.2.2. The Developer may from time to time hereafter permit any right which it then holds under the provisions of this Declaration to be exercised on its behalf by any of its officers, directors, employees or agents.

11.3. Amendment and termination.

11.3.1. Except as is otherwise provided in this Declaration (including, without

limitation, in connection with the expansion of the Property pursuant to the provisions of Section 7 herein or any boundary adjustment or resubdivision made pursuant to the provisions of Section 3 herein), this Declaration and the Property Plat may be amended or terminated by and only by an instrument or plat (a) executed by Owners of at least ninety percent (90%) of the Lots (one of which must, during the Development Period, be the Developer) until the twentieth (20th) anniversary of the date hereof, and by Owners of at least seventy-five percent (75%) of the Lots thereafter, and (b) recorded among the Land Records.

11.3.2. This Declaration, as amended from time to time, shall run with the land subjected hereto, and remain in full force and effect (a) until the twentieth (20th) anniversary of the date hereof, and (b) thereafter shall be automatically extended for successive periods of twenty (20) years until there is recorded among the Land Records an instrument which, expressly and by specific reference to this Paragraph 11.3.2, and in the manner set forth in the foregoing provisions of this subsection, terminates the operation and effect of this Declaration as of a date specified in the provisions of such instrument, in which event such termination shall be effective as of such date.

11.3.3. Anything contained in the provisions of this Declaration to the contrary notwithstanding, the Developer may, without obtaining the consent thereto of any Owner, Mortgagee or other person, amend this Declaration or the Property Plat if such amendment is (a) (in the Developer's reasonable opinion) necessary to correct typographical, mathematical, engineering or similar errors therein, or (b) required by any federal mortgage agency, or Loudoun County, Virginia, as a condition of approval of the Property, the Association Documents, any Dedicated Roadway or the Property Plat, provided however that any amendment pursuant to this subpart (b) shall be made following written notice to all Owners of Developer's intention to make such amendment, and recorded within three (3) years after the recording of this Declaration.

11.4. Waiver. The Developer shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by the Developer in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

11.5. Applicable law. This Declaration shall be given effect and construed by application of the law of Virginia, and any action or proceeding arising hereunder shall be brought in the courts of Virginia; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Eastern District of Virginia. Statutes and laws applicable hereto may from time to time be amended, supplemented or otherwise modified. Decisions may be rendered by courts of competent jurisdiction which affect the Association and rights, remedies and/or enforcement of this Declaration. Notwithstanding the various provisions herein contained, this Declaration shall be construed consistent with the mandatory governing laws of the United States, the Commonwealth of Virginia and the County

of Loudoun as may be from time to time be in effect. By way of example, and not in limitation, if a portion of the Virginia Code requires certain provisions, such provisions shall be deemed incorporated in this Declaration from and after the effective date thereof. However, if any pertinent statute or law allows the Declaration to provide otherwise, and the Declaration does so as permitted, the provision of the Declaration shall prevail.

11.6. Headings. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

11.7. Severability. No determination by any court, governmental or administrative body or otherwise that any provision of this Declaration, the Property Plat or any amendment thereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any instance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

11.8. Construction. All references made herein (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such section, subsection, paragraph or subparagraph of this Declaration.

11.9. Complementarity of Association Documents and Incorporation by Reference. The Association Documents shall be construed together and shall be deemed to incorporate one another. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. Any provision of any Association Document referenced in any other Association Document with the intent to incorporate the provisions of the Association Document into the other Association Document, shall be deemed incorporated therein, as if set forth in full. If there is any conflict between the Association Documents, the Declaration shall control, except (i) as to matters of compliance with the Act, in which case the Articles of Incorporation shall control, and (ii) as to matters of compliance with the Code, and subject to Subsection 11.9(i), the Code controls. Particular provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent therewith. The provisions of the By-Laws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

11.10. Contract Purchasers and Lessees. Nothing in the provisions of this Declaration shall be deemed in any way to condition the effectiveness of any action upon the consent thereto or joinder therein of any Contract Purchaser or Lessee of a Lot, notwithstanding that such effectiveness may be conditioned upon the consent thereto or joinder therein of the Owner of such Lot.

11.11. Exhibits. Each writing or plat referred to herein as being attached hereto as an

exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

11.12. General Plan of Development.

11.12.1. The provisions of this Declaration shall conclusively be deemed to be part of a general plan or scheme of development and use for the real property which, at the time in question, comprises the Property and, as such, to be covenants running with, binding upon, benefiting and burdening the respective titles to each Lot and the Commons; provided, that they shall not be deemed to be part of a general plan or scheme of development and use for, or to be covenants running with, binding upon, benefiting or burdening the title to (or otherwise to be enforceable at law or in equity with respect to),

(a) any Future Parcel or portion thereof unless and until it is added to the Property through an expansion thereof pursuant to the provisions of Section 7, or

(b) any land not within The Parcel or any Future Parcel.

11.12.2. If any Owner or other person fails to comply with any of such provisions, such failure shall give rise to a cause of action for the recovery of damages, injunctive relief, or both, in any or all of the Developer, the Association and each Owner, and their respective heirs, personal representatives, successors and assigns.

11.12.3. Both the Developer, by delivering to the Association a deed conveying to it the title to any or all of the Commons, or to any person a deed conveying to such person the title to a Lot, and the Association or such person, by accepting such delivery, shall be deemed thereby to have agreed with each other, and with each other Owner, to be bound by the provisions of this Declaration.

11.12.4. Any lease or licensing agreement entered into by an Owner or another person and covering any or all of a Lot, or by the Association and covering any of the Commons, shall be in writing and shall expressly provide that (a) the terms of the lease or license thereby created are in all respects subject to the operation and effect of the provisions of this Declaration, and (b) any failure by the lessee or licensee thereunder to comply with such provisions shall constitute a default under such agreement. To the extent that any such agreement does not expressly so provide, it shall be deemed to do so.

11.12.5. Each person who, together with any other person, is an Owner or a Lessee shall be jointly and severally liable for adhering to the terms and satisfying the conditions hereof.

11.13. Notices.

11.13.1. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to any person shall be in writing, and (a) shall be deemed to have been provided forty-eight (48) hours after having been sent certified mail, return receipt requested, in the United States mails, postage prepaid, and addressed (i) if the addressee is the

Developer, to its address which is set forth hereinabove or to such other address in the United States of America as the Developer may designate from time to time by notice to the Association, with a copy to the Developer's attorney, care of T. Patrick Dulany, Esquire (whose address is c/o Bracewell & Patterson, LLP, Suite 500, 12355 Sunrise Valley Drive, Reston, Virginia 20191), (ii) if the addressee is the Association or the Architectural Committee, to the address of the Association's resident agent as set forth in the Articles of Incorporation, or to such other address in the United States of America as the Association may designate from time to time by notice to the Owners, (iii) if the addressee is an Owner (other than the Developer), a Mortgagee who (in accordance with the provisions of the Articles of Incorporation and the By-Laws) has notified the Association of its status as such and furnished the Association with its address in the United States of America, or the owner or owners of the Multi-Family Parcel, to such person's said address (herein referred to as such person's "Notice Address"), and (iv) if the addressee either (1) has not so notified the Association and furnished it with its address, as aforesaid, or (2) is any other person, to such address in the United States of America as is used by the United States Postal Service for the delivery of mail to such person or his Lot, or (b) shall be deemed to have been provided upon actual hand or other delivery to such person.

11.13.2. Anything contained in the provisions of this Declaration to the contrary notwithstanding, unless an Owner or a Mortgagee has notified the Association of its status as such and furnished the Association with its address in accordance with the provisions of the Articles of Incorporation or the By-Laws, such person shall have no right under the provisions thereof or of this Declaration (a) to be given any notice, demand, consent, approval, request or other communication or document by the Association, (b) to participate in the consideration of or cast any vote on any question voted upon by the Membership, or (c) otherwise to be recognized as such by the Association or any Owner.

11.14. Waiver of reversionary right. The provisions of this Declaration shall not be construed as conditions subsequent, or as creating a possibility of reverter, and no provision hereof shall be deemed to vest in the Developer or any other person any reversionary right with respect to any Lot. Any such reversionary right is hereby expressly waived.

11.15. Dissolution of the Association; disposition of Commons. The Association shall not be dissolved, nor shall it dispose of the Commons or any portion thereof, by sale or otherwise, except to an organization conceived and organized to own and maintain the Commons, without first offering to dedicate the same to Loudoun County or other appropriate governmental agency. Additionally, dissolution shall not occur without prior written approval from the appropriate agency of Loudoun County.

11.16. County Approval. A number of provisions are contained within this Declaration to comply with the conditions of subdivision approval or Proffers applicable to the Property. Therefore, notwithstanding any other provision of this Declaration, no Supplementary Declaration or amendments shall modify or delete any such provision of this Declaration required by such subdivision approval conditions and Proffers, nor shall any Supplementary Declaration or amendment impair the right and authority of the County to require compliance with the subdivision approval conditions and Proffers applicable to the Property without the prior written approval of the County. Further, the Association may not be dissolved, except pursuant

to a merger or consolidation with an entity formed for similar purposes, or the Declaration terminated, without the prior written approval of the County.

[Signatures commence on the following page.]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed and
 ensealed on its behalf by its duly authorized representatives, the day and year first above written,
 and the Association and the Trustee have caused this Declaration to be executed in order to
 indicate their consent and agreement hereto.

LOUDOUN INTERTECH DEVELOPMENT
 CORPORATION, a Delaware corporation

By: [Signature] (Seal)
 Name: CHAIM ZABUDOWICZ
 Title: CEO/CHAIRMAN

STATE OF N.Y.
 COMMONWEALTH OF VIRGINIA)

COUNTY OF N.Y.) to-wit:

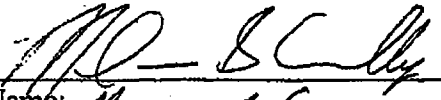
The foregoing instrument was acknowledged before me this 13 day of MAY,
 2002, by CHAIM ZABUDOWICZ, as CHAIRMAN/CEO of Loudoun Intertech
 Development Corporation, a Delaware corporation, on behalf of the corporation.

My Commission Expires:

AUGUST 27, 2005

[Signature]
 Notary Public

[Signatures continue on the following page.]

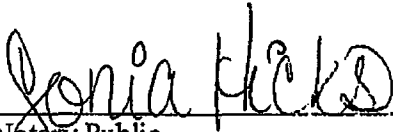
ASHBROOK HOMEOWNERS ASSOCIATION,
a Virginia nonstock corporationBy:  (SEAL)
Name: MELANIE B. CONNELLY
Title: PRESIDENT

COMMONWEALTH OF VIRGINIA)

COUNTY OF Fairfax } to-wit:

The foregoing instrument was acknowledged before me this 20th day of May, 2002,
by Melanie Connelly, as President of Ashbrook Homeowners Association, a Virginia nonstock
corporation, on behalf of the corporation.

My Commission Expires:

March 31, 2005
Notary Public

[Signatures continue on the following page.]

TRUSTEE'S CONSENT AND SUBORDINATION

The undersigned trustees, either of whom may act, by virtue of a deed of trust recorded among the land records of Loudoun County, Virginia, in Deed Book 1926, at page 593 (the "Deed of Trust"), as authorized to act by their beneficiary, as shown by its execution hereto, do hereby subordinate the lien of the Deed of Trust to the foregoing Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens.

TO HAVE AND TO HOLD SAID the foregoing Declaration over the herein described property prior in time and right to the lien, operation and effect of the Deed of Trust.

It is expressly understood that the subordination of the Deed of Trust over the portion of the Property described herein shall not affect in any way affect, alter or diminish the lien of the Deed of Trust upon the other land conveyed thereby, and the Deed of Trust shall remain in full force and effect as to the land conveyed thereby, but subject to the easements herein conveyed.

Statutory Compliance Provision

Pursuant to Section 15.2-2264 of the 1950 Code of Virginia, as amended, the platting and/or dedication of the Property is with the free consent and in accordance with the desire of the undersigned Trustees.

Brian F. Kenney (SEAL)
BRIAN F. KENNEY, TRUSTEE

John E. Prominski, Jr. (SEAL)
JOHN E. PROMINSKI, JR., TRUSTEE

ALLFIRST BANK

By: Stewart Cooper (SEAL)
Name: Stewart Cooper
Title: Vice President

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that BRIAN F. KENNEY, TRUSTEE, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 28th day of May, 2002.

My commission expires: 12/31/04

Mary Ann Rardin
Notary Public

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that JOHN E. PROMINSKI, JR., TRUSTEE, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 28th day of May, 2002.

My commission expires: 12/31/04

Mary Ann Rardin
Notary Public

COMMONWEALTH OF VIRGINIA ~~MARYLAND~~
COUNTY OF BALTIMORE, to wit:
CITY

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that D. Stewart Cooper, as Vice President of ALLFIRST BANK, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 22ND day of MAY, 2002.

My commission expires:

Notary Public Elizabeth Y. Cueva-Thomas

ELIZABETH Y. CUEVA-THOMAS
NOTARY PUBLIC
MY COMMISSION EXPIRES 7/23/05

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

EXHIBIT A

Description of The Property

ALL OF THAT LAND in Loudoun County, Virginia, which is described as follows:

Parcel 2 and Land Bay B, Phase II Ashbrook as the same appears on the Property Plat, and duly dedicated, platted and subdivided by that certain Deed of Subdivision, Dedication, Easement, Supplementary Declaration and Vacation of even date herewith, recorded immediately prior hereto, in Deed Book ____, at Page ____, among the land records of Loudoun County, Virginia.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

EXHIBIT B

Detached Single Home Lots

[To be hereafter created]

Townhouse Lots

[To be hereafter created]

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

EXHIBIT C

Proffers

STATEMENT OF PROFFERED DEVELOPMENT CONDITIONS

ZMAP 1994-0012

ASHBROOK

Date: January 11, 1996

Revisions: February 5, 1996

March 14, 1996

Pursuant to Section 15.1-491(a) of the Code of Virginia, as amended, and Section 6-1209 of the Zoning Ordinances of Loudoun County, the undersigned, Loudoun Intertech Development Corporation and LAPO Realty, N.V. (collectively along with their successors and assigns, referred to as the "Applicant"), the owners of Loudoun County Tax Map 62, Parcel 5A (hereinafter collectively the "Property"), do hereby proffer on behalf of themselves, their successors and assigns, that if the Property is zoned to the requested PD-CC, PD-IP, and PDH-6 Districts, the development shall conform to the following terms and conditions:

PROFFERS

A. CONCEPT PLAN AND DESIGN

1. The Property will be developed in accordance with the Concept Plan, prepared by William H. Gordon Associates, dated September 1994, and revised through December 8, 1995, and in accordance with the Detailed Land Use Plan, prepared by The Weihe Partnership, dated June 21, 1995. The final design and location of facilities on the Property will be determined by final engineering constraints at time of subdivision and site plan approval, provided, however, that no dimension depicted on either the Concept Plan or on the Detailed Land Use Plan may be varied in excess of fifteen (15%) percent from that represented on those Plans. Notwithstanding anything to the contrary herein set forth, all land uses will lie within the boundaries of the zoning districts within which they are permitted. In addition, the particular design concepts conveyed by the Illustrative Plan (Exhibit A) prepared by the Weihe Partnership and dated January 4, 1996, shall be incorporated into the final design and development of the Property, as specified below.

2. The internal public open space areas depicted on Exhibits B through D will be developed in consonance with the design principles described by those exhibits and at a concurrent

Proffer Statement

3/14/96

Page 2

time with the development of their immediately adjacent land areas. Although these open space areas may be modified to accommodate site engineering and architectural considerations, there will be a developed open space corridor area between the on-site residential and non-residential portions of the Property which will include a finished sidewalk/trail system and public gathering places.

3. An internal sidewalk/trail system will be incorporated into the final design of the Property which will provide a means of pedestrian access between the residential and non-residential uses on the Property. This sidewalk/trail system will provide recreational opportunities, including a children's play area and adult exercise facilities, through the Property, and will be constructed at a concurrent time with the development of its immediately adjacent land areas.

B. TRANSPORTATION

1. (a) The Applicant will diligently pursue the acquisition of the rights of way necessary to accommodate the off-site portion of Russell Branch Parkway, from the Property to Ashburn Village Boulevard, as a four lane divided roadway (the "Russell Branch Rights of Way"), at commercially sound market prices. This effort to acquire the Russell Branch Rights of Way will commence within ninety (90) days after the approval of this rezoning application and will continue until the rights of way have been acquired or one year after the commencement of the acquisition effort.

(b) In the event that the Applicant is unable to acquire the Russell Branch Rights of Way as set forth in paragraph B.1.(a) above, the Applicant will (i) request that the Board of Supervisors authorize the condemnation of those rights of way, all in accordance with the provisions of paragraph 15 below, and (ii) upon such authorization by the Board of Supervisors, post surety, in the form of a letter of credit, cash, set aside letter, or other form acceptable to Loudoun County and the Virginia Department of Transportation, in an amount reasonably sufficient to acquire the Russell Branch Rights of Way.

(c) (i) In the event the Russell Branch Parkway right of way has been acquired, then the Applicant shall, subject to the provisions of paragraph B.1.(b) (ii), will commence, and diligently pursue, the construction, or bonding for construction, of the western, off-site, portion of Russell Branch Parkway to Ashburn Village Boulevard prior to record plat approvals being granted for any individual residential lots on the Property. In the event that, by that time, the Russell Branch Rights of Way have not been acquired, as set forth in paragraph B.1.(a) above, the Applicant will post surety, in the form of a letter of credit, cash, set aside letter, or other form acceptable to

Loudoun County and the Virginia Department of Transportation, in an amount reasonably sufficient to construct this portion of Russell Branch Parkway.

(ii) In the event that the western, off-site, portion of Russell Branch Parkway has not been acquired by the Applicant or Loudoun County, from the Property to Ashburn Village Boulevard, then prior to the issuance of Zoning Permits for any or (50,000) square feet of non-residential uses, the Applicant will construct or bond for construction adequate public road access to Route 7 via Lexington Drive. The Applicant's performance of the improvements required by this proffer do not release the Applicant from the obligations set forth in proffer B.1.(a), (b), or (c).

(iii) In either event, after it has sought the issuance of Zoning Permits for either one hundred (100) dwelling units or fifty thousand (50,000) square feet of non-residential uses, the Applicant shall have a continuing duty to construct the western, off-site, portion of Russell Branch Parkway, until it has obtained Zoning Permits for more than One Million (1,000,000) gross square feet of non-residential buildings, after which time the Applicant shall no longer have that duty under these proffers.

2. The Applicant will construct that on-site portion of Russell Branch Parkway, which is required by the Loudoun County Subdivision and Zoning Ordinances to provide required public street access to adjacent portions of the Property, as a four lane divided roadway within a 110 foot wide right of way. This construction will commence or be bonded for construction prior to the issuance of Zoning Permits for any residential dwelling units on the Property, or as may be required by the LSDO. It is the intent of this proffer that the Applicant be required to construct only those portions of Russell Branch Parkway which either provide street frontage to developed parcels, or are necessary to provide vehicular access to and from the developed and occupied portions of the Property. In addition, the Applicant will (i) reserve an additional five (5) feet of right of way along each border of Russell Branch Parkway, and (ii) in the event that Russell Branch Parkway is widened to a six-lane divided cross section, dedicate and convey that additional right of way.

3. The Applicant will construct that portion of Russell Branch Parkway adjacent to the PD-CC District, as a four lane divided roadway. This improvement will either be constructed, or bonded for construction, the earlier to occur of: (a) the issuance of Zoning Permits for more than 200,000 gross square feet of retail uses on the Property, or (b) the Applicant's acquisition of the necessary rights of way to construct the improvements described in paragraph 1.(c)(i) above, or (c) as may be required by the LSDO.

4. The Applicant will construct the on-site portion of Russell Branch Parkway, in satisfaction of the minimum requirements of the Loudoun County Subdivision and Zoning Ordinances, to its property boundary on the east, as a four lane divided roadway. This construction will be commenced at the earlier of the following events: (i) at such time as Russell Branch Parkway has been constructed by others to the Property's eastern property boundary at a location concurrent with that depicted on the Concept Plan, or (ii) at such time as portions of the Property along its frontage are developed, or (iii) at such time as Zoning Permits for more than three (300) hundred dwelling units and two hundred thousand (200,000) square feet of non-residential retail buildings have been issued and prior to issuance of more than five hundred thousand (500,000) gross square feet of non-residential office buildings.

5. The Applicant will construct Lexington Drive as a four-lane divided roadway from its intersection with Route 7 to a point approximately 1000 feet south of that intersection such that it intersects with an internal street of the project. This proffer will be satisfied prior to the issuance of Zoning Permits for any residential dwelling units or office uses unless Russell Branch Parkway access to Ashburn Village Boulevard has, by then, been completed, in which event this improvement of Lexington Drive will be completed prior to the issuance of Zoning Permits for more than 500,000 gross square feet of office uses on the Property.

6 (a) The Applicant will construct a third, eastbound, lane along the Property's frontage on Route 7. This commitment includes the dedication of all necessary rights of way and easements, on the Applicant's property, which are necessary to accommodate the improvements. This proffer will be satisfied by construction or bonding for construction prior to the issuance of Zoning Permits for more than (i) 450 multi-family-family dwelling units, or (ii) 250 single family detached and/or attached dwelling units, or (iii) 350,000 gross square feet of non-residential floor area.

(b) In the event that the improvements described in paragraph B.6.(a) above are provided by VDOT or Loudoun County, upon their request, the Applicant will cooperate with their provision by providing necessary permanent and temporary construction and/or drainage easements, provided, however, that such easements will encompass the minimum amount of land area made necessary by sound engineering practices.

7. If requested by Loudoun County or VDOT, the Applicant will diligently seek to install, or at the discretion of VDOT fund the installation of a traffic signal at the proposed intersection of Russell Branch Parkway and Ashburn Village Boulevard. The funding of this proffer

Proffer Statement

3/14/96

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will be provided in accordance with the foregoing, but not later than at a time concurrent with the Applicant's connection to this intersection being completed and accepted by VDOT.

8. If requested by Loudoun County or VDOT, the Applicant will diligently seek to install, or at the discretion of VDOT fund the installation of a traffic signal at the proposed intersection of the northernmost entrance from the PD-CC District portion of the Property onto Ashburn Village Boulevard. The funding of this proffer will be provided in accordance with the foregoing, but not later than at a time concurrent with the Applicant's connection to this intersection being completed.

9. If requested by Loudoun County or VDOT, the Applicant will diligently seek to install, or at the discretion of VDOT fund the installation of a traffic signal at the proposed intersection of Route 7 with Lexington Drive. The funding of this proffer will be provided in accordance with the foregoing, but not later than at a time concurrent with the construction, or bonding for construction, of the Applicant's connection of Lexington Drive to Route 7.

10. If requested by VDOT and not provided by others, the Applicant will diligently seek to install, or at the discretion of VDOT fund the installation of a traffic signal at the intersection of Route 7 with Ashburn Village Boulevard. The funding of this proffer will not be required until thirty days after the final approval of this Rezoning.

11. In the event that any one or more of the individual roadway improvements, or traffic signals, proffered by the Applicant herein is substantially performed by others prior to bonding for such construction by the Applicant, then the actual paid and reasonable construction costs of such individual improvements is required to be provided by the Applicant pursuant to this Proffer Statement. Such contribution shall be made by the Applicant, and shall be placed in a fund established by the County for the provision of transportation improvements in the immediate vicinity of the Property, or in the event such bond or funding is to be provided by VDOT, at the time that the construction contract is executed by VDOT for the improvement. For purposes of this proffer, immediate vicinity shall be deemed to mean within one mile of the Property. Such contributions in lieu of actual construction shall occur at the time specified in the applicable proffer for bonding or construction. The amount of said contributions shall be increased on a yearly basis starting from the time the improvement is bonded and changing annually thereafter based on the corresponding increase in the United States Department of Labor Consumer Price Index until such contribution has been paid. No such contribution shall be made pursuant to these Proffers in the event that the

proffered improvements are constructed as part of a private contract between the Applicant and other parties.

12. The Applicant will contribute One Dollar and Twenty Five Cents (\$1.25) for each non-residential FAR square foot of development on the Property to a fund established by the County for the provision of transportation improvements in the immediate vicinity of the Property. For purposes of this proffer, immediate vicinity shall be deemed to mean within one mile of the Property. Such contributions shall be paid on a pro-rata basis at the time of zoning permit issuance for individual non-residential portions of the Property. The amount of said contributions shall be increased on a yearly basis starting from the time that this rezoning application is approved and changing annually beginning twelve months after the approval of this Rezoning, and annually thereafter based on the corresponding increase in the United States Department of Labor Consumer Price Index until such contribution has been paid.

13. The Applicant will complete the construction of an off-site third lane, along eastbound Route 7, from the Property to Route 607. This proffer will be satisfied by the Applicant by construction or bonding for construction prior to the issuance of Zoning Permits for more than (i) 450 multi-family-family dwelling units, or (ii) 250 single family detached and/or attached dwelling units, or (iii) 350,000 gross square feet of non-residential floor area.

14. The Applicant will close and, at its sole option, and subject to VDOT approval, may relocate its internal "loop" access road to the retail center at its sole expense at such time as VDOT or Loudoun County award a contract for the construction of a grade separated crossing of Lexington Drive over Route 7. This relocation will be to a location which (i) does not conflict with the approved design of the new construction and (ii) will not include an entrance directly from Route 7.

15. In connection with any of the above-proffered roadway links which are located off-site, the Applicant may ask the County to cooperate in obtaining rights-of-way and/or easements for road construction either through direct contributions from property owners and/or by proffer through the zoning process. The initiation of such direct contributions or proffers is solely within the discretion of the County.

If off-site right-of-way is needed for such improvement and is not available, the Applicant shall make a good faith attempt to purchase said right-of-way at fair market value.

Where right-of-way and/or easements necessary for construction of such proffered improvement cannot be obtained either: (i) voluntarily through donation or proffer to the County; or (ii) through purchase by the Applicant at fair market value; the Applicant will work with the County

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to acquire such right-of-way and/or easements by appropriate eminent domain proceeding by the County, with all costs associated with eminent domain proceedings to be borne by the Applicant, including but not limited to land acquisition costs. It is understood that the County, within its sole discretion, will seek said right-of-way and off-site improvement from other landowners as development occurs. The initiation of such eminent domain proceedings is solely within the discretion of the County.

16. In the event that the property located adjacent to the Property and on the northeast quadrant of the intersection of Russell Branch Parkway and Ashburn Village Boulevard requires access from Russell Branch Parkway and conveys the necessary rights of way and easements to the Applicant, the Applicant will relocate its internal shopping center perimeter travelway westward to provide a common access entrance off Russell Branch Parkway.

17. At any time after the issuance of Zoning Permits for more than one hundred (100) dwelling units or fifty thousand (50,000) square feet of non-residential buildings Loudoun County may request that the Applicant provide any portion of the right of way for Russell Branch Parkway, through the Property, which it deems necessary. The Applicant will comply with such a request within one hundred eighty (180) days after its receipt.

18. All public secondary and primary roadwork will be accomplished in accordance with VDOT standards.

19. The entrance from the shopping center onto Ashburn Village Boulevard will be modified at the Applicant's expense, as required by VDOT, at such time as the construction of the grade-separated interchange of Route 7 and Ashburn Village Boulevard begins or, in the event that VDOT determines that adopted safety guidelines have ceased to be satisfied, the entrance will be closed at the Applicant's expense.

20. At such time as the grade separated interchange between Route 7 and Ashburn Village Boulevard is fully funded, as evidenced by the awarding of a construction contract, the Applicant will dedicate that portion of the northwest corner of the Property, designated on the Concept Plan as a "Reservation", to Loudoun County for the purpose of accommodating that construction.

21. The Applicant shall implement a Traffic Demand Management Program ("TDM"), whose objective is to reduce peak hour vehicle trips generated from the Property. The TDM program shall be designed in cooperation with the County and implemented upon occupancy of one

million (1,000,000) square feet of office development on the Property. Elements of the TDM Program shall include:

- * A designated manager who:
 - (a) Matches potential passengers;
 - (b) Coordinates with nearby managers, or a government coordinator, in matching riders;
 - (c) Coordinates van pools;
 - (d) Provides on-site sale of transit tickets;
 - (e) Conducts employee surveys to assure compliance with goals;
 - (f) Coordinates the Ashbrook program with any regional agency that might be serving as a central clearing house.

C. PHASING

1. The Applicant may not obtain Zoning Permits for any residential dwelling units without first obtaining Zoning Permits for, and diligently pursuing the construction of, not less than two hundred thousand (200,000) square feet of non-residential uses. The foregoing does not, however, prohibit the Applicant from obtaining Zoning Permits for buildings or uses which are accessory to the residential uses on the Property.

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D. CAPITAL FACILITIES

1. The Applicant will contribute \$3,270.00 per market rate single family detached dwelling unit, \$2,307.50 per market rate single family attached dwelling unit, and \$1,506.25 per market rate multi-family dwelling unit to the County for Capital Facilities. This contribution will be made prior to the issuance of zoning permits for these dwelling units and will be escalated, after January 1, 1997, and yearly thereafter, at a rate indexed on the Consumer Price Index published by the Bureau of Labor Statistics, of the U.S. Department of Labor. Subject to the discretion of the Board of Supervisors, the Applicant desires to designate that not less than eighty (80%) percent of these contributions be disbursed for the provision of public school facilities.

2. Concurrently with the issuance of zoning permits for development of any non-residential portion of the Property, the Applicant will make a one-time, initial contribution to the County of five cents (\$0.05) per FAR square foot of approved non-residential building area on the Property which is the subject of the permit for the primary servicing of fire and rescue companies. Annually thereafter the Lot Owners' Association provided for in Section E.2., herein, will contribute directly to the volunteer fire and rescue companies who provide first call service to the Property five cents (\$.05) per FAR square foot of non-residential building area. The amount of said initial and annual contributions shall be divided equally between the primary servicing fire and rescue companies and shall be increased on a yearly basis starting from the time that this rezoning application is approved and changing annually beginning on January 1, 1997, based on the corresponding increase in the United States Department of Labor Consumer Price Index until such contribution is no longer required in accordance with proffer D.4. below.

3. The Applicant shall pay an initial sum of SIXTY DOLLARS (\$60.00) per residential unit at the time of the issuance of zoning permits, to the County, for distribution to the fire company and the rescue company providing primary fire and rescue service to the Property. Annually, thereafter, the Homeowners' Association provided for in Section E.1., herein, shall pay the sum of SIXTY DOLLARS (\$60.00) per residential unit directly to the fire and rescue companies with primary responsibility to service the Property. The amount of said initial and annual contributions shall be divided equally between the primary servicing fire and rescue companies and shall be increased on a yearly basis on January 1, 1997, and annually thereafter based on the corresponding increase in the United States Department of Labor Consumer Price Index until such contribution has been paid or is no longer required in accordance with proffer D.4. below.

4. The obligations set forth in Paragraphs 2 and 3., above, shall continue so long as the

fire and rescue companies providing primary service to the Property are predominantly volunteer (i.e., less than 75 percent of the annual operational budget is funded by the County). In the event the volunteer fire and rescue companies serving the Property shall cease to be predominantly volunteer, as set forth above, the obligations to make such donation shall terminate.

E. MISCELLANEOUS

1. Documents to establish a Homeowners' Association (HOA) will be submitted to the County for review and approval and consistency with these Proffers prior to first record subdivision plat approval or first site plan approval, whichever is first in time, for residential development on the Property, provided that such approval shall not be unreasonably withheld. The HOA shall have among its duties, maintenance of all private streets, common areas, including thereby open space, trails and play areas, on the subject Property as well as collection of the aforesaid annual fire and rescue donations.

2. (a) The Applicant shall establish a lot owners' association no later than first record subdivision plat for the recordation of a building lot or first site plan approval, whichever is first in time, on those portions of the Property zoned non-residential. Lot owner association documents satisfactory in form to the County and consistent with these Proffers, dealing with matters including maintenance of common open space, visual harmony, and collection of fire and rescue donations, shall be submitted for the review and approval by the County in connection with its application for first record non-residential subdivision plat approval and/or first non-residential final site plan approval, whichever is first in time, and such County approval shall not be unreasonably withheld.

(b) The Applicant shall establish, as a part of the lot owners' association documents, a site plan review board for the Property under terms which require the owners of the individual parcels to submit all site development plans to such board for review and approval. This approval shall ensure compliance with defined landscape and development standards set forth in the lot owners' association documents. These development standards shall incorporate the following minimum review criteria:

(1) Land development techniques and the elements of landscape architecture for those portions of the individual parcels of the Property adjacent to the public rights-of-way and property lines shall be compatible, complimentary and consistent with one another. The goal of the review criteria shall be to achieve compatibility among the various different uses on the Property through consistent land development techniques and landscape treatment.

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(2) Complementary plant materials and landscaping techniques shall be utilized throughout the streetscape of the Property.

3. The Applicant shall make a contribution to the County in the amount of THREE THOUSAND EIGHT HUNDRED SEVENTY-NINE DOLLARS AND THIRTY-ONE CENTS (\$3,879.31) per open space easement for the purpose of preserving or purchasing open space in the County for thirteen (13) open space easements. This amount shall be paid for on a per unit basis. The amount of this per unit contribution shall be made at the time of record plat subdivision approval, on a per market unit pro-rata basis (\$76.17/unit), based on the number of market rate units associated with each such record plat approval. The amount of said contribution shall be increased on a yearly basis from the date of approval of this Rezoning, and annually thereafter based on the corresponding increase in the United States Department of Labor Consumer Price Index until such contribution has been paid or is no longer required in accordance with proffer D.4. below.

4. Subject to the satisfaction of all applicable laws and regulation, including Special Exception application and approval, the Applicant will provide at least one child care facility on the PD-IP portion of the Property.

These proffers, which apply to Tax Map 62, Parcel 5A, are filed in accordance with Section 15.1-491(a) of the Code of Virginia, as amended, and Section 6-1209 of the Zoning Ordinances of Loudoun County, Virginia.

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The Applicant warrants that all of the owners of the Property have signed this Proffer Statement, that the undersigned are authorized to bind the Property to these Proffers, and that they have voluntarily subjected the Property to these proffered conditions.

LOUDOUN INTERTECH DEVELOPMENT CORP.

By: Orna L. Shulman

Its:

[Signature] Vice President

LAPO REALTY, N.V.

By: Orna L. Shulman

Its:

[Signature] attorney
in fact

NOTARY:

STATE OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 14th day of March, 1996 Orna L. Shulman.

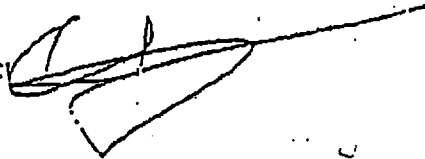
Ruth Ann Noel

My Commission Expires:

NOTARY PUBLIC

MEMORANDUM

MAR 23 1996

DATE: March 20, 1996
TO: Members of the Board of Supervisors
Loudoun County
FROM: Carlos M. Montenegro, Attorney-in-fact 
RE: Ashbrook: ZMAP 1994-0012

Please accept the following clarification of the proffers for the above referenced rezoning application. Proffer number E.3. should provide that the Board may designate the monies to be contributed pursuant to this proffer to the provision of facilities local to the Ashbrook property.

padc supermem.doc

2071 CHAIN BRIDGE ROAD
SUITE 320
VIENNA, VIRGINIA 22182
PHONE: (703) 905-9550

BK2192PG0884

ASHBROOK, VA & DC BAR

FAX: (703) 905-9550

March 14, 1996

VIA HAND DELIVERY

Mr. John Merrithew
Planner
Planning Department
Loudoun County
750 Miller Drive S.E.
Leesburg, Virginia 22075

Re: Letter of Proffer Statement Clarification; Ashbrook;
ZMAP 1994-0012

Dear John:

On behalf of my client Atlantic Realty Companies, the applicant for the above referenced application, and in accordance with our discussions with Lahr Kelley, Esq., please accept this correspondence, together with the attached revisions to the Statement of Proffered Development Conditions, as revised through March 14, 1996, as a clarification of the Applicant's intentions with regard to that statement of conditions.

Last, it is my understanding that our proposed use of certain portions of PD-IP ground for privately maintained community play fields will be a matter of right under the zoning and need not be referenced in the Proffer Statement or Concept Plan at this time.

BK2192PG0885

As always, we want to thank you for your kind attention to these matters.

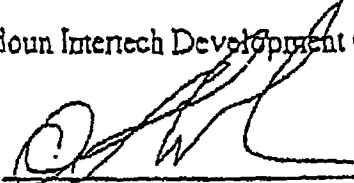
Regards,



Carlos M. Montenegro

Loudoun Intertech Development Corp.

By:

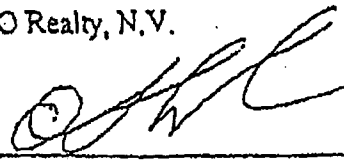


Its:

Vice President

LAPO Realty, N.V.

By:



Its:

attorney in fact

Enclosures

cc: Mr. David A. Ross

mw.sbbrookline=2796.duo

BK2192PG0000

STATE OF VIRGINIA
CITY/COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 14th day of
March, 1996 by Orna L. Shulman.

Ruth Ann Noel
NOTARY PUBLIC

My Commission expires: 11/30/99.

2071 CHAIN BRIDGE ROAD
SUITE 320
VIENNA, VIRGINIA 22182
PHONE: (703) 805-8550

BK 2192PG0887

MEMBER, VA & DC BAR

FAX (703) 805-95

February 7, 1996

VIA HAND DELIVERY

Mr. John Merrithew
Planner
Planning Department
Loudoun County
750 Miller Drive S.E.
Leesburg, Virginia 22075

Re: Letter of Proffer Statement Clarification: Ashbrook:
ZMAP 1994-0012

Dear John:

On behalf of my client Atlantic Realty Companies, the applicant for the above referenced application, and in accordance with our discussions with Lahr Kelley, Esq., please accept this correspondence, together with the attached revisions to the Statement of Proffered Development Conditions, as a clarification of the Applicant's intentions with regard to that statement of conditions.

Further, please be advised that the owner of the property, Loudoun Intertech Development Corp., recorded a deed on January 3, 1996, which effected the subdivision of the 277 acre property into two separate parcels. The parent parcel now measures approximately 244 acres and the new parcel, which was conveyed to an associated entity named LAPO Realty, N.V., measures approximately 33 acres. As we have discussed over the past several months, we knew this conveyance was going to occur and took the precautions to include LAPO Realty, N.V. as an executing party to the Proffer Statement.

Last, it is my understanding that our proposed use of certain portions of PD-IP ground for privately maintained community soccer fields will be a matter of right under the zoning and need not be referenced in the Proffer Statement of Concept Plan at this time.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

EXHIBIT D

Description of Multi-Family Parcel

ALL OF THAT LAND in Loudoun County, Virginia, which is described as follows:

Parcel 2 as the same appears on the Property Plat, and duly dedicated, platted and subdivided by that certain Deed of Subdivision, Dedication, Easement, Supplementary Declaration and Vacation of even date herewith, recorded immediately prior hereto, in Deed Book ____, at Page ____, among the land records of Loudoun County, Virginia.

RECORDED / W / CERT ANNEXED

2002 JUN 11 AM 11:06

LOUDOUN CO. VA

TESTE:

CLERK