

**KENSINGTON COURTS COMMUNITY ASSOCIATION, INC.  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS DECLARATION dated OCTOBER 18, 1994, by KENINGTON  
COURTS LIMITED LIABILITY COMPANY, (the "Company").**

**R E C I T A L S**

**A.** The Company owns a 11.6895 acre tract of land more or less located in Cecil County, Maryland. The tract (hereinafter referred to as "the Property") consists of a portion of the land described in a Deed dated September 15, 1993, between Kensington Development Limited Partnership, Grantor, and Kensington Courts Limited Liability Company, Grantee and recorded among the Land Records of Cecil County at N.D.S. 453, Folio 477, and said portion being more particularly described in exhibit A, which is incorporated herein and made a part hereof, together with all improvements thereon and all appurtenances thereto.

**B.** The Company desires to subject the Property and the lots located therein (the "Lots"), to the Covenants, Conditions and Restrictions set forth below which are for the purpose of protecting the value and desirability of the Property and the Lots, and are for the purpose of distributing among the Lot Owners the cost of maintaining and operating the Common Areas located within the Property, and any improvements constructed thereon.

**C.** The Company hereby declares that the Property shall be held, sold and conveyed subject to the Covenants, Conditions and Restrictions set forth below.

**ARTICLE I**

**DEFINITIONS**

(a) "Association" means the Kensington Courts Community Association, Inc., a Maryland nonstock, nonprofit corporation, its successors and assigns.

(b) "Common Area" means those areas of land, designated on the recorded subdivision plats of the Property as "open space," intended to be owned by the Association and devoted to the common use and enjoyment of the owners of the Lots.

(c) "Company" means Kensington Courts Limited Liability Company and any successor or assign thereof to whom Kensington Courts Limited Liability Company shall convey or otherwise transfer all of the rights, title and interest in the Property then owned by it, and to whom Kensington Courts Limited Liability Company shall expressly transfer, and assign all of its rights, title and interest under this Declaration, or any amendment or modification thereof.

(d) "Owner" means the person, or legal entity, or the combination thereof, including contract sellers, holding the record fee simple or perpetually renewable leasehold title to a Lot in the Property, as the Lot is now or may from time to time hereafter be created or established. If more than one person, or other legal entity or any combination thereof, holds the record title to any Lot, all of

them shall be deemed a single record owner and shall be a single member of the Association by virtue of their ownership of the Lot. The term "Owner" shall not mean any contract purchaser, nor shall it include any mortgagee or other person or legal entity holding an interest in a Lot as security for the performance of an obligation.

(e) "Property" means all of the land designated and identified in Exhibit A to this Declaration and such additional land as may be subjected to this Declaration under the provisions of Article II below.

(f) "Covenant Committee" means a committee composed of three (3) or more representatives appointed by the Board of Directors of the Association.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

#### **SECTION 1**

All the land shown in Exhibit A shall be transferred, held, sold, conveyed, and occupied subject to this Declaration.

#### **SECTION 2**

Additional lands may be subjected to this Declaration in the following manner:

(a) The Company, its successors, and assigns, shall have the right for ten (10) years from the date of this Declaration to bring within the operation and effect of this Declaration additional land or developments. If the U.S. Department of Housing and Urban Development (HUD), the Veterans Administration (VA), the Federal Housing Administration (FHA) or any successor agencies approve the Property or any parts thereof or any Lots thereon for federally approved mortgage financing purposes, any annexation of additional properties, made during any period of time when there are Class B members of the Association, shall require the prior consent of HUD, FHA, or VA.

The additions authorized under this Section 2 (a) shall be made by recording among the Land Records of Cecil County a supplement to this Declaration, which need be executed only by the Company and the owner of such additional land if the Company is not the Owner thereof, which shall describe the additional land and state that it is subject to this Declaration. The additions authorized by this Section 2 (a) shall not require the approval of the Association.

(b) Upon the written approval of the Association after the Association has attained the assent of the holders of two-thirds (2/3) of the votes of each class of members present in person or by proxy at the meeting at which the vote is taken, the owner of any land who desires to subject it to the operation and effect of this Declaration may do so by recording among the aforesaid Land Records a supplement to this Declaration describing the additional land and stating that it is subject to this Declaration.

Any such Supplement to this Declaration may contain such complementary additions and modifications of the Covenants, Conditions, and Restrictions contained herein as may be necessary to reflect the different character, if any, of the added Property, provided they are not inconsistent with this Declaration. In no event, however, shall the supplement to this Declaration revoke, modify, or add to the Covenants, Conditions, and Restrictions established by this Declaration insofar as they pertain to the Property as the same exists prior to the supplement.

(c) Additional land within the area described in the Deed dated September 15, 1993, between Kensington Development Limited Partnership, Grantor, and Kensington Courts Limited Liability Company, Grantee, and recorded among the Land Records of Cecil County at N.D.S. 453 Folio 477, may be annexed by the Company without the consent of Members within ten (10) years of the date of this Declaration provided that the FHA and the VA determine that an annexation is in accord with the general plan heretofore approved by them.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

##### **SECTION 1**

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of the Lot. Each Lot owner has the right to enforce the covenants.

##### **SECTION 2**

The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners with the exception of the Company and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members; however, for purposes of a quorum they shall be treated as a single member. The votes for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member(s) shall be the Company and shall be entitled to three votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(a) seventy-five percent (75%) of the units are deeded to homeowners; or

(b) on the tenth (10th) anniversary of the date of the Declaration.

Provided, however, the Class B Membership shall be revived (and the Company shall again be entitled to three votes for each Lot owned

by the Company) during any periods of time occurring before the tenth (10th) anniversary of the date of the Declaration, when by reason of the annexation of additional land as a part of the Property additional Lots owned by the Company exist which, when added to the other Lots then owned by the Company, would result in the Company having more than fifty percent (50%) of the votes of the Association were the Company to have three votes for each Lot owned by the Company instead of only a single vote for each Lot owned by the Company.

#### **ARTICLE IV**

#### **COMMON AREA**

#### **SECTION 1**

The Company shall grant and convey to the Association, and the latter shall take and accept from the Company, the Common Areas shown on a subdivision plat, recorded among the Land Records of Cecil County in Plat Book 13, Folio 74, which is subject to this Declaration, not later than the date the first Lot shown on the subdivision plat which is improved by a dwelling is conveyed to an Owner or immediately prior to HUD's insurance of the first mortgage whichever event first occurs. At the time of the conveyance the Common Area shall be free of any mortgages, judgment liens, or similar liens or encumbrances.

The Association shall hold the Common Area conveyed to it subject to the following:

(a) The reservation, to the Company, its successors, and assigns, of the storm water management pond, of the beds, in fee, of all streets, avenues, and public highways shown on the subdivision plat which includes the Common Area so conveyed.

(b) The reservation to the Company, its successors, and assigns, of the right to lay, install, construct, and maintain, on, over, under, or in those strips across land designated on the subdivision plat, as "Drainage and Utility Easement", "Sewer Easement", "Drainage and Sewage Easement", "Open Space", and "Area Reserved for Future Road", or otherwise designated as an easement area, or on, over, under, or in any portion of any Common Area, pipes, drains, mains, conduits, lines, and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television lines, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations therein.

(c) The reservation to the Company, its successors, and assigns, of the right to enter upon any Common Area conveyed to the Association for the purpose of construction or completing the construction of improvements and the landscaping of the Common Area.

(d) The reservation to the Company, its successors, and assigns, of the right to continue to use and maintain any storm water

management ponds and any sediment control ponds or facilities located on any Common Area conveyed to the Association.

## **SECTION 2**

The Common Areas conveyed to the Association shall be deemed property and facilities for the use, benefit, and enjoyment, in common, of each Owner which is appurtenant to the title to the Lot. Except as otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on any Common Area except: (i) structures or improvements, including, without limiting the generality of the foregoing, shelters, benches, chairs, or other seating facilities, fences and walls, hiking trails, walkways, roadways, playground equipment, swimming pools, and tennis courts; and (ii) drainage, storm water, and utility systems and structures. The Common Areas may be graded, and trees, shrubs, or other plants may be placed and maintained thereon for the use, comfort, and enjoyment of the Owners, or the establishment, retention, or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons. No portion of any Common Area may be used exclusively by any Owner for personal gardens, storage facilities, or other private uses without the prior written approval of the Association.

## **SECTION 3**

No noxious or offensive activity shall be carried on upon any Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.

## **SECTION 4**

The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore, and maintain the Common Areas as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense.

## **SECTION 5**

The right of each Owner to use the Common Areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and, to any rule or regulation now or hereafter adapted by the Association for the safety, care, maintenance, good order, and cleanliness of the Common Areas. All such terms, conditions, provisions, rules, and regulations shall inure to the benefit of and be enforceable by the Association and the Company, or either of them, their respective successors and assigns, against any Owner, or any other person, violating, or attempting to violate the same, either by an action at law for damages or a suit in equity to enjoin a breach or violation, or to enforce performance of any term, condition, provision, rule or regulation. The Association and the Company shall each have the right, summarily, to abate and remove any breach or violation by any Owner at the cost and expense of the Owner.

**SECTION 6**

If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such area is subject to Lot owner's easement.

**ARTICLE V**

**PROPERTY RIGHTS IN THE COMMON AREAS**

**SECTION 1**

The Company shall hold, and hereafter grant and convey the Lots, subject to the covenants, conditions, and restrictions herein set forth, which are imposed upon the Lots for the benefit of the Company, the Association and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that each Owner hold his Lot subject to the following:

Each Owner, in common with all other Owners, shall have the right and privilege to use and enjoy the Common Areas for the purposes for which the same were designed. This right and privilege shall be appurtenant to and pass with the title to the Lot. The right to the use and enjoyment of all Common Areas shall be subject to: (i) the right of the Association to charge reasonable admission and other fees for use of facilities within the Common Areas; and (ii) the right of the Association to suspend the voting rights and rights to use the Common Areas by a Owner (a) for any period in which any assessment against his Lot remains unpaid, or (b) for a period not to exceed sixty (60) days for any infraction of published rules and regulations of the Association.

**SECTION 2**

Any Owner may delegate, in accordance with Bylaws of the Association, his right to the use and enjoyment of the Common Areas, and any facilities thereon, to the members of his family, his tenants, or to contract purchasers who reside on his Lot.

**SECTION 3**

Each Owner shall fully and faithfully comply with the rules, regulations, and restrictions applicable to use of the Common Areas, as these rules, regulations, and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order, and cleanliness of the Common Areas. Each Owner shall comply with the covenants, agreements, and restrictions imposed by this Declaration on the use and enjoyment of the Common Area.

**SECTION 4**

The rights, privileges, and easements of the Owners are at all times subject to the right of the Association or Company to dedicate or transfer the storm water pond and all or any part of any Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Association or Company; provided, however, that no such dedication or transfer shall be

effective unless approved by a two-thirds (2/3) vote of each class of members of the Association voting in person or by proxy at a meeting called for such purpose, and the same shall have been consented to by the agency, authority, or utility accepting the dedication or transfer. Any dedication made during any period of time when there are Class B members of the Association shall require the prior consent of HUD, FHA, or VA.

The Common Area shall not be mortgaged by the Association unless approved by a two-thirds (2/3) vote of the lot owners voting in person or by proxy at a meeting called for such purpose excluding the developer.

## **ARTICLE VI**

### **COVENANT FOR ASSESSMENT**

#### **SECTION 1**

The Company, for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to him, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenants and agreed to pay the Association (i) annual assessments or charges; and (ii) special assessments or charges for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. The annual and special assessments or charges, together with interest at the rate of six percent (6%) per annum accruing from their due date until payment is made, and the costs of collection thereof and reasonable attorney's fees, shall be a charge on, and continuing lien upon each Lot against which an assessment is made. Each assessment or charge, together with interest at the rate of six percent (6%) per annum accruing as aforesaid, and costs and reasonable attorney's fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner of the Lot, and the Association may bring an action of law against the owner. The personal obligation for any delinquent assessment or charge, together with interest, costs, and reasonable attorney's fees, however, shall not pass to the Owner's successors in title, unless expressly assumed by them. Failure to pay assessment does not constitute a default under an insured mortgage.

#### **SECTION 2**

The assessments and charges levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents of the Property, and in particular for the improvement, operation, and maintenance of the Common Areas, including, but not limited to, the payment of taxes (except to the extent that proportionate shares of such public charges and assessments on the Common Areas may be levied against all Lots on the Property by the tax collecting Authority so that the same are payable directly by the Owners thereof, in the same manner as real property taxes assessed or assessable against the Lots) and insurance thereon.

### **SECTION 3**

Until December 31st of the year in which the first Common Area is conveyed to the Association, the annual assessment shall be \$75.00 per Lot which shall be the maximum annual assessment for that year.

The Board of Directors of the Association will recommend to the members an annual assessment against each Lot. Such recommendation will be submitted to a vote of the membership of the Association for approval and must be approved by a majority of the votes of each class of the membership. In the event that an annual assessment is not approved by the membership of the Association, the annual assessment from the previous year will remain in effect.

Notwithstanding anything elsewhere set forth herein, no annual assessments or changes shall be made or levied against any Lot of which the Company is the Owner on January 1st of the year to which the assessment pertains, until an occupancy permit has been issued for any dwelling erected in the Lot at which time the annual assessment shall equal twenty-five percent (25%) of the annual assessment or charge made levied against any other Lot on the Property, it being intended that the Company shall not pay more, or less, than twenty-five percent (25%) of the per Lot annual assessment established by the Association under this section. No annual assessment shall be owed by the Company for a Lot with a model or spec home.

### **SECTION 4**

In addition to the annual assessments authorized above, the Board of Directors of the Association may levy in any year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any capital improvement located on any Common Area, including fixtures and personal property related thereto, provided that such assessment shall first be approved by two-thirds (2/3) of the votes of each class of the members of the Association, voting in person or by proxy at a meeting called for such purpose.

### **SECTION 5**

Except as provided in Section 3 of this Article, and in Section 7 of this Article, annual assessments must be fixed at a uniform rate for all Lots.

### **SECTION 6**

Written notice of any meeting of members of the Association called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first meeting, the presence of members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at the meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of



the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### **SECTION 7**

The annual assessments shall commence on the first day of the month following the first conveyance of a Common Area to the Association. The first annual assessment shall be made for the balance of the calendar year and shall become due and payable on the date fixed for the commencement. The amount of the assessment for the first year shall be an amount which bears the same relationship to the annual assessment provided for in the first sentence of Section 3 of this Article as the remaining number of months in that year bear to twelve. The same reduction in the amount of the annual assessment shall apply to the first assessment levied against any property which is hereafter added to the Property at a time other than the beginning of any calendar year.

The annual assessments for any year after the first year shall be on a calendar year basis and become due and payable on the first day of March of that year. Mortgagees are not required to collect assessments.

The due date under any special assessment under Section 4 shall be fixed in the resolution authorizing the special assessment; however, such due date shall be at least forty-five (45) days after the date of such resolution.

#### **SECTION 8**

The Board of Directors of the Association shall fix the date of commencement and the amount of the annual assessment against each Lot for each assessment period at least one month in advance of the due date for the payment thereof and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

#### **SECTION 9**

The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall only extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

## ARTICLE VII

### REPAIR AND MAINTENANCE OF LOTS; COMPLIANCE

The owner of each Lot shall keep the Lot, and the buildings and other improvements thereon, in good order and repair, and free of debris. Lawns shall be seeded and mowed at a height of 6" or less, shrubbery trimmed, and painted exterior surfaces repainted, all in a manner and with such frequency as is consistent with good property management. In the event the Owner of a Lot shall fail to maintain the Lot and the buildings and other improvements thereon as provided herein, the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair as well as the right to remove garbage and other debris from a Lot. All costs including legal fees incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VI of this Declaration.

In the event the Owner of a Lot fails to comply with a provision of this Declaration or engages in a prohibited use, all costs including legal fees incurred by the Association in connection with obtaining compliance with this Declaration shall be reimbursed by the Owner to the Association upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VI of this Declaration.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

#### SECTION 1

Architectural Change Approval. No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes in color, changes or additions to driveways, or walkway surfaces and landscaping modifications) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by a covenant committee composed of three (3) or more representatives appointed by the Board of Directors of the Association ("Covenant Committee"); provided, however, that the Company has the right to appoint the members of the Covenant Committee until such time as the Class B membership ceases to exist. In the event said Board, or its designated committee, fails to approve or disapprove any design and location within thirty (30) days after the plans and specifications for such design and location have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied

with. Design and location approval by the Covenant Committee or by the Board shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed. The Board or the Covenant Committee shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed the costs actually incurred by the Board or the Covenant Committee. Any exterior addition to or change or alteration made without application having first been made and approval obtained as provided above shall be deemed to be in violation of this covenant and the addition, change or alteration may be required to be restored to the original condition at the Owner's cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits therefore having first been obtained by the Owner from the applicable public authorities or agencies. In addition, no charges, alterations or additions may be constructed which are not in compliance with local governmental guidelines or restrictions. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article VIII shall not be applicable to the Company or any part of the Property owned by the Company.

## SECTION 2

Initiation and Completion of Approved Changes. Construction or alterations in accordance with plans and specifications approved by the Board of Directors or the Covenant Committee pursuant to the provisions of this Article shall be commenced within three (3) months of such approval and completed within (6) months of such approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Board of Directors or the Covenant Committee without the prior consent in writing of the Board of Directors or the Covenant Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Board of Directors or the Covenant Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

## SECTION 3

Certificate of Compliance. Upon completion of any construction or alterations or other improvements or structures in accordance with plans and specifications approved by the Board of Directors or the Covenant Committee in accordance with the provisions of this Article, the Board or the Covenant Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Board or the Covenant Committee in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

#### SECTION 4

**Covenant Committee Rules and Regulations; Appeal of Covenant Committee Decision.** The Covenant Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decisions of the Covenant Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Covenant Committee may appeal the decision of the Covenant Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors. Two thirds (2/3) of the Board of Directors shall be required to reverse the decision of the Covenant Committee.

#### SECTION 5

**Exterior Appearance.** Except as specifically provided herein to the contrary, and without limiting the generality of this Article VIII, the following shall apply to every Lot and dwelling unit within the Property, unless otherwise expressly provided by the Covenant Committee and the Board of Directors:

(a) The installation of any storm door(s) must receive prior approval of the Board of Directors or the Covenant Committee, including, but not limited to, the style, color and material of said storm door(s). Storm doors must be of traditional design and must be full view clear glass.

(b) Exterior wood decks, fences and gates, if any, shall not be painted but may be stained in earth tones only; provided however, that neutral color wood preservative may be applied to such wood decks, fences and gates.

(c) The color of the exterior of all structures or dwellings on Lots including, without limitation, garage doors, all sidings, gutters, downspouts, brick and trim, shall not be changed or altered without the approval of the Covenant Committee.

(d) The roof of any dwelling shall be repaired or replaced with materials, substantially identical in construction, shingle type, texture and color as the material utilized by the Company in the original construction of the dwelling.

(e) No wall or window air conditioning unit may be installed in the front of any home.

(f) In ground and above ground pools, if any, are allowed subject to the prior approval of the Board of Directors or Covenant Committee.

Notwithstanding anything to the contrary contained in this Article VIII, the provisions of said Article VIII shall not apply to any Lot or dwelling owned by the Company.

## ARTICLE IX

### USE RESTRICTIONS

#### SECTION 1

**Permitted Uses.** The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a dwelling, except that subject to Covenant Committee approval, a professional office may be maintained in a dwelling, provided that (i) such maintenance and use is limited to the person actually residing in the dwelling; (ii) no employees or staff other than a person actually residing the dwelling are utilized; (iii) such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation and (iv) the person utilizing such office maintains a principal place of business other than the dwelling. As used in this Section, the term "professional office" shall mean profession, including doctors, dentists, lawyers, architects, residential family day care home and the like, but not including medical or dental clinics.

The Association may charge a residential family day care provider a reasonable fee for the use of the common area as permitted by the law and may charge family day care providers on a pro rata basis based upon the total number of family day care homes operating in the Association any increase in insurance costs of the Association that are solely and directly attributable to the operation of family day care homes in the Association.

Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Company from the use of any Lot, open space, dwelling, or improvement thereon, for promotional or display purposes, or as "model homes," a sales and/or construction office, storage trailers, or the like. Real estate sales, management, and construction offices may, with the prior written consent of the Company, be erected, maintained, and operated on any Lot or open space provided the offices are used solely in connection with the development of the Property or the construction of improvements on the Property, or the management, rental, or sale of any part of the Property, or of improvements now or hereafter erected thereon.

#### SECTION 2

**Prohibited Uses and Nuisances.** Except for the activities of the Company during the construction or development of the Property, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Area:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling or any other part of the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members.

Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number shall be and is hereby prohibited on any Lot or within any dwelling, or other part of the Property, except that this shall not prohibit the keeping of two (2) dogs, two (2) cats, and a reasonable number of caged birds or other small domestic animals as pets provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; and (iii) such pets are maintained in strict conformance to all laws and ordinances. The Board of Directors or, upon resolution of the Board of Directors, the Covenant Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Area unless accompanied by a responsible person and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate. No dog runs are permitted. Dog houses are allowed provided the house is of the same color and material as the dwelling and is flush to the dwelling or the shed.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any Lot or other part of the Property.

(d) Vehicles must be parked in the driveway and driveways must be maintained by Owners. Except for parking within closed garages, and except as herein elsewhere provided, no junk or dilapidated vehicle, commercial vehicle, exceeding 3/4 tons (including vans used for commercial use), trucks, exceeding 3/4 tons, unlicensed or inoperable motor vehicle (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailer, recreational vehicle, camper, bus, camp truck, house trailer, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Area) shall be kept upon the Property or upon the public or private streets adjacent to the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Covenant Committee, provide and maintain a suitable area designated for the parking of such vehicles or the like. In any event, no vehicles of any kind shall be permitted at any time in the backyard of any Lot. No three or four wheeled ATV vehicles, dirt bikes, or unlicensed motorcycles will be operated in the

development. In no event shall motorized recreational vehicles be used in the common areas. Boats may only be kept in the backyard of any Lot provided they are covered with brown, grey or green tarp and are on a trailer.

(e) Trash and garbage containers must have lids and shall not be permitted to remain in public view except on days of trash collection and the evening prior to such days of trash collection. No incinerator shall be kept or maintained upon any Lot.

(f) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Company and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Company or any other person for any purpose.

(g) No fences or walls including continuous shrub plantings which create the effect of a fence or wall shall be permitted in the front yard of any lot. No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the community of which it is a part.

(h) No decorative lawn ornament (unless approved by the Covenant Committee), no structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, or buildings shall be erected, used or maintained on any Lot at any time. A storage shed may be erected, constructed or placed on a Lot provided that such shed (i) is approved, in writing, with respect to design (including, but not limited to color and materials), location and construction by the Board of Directors or the Covenant Committee; (ii) if constructed, such shed must be located flush against the dwelling unit situated on the Lot and must be of the same color and material as the dwelling; (iii) any shed must be properly maintained at all times by the Owner of the Lot upon which it is located; (iv) is no larger than one hundred forty-four (144) square feet, one (1) story in height; and (v) complies with all state, local and federal codes.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such promotional sign or signs as may be maintained by the Company or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or dwelling, provided, however, that one temporary real estate sign not exceeding six (6) square feet in area may be erected upon any Lot or attached to any dwelling placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any

Lot who comes into possession of the Lot by reason of any remedies provided by law or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure. No signs shall be permitted in the window of any dwelling.

(j) No water pipe, sewer pipe, gas pipe, drainage pipe, cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot; provided, however, that such transmission line may be attached to the exterior of any structure on any Lot; provided, however, that such transmission lines, wires or cables providing utility services to any Lot (including, but not limited to, electricity, telephone, gas, water and cable television) shall be permitted. Except during periods of actual use, no hose shall be stored or placed in the front yard of any dwelling unless screened from public view.

(k) No play equipment, including without limitation, basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling without the prior approval of the Board of Directors or the Covenant Committee pursuant to Article VIII hereof. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.

(l) No structure, planting or other material shall be placed or permitted to interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction flow of any drainage channels.

(m) No outside television aerial or radio antenna, or other aerial or antenna for either reception or transmission, including, but not limited to, satellite dish antenna, shall be maintained upon the Property except that such aeriels or antennae may be erected and maintained within the dwellings located upon the Property.

(n) Vegetable gardens shall be maintained only within the rear yard of any Lot, and shall be maintained in a neat and attractive manner.

(o) Lawn furniture shall be used and maintained in a neat and attractive manner.

(p) No equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard on any Lot but must be stored in a storage shed.

(q) No garbage or trash containers shall be kept on the front or side yard of any Lot and garbage and trash containers kept or maintained in the rear yards of any Lots under or upon decks shall be screened from public view at all times. Compost piles must be along rear lot lines.



(r) No Member shall make any private or exclusive or proprietary use of any of the Common Area and no Member shall engage or direct any employee of the Association on any private business of the Member during the hours such employee is employed by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee of the Association.

(s) All fences and areas to be fenced must be pre-approved by the Board of Directors or Covenant Committee and may be of earth tones or neutral colors only. Any fence constructed upon the Property shall not extend forward of the rear building line of the dwelling on the Lot upon which any such fence is erected. No fence shall be more than forty-eight inches (48") in height. Chainlink, stockade, and other wire fencing is specifically prohibited; provided, however, thin wire fencing used in conjunction with a split rail or similar fencing for the purpose of enclosing pets is permitted if approval is obtained from the Covenant Committee pursuant to Article VIII.

(t) Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot.

(u) Children's play and similar equipment shall not be allowed to remain overnight within any front yard of any Lot or within the Common Area.

(v) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted within a Lot; provided the prior written approval of the Board of Directors or Covenant Committee is obtained and that such equipment, playhouse(s) and/or apparatus is properly maintained at all times.

(w) Exterior lighting shall be permitted only to the extent that it does not unreasonably disturb the occupants of any other Lot in the development.

(x) No garage or outbuilding properly erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation unless approved by the Covenant Committee. Notwithstanding the foregoing, any Lot owned by the Company upon which is situated a dwelling unit in which the garage has been modified to serve as living area shall be exempt from this paragraph and any grantee of the Company, and its successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such Lot.

(y) No drying or airing of any clothing or bedding shall be permitted outdoors and within any Lot other than within rear yards and between the hours of 8 a.m. and 5 p.m. on Monday through Friday and 8 a.m. and 1 p.m. on Saturdays (except when any such days shall fall upon a holiday) and clothes-hanging devices such as lines, reels, poles, frames, etc., shall be stored out of sight other than during the times aforementioned.

(z) Notwithstanding anything to the contrary contained in this Declaration, no garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without the prior written approval of the Board of Directors or Covenant Committee pursuant to Article VIII of this Declaration. Notwithstanding the foregoing, any Lot owned by the Company upon which is situated a dwelling unit in which the garage has been modified to serve as living area shall be exempt from this paragraph and any grantee of the Company, and successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such Lot.

(aa) No more than two cords of firewood may be stored at any one time on any Lot and must be neatly stacked in the rear yard.

### SECTION 3

#### Leasing and transfers.

(a) No portion of a dwelling unit, other than an entire dwelling unit, may be leased or rented unless the prior written approval of the Covenant Committee or the Board of Directors is obtained. All leases shall be on forms approved by the Association and shall (i) contain provisions advising the tenant of his/her obligation to comply with all provisions of this Declaration, the Bylaws and the Rules of the Association; (ii) provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Bylaws or Rules of the Association, or of any other document, agreement or instrument governing the dwelling units and/or the Property. The Owner(s) of a leased or rented dwelling unit shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit may be rented or leased shall be six (6) months, and in no event may a transient tenant be accommodated in any dwelling unit.

(b) Prior to the sale, conveyance or transfer of any Lot or dwelling unit to any person, the Owner shall notify the Board of Directors in writing of the name and address of the person to whom the proposed sale, conveyance or transfer is to be made and provide to it such other information as the Board of Directors may reasonably require. Failure to comply with the provisions of this Section 3 (b) shall not void, prohibit or otherwise invalidate the sale, conveyance or transfer of any Lot or dwelling unit nor may it have any affect upon any mortgage or deed of trust thereon.

### SECTION 4

Parking. Parking within the Property shall be subject to the following restrictions:

(a) The Association shall be entitled to establish supplemental rules concerning parking on any portion of the Common Area

and Lots, including, without limitation, providing for the involuntary removal, at the expense of the owners, of any vehicle violating the provisions of the Declaration and/or such rules.

(b) The Company, its successors and assigns, and its nominee or nominees and any agents, servants and/or employees thereof shall be exempt from the provisions of this Section 4.

#### SECTION 5

**House Rules, Etc.** There shall be no violation of any reasonable rules for the use of the Common Area and community facilities or "house rules" or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

#### SECTION 6

**Exemptions.** None of the foregoing restrictions shall be applicable to the activities of:

(a) Company, its officers, employees, agents or assigns, in their development, marketing, leasing and sale of Lots or other parcels within the Property; or

(b) To the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Area and community facilities.

#### SECTION 7

**Declaration of Easements and Rights.** The following easements and rights are hereby declared or reserved:

(a) Company reserves the right to grant easements, both temporary and permanent, and convey storm water management ponds to all public authorities and utility companies over any part of the Common Area in connection with the construction or development of the Project.

(b) Each Lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots and Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater 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.

(c) There is hereby reserved unto the Company (and to such other party(ies) as the Company may specifically, and in writing, assign such rights), for the benefit of the real property described on the Development Plan ("Benefitted Property"), a blanket easement upon, across and under the Property (provided such easement does not encroach upon any building within the Property or unreasonably interfere with the use and enjoyment of the Property), for vehicular and pedestrian ingress and egress, curb cuts, slope, or grading easements, as well as for the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or siltation, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines and other equipment on the Property, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage line, on, above, or below any portion of the Property, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property. There is further reserved unto the Company the right to erect entry features, promotional and other similar items within the Property provided they do not unreasonably interfere with the use, operation and enjoyment of the Property. There is further reserved unto the Company the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this subsection (c). Further, without limiting the generality of the foregoing, the Company reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property; provided, however, that if requested by the Company, any party having an interest in the Property shall promptly join in and execute such confirmatory easements and other agreements. Each Lot shall further be subject to a public pedestrian access easement over and upon any sidewalk (or the replacement thereof) constructed on the Lot by the Company, which sidewalk is reasonably deemed to be for the use of the Community of which the Lot is a part.

(d) An easement is hereby reserved to Company to enter the Common Area during the period of construction and sale on the Property, and to maintain such facilities and perform such operations as in the sole opinion of Company may be reasonably required, convenient or incidental to the construction and improvement of the Common Area.

(e) Company also reserves the right to enter into the Common Area for the purposes of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property or the improvements thereon. There is further reserved unto the Company and its agent(s) a non-

exclusive easement over, across and through all of the Common Area for the purpose of access, the storage of building supplies and materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction or rehabilitation and repair of the Property.

(f) For a period of ten (10) years from the date of conveyance of the first Lot, the Company reserves a blanket easement and right on, over and under the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Company shall restore the affected property to its original condition as near as practicable. The Company shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Company an emergency exists which precludes such notice. There is further reserved unto the Company the right to grant specific easements, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easement created by this subsection (f).

(g) The rights and duties with respect to sanitary sewer and water, storm drains, downspouts, yard drains, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(i) Whenever water, sanitary sewer and water, storm drains, downspouts, yard drains, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary therefore, to enter upon or have a utility company enter upon any portion of the Property in which said installations lie, to repair, replace and generally maintain said installations.

(ii) The right granted in paragraph (i) above shall be only to the extent necessary to entitle the property of the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(iii) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, or its designated committee, who shall decide the dispute, and the decision of the Board, or its designated committee, shall be final and conclusive as to the parties.

(h) The Association shall have an easement to enter any portion of the Property for the performance of its duties hereunder; provided that except as provided in Article XI hereof, such easement shall not entitle the entry within the interior portion of any dwelling located on the Property, but (by way of illustration only and not in

limitation of the rights granted herein) shall permit the entry into fenced, or other similar areas of the Property.

(i) With respect to any step, patio, deck, downspout or yard drain or other similar structure that may benefit any Lot and is constructed by the Company and which may encroach upon any portion of the Common Area, there is hereby reserved for the benefit of the Lot for which such step, patio, deck, downspout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Area, but only to the extent the Company's original construction thereof encroaches within the Common Area. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

(j) With respect to "zero lot line", "patio home" or similar detached homes which are designed to be built on or near Lot boundary lines, it is understood that the roofs, gutters, downspouts and the like may extend over the property line of adjoining Lots and an easement for such encroachment is hereby declared and created. Such encroachment easement shall only exist to the extent necessary to accommodate such overhang. In addition, an easement of ten (10) feet is declared to exist on every Lot adjacent to a "zero lot line", "patio home" or similar homes to permit access for maintenance and repair of such homes provided that such easement is exercised in a manner that would not be considered a nuisance by a reasonable person and further provided that the party exercising the easement shall restore to its original condition anything that is disturbed as a result of said maintenance and repair.

(k) There is hereby created for the benefit of each Lot, which is enclosed, in whole or in part, by a fence and/or wall constructed by the Company, a perpetual easement to use any portion of the Common Area that may be located between such fence and/or wall and the record platted lot line for such benefited Lot; and the obligation to maintain such portion of the Common Area shall be that of the Owner of the benefited Lot and the obligation to maintain the fencing located within the Common Area, which encloses the benefited Lot, shall be that of the Owner of the benefited Lot. The Owner of any Lot benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement rights provided for herein.

(l) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Project. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Project, then the Owner of such Lot shall promptly, at his expense, repair any damage to such utilities caused by the Owner, his guests or invitees.

(m) The Association, its agents and employees, shall have an irrevocable right and an easement to enter the Lots for the purposes of exercising the rights and fulfilling the obligations established by this Declaration and any Supplementary Declarations recorded hereafter. The interior of any dwelling situated on a Lot may not be entered by the Association or its agents or employees except in the case of an emergency to protect the Common Area, other Lots or persons from injury or damage.

(n) The Company reserves the right to modify or alter the size, number and location of the Common Area and Lots, as well as the improvements thereon, and join additional property as it deems necessary or desirable in conjunction with the development of the Project. Without limiting the generality of the foregoing, the Company reserves the right to resubdivide all or a portion of the Project, to modify the site plans, to construct improvements on the Common Area, and to take whatever other action with respect to the Common Area and the Lots as the Company deems necessary or desirable in conjunction with the development of the Project.

(o) The Board of Directors of the Association shall have the right to grant easements, rights-of-way, licenses and similar interests over any part of the Common Area for any lawful purpose which it determines, in its own discretion, to be in the best interests of the Association.

All dwellings shall comply with setback restrictions as shown on the recorded plats; provided, however, that in the event that the minimum building setback line as established by the Town of Elkton Zoning Ordinance from time to time shall be less than the line shown on the recorded plats, the line established by the Town of Elkton Zoning Ordinance shall prevail over the line as established by the recorded plats; and provided further, that any variance granted by the Town of Elkton with respect to minimum setbacks required under any existing Zoning Ordinance shall likewise serve as a grant of variance from the restriction lines shown on any recorded plats of the subdivision.

#### ARTICLE X

##### CHESAPEAKE BAY CRITICAL AREA

The purpose of this Article is to inform all Owners that the Property is subject to certain provisions of Maryland and Cecil County law, including, but not limited to, Title 8, Natural Resources Article, Annotated Code of Maryland (1990) and Cecil County Chesapeake Bay Critical Area Program (1988), as the same may be amended from time to time (collectively, the "Chesapeake Bay Critical Area Legislation"). The Chesapeake Bay Critical Area Legislation imposes certain restrictions on the use and development of the Property.

#### ARTICLE XI

##### PARTY FENCES

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

## SECTION 1

General Rules of Law to Apply. Each fence which is constructed on the Property and any part of which is placed on the dividing line between two or more separate Lots, shall constitute a party fence, as applicable, and with respect to such fence or driveway, each of the adjoining Owners and their respective Lots shall be subject to an easement for that portion of the fence or driveway on their respective Lots, and shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party fences and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

## SECTION 2

Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party fence is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners or any of such Owner's agents, guests, or family members (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the party fence.

## SECTION 3

Repairs of Damage Caused by one Owner. If any such party fence is damaged or destroyed through the act of one adjoining Owner or any of such Owner's agents, guests or family members so as to deprive the other adjoining Owner of the full use and enjoyment of such fence or driveway, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining owner.

## SECTION 4

Encroachments. If any portion of a party fence shall encroach upon any adjoining Lot, or upon the Common Area by reason of reconstruction, settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same shall exist for as long as the building stands.

## SECTION 5

Other Changes. In addition to meeting the other requirements of these restrictive covenants, and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild such Owner's residence in any manner which requires an extension or other alteration of any party fence, shall first obtain the written consent of the adjoining Owner, which consent shall not be unreasonably delayed or denied.

## SECTION 6

Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be



appurtenant to the land and shall pass to such Owner's successors in title.

#### SECTION 7

Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party fence, or with respect to sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board of Directors shall be final and binding upon the parties.

#### ARTICLES XII

#### GENERAL PROVISIONS

#### SECTION 1

Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

#### SECTION 2

The covenants and restrictions of this Declaration shall run with and bind the Property for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless, prior to the expiration of the then current term, a written instrument shall be executed by the then Owners of seventy-five percent (75%) of the Lots stating that this Declaration shall expire at the end of the then current term. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots. Any amendment must be recorded among the Land Records of the jurisdiction referred to in the Recitals to this Declaration.

#### SECTION 3

Anything set forth in Section 2 of this Article to the contrary notwithstanding, the Company shall have the absolute unilateral right, power, and authority to modify, revise, amend, or change any of the terms or provisions of this Declaration, all as from time to time amended or supplemented. However, this unilateral right, power, and authority of the Company may be exercised only of the Veterans Administration (VA), the Federal Housing Administration (FHA), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), the U.S. Department of Housing and Urban Development (HUD), or any successor agencies or entities thereto or any agencies or entities providing similar programs shall require such action as a condition precedent to the approval by such agency or entity of the Property or any part thereof or any Lots thereon, for approved mortgage financing purposes under applicable VA, FHA, Freddie Mac, Fannie Mae, Ginnie Mae, or similar programs. If HUD, the VA or the FHA or any successor agencies approve the Property or any parts thereof or any Lots thereon for federally approved mortgage financing purposes, any further amendments to the Declaration made during any

period of time when there are Class B members of the Association shall also require the prior consent of the agency giving such approval.

WITNESS the hands and seals of the parties hereto on the day hereinabove first written.

ATTEST:

KENSINGTON COURTS LIMITED  
LIABILITY COMPANY

Signed by Pamela J Benjamin

By: signed by Bruce Schneider(SEAL)  
Bruce Schneider  
General Manager

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY that on this 18<sup>th</sup> day of October, 1994, before me, a Notary Public of the State of Maryland and the County of Cecil, personally appeared BRUCE SCHNEIDER who acknowledged himself to be the General Manager of Kensington Courts Limited Liability Company and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself as such officer.

WITNESS my hand and Notarial Seal.

Signed by Pamela J Benjamin  
Notary Public

My commission Expires: 01-24-96

This instrument has been prepared by Susan S. Flanigan, an attorney, under such attorney's supervision, or by one of the parties named in this instrument.

Signed by Susan S. Flanigan  
Susan S. Flanigan

**EXHIBIT A**

**DESCRIPTION OF BLOCK 11, KENSINGTON COURTS IN THE TOWNN OF ELKTON**

**BEGINNING FOR THE SAME** at a point, said point being an angle point in the northeastern most lines of the total tract as shown on a plat known as KENSINGTON COURTS as prepared by Rauch, Walls & Lane, Inc. of Easton, Maryland and recorded among the land records of Cecil County in Plat Book 13, folio 74, said point also being a corner in the lands now or formerly of Town & Country of Elkton, MD., Inc. as recorded among said land records in W.A.S. 303/169 and lying SOUTH 55 DEGREES, 16 MINUTES, 57 SECONDS EAST, 271.19 FEET from a concrete monument found, running thence along the easternmost line of the whole tract and along the westernmost line of Town & Country SOUTH 19 DEGREES, 28 MINUTES, 15 SECONDS EAST, 562.68 FEET to a point in the 60' right-of-way line of Whitehall Road, thence running with Whitehall Road and crossing over the 60' right-of-way of Highland Drive SOUTH 79 DEGREES, 39 MINUTES, 26 SECONDS WEST, 1085.74 FEET to a point, thence leaving said road and running through the open space area between blocks #2 & #11 NORTH 15 DEGREES, 02 MINUTES, 09 SECONDS WEST, 370.49 FEET to a point, thence turning through the open space area between blocks #10 & #11 NORTH 61 DEGREES, 55 MINUTES, 44 SECONDS WEST, 165.00 FEET to a point in an arc of the 60' right-of-way of Highland Drive, thence crossing over said right-of-way NORTH 61 DEGREES, 55 MINUTES, 44 SECONDS, 60.00 FEET to a point in an arc in said right-of-way, thence leaving said road and passing through the OPEN SPACE area as shown on sheet 12 of 12 of said plat showing BLOCK ELEVEN of Kensington Courts NORTH 71 DEGREES, 24 MINUTES, 28 SECONDS EAST, 820.97 FEET to the place of beginning containing 11.6895 ACRES MORE OR LESS.

Members shall have the right to use the existing road for purposes of ingress, egress and regress to and from waterfront boat launching area. The Company reserves the right to relocate said road and waterfront boat launching area.