

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
OF
ASHLAWN RIDGE
(commonly known as Kelsey Court)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (hereinafter "Declaration") is made as of _____, by and between Kelsey Court Homeowners Association, a Virginia nonstock corporation and property owners' association ("Association"), and the Owners of Lots in Kelsey Court, whose ratifications are attached as Exhibit 1.

RECITALS:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Kelsey Court was recorded on May 22, 1990 in Deed Book 7593 at page 1141 among the land records of Fairfax County, Virginia and amended by a First Amendment that was recorded on May 14, 1992 at Deed Book 8126 at page 1323 among the land records of Fairfax County, Virginia (collectively, the "Original Declaration"); and

WHEREAS, Section 11.02(a) of the Original Declaration permits the Owners to amend the Original Declaration by a recorded instrument executed by Owners of at least seventy-five percent (75%) of all Lots; and

WHEREAS, the requisite majority of the Owners have executed this Declaration as evidenced by their signatures on the ratification and consent forms attached as Exhibit 1 to this Declaration; and

WHEREAS, the Association and its members have complied with Section 11.02(a) of the Original Declaration and wish to restate and make certain amendments to the Original Declaration as set forth in this Declaration.

NOW, THEREFORE, the Association and the Owners hereby amend and restate the Original Declaration as follows:

Article I – Definitions

The following words, when used in this Declaration, shall have the following meanings:

1.01 “Annual Assessment” means the Assessments levied by the Association in each of its fiscal years pursuant to Article IV.

1.02 “Articles of Incorporation” means and refers to the Articles of Incorporation of the Association as filed, or as may hereafter be amended, with the Secretary of the State Corporation Commission of the Commonwealth of Virginia.

1.03 “Assessments” means the Annual Assessment and any Special Assessments (as hereinafter defined) as well as all other charges and assessments imposed by the Association in accordance with this Declaration or Virginia law.

1.04 “Association” means Kelsey Court Homeowners Association, a Virginia nonstock corporation and property owners’ association, its successors and assigns.

1.05 “Board of Directors” means the Board of Directors of the Association and the comparable governing body of any successor or assign of the Association.

1.06 “Bylaws” means and refers to the Bylaws of the Association, as may be amended.

1.07 “Common Area” means all real property and improvements thereon owned in fee simple by the Association.

1.08 “Common Expenses” means and includes the following:

(a) All costs of administration, maintenance, management, operation, repair and replacement of the Common Areas, including the private street and sidewalk, and of the retaining walls developed as part of the Property, and including such reserves as may be established;

(b) The administrative costs of the Association;

(c) Real estate taxes and assessments levied against the Common Areas;

(d) Premiums for insurance policies purchased by the Association;

(e) Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; and

(f) Expenses agreed upon as Common Expenses by the Owners acting in accordance with the provisions of this Declaration and the Bylaws.

1.09 "Covenants Committee" means the Committee of the Association so named and established in accordance with Article VII.

1.10 "Declaration" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements as it may from time to time be amended or supplemented.

1.11 "Delinquent" is defined in Section 4.0807(a).

1.12 "Easement Area" is defined in Section 10.01.

1.13 "Exempt Property" shall mean and refer to the following portions or parts of the Property:

(a) All land and Structures owned by the United States, the Commonwealth of Virginia, Arlington County, Fairfax County or any instrumentality, or agency or any such entity and used or held by such entity, instrumentality or agency for a public purpose for so long as any such entity, instrumentality or agency shall be the owner thereof; and

(b) All land and Structures and Common Area owned by the Association for so long as the Association shall be the owner thereof.

1.14 "First Mortgagee" means the Person who holds a first mortgage on a Lot, or is secured by a first deed of trust on a Lot.

1.15 "Governing Documents" means and refers to the Declaration, Articles of Incorporation, Bylaws, and all rules, regulations, resolutions, and policies of the Association, collectively.

1.16 "Guarantor" means a governmental guarantor of the payment of any indebtedness secured by a first mortgage or first deed of trust on a Lot.

1.17 "Insurer" means any Person who has insured the payment of any indebtedness secured by a first mortgage or first deed of trust on a Lot.

1.18 "Lot" means any plot of land shown upon any recorded subdivision plat of the Property upon which a dwelling unit could be constructed in accordance with Fairfax County

zoning ordinances, and to the extent any such parcel of land is improved by a dwelling unit, such term shall include the dwelling unit. "Lot" does not include the Common Area.

1.19 "Member" means a Member of the Association as established in Section 3.03.

1.20 "Owner" means, with respect to any Lot, (a) the owner of record from time to time, whether one or more Persons, of an interest in fee simple, (b) the lessee under a 99-year ground lease, and (c) a ~~contact~~contract seller of such an interest. The term "Owner" does not include the Association or any Person having an interest in a Lot merely as security for the performance of an obligation, but does include a mortgagee who has acquired one of the above interests in a Lot by foreclosure or conveyance in lieu of foreclosure.

1.21 "Person" means any individual, corporation, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government (or any agency or political subdivision of a government) or any other legal entity.

1.22 "Property" means certain real property located in the Counties of Arlington and Fairfax, Virginia, and known of record as Lots one (1) through twenty-six (26), both inclusive, Parcel A and Outlot A, Ashlawn Ridge, and which property is marked as Kelsey Court.

1.23 "Resident" means all of the following:

(a) Each lessee of a Lot who actually occupies that Lot and who, if requested by the Secretary of the Association, has delivered a copy of his lease agreement, on which the signatures are reproduced, to the Secretary of the Association.

(b) Any Person who actually resides on the Lot of (i) a lessee described in Subsection (a) or (ii) an Owner.

1.24 "Special Assessment" means any special charge established under Section 4.0403.

1.25 "Structure" means all of the following:

(a) Any portion of the Common Area.

(b) Any thing or object (other than trees and hedges less than two (2) feet high, shrubbery, and landscaping), the placement of which upon any Lot may affect the appearance of the Lot, including but not limited to any building, garage, porch, shed, greenhouse, bathhouse, coop, cage, house trailer, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, signboard or other temporary or permanent improvement on the Lot.

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

(d) Any change of more than six (6) inches in the grade of any Lot.

Article II – Common Area

2.01 Rights of Enjoyment, Ingress and Egress

(a) Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area subjected to these Covenants. The right and easement shall be appurtenant to and shall pass with the title to every Lot.

(b) Each Resident shall have a nontransferable right to use and enjoy the Common Area, which right shall terminate when that person ceases to have the status of a Resident.

(c) Each Owner shall have a right and easement and each Resident shall have a right to ingress and egress over, upon, and across the Common Area necessary for access to his Lot.

(d) The Board of Directors shall have the authority to adopt, amend, and enforce regulations that permit guests of an Owner or Resident to have, under conditions stated in the regulations, a revocable, non-exclusive license or privilege to use and enjoy all specified Common Area. The regulations may limit the number of such guests who may use the Common Area at any one time.

(e) The easements and rights provided for in this Section shall be subject to the following:

(i) The Association, through its Board of Directors, shall have the authority to adopt, amend, and enforce reasonable rules and regulations pertaining to the use of the Common Area, which shall enhance the preservation of the Common Area and the safety and convenience of the users of them;

(ii) The Association, through its Board of Directors, shall have the authority to suspend the right of any Resident and the right and easement of any Owner to use any portion of the Common Area for up to sixty (60) days for a violation of the Governing Documents in accordance with Article IX of this Declaration, to the extent that access to the Resident and Owner's access to their Lot through the Common Area is not precluded and

provided such that suspension does not endanger the health, safety, or property of any Owner or Resident;

(iii) The Association, through its Board of Directors, shall have the authority ~~under Section 4.09(d)~~ to suspend ~~(by action of the Board of Directors)~~ the right of any Resident and the right and easement of any Owner to use any portion of the Common Area, for so long as any part of an Assessment for the Lot is Delinquent (hereinafter defined) in accordance with Article IX of this Declaration, to the extent that access to the Resident and Owner's access to their Lot through the Common Area is not precluded and provided such that suspension does not endanger the health, safety, or property of any Owner or Resident;

(iv) The Association shall have the authority to assess charges (by action of the Board of Directors) against any Owner for a violation of the Governing Documents by that Owner or any Resident of the Owner's Lot in accordance with Article IX of this Declaration;

(v) The Association shall have the authority to grant easements or rights-of-way to any public utility corporation or public agency upon the approval of (i) the Board of Directors and (ii) at least two-thirds (2/3) of the votes cast at a meeting duly called for that purpose at which a quorum is present;

(vi) The Association shall have the power and authority, from time to time, to borrow money for the purpose of constructing, equipping, improving or maintaining Common Area and to mortgage the Common Area as security for such borrowing. Such action may be taken only with the approval of (i) the Board of Directors, and (ii) more than two-thirds (2/3) of the entire number of votes cast by the Members who are voting in person or by proxy at a meeting duly called for that purpose at which a quorum is present. Any such mortgage instrument shall provide that, in the event of a default, the lender's rights or the rights of any person succeeding to the interest of the lender shall be subordinate to the rights of the homeowners hereunder;

(vii) The Association, pursuant to Section 2.03, shall have the authority (with the approval of the Board of Directors) to convey or lease any part of the Common Area;

(viii) Utility easements as provided in Article X; and

(ix) All other easements, restrictions and rights of record to which the Common Area are subject.

2.02 Additional Common Area and Improvements. The Association may not construct any capital addition or capital improvement to the Common Area unless the addition or improvement has been authorized by the Board of Directors. In addition, if the cost of such action and the cost of similar actions to the Association in the same fiscal year exceed in the aggregate \$10,000.00, the action (and any necessary increase in the Annual Assessment) must also be

approved by two-thirds (2/3) of the votes cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present.

2.03 Conveyance of Common Area. The Association may at any time dedicate or transfer all or a part of the Common Area to any public agency or organization including, without limitation, Arlington County and/or Fairfax County, or to any nonprofit organization, upon such terms and conditions as are agreed upon by that agency, authority or organization and the Association. No dedication or transfer shall be effective, however, unless an instrument agreeing to it is signed by at least two-thirds (2/3) of the Members. Article XI requires the consent of certain First Mortgagees for certain of such actions. Any dedication or transfer shall be further subject to applicable laws and regulations governing Virginia nonstock corporations.

2.04 Maintenance of Common Area.

(a) The Association shall be responsible for maintenance of the Common Area and of the retaining walls developed as part of the Property.

(b) In the event the Association fails to maintain the Common Area and the retaining walls in accordance with the county-approved landscape plan for the Property or applicable state and county statutes and ordinances, the county in which such property is located and its agents and employees, shall have the right to enter upon the Common Area for the purposes of bringing it into compliance with the landscape plan, the statutes or ordinances.

(c) A pro rata share of the costs incurred pursuant to Paragraph 2.04(b) shall constitute a lien on each Lot within the Property pursuant to the applicable provisions, if any, of the Arlington or Fairfax County zoning ordinance.

(d) Notwithstanding anything to the contrary contained herein, the provisions of paragraphs (b) and (c) of this Section are enforceable by Arlington or Fairfax County.

Article III – Association Membership
Voting Rights, Meeting of Members

3.01 Organization of the Association. The Association is organized as a nonprofit, nonstock corporation under the laws of Virginia (a) to promote the interests of the Owners of Lots; (b) to own, acquire, build, hold, improve, sell, convey, lease, dedicate to public use, operate and maintain the Common Area, including all recreation areas, open space, parks, playgrounds, private streets and sidewalks, buildings, structures and personal property incident thereto; (c) to fix, levy, collect, and enforce payment by any lawful means of charges and assessments made against the Property in accordance with this Declaration; (d) to enforce any and all covenants running with the land and restrictions applicable to the Property in any lawful manner, and to perform all of the duties and obligations of the Association as set forth in this Declaration as recorded, or amendments to the same that may be recorded in the Clerk's Offices of the Circuit

Courts of Arlington County, Virginia and Fairfax County, Virginia; (e) to pay taxes, if any, on the Common Area and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the properties of the Association; and (f) to borrow money, to mortgage, pledge, deed in trust, or hypothecate or any or all of its real or personal property as security for money borrowed or debts incurred.

The Association is assigned such further duties and granted such powers as are prescribed by law and set forth in the Articles of Incorporation and Bylaws of the Association and in this Declaration, as all of them may be amended from time to time. The Articles of Incorporation and Bylaws of the Association may not be amended or interpreted so as to be inconsistent with this Declaration. No part of the net earnings of the Association shall inure (other than (a) by acquiring, constructing or providing management, maintenance and care of the Common Area, and (b) by a rebate of any excess Annual Assessment, Special Assessment or other dues or fees) to the benefit of any Member or individual.

3.02 Professional Management of the Association. The Association may employ and retain such agents and services as is necessary or appropriate to exercise the powers, duties and authority vested in ~~our~~or granted to the Association by this Declaration or the other Governing Documents of the Association.

3.03 Membership in the Association. The Association shall have one (1) class of membership ~~constituting~~consisting of all Owners. A Person shall automatically become a Member upon becoming an Owner and shall remain a Member for so long as he is an Owner. Membership shall be appurtenant to, and shall not be separated from, the status of Owner.

3.04 Voting Rights of Members.

(a) Each Member shall be entitled to one (1) vote on each matter submitted to the Members for each Lot owned by him. Any Member who is in violation of this Declaration (or any other Governing Document of the Association) with respect to any Lot or is Delinquent in the payment of any Assessment on any Lot, as determined by the Board of Directors in accordance with this Declaration and the Governing Documents, shall not be entitled to cast the vote of that Lot as long as the violation or Delinquency continues.

(b) If a Lot is owned by more than one Owner, the Owners shall be deemed to constitute a single Member as to that Lot and shall collectively be entitled to a single vote for that Lot as to each matter submitted to the Members.

3.05 Board of Directors. The business and affairs of the Association shall be managed by a Board of Directors.

3.06 Adoption of Further Rules and Regulations. The Board of Directors may make whatever rules and regulations, consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws, it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and other matters concerning the conduct of meetings and voting.

3.07 Voting by Mail. The Bylaws of the Association may provide for Members to vote by mail on a particular proposal or for the election of directors.

Article IV – Assessments

4.01. Purpose of Assessments. Assessments shall be used exclusively to carry out the business and responsibilities of the Association, including, but not limited to (i) the acquisition, construction, management, maintenance and care of the Common Area, including private streets and sidewalks, and the maintenance and repair of the retaining walls developed as part of the Property; (ii) obtaining, managing and maintaining services for the Property or sections of it including, as necessary, lawn service, refuse collection, street cleaning and snow removal; (iii) the insurance responsibilities assigned to the Association in Article V; and (iv) promoting the recreation, health, safety and welfare of the Members.

4.02. Establishment of Annual Assessment. The Association may levy an Annual Assessment in each of its fiscal years against each Lot which is not Exempt Property. The amount of the Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 4.03 and 4.0504, at any time during the Association's fiscal year at least thirty (30) days in advance of the beginning of each subsequent fiscal year. The first Annual Assessment imposed on each Lot shall be adjusted according to the number of months remaining in the fiscal year after the earlier of the Owner's date of purchase or date of occupancy. If the Board of Directors does not timely establish an Annual Assessment, then the Annual Assessment established for the previous fiscal year shall automatically continue until such time as the Board acts.

~~4.03. Maximum Assessments. [OR BOARD CAN REMOVE THIS SECTION TO REMOVE LIMIT ON ANNUAL INCREASE]~~

~~(a) — For each fiscal year of the Association beginning on or after January 1 of the year immediately following the recording of this Declaration, the Board of Directors may increase the Annual Assessment for each Lot by not more than five percent (5%) of the Annual Assessment for the preceding fiscal year of the Association. The Annual Assessment, however, may be increased above the limits established above by the amount by which any ad valorem real estate taxes and casualty and other insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year.~~

~~(b) The Annual Assessment for each Lot may be increased by more than would otherwise be permitted by Subsection (a) with the assent of at least two-thirds (2/3) of the votes cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present.~~

4.04.4.03. Special Assessments. In addition to the Annual Assessments, the Association may levy a Special Assessment in any fiscal year of the Association, applicable to that fiscal year only and payable over not more than the next three (3) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement to the Common Area, including fixtures and personal property related to them. A Special Assessment charged pursuant to this Declaration must be approved by at least two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present. If such quorum shall not be obtained, then members holding a majority of the votes present, in person or by proxy, at such meeting may adjourn such meeting and upon due notice such meeting shall be reconvened and the presence, in person or by proxy, of Members holding 30% of the outstanding votes in the Association shall constitute a quorum throughout such reconvened meeting. Special Assessments shall be imposed against Lots in the same proportions as Annual Assessments under Section 4.0204.

4.05.4.04. Uniform Rate of Assessment. Both Annual and Special Assessments must be set at a uniform rate for all Lots ~~in accordance with Section 4.02 above.~~

4.06.4.05. Notice and Due Date. Written notice specifying (i) the amount of each Assessment and (ii) the number and amounts of the installments by which each Assessment is to be paid, shall be given at least once yearly to the Owner of each Lot subject to Assessments. Each installment of an Annual Assessment shall be due on the later of (a) the due date established by the Board of Directors and specified in the notice or (b) if the notice is mailed, on the tenth day following the date of mailing.

4.07.4.06. Covenant to Pay Assessments. Each Owner (including but not limited to a mortgagee who has become an Owner by foreclosure or conveyance in lieu of foreclosure), by his acceptance of a deed for a Lot, whether or not it is so expressed in that deed, shall be deemed to covenant and agree to pay to the Association all of the following:

- (a) All Assessments levied on that Lot in accordance with this Declaration or Virginia law;
- (b) Interest on those Assessments under Section 4.0807;
- (c) Late fees on those Assessments under Section 4.0807; and
- (d) Costs of collection of those Assessments under Section 4.0908.

4.08-4.07. Delinquent Assessments.

(a) If an Owner fails to pay any part of any assessment within fifteen (15) days after the due date (as defined in Section 4.0605) the unpaid amount shall be deemed "Delinquent", and the Owner shall be deemed "Delinquent" in the payment of that amount.

(b) Any Delinquent amount shall automatically bear interest at ~~six~~ rate set by the Board of Directors that is no more than ten percent (~~6~~10%) per annum. The Owner shall also be charged a late fee in an amount to be determined by the Board of Directors of the Association.

(c) The First Mortgagee of a Lot may be entitled, under Section 11.01(a), to notice that Assessments with respect to that Lot have become Delinquent.

4.09-4.08. Enforcement Powers of Association. As to any Delinquent Owner, the Association shall have the power and authority to take any or all of the following actions, at its sole option and without the necessity of any election of remedies; and by acceptance of the deed to his Lot, each Owner specifically agrees that:

(a) In addition to any other remedies it may have, the Association may accelerate and declare the balance of any Assessment installment due and payable in full;

(b) In addition to any other remedies it may have, the Association may sue the Owner for a personal judgment for the Delinquent amount, plus interest and late fees under Section 4.0807(b) and its costs of collection, including but not limited to court costs and reasonable attorneys' fees.

(c) In addition to any other remedies it may have, the Association may enforce and foreclose the lien imposed by Section 4.1110(a). In any foreclosure sale or proceeding, the Association shall be entitled to recover the Delinquent amount, plus interest and late fees under Section 4.0807(b), and its costs of collection, including but not limited to court costs, cost of any public or private sale, and reasonable attorney's fees;

(d) For so long as an Owner remains Delinquent as to any Assessment with respect to a Lot, the Association may suspend within reason any or all of the following:

(i) The Owner's right and easement of enjoyment in and to any or all of the Common Area;

(ii) The right of any Resident of the Lot to use and enjoy any or all of the Common Area; and/or

(iii) The license and privilege of enjoyment, of any guest or other Person claiming that license or privilege under or through the Owner, to use and enjoy any or all of the Common Area.

4.10-4.09. Suspension of Voting Rights. Under Section 3.04, for so long as any Assessment with respect to any Lot is Delinquent in whole or in part, as determined by the Board of Directors in accordance with this Declaration and its ~~regulations~~ Governing Documents, the Owner shall not be entitled to cast a vote or votes for that Lot.

4.11-4.10. Lien of Assessments.

(a) All Assessments, together with interest and late fees under Section 4. ~~0807~~ (b) and costs of all collection under Section 4. ~~0906~~, shall be a charge on the Lot from the date such Assessments are levied and shall be a continuing lien thereon. Nevertheless, the Association may permit Assessments to be paid in periodic installments.

(b) Each Assessment, together with interest and late fees under Section 4. ~~0807~~ and costs of collection under Section 4. ~~0906~~, shall also be the personal obligation of the Person who was the Owner of the affected Lot at the time when the Assessment fell due. The obligation shall not pass to the Owner's successors in title unless expressly assumed by them.

(c) No Owner may waive or otherwise escape liability for any Assessment by abandonment or sale of his Lot or non-use of the Common Area.

(d) A lien for Assessments shall not be affected by any sale or transfer of a Lot except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for Assessments that became payable prior to such sale or transfer. However, any such Delinquent Assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all Lots as a Common Expense. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of, any Assessments made thereafter.

4.12-4.11. Subordination. The lien of the Assessments provided for in this Declaration and any fees, late charges, violation charges or interest that might be levied by the Association in connection with Delinquent Assessments or any violation of the Governing Documents shall be subordinate to the lien of any first mortgage or first deed of trust.

4.13-4.12. Reserves and Common Expenses.

(a) The Association shall establish and maintain a reserve fund for repair and replacement of the Common Area, including a private street and sidewalk, ~~by the allocation and payment monthly to the reserve fund of an amount to be determined from time to time by the Board of Directors.~~ The reserve fund shall constitute a Common Expense of the Association ~~and~~

~~shall be (i) deposited in any banking institution the accounts of which are insured by the United States Government or (ii) in the discretion of the Board of Directors, be invested in obligations of, or obligations which are fully guaranteed as to principal by the United States Government.~~ The reserve fund may be expended only for the purposes of (i) replacement of the Common Area including but not limited to major repairs to street, sidewalks and retaining walls developed as part of the Property; (ii) equipment replacement; and (iii) the Association's obligations.

(b) The proportional interest of any Owner in any Common Expenses shall be an appurtenance of his Lot and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the Lot, but shall be automatically transferred with the Lot.

4.14.4.13. Certificate of Payment. The Association shall, upon request and for a reasonable charge, furnish a certificate, signed by an officer of the Association, setting forth whether the Assessments on a specified Lot have been paid. Any such certificate, if properly executed, shall be binding upon the Association as of the date of its issuance.

Article V – Damage or Destruction of Structures and Insurance

~~5.01. Required Insurance.~~

~~(a) The Association shall procure and maintain the following insurance coverages to the extent obtainable:~~

~~(i) Coverage of all Common Areas and other Structures located on land owned by the Association, against loss or damage by fire, lightning and such other perils as are comprehended within the term "extended coverage", including but not limited to vandalism and malicious mischief, debris removal and windstorm and water damage. The named insureds shall be the Association and, as to any Property with which the Association has mortgaged, the mortgagee of that Property, as their interests may appear. The coverage shall be in an amount not less than one hundred percent (100%) of the current replacement cost of the insured Structures without deduction for depreciation;~~

~~(ii) Comprehensive general liability coverage insuring the Association against liability for bodily injury, disease, illness or death of Persons and for injury to or destruction of property occurring upon or arising from the authorized or unauthorized use of any Common Area or other property owned or controlled by the Association. Such insurance coverage shall also include protection against legal liability arising out of lawsuits related to this Declaration and employment contracts of the Association. The coverage shall be in whatever amounts and subject to whatever deductibles and exclusions the Board of Directors considers prudent; provided, however, that such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence;~~

~~(iii) — Workers' compensation insurance in the amounts required under Virginia law, if any; and~~

~~(iv) — All other bonds and insurance coverages required by the Federal National Mortgage Association, Government National Mortgage Association, or Federal Home Loan Mortgage Corporation, for so long as each of them is an owner or First Mortgagee of any Lot.~~

~~(b) — The Association may also procure and maintain whatever other insurance coverage the Board of Directors considers necessary or appropriate, including but not limited to directors' and officers' liability insurance.~~

~~(c) — Insurance premiums for the coverages required and authorized by this Section shall be paid from the Association's revenues from Annual Assessments.~~

~~(d) — All insurance policies must contain language requiring the insurer to give the Association thirty (30) days' prior written notice of any expiration, cancellation or change in premiums or coverage.~~

~~[OR IN THE ALTERNATIVE TO 6.01...~~

~~5.02.5.01.~~ The Association shall purchase and keep in effect liability insurance on behalf of all individuals who are or were directors, officers, appointed committee members, managers, or employees of the Association. This insurance shall include, without limitation, blanket property coverage for the Common Area, (in an amount not less than one hundred percent (100%) of the current replacement cost of the insured Structures without deduction for depreciation), commercial general liability insurance, (in an amount not less than \$1,000,000.00), workers' compensation insurance (as required by law), and directors' and officers' liability coverage. The Board of shall determine the amount and types of insurance coverage subject to its best business judgment. Insurance premiums for the coverages required and authorized by this Section shall be paid from the Association's revenues from Annual Assessments.

~~5.03.5.02.~~ Annual Review. The Board of Directors shall annually conduct a thorough review of the terms and adequacy of coverage of all insurance policies held by the Association.

~~5.04.5.03.~~ Uninsured Loss or Insufficient Proceeds. If a Structure owned by the Association suffers damage or destruction from any cause ~~which~~that is not insured against or if the insurance proceeds from which are not sufficient to pay all costs of repair or reconstruction, ~~and then~~ the repair or reconstruction shall constitute a capital improvement for which a Special Assessment may be made and levied.

~~5.05.5.04.~~ Rights of ~~Mortgages~~Mortgagees.

(a) Section 11.01 requires notice to certain First Mortgagees of (i) certain casualty losses to Common Area and (ii) cancellation or nonrenewal of certain insurance coverages.

(b) Section 11.02 requires consent of certain First Mortgagees for certain uses of insurance proceeds.

~~5.06~~5.05. Total or Partial Condemnation, Loss or Destruction.

(a) The Association shall represent the Members in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area or any part thereof. Each Member hereby expressly appoints the Association as attorney-in-fact for the limited purpose of performing in accordance with this subparagraph.

(b) In the event of a taking or acquisition of part of the Common Area by a condemning authority as a result of eminent domain proceedings or threats thereof ("Condemnation") the award or proceeds ("Condemnation Proceeds") of settlement shall be payable to the Association, and if such Common Area has been mortgaged, then as the interests of the Association's mortgagee(s) may appear. The Association, subject to the rights, if any of its mortgagee(s) and the rights, if any, of the First Mortgagees, shall apply the Condemnation Proceeds to the repair, restoration or replacement, if practicable, of the Common Area so taken or acquired or as it shall deem in the best interests of the Association.

(c) In the event of a total Condemnation of the Common Area, the Association, acting by and through its Board of Directors, shall, subject to the rights, if any, of its mortgagee(s) and the rights, if any, of First Mortgagees, determine the feasibility of applying the Condemnation Proceeds toward the repair, restoration or replacement, if practicable, of the Common Area so condemned. If, in the Association's determination, it is feasible to apply the Condemnation Proceeds toward the repair, restoration or replacement of the Common Area, then it shall do so subject to the relative rights, if any, of its mortgagee(s) and the First Mortgagees, and apply so much of the Association reserves and/or impose a Special Assessment upon the Owners as is necessary for the purpose of defraying completely the cost of repairing, restoring or replacing the Common Area. If the Association determines that repair, restoration or replacement of the Common Area would not be feasible, the Board of Directors shall call a special meeting of all Members for the purpose of deciding an appropriate course of action with respect to the future existence, operation and control of the Association, including but not limited to whether to terminate the Association. Any decision by the Members to terminate the Association shall be in accordance with Article XI hereof.

(d) In the event of partial destruction of the Common Area, the insurance proceeds ("Insurance Proceeds"), if any, shall be payable to the Association, and if the Common Area has been mortgaged, as the interests of the Association's mortgagee may appear. The

Association, subject to the rights, if any, of the respective mortgagees and First Mortgagees shall apply the Insurance Proceeds of such insurance toward the repair or restoration of the Common Area. If the amount of Insurance Proceeds is insufficient to defray completely the cost or repair or restoration of the partially destroyed Common Area, the Association, acting by and through the Board of Directors, shall (i) use all or part of the funds constituting the reserves described in Section 4.13 above, and, if necessary, (ii) impose a Special Assessment upon the Members, all as the Board of Directors shall deem reasonably necessary, to pay for the repair or restoration of the Common Area.

(e) In the event of a total destruction of the Common Area, the Association, acting by and through its Board of Directors, shall, subject to the rights, if any, of its mortgagee(s) and the rights, if any, of First Mortgagees, determine the feasibility of applying the Insurance Proceeds toward the repair, restoration, or replacement of the Common Area. If, in the Association's determination, it is feasible to apply the Insurance Proceeds toward the repair, restoration or replacement of the Common Area, then it shall do so subject to the relative rights, if any, of its mortgagee(s) and the First Mortgagees, and apply so much of the Association's reserves and/or impose a Special Assessment upon the Owners as is necessary for the purpose of defraying completely the cost of repairing, restoring or replacing the Common Area. If the Association determines that the repair, restoration or replacement of the Common Area would not be feasible, then the Board of Directors shall call a special meeting of all Members for the purpose of deciding an appropriate course of action with respect to the future existence, operation and control of the Association, including but not limited to whether to terminate the Association. Any decision by the Members to terminate the Association shall be in accordance with Article X hereof.

(f) The Association shall use its best efforts to obtain the highest feasible award available as a result of Condemnation or destruction of the Common Area.

(g) Any distribution made as a result of the termination of the Community shall be made to the Members in proportion to the total number of Lots subject to this Declaration at the time of loss or Condemnation.

Article VI – Party Walls

6.01. General Rules of Law to Apply. Each wall which is built as part of the original construction on the Lots which shall serve and separate any two (2) adjoining dwelling units shall constitute a Party Wall (hereinafter "Party Wall"), and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

6.02. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners sharing the wall except to the

extent any expense related to such repair and maintenance is due to the negligent or willful act or omission of one of the Owners.

6.03. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

6.04. Weatherproofing. Notwithstanding any other provisions of this Article, and Owner who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the full cost of furnishing the necessary protection against such elements.

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

Article VII – Covenants Committee

7.01. Composition and Appointment. A Covenants Committee of the Association shall be appointed by the Board of Directors. The Committee shall initially consist of three (3) members; but may thereafter be increased or decreased in size by the Board of Directors, from time to time, to not more than five (5) members or less than three (3) members. Members of the Covenants Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Covenants Committee shall be filled by the Board of Directors for the remaining portion of the term of the originally appointed member. If any vacancy occurs, the remaining members of the Covenants Committee may continue to act until the vacancy has been filled. Any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors fails or is unable to appoint a Covenants Committee, the Board of Directors shall serve as the Covenants Committee.

7.02. Powers and Duties.

(a) The Covenants Committee shall serve as an architectural review board and regulate the external design, appearance and location of Lots and Structures so as to enforce the architectural provisions of this Declaration, preserve and enhance values, and maintain a harmonious relationship among Structures.

(b) The Covenants Committee shall have whatever other duties and authority the Board of Directors may from time to time assign to it in connection with the enforcement of this Declaration and the other Governing Documents of the Association.

(c) Any decision or determination of the Covenants Committee may be appealed by the affected Member to the Board of Directors.

7.03. Submission of Plans to Covenants Committee for Approval. No Structure shall be erected, placed, moved onto or permitted on any Lot, nor shall any existing Structure be removed, modified or altered in any way which materially changes its exterior appearance or structural integrity until plans and specifications for the proposed action have been approved in writing by the Covenants Committee. The plans and specifications shall be in whatever form and shall contain whatever information the Covenants Committee may reasonably require, but shall in all cases include all of the following:

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

(b) Exterior elevations for the proposed structure;

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

(d) A description of plans for landscaping or grading.

7.04. Approval of Plans and Specifications.

(a) Any approval or disapproval of a proposed action by the Covenants Committee shall be in writing. In denying any application, the Covenants Committee shall specify the reasons for the denial. The Covenants Committee may approve an application subject to whatever conditions and qualifications it or the Board deems appropriate to enforce the architectural provisions of this Declaration.

(b) The Committee may establish guidelines or regulations to govern particular issues, ~~and is required to do so~~ such as ~~to those~~ issues specified in Sections 8.03, 8.05, 8.06, 8.10, 8.11 and 8.12.

7.05. Failure of the Covenants Committee to Act. If the Covenants Committee fails to act upon any written request submitted to it within thirty (30) days after submission, the request shall be deemed approved as submitted, and no further action by the Committee shall be required.

7.06. Rules, Regulations, and Policy Statements. The Covenants Committee may adopt, from time to time, subject to the approval of the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities. It may from time to time issue statements of policy with respect to architectural standards and other matters on which it is

authorized to act. It shall adopt rules of procedure, subject to the approval of the Board of Directors, which shall include provisions substantially to the following effect:

(a) The Committee shall hold regular meetings at least once every year and more frequently, if necessary. Meetings of the Committee may be called by the Chairman of the Board and by a majority of the members of the Committee;

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

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

(d) All meetings of the Committee shall be open to the members of the Association and any vote of the Committee shall be taken at an open meeting. However, this shall not prevent the Committee from meeting in closed session or executive session to discuss matters before the Board;

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

(f) The affirmative vote of fifty-one percent (51%) of the members of the Committee present at a meeting at which a quorum is present shall be the act of the Committee.

7.07. Expenses of the Covenants Committee. Members of the Covenants Committee may be reimbursed by the Association for reasonable and necessary expense incurred in connection with service on the Committee. The Association shall pay all ordinary and necessary expenses of the Covenants Committee.

7.08. Right of Entry. Upon prior notice, except in emergency circumstances, the Association, the Board of Directors, and the Covenants Committee, through their authorized officers, employees and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether the Lot or any Structure on it is in compliance with the provisions of this Article and Article VIII, without the Association, the Board of Directors, the Covenants Committee or the officer, employee or agent being deemed to have committed a trespass or wrongful act.

7.09. Amendment. Any Amendment of this Article requires the approval of the First Mortgagees under Section 11.02.

Article VIII – General Restrictions on the

Use of Lots and Improvements to Lots

8.01. Zoning Regulations. No Lot shall be used for any purpose not permitted by the Fairfax ~~or Arlington~~-County zoning ~~ordinances~~ordinance or the applicable laws or regulations of any governmental authority. This restriction shall not apply to any use for which a special exception under Fairfax County zoning ordinances or other governing regulations is finally granted, provided the use is also approved in writing by the Board of Directors. The right to limit or restrict the use of a particular Lot in addition to the restrictions imposed by zoning ordinances, laws, and regulations is reserved under the provisions of this Declaration.

~~8.02.~~ No Use Contrary to Law and No Nuisances.

~~8.03.~~8.02. No noxious or offensive trade, service or activity may be conducted on any portion of the Property nor shall anything be done on the Property which may be or become a continuing annoyance, hazard or nuisance to Owners or Residents. No use of any Lot or any Structure shall be made, nor shall any materials or products be manufactured, processed or stored on a Lot or in a Structure, in violation of federal, state or local laws or regulations or resulting in an undue fire hazard to adjoining Lots or Structures.

~~(a) — An Owner may use a portion of a Lot for a professional or home office or studio, provided that such use shall be consistent with all laws, zoning ordinances and regulations and shall not interfere with the quiet enjoyment or comfort of any other Owner, and provided, further, that in no event shall any part of any Lot be used as a school or music studio. Except for such professional or home office or studio use, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, shall be conducted, maintained, or permitted on a Lot. Except for those related to real estate sales and construction, no sign, advertisement or message shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of business solicitation in or from any Lot.~~

[ALTERNATIVE TO 8.02(b)...

~~8.04.~~8.03. Home-Based Businesses. No Lot shall be used for any business, commercial, manufacturing, mercantile, storage, sales or other similar purposes; provided, however, that an Owner may maintain an office or home business in the dwelling on a Lot if (i) such office or home business is operated by a member of the Owner's household residing on the Lot; (ii) there are no displays or signs indicating that the Lot is being used other than as a residents; (iii) such office or business does not generate significant traffic or parking usage (as determined by the Board of Directors) by clients, customers, or other persons related to the business; (iv) no equipment or other items related to the business are stored, parked, or otherwise kept on such Owner's Lot or the Property outside of an Association-approved enclosure; (v) such Owner has obtained anyall required approvals for such use from the, and otherwise complies with all applicable legal requirements for such use imposed by, Fairfax

County or other appropriate local government agency or authority; (vi) the activity is consistent with the residential nature of the Property and complies with local ordinances; (vii) no person is employed in such office or home business except for members of the Owner's household residing on the Lot; and (viii) the Board of Directors approves such home business in writing. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, trash removal, utilities, or other costs for the Association or other Owners that may result from such use. Garage sales, yard sales, and similar activities shall only be conducted in accordance with the rules and regulations adopted by the Board of Directors.

~~8.05-8.04.~~ Garages and Structures.

(a) No garage built upon a Lot shall be converted into living space or to any other use inconsistent with the parking of vehicles.

(b) In accordance with Article VII of this Declaration, all Structures and alterations or improvements to them (other than interior alterations not affecting external appearance, must be approved in writing by the Covenants Committee. In reviewing an application for such a change, the Covenants Committee shall determine whether the proposed change is harmonious in terms of type, size, scale, form, color, and material with the existing architectural character of the neighborhood and the surrounding natural environment. No Structure shall be painted, stuccoed or surfaced with any material unless approved in writing by the Covenants Committee in accordance with objective, performance-oriented guidelines established by that Committee. Screens or parapets shall be used to organize and aesthetically shield mechanical equipment from public view.

(c) No satellite receiving systems or stations shall be maintained upon the Common Area or upon any Lot without the prior written approval of the Covenants Committee in accordance with Article VII of this Declaration. No exterior television, radio, or other communications antennae of any sort shall be erected or maintained on any Lot without the prior written approval of the Covenants Committee in accordance with Article VII of this Declaration.

~~8.06-8.05.~~ Screens and Fences. No fences shall be erected upon any Lot or the Common Area except for those fences erected with the prior written approval of the Covenants Committee in accordance with Article VII of this Declaration. Any fence or wall built on any Lot shall be maintained in good condition and repair in a manner consistent with the appearance of surrounding Lots.

~~8.07-8.06.~~ Outside Storage or Operations.

(a) No outside storage of lumber, metals or bulk materials of any kind, except approved Structures, shall be permitted unless such item is visually screened in a manner approved in writing by the Covenants Committee. No outside storage and operations shall extend above the top of any such screening.

(b) No trash, garbage, or other refuse shall be dumped or stored or allowed to be accumulated on any Lot or upon the Common Area. The burning or incineration of trash, garbage or other refuse is prohibited. All trash, garbage or other refuse shall be placed in covered containers and shall be stored out the public view except on days of collection. The Board of Directors, or its designee, may formulate and adopt reasonable regulations as to the size, shape, color and type container permitted and the manner of storage or same on any Lot.

~~8.08~~8.07. Signs and Street Furniture. The locations, color, nature, size, design and construction of all signs, lights, and other street furniture shall be approved in writing by the Covenants Committee, and must be in keeping with the character of the Property and accord with guidelines to be established by the Covenants Committee; provided, that one (1) temporary “for sale” or “for rent” sign not in excess of two square feet may be erected upon any Lot. All signs advertising a Lot for sale or rent shall be removed within three (3) days following the date of execution of any agreement of sale or rental.

~~8.09~~8.08. Commercial Vehicles. 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 without the written approval of the Board of Directors or its designee.

~~8.10~~8.09. Recreational Vehicles. No boat, trailer, junk vehicle or other vehicle on which current registration plates are not displayed, tent, Structure of a temporary character, motor home or portable vehicle (other than automobiles) shall remain parked in a location visible from any roadway without the written approval of the Board of Directors or its designee.

~~8.11~~8.10. Animals.

(a) No livestock, poultry or other animals shall be kept on any Lot or for breeding purposes, and in no event shall any stable, barn, coop or other shelter for animals or for the storage of materials be placed or maintained upon any Lot, except as approved in writing by the Covenants Committee in accordance with Article VII of this Declaration. Dogs, cats and other household pets may be kept on the Property provided that the total of such household pets does not exceed ~~four~~ three (3) per Lot and they are not raised or bred for any commercial purposes.

(b) Pets shall not be permitted upon the open Common Area unless accompanied by a reasonable person. Any Owner, Resident or other occupant who keeps or maintains any pet shall be deemed to have indemnified and agreed to hold harmless the Association, each Owner, and the Board of Directors from any loss, claim or liability of any kind or character whatsoever, including without limitation court costs and attorneys’ fees, arising by reason of the keeping or maintaining of such pet within the Property. All pets shall be leashed, registered and inoculated as required by local law.

8.12.8.11. Air and Water Pollution. No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards to be established by the Covenants Committee and approved by the Board of Directors. The environmental standards shall at a minimum meet the requirements of federal and state law and regulations applicable to the Property. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property in violation of any regulations of Arlington County and Fairfax County sanitary authorities or any private or public body having jurisdiction. No person shall dump garbage, trash or other refuse into any waterway on the Property.

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

- (a) Enhance the site and building,
- (b) Screen undesirable areas or views,
- (c) Establish acceptable relationships between buildings, parking and adjacent properties, and
- (d) Control drainage and erosion.

Existing trees shall be retained, buffer areas established and the natural contour of the land respected, unless otherwise approved in writing by the Covenants Committee. No tree (a) having a diameter of more than six (6) inches, measured two (2) feet above the ground level, and (b) lying outside the approved building area shall be removed without the written approval of the Covenants Committee. No chemical fertilizers, pesticides or herbicides other than those approved by the Board of Directors shall be used on any of the Property. The Board of Directors, or its designee, may require special treatment of slopes, construction of walls and wells and use of stone fills and drains to preserve trees that cannot otherwise be saved.

8.14.8.13. Maintenance of Premises and Improvements. Each Owner or Resident shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition. Appropriate maintenance shall include, but not be limited to, the seeding, watering and sowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements all in a manner and with such frequency as is consistent with good property management. In the event of fire or other casualty, no structure's exterior shall be permitted to remain unrepaired for longer than four (4) months. The Owner or Resident shall comply with all laws, ordinances and regulations pertaining to health, safety and pollution, and shall provide for storage and removal

of trash and rubbish from his premises in a manner to be approved by the Board of Directors or its designee.

8.15-8.14. Lease of ~~Parcel~~Lot. No Owner of a Lot or Structure shall use such Lot or Structure, or any portion thereof, for revolving use, transient or hotel purposes. ~~No~~Additionally, no Owner of a Lot or Structure shall permit such Lot or Structure to be subleased for any purpose or duration without the express written agreement of the Board of Directors. Except for rent-back provisions included in any Lot sales contract, no Owner of a Lot or Structure shall lease or license ~~the~~a Lot or Structure ~~or part thereof either~~ unless the lease or license:

(a) is for the entire Lot and all Structures located thereon (no part or subdivision of the Lot or any Structure may be subleased);

~~(a)~~(b) is in writing and of a duration of no less than ~~thirty (30)~~six (6) consecutive ~~days~~months;

~~(b)~~(c) expressly provides that its terms shall be subject in all respects to the provisions of this Declaration and the Governing Documents;

~~(c)~~(d) expressly provides that any failure by the lessee/licensee to comply with the terms of this Declaration and/or the Governing Documents shall be a default under the lease/license; and

~~(d)~~(e) expressly provides that the Association, through its Board of Directors, has the power to terminate the lease/license and/or to bring summary proceedings to evict the lessee/licensee in the name of the lessor/licensor after thirty (30) days' prior written notice to the Owner in the event of a default by the lessee/licensee in the performance of the lease/license.

Each Owner shall, promptly after entering any lease/license of a Lot or Structure or part of either, forward a conformed copy of the lease/license to the Board of Directors ~~and provide the Board of Directors with the names and contact and vehicle information for each tenant.~~ The Board of Directors may ~~suggest or~~ require an Owner to use a standard form lease/license or an addendum to any lease/license ~~addendum for use that is prepared by Owner~~the Board of Directors. The Board of Directors may require the Owner to pay a rental fee in an amount determined by the Board from time to time. The foregoing paragraph shall not apply to the Association or a mortgagee in possession of a Unit as a result of foreclosure, judicial sale, or a proceeding in lieu of foreclosure.

Notwithstanding the foregoing, no more than seven (7) Lots ("Rental Cap") may be leased or licensed at any given time. By any rule or resolution adopted hereafter, the Board of Directors may increase the Rental Cap so that more than seven (7) Lots may be leased or licensed by the Owners, but in no event shall the Board of Directors be permitted to restrict Lot rentals to less than seven (7) Lots. Once the Rental Cap is reached, the Board of Directors may, in its sole

discretion, authorize an additional rental only upon a showing by an Owner of a hardship that may result from the enforcement of the Rental Cap. Examples of hardship may include, but are not limited to, death of the Owner, military or government transfer, or ill health preventing occupancy of the Lot.

~~8.16-8.15.~~ Enforcement of Maintenance.

(a) The Association, through the Board of Directors, Covenants Committee, or its agent(s), during normal business hours, shall have the right to do any and all maintenance work reasonably necessary in the opinion of the Board of Directors, to keep any Lot whether unimproved, improved or vacant, in neat and good order. Before doing any such work, the Association shall give the Owner of the affected Lot ten (10) days' written notice describing the work to be done, and shall proceed with the work only if the Owner has not taken reasonable steps to do it or have it done before the ten (10) day period expires. The cost and expense of the work shall be paid by the Owner to the Association upon written demand and, if not paid within thirty (30) days, shall become a lien upon the Lot which shall be enforceable in the same manner as, and have the same priority relative to other liens as, the lien of the Annual Assessment.

(b) The Association, through the Board of Directors, Covenants Committee, or its agent(s), shall have the right (upon the same notice and conditions as specified in Subsection (a) to trim or prune, at the expense of the Owner or Resident, any hedge, tree or any other planting that, in the opinion of the Board of Directors, by reason of its location on the Lot or the height to or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is unattractive in appearance, or obstruct street or directional signs or sight lines for vehicular traffic.

~~8.17-8.16.~~ Miscellaneous. Without prior written approval of the Covenants Committee:

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

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

(c) No Lot may be split, divided or subdivided for sale, resale, gift, transfer or otherwise, unless by deed of correction in accordance with Arlington or Fairfax County requirements.

(d) No facility, including but not limited to, poles, wires and conduits for transmission of electricity, telephone messages and the like may be placed or maintained above the surface of the ground on any Lot.

(e) No Lot may be used for any mining, boring, quarrying, drilling, removal, or any other exploitation of subsurface natural resources, which would tend to conflict with the surface development in accordance with federal, state or local laws or regulations.

~~8.18-8.17.~~ Stormwater Facility. As to any stormwater management facilities located on the Property which are not maintained by the county in which located or, in the opinion of the Board of Directors, is not adequately maintained by said county, the Association shall undertake grass mowing and the removal of debris and other material where such debris or material has impeded or threatens to impede the free flow of stormwater through said drainage facility.

~~8.19-8.18.~~ Rule-Making Authority. The Association, through its Board of Directors, has the authority to adopt, promulgate, enforce, and from time to time amend reasonable rules and regulations regarding the contents of this Article or that may otherwise promote the health, safety, and welfare of the Owners and Residents and to assess charges for any violation thereof in accordance with Article IX of this Declaration.

~~8.20-8.19.~~ Effect on First Mortgages. No violation of this Article shall affect the validity of any first mortgage.

~~8.21-8.20.~~ Amendment. Any amendment of this Article requires the approval of First Mortgagees under Section 10.02.

Article IX – Compliance & Enforcement

9.01. Rules and Regulations. The Board of Directors shall have the power to establish, adopt, and enforce reasonable rules and regulations with respect to the use of the Common Area and with respect to all other areas of responsibility assigned to the Association by this Declaration, including without limitation, all rule-making authority granted to the Association in this Declaration.

9.02. Suspension and Charges. The Board of Directors shall have the power to

(a) suspend a Member's, and their designees', right to use the Common Area for so long as any Assessment remains unpaid or any violation of the Governing Documents continues, provided that access to their Lot through the Common Area is not precluded and that such suspension shall not endanger the health, safety, or property of any Owner or resident and

(b) assess charges against any Member for any violation of this Declaration or the Association's Governing Documents for which the Member or his family members, tenants, guests, or other invitees are responsible, subject to the limitations set forth in the POA Act. Such

charges shall be treated as an Assessment against the Member's Lot for the purposes of this Declaration and the POA Act.

9.03. Due Process. The Board of Directors, before imposing any suspension or charge against any Member, shall afford such Member all rights prescribed by Section 55-513 of the POA Act, as may be amended from time to time, including without limitation rights to notice, hearing, and representation by counsel. The Board shall treat all Members equitably, based on decision-making procedures, standards, and guidelines which, even if informal, shall be applied to all Members consistently.

9.04. Legal Proceedings. Notwithstanding the foregoing, the Association, or any other Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now imposed or imposed in the future by the provisions of this Declaration or the Governing Documents of the Association. In the event any such proceeding is initiated, the prevailing party shall be entitled to all costs, including without limitation reasonable attorneys' fees and court costs, associated with such proceedings. The Association does not need to satisfy any due process requirements set forth in this Article prior to bringing any legal enforcement action.

9.05. Other Remedies. The provisions of this Article shall be in addition to and not in limitation of any rights or remedies provided in this Declaration, the POA Act, or otherwise under Virginia law.

9.06. Non-waiver. Failure by the Association or by any Owner to enforce any covenant or restriction in this Declaration shall not be deemed a waiver of the right to do so in the future.

Article X – Easements

10.01. Utility Easements.

(a) There is hereby reserved unto the Association the perpetual and non-exclusive right, power and authority to grant and/or create or declare easements, rights-of-way, and licenses over, upon, across, through and under or otherwise enter into agreements (collectively "Easements") encumbering the "Easement Area" of each Lot and over any Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewer, gas, telephone, electricity, television, cable or communication lines and systems. By virtue of this Section, the providing utility or service company may install and maintain facilities and equipment on the Property, install and maintain facilities and equipment on the Property, and conduits on, in and under the roofs and exterior walls of homes, provided that the company so installing and/or maintaining such equipment and facilities, restores disturbed areas substantially to the condition in which

they were found. The foregoing reservation of authority may be exercised without the consent of the Members, Owners, Residents, or any other Person.

(b) “Easement Area” means (i) those areas on each Lot with respect to which easements are shown on the recorded subdivision plat or any corrected subdivision plat; and (ii) a strip of land within the Lot lines of each Lot, 10 feet in width in front and 5 feet in width at the rear and on each side, each distance being measured from the Lot line toward the center of the Lot.

10.02. Easement for Governmental Personnel. A right of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access. A right of entry on any of the Common Area is hereby granted to animal wardens for the enforcement of Fairfax County and Arlington County Animal Control Ordinances, if any, and any similar health regulation.

10.03. Easement for Structures. In the event any portion of a Structure inadvertently encroaches upon (i) any Lot other than the Lot for which each Structure was intended to be erected, constructed or implanted, pursuant to plans and specifications developed as part of the Property and filed with appropriate Arlington or Fairfax County authorities or (ii) any Common Area, as a result of the construction, repair, shifting, settlement, or movement of such Structure; a valid easement for the encroachment and for its maintenance shall exist so long as the encroachment exists.

Article XI – Notice to and Rights and Consent of Certain Mortgagees and Governmental Agencies

11.01. Notice to First Mortgagees

(a) The Association shall provide written notice of any or all of the following events to any First Mortgagee, Insurer or Guarantor, which has, in writing, informed the Secretary of the Association of its First Mortgagee, Insurer or Guarantor status, as applicable, and requested such treatment:

(i) Addition of, or amendment to, any material provisions of the Bylaws, Articles of Incorporation or this Declaration specified in Section 11.02(d)(ii) below;

(ii) Any decision by the Association to terminate professional management and the same self-management of the Common Area;

(iii) Any condemnation loss or casualty loss which affects a material portion of the Common Area or of any Lot on which there is a first mortgage or first deed of trust, held, insured or guaranteed by a First Mortgagee, Insurer or Guarantor, as applicable;

(iv) Any Delinquency in the payment of Assessments or charges owed by a Member subject to a first mortgage or first deed trust, held, insured or guaranteed by a First Mortgagee, Insurer or Guarantor, as applicable, which remains uncured for a period of sixty (60) days;

(v) Any lapse, material modification, cancellation or expiration, without renewal, or any fidelity bond or of any insurance coverage for Common Area required by Article V; and

(vi) Any proposed action which would require the consent of a specified percentage of First Mortgagees specified in Section 10.02 below.

(b) All notices and documents required to be provided to Members or Owners under this Declaration or under the Articles of Incorporation or Bylaws or the Association shall, upon prior written request by a First Mortgagee, Insurer or Guarantor to the Secretary of the Association, be provided to the First Mortgagee at the same time as provided to Members or Owners.

11.02. Consent to First Mortgagees. Notwithstanding compliance with the other provisions of this Declaration and with the provisions of the Articles of Incorporation of the Association, any First Mortgagee who has provided the Association with notification within Section 11.01(a) above (hereinafter referred to as "Eligible Mortgagees"), shall be afforded the following rights:

(a) Any restoration or repair of the Common Area, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration in the original plans and specifications filed by Developer, unless other action is approved by Eligible Mortgagees on Lots to which at least fifty-one percent (51%) of the votes of Members are attributable;

(b) Any election to terminate the legal status of the community after substantial destruction or a substantial taking Condemnation of the Common Area, must require the approval of Eligible Mortgagees holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of all Lots subject to first mortgages or deeds of trust held by First Mortgagees;

(c) When professional management has been previously required by any First Mortgagee or Insurer or Guarantor, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least two-thirds (2/3) of the votes in the Association are allocated and the approval of Eligible Mortgagees holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to mortgages or deeds of trust held by First Mortgagees;

(d) The following provisions do not apply to amendments to this Declaration, the Articles of Incorporation or the Bylaws, or termination of the Association made as a result of destruction, damage or Condemnation pursuant to subsections (a), (b) or (c) above, or to a reallocation of interests in the Common Area which might occur pursuant to any annexation referred to in this Declaration.

(i) The consent of Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible Mortgagees holding mortgages on Lots which have at least seventy-five percent (75%) of the votes of all Lot subject to mortgages or deeds of trust held by First Mortgagees, shall be required to terminate the legal status of the community; and

(ii) The consent of the Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible Mortgagees holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of all lots subject to mortgages or deeds of trust held by First Mortgagees, shall be required to add or amend any material provision of this Declaration, of the Articles of Incorporation or of the Bylaws, which establishes, provides for, governs or regulates any of the following provided that no such amendment shall be effective to impair or dilute any rights of Members that are governed by this Declaration and are part of the property interest of Owners (unless such exemption from amendment is contrary to the laws of Virginia):

- (A) Voting;
- (B) Assessments, assessment liens or subordination of such
liens;
- (C) Reserves for maintenance, repair and replacement of the
Common Area;
- (D) Insurance or fidelity of bonds;
- (E) Rights to use the Common Area;
- (F) Responsibility for maintenance and repair of the several
portions of the Common Area;
- (G) Expansion or contraction of the Property or the addition,
annexation or withdrawal of property to or from the Property;
- (H) Boundaries of any Lot;

- (I) The interests of the Common Area;
- (J) Convertibility of Lot into Common Area or of Common Area into Lots;
- (K) Leasing of lots;
- (L) Imposition of any right of first refusal or similar restriction on the right of a Member to sell, transfer or otherwise convey his Lot;
- (M) Any provisions which are for the express benefit of mortgagees, First Mortgagees, Insurers, or Guarantors; and
- (N) Any provision of Article VII or Article VIII hereof.

(e) Any First Mortgagee who receives a written request to approve additions or amendments to this Declaration, the Articles of Incorporation or the Bylaws pursuant hereto, who does not deliver or post to the Association a negative response within thirty (30) days of such request shall be deemed to have approved such request

11.03. Other Rights of Mortgagees.

(a) Any First Mortgagee may designate a representative (who shall have no voting privileges) to attend any meeting of the members.

(b) Any First Mortgagee, Insurer or Guarantor who has provided the Association with notification within Section ~~10~~11.01(a) above and requested such treatment shall:

(i) Have the right to inspect the books and records of the Association during normal business hours;

(ii) Be provided by the Association with a copy of the annual audited financial statement of the Association for each fiscal year of the Association within ninety (90) days after the end of that fiscal year.

Article XII – General Provisions

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

12.02. Amendment or Termination

(a) Notwithstanding anything herein to the contrary, the provisions of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Owners of at least seventy-five percent (75%) of all Lots. The right of Owners to amend this Declaration is subject to the rights of certain First Mortgagees and other persons, as set forth in paragraph (b) of this Section.

(b) Certain amendments of this Declaration require the approval of First Mortgagees under Section 11.02.

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

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

12.05. Headings and Cross-References. The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration. Any references in this Declaration to an "Article" or to a "Section" or "Subsection" shall be construed, respectively, as referring to an article of this Declaration, a section of this Declaration or a subsection of the section of this Declaration.

12.06. Gender. Throughout this Declaration the masculine gender shall be deemed to include the feminine and neuter.

IN WITNESS WHEREOF, the Association has caused this Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Ashlawn Ridge (commonly known as Kelsey Court) to be signed pursuant to due and proper authority as of the date set forth above by the Owners of the requisite majority of the Lots as evidenced by the ratification forms attached hereto as Exhibit 1.

Kelsey Court Homeowners Association

By: _____
[NAME], President

To Wit:

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX

to wit:

I, _____, a notary public in and for the jurisdiction aforesaid, do hereby certify that _____, whose name as President of Kelsey Court Homeowners Association is signed to the foregoing writing, and in the name and on behalf of the said corporation, acknowledged the said writing as the act and deed of the said corporation and made oath that he is the President of the said corporation.

Given under my hand this _____ day of _____, 2017.

(SEAL)
NOTARY PUBLIC

My commission expires: _____

CERTIFICATION OF ASSOCIATION PRESIDENT
TO AMENDED AND RESTATED DECLARATION

I, [NAME], President of Kelsey Court Homeowners Association hereby certify that this Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Ashlawn Ridge (commonly known as Kelsey Court) was made in accordance with the procedures and requirements of the Original Declaration and that Owners of a majority of the lots executed this Declaration or ratifications thereof, as evidenced by their signatures on the ratification and consent forms attached hereto as Exhibit 1.

Kelsey Court Homeowners Association

By: _____
[NAME], President

To Wit:

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX,

to wit:

I, _____, a notary public in and for the jurisdiction aforesaid, do hereby certify that _____, whose name as President of Kelsey Court Homeowners Association is signed to the foregoing writing, and in the name and on behalf of the said corporation, acknowledged the said writing as the act and deed of the said corporation and made oath that he is the President of the said corporation.

Given under my hand this _____ day of _____, 2017.

____ (SEAL)
NOTARY PUBLIC

My commission expires: _____