

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS**

**THE OAKS AT FENTON MILL**

**YORK COUNTY, VIRGINIA**

**Plat Instrument**\_\_\_\_\_

**Parcel Identification Number(s)**\_\_\_\_\_

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**THE OAKS AT FENTON MILL  
DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS ("this Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006 by **The R. A. Lawson Corporation, a Virginia corporation ("Developer")**.

RECITALS

Developer is the owner of certain real estate in the County of York, Virginia, on which it intends to create a subdivision to be generally known as "The Oaks at Fenton Mill." In order to provide for the preservation and enhancement of property values and the maintenance and care of certain amenities within the community, Developer desires to subject the real estate described in Exhibit A, to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the community and the owners within the community. Developer owns the property described in Exhibit A.

NOW, THEREFORE, Developer hereby declares that the real estate described in Exhibit A hereto, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, as the same may be amended, modified, supplemented or restated from time to time.

**ARTICLE I  
DEFINITIONS**

Section 1.1. "Annual Assessment"

shall have the meaning set forth in Section 4.2 of this Declaration.

Section 1.2. "Architectural Review Board"

shall have the meaning set forth in Section 5.1 of this Declaration.

Section 1.3. "Articles"

means the Articles of Incorporation of The Oaks at Fenton Mill Homeowners Association, Inc., as the same may be amended from time to time.

Section 1.4. "Association"

means the The Oaks at Fenton Mill Homeowners' Association, Inc., a Virginia nonstock corporation, its successors and assigns.

Section 1.5. "Bylaws"

means the Bylaws of The Oaks at Fenton Mill Homeowners Association, Inc., as the same may be amended from time to time.

Section 1.6. "Clerk's Office" and "County"

"Clerks Office" means the Clerk's Office of the Circuit Court of the County of York, Virginia and "County" means the County of York, Virginia

Section 1.7. "Common Area"

means (i) real estate and/or easements specifically designated as "Common Area" or "Common Area Easement" on recorded plats of the Properties, in any Supplemental Declaration or in any amendment to this Declaration or in any other instrument executed by Developer and recorded in the Clerk's Office; (ii) the portions of the Properties, if any, designated as "Open Space," "buffer zones," "scenic easements," "conservation areas," "landscape easement" and "BMP" or similar purposes on recorded plats of the Properties and conveyed (by deed, plat dedication or easement) to and accepted by the Association; and (iii) all other real property easements, and improvements or facilities now or hereafter owned by the Association which are intended to be devoted to the common use and enjoyment of the Owners. The Common Area includes or may in the future include, without limitation, entrance signs and entry features, landscaping easements, certain fencing, medians located within or adjacent to streets within the Properties, certain parks and open space areas, one or more storm water retention ponds or "BMP's".

Section 1.8. "Declaration"

means this Declaration of Protective Covenants and Restrictions, as the same may from time to time be supplemented or amended.

Section 1.9. "Developer"

means The R. A. Lawson Corporation, a Virginia corporation, and its successors as "Developer" of the Properties to whom the R.A. Lawson Corporation has assigned its rights hereunder by instrument recorded in the Clerks' Office as provided in Section 8.11.

Section 1.10. "General Assessments"

shall have the meaning set forth in Section 4.3 of the Declaration.

Section 1.11. "Governing Documents"

means the Articles, the Bylaws, this Declaration and any Supplemental Declaration, as the same may be amended or supplemented from time to time.

Section 1.12. "Improvement"

shall have the meaning set forth in Section 5.2 of this Declaration.

Section 1.13. "Lot"

means any lot which is shown on a recorded subdivision plat of all or a portion of the Properties (or any subsequently recorded subdivision plat) and on which is constructed or is to be constructed a single family, detached residence. The term "Lot" shall not include any portion of the Properties which at the time in question is not

included in a recorded subdivision plat, nor shall "Lot" include Common Areas, private streets or property dedicated to and accepted by a public authority.

Section 1.14. "Member"

means every person or entity who holds membership in the Association.

Section 1.15. "Neighborhood Builder"

means a general contractor possessing a Class A Virginia Contractor's License, which is engaged in the acquisition of residential real property and construction of residential dwellings thereon and the sale of such residential properties and constructed dwellings to third parties.

Section 1.16. "Owner"

means the record holder, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.17. "Properties"

means all property currently subjected to this Declaration

Section 1.18. "Virginia Code"

shall mean the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed, rectified or recodified, reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

Section 1.19. "Zoning Ordinance"

means the Zoning Ordinance adopted by the Board of Supervisors of the County, as may hereafter be amended, including all special zoning applicable to the Properties and any proffered conditions incorporated therein, together with all other zoning ordinances, rules and regulations applicable to the Properties. If the Zoning Ordinance or any other applicable ordinances, rules and regulations in effect on the first date of recordation of this Declaration are subsequently repealed, amended or supplemented in any respect or if any variances or waivers are subsequently granted with respect thereto, the term "Zoning Ordinance" when used in interpreting or applying this Declaration at any point in time shall mean the Zoning Ordinance and such other ordinances, rules and regulations as they have been repealed, amended, supplemented, varied or waived as of such point in time.

## ARTICLE II OWNERS ASSOCIATION

### Section 2.1. Membership.

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Upon the recordation of a deed to a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

### Section 2.2. Class of Membership.

The Association shall have one class of voting membership:

Class A. All Owners of Lots, including Developer as to Lots owned by Developer, shall be Class A members.

### Section 2.3. Voting Rights.

(a) Each Class A member including Developer, shall be entitled to cast one vote for each Lot owned.

### Section 2.4. Suspension of Voting Rights.

The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration during the period when any such assessment shall be delinquent, but upon payment of such assessment the voting rights of such Member shall automatically be restored.

### Section 2.5. Articles and Bylaws to Govern, Property Owners' Association Act.

Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Declarant shall appoint the members of the Board of Directors and exercise all rights and perform all duties and obligations of the Association until the Period of Developer Control terminates. The Period of Developer Control terminates on the earlier of (i) the date on which Developer (or assignee of Developer, if Developer assigns its rights pursuant to Section 8.11 below) ceases to own twenty-five percent (25%) or more of the land (including undeveloped Lots) lying within The Oaks at Fenton Mill, (ii) the date on which Developer executes and records in the Clerks' Office an amendment to this Declaration terminating the Period of Developer Control, or (iii) on January 1, 2011. However, in the event of any conflict or inconsistency between the provisions of this Declaration or any Supplemental Declaration and the provisions of the Articles or Bylaws, this Declaration and all Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Property Owners' Association Act, Section 55-508 et seq. of the Virginia Code, as the same may be amended from time to time. Except as expressly provided otherwise by applicable law, all remedies provided to the

Association by the Property Owners' Association Act shall be in addition to the remedies set forth in this Declaration.

### ARTICLE III COMMON AREA

#### Section 3.1. Obligations of the Association.

The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, management, operation and control, for the benefit of the Members, of the Common Area conveyed, reserved or dedicated to or for the benefit of the Association and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the Common Area and the improvements thereon in accordance with the requirements of the Zoning Ordinance, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean and attractive condition, order and repair.

The Association shall be responsible for the management, control and maintenance of all street intersection signs (to the extent not maintained by the County), direction signs, plantings, entrance features and/or "theme areas," lighting, stone, fencing, wood or masonry wall features and/or related landscaping installed or planted in the Common Areas by the Developer or the Association, for the benefit of the Members or the Association; provided such items are not maintained by the County or the Virginia Department of Transportation at its expense and are located within Common Areas.

#### Section 3.2. Owners' Rights of Enjoyment and Use of Common Areas.

Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot. The Common Areas shall be used by Owners only for the purpose or purposes for which they may have been improved by Developer or the Association and subject to any applicable restrictions in the Zoning Ordinance. Any Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

#### Section 3.3. General Limitations on Owners' Rights.

The Owners' rights of enjoyment in the Common Areas shall be subject to the following:

(i) the right of the Association to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Areas;

(ii) subject to the limitation imposed by the last sentence of Section 55-514.C of the Virginia Code as in effect on the date hereof, the right of the Association to

suspend the right of an Owner to use or benefit from any of the Common Areas for the period during which any assessment against his Lot is delinquent;

(iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;

(iv) subject to the Bylaws, the right of the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto;

(v) subject to the Bylaws, the right of Developer or the Association to grant utility easements across the Common Areas as provided in Section 7.1;

(vi) subject to the Bylaws, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association; and

(vii) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas.

#### Section 3.4. Delegation of Use.

Any Owner may delegate his right of enjoyment to the Common Area to members of his family living on his Lot and to his guests, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may be established from time to time by the Association.

#### Section 3.5. Damage or Destruction of Common Area by Owner.

In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Lot of such Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

Section 3.6. Rights in Common Areas Reserved by Developer.

Until such time as Developer conveys a parcel of real estate constituting Common Area, as the case may be, to the Association, Developer, shall have the right as to that parcel, but not the obligation, (i) subject to the provisions of Article V hereof, to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, and (ii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration. Until such time as Developer conveys a parcel of real estate constituting Common Area, as the case may be, to the Association, Developer, shall maintain such Common Area in neat condition and repair, including mowing and removing underbrush and weeds.

Section 3.7. Title to Common Area.

Developer may retain legal title to the Common Area, as the case may be, or portions thereof, but notwithstanding any provision herein to the contrary, Developer shall convey each Common Area to the Association, in a condition acceptable to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such improvements are completed and in a condition acceptable to the Association. The Developer shall convey the Common Areas to the Association no later than two (2) years following the designation of the Common Areas on a recorded plat or such other instrument as may be recorded in the land records of the County. Regardless of whether the Common Areas actually have been conveyed by the Developer, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles and Bylaws with respect to the Common Areas from and after the date such Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date a deed or deeds to such Common Area is recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. Until the Common Areas are conveyed to the Association, Developer shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

Section 3.8. Veterans Administration Approval.

During the Period of Developer Control, Developer shall not do the following without the prior written approval of the Veterans Administration: (i) mortgage any Common Areas, (ii) dedicate any Common Areas to general public use, or (iii) consolidate, merge or dissolve the Association.

Section 3.9. Reservation of Rights Regarding Common Area.

Certain of the open space, conservation areas, and historic resources may be better suited for ownership by a private, nonprofit organization among whose purposes is the conservation of open space land and/or natural or historic resources. Notwithstanding anything in this Declaration to the contrary, and regardless of whether such areas have previously been designated as Common Areas, Developer reserves for itself, and it's successors and assigns, the right to transfer and convey in fee simple such open space, conservation areas, and historic resources as Developer deems in the best interests of such areas to one or more private, nonprofit organizations. Any

transfer and conveyance shall comply with any and all specific criteria set forth in the Zoning Ordinance regarding or pertaining to the same.

## ARTICLE IV ASSESSMENTS

### Section 4.1. Creation of the Lien and Personal Obligation for Assessments.

Developer, for each Lot owned within the Properties, hereby covenants (subject to Sections 4.5, 4.8, 4.9 and 4.11), and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws, except as provided in Section 4.12 below. The assessments, together with interest thereon, late charges and costs of collection including attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas, or abandonment of his Lot. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within ten (10) days of its due date shall, at the option of the Board of Directors, incur a late charge in the amount of thirty dollars (\$30.00) or as may be otherwise established from time to time by resolution duly adopted by the Board of Directors of the Association.

### Section 4.2. Purpose of Assessments.

The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the furnishing of certain services benefiting the Lots as more particularly described in Section 4.3 below, for the discharge of all taxes and other levies and assessments against the Common Areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association in accordance with the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles or Bylaws or this Declaration or any Supplemental Declaration, and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

### Section 4.3. Annual Assessments.

"Annual Assessments" shall mean "General Assessments."

#### General Assessments.

1. Purpose. "General Assessments" shall mean those assessments used for the general purposes set forth in Section 4.2 above.

2. Basis. The General Assessments shall be established and increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

Section 4.4. Special Assessments.

In addition to the General Assessments, the Board of Directors of the Association may levy a periodic special assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area or for the purposes set forth in Section 1 or Article XII of the Bylaws. If any such special assessment is in an amount greater than the annual amount of the General Assessment, then no such special assessment shall be levied without the approval of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose or at the annual meeting of the Association and the approval of Developer during the Period of Developer Control; otherwise, such special assessment may be established by the Board of Directors of the Association without a vote of the membership. Any such special assessment may be rescinded by a majority vote of Members attending a meeting of the Association convened in accordance with the Bylaws within sixty (60) days after receipt of the notice of such special assessment.

Section 4.5. Date of Commencement of Annual Assessments.

Subject to Section 4.9, the Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the recordation of the Declaration which subjects such Lot to this Declaration. The first Annual Assessment on a Lot shall be adjusted according to the number of months remaining in the calendar year. Unless the Board of Directors of the Association amends the Bylaws to provide otherwise, the Annual Assessments shall be paid as provided in the Bylaws.

Section 4.6. Effect of Nonpayment of Assessments; Remedies of Association.

The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Virginia Code. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien. The Board of Directors of the Association shall have the power and authority to accelerate all remaining installments of any annual Assessment in the event any assessment installment is not paid within thirty (30) days of its due date.

Section 4.7. Subordination of Lien to Mortgages.

The lien upon each of the Lots securing the payment of the assessments shall have the priority set forth in Section 55-516.A of the Virginia Code.

Section 4.8. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) any property used as a sales or leasing center, model, maintenance center or management facility by Developer or for similar purposes; (ii) all properties dedicated and accepted by a public authority; (iii) all Common Areas; and (iv) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 4.9. Annual Budget.

The Board of Directors shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of assessments (including provision for reserves and physical damage insurance deductibles) and an allocation of expenses. There shall be no responsibility for the payment of assessments until after the Board of Directors adopts its initial annual budget. In the event the Board of Directors fails to adopt a budget, then the budget adopted for the previous fiscal year shall automatically be deemed to be adopted until such time as the Board of Directors adopts a budget for the then current fiscal year.

Section 4.10. Capitalization of Association.

Upon the acquisition of record title to a Lot by the first purchaser thereof (other than Developer), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount equal to one-quarter of the amount of the Annual Assessment payable on such Lot for that year. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association for its reserves.

Section 4.11. Loans by Developer.

The Developer shall have the option, but not the obligation, to loan money to the Association on such terms and at such rates as are commercially reasonable to enable the Association to comply with its obligations under this Declaration. Such loan or loans may be in lieu of, or in addition to, loans obtained by the Association from other parties. Any such loan shall be represented and secured by one or more promissory notes of the Association and shall be listed and disclosed as "Loans from Developer" on all annual budgets and year-end financial statements of the Association.

Section 4.12. Annual Assessments Payable by Developer.

During the Period of Developer Control, Developer may annually elect either to pay its regular assessments as provided for in the Bylaws on its unsold Lots, or to pay the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (the "Developer Assessment"). Unless Developer otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each fiscal year, Developer shall be deemed to have elected to continue paying on the same basis as

during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Lots owned by the Developer to secure Developer's obligations under this paragraph, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. Developer's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

## ARTICLE V ARCHITECTURAL CONTROL AND RESTRICTIONS

### Section 5.1. Architectural Review Board.

There is hereby established a board (the "Architectural Review Board") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners, other than Developer, in accordance with this Article V. The Architectural Review Board shall be composed of three persons, who need not be Members of the Association, from time to time appointed by Developer until 100% of the Properties have been developed and conveyed to Owners other than builders, or by the Board of Directors of the Association from and after the date on which Developer delegates this responsibility to the Association by written instrument in recordable form executed by Declarant. The Developer or the Board of Directors, as the case may be, may appoint one alternate member to the Architectural Review Board, which alternate member may vote only in the absence of a regular member. The members of the Architectural Review Board shall serve for such terms as may be determined by Developer or the Board of Directors of the Association, as the case may be. The Developer reserves the right (which may be exercised at any time or from time to time) to delegate certain, but less than all Architectural Review Board responsibilities to the Association, and if Developer exercises this right the Board of Directors may appoint its own review board which satisfies the same criteria as set forth herein for the Architectural Review Board. The Developer appointed Architectural Review Board and authorized architectural review board appointed by the Board of Directors shall be collectively referred to herein for ease of reference as the "Architectural Review Board." References herein to Architectural Review Board shall apply to either or both boards, as applicable.

### Section 5.2. Plans to be Submitted.

Before commencing the construction, erection, planting or installation, as applicable, of any building, addition, patio, deck, fence, wall, animal pen or shelter, landscaping, exterior lighting, sign, mailbox or mailbox support, improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement") on any Lot, including any site work in preparation therefor, and before commencing any alteration, enlargement, demolition or removal of an improvement or any portion thereof in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, each Owner, other than Developer, shall submit to the Architectural Review Board a completed application on the form provided by the Architectural Review Board (the "Application"), a proposed construction schedule and at least three sets of plans and specifications of the proposed

construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include, but not necessarily be limited to, (unless waived by the Architectural Review Board): (i) a site plan showing the size, location and configuration of all Improvements, including driveways and landscaped areas, and all setback lines, buffer areas and other features required under the Zoning Ordinance or the guidelines adopted by the Architectural Review Board, (ii) as to Improvements initially constructed on a Lot, landscaping plans showing the trees to be removed and to be retained and shrubs, plants and ground cover to be installed, (iii) architectural plans of the Improvements showing exterior elevations, construction materials, exterior colors, driveway material, (iv) a sediment and erosion control plan, and (v) a tree protection plan and such other information as the Architectural Review Board in its discretion shall require (collectively, the "Plans"). The Architectural Review Board may, in its sole discretion, waive the requirement that any or all of the required Plans be submitted in a particular case where it determines such Plans are not necessary to properly evaluate the Application. The Architectural Review Board shall not be required to review any Plans unless and until the Application has been submitted in completed form with the proposed construction schedule and the Plans contain all of the required items. The Application, Plans and the proposed construction schedule must be submitted to the Architectural Review Board at the address of Developer in the same manner as notices are to be sent to Developer pursuant to Article X, for so long as all members of the Architectural Review Board are appointed by Developer, and thereafter the Application, Plans and the proposed construction schedule must be submitted to the Architectural Review Board at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Article X.

#### Section 5.3. Consultation with Architects, etc.; Administrative Fee.

In connection with the discharge of its responsibilities, the Architectural Review Board may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person seeking the approval of the Architectural Review Board agrees to pay all fees thus incurred by the Architectural Review Board and further agrees to pay an administrative fee to the Architectural Review Board in such amount as the Architectural Review Board may from time to time reasonably establish. The payment of all such fees is a condition to the approval or disapproval by the Architectural Review Board of any Plans, and the commencement of review of any Plans may be conditioned upon the payment of the Architectural Review Board's estimate of such fees.

#### Section 5.4. Approval of Plans.

The Architectural Review Board shall not approve the Plans for any Improvement that would violate any of the provisions of this Declaration or of any Supplemental Declaration applicable thereto. In all other respects, the Architectural Review Board may exercise its sole discretion in determining whether to approve or disapprove any Plans, including, without limitation, the location of any Improvement on a Lot.

#### Section 5.5. No Structures to be Constructed, etc. Without Approval.

Except with respect to those improvements constructed by or on behalf of Developer, no Improvement shall be constructed, erected, installed or maintained on

any Lot, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, unless the Application, Plans and construction schedule therefor have been approved by the Architectural Review Board. After the Application, Plans and Construction Schedule therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Board.

Section 5.6. Guidelines May Be Established.

The Architectural Review Board may, in its discretion, establish guidelines and standards to be used in considering whether to approve or disapprove Plans. However, nothing contained in this Declaration shall require the Architectural Review Board to approve the Plans for Improvements on a Lot on the grounds that the layout, design and other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Architectural Review Board for another Lot.

Section 5.7. Limitation of Liability.

The approval by the Architectural Review Board of any Plans, and any requirement by the Architectural Review Board that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Board shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Architectural Review Board have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Board's approval, disapproval or conditional approval of any Plans.

Section 5.8. Other Responsibilities of Architectural Review Board.

In addition to the responsibilities and authority provided in this Article V, the Architectural Review Board shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration, in any Supplemental Declaration and in the Bylaws.

ARTICLE VI  
USE OF PROPERTY

Section 6.1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist on any Lot. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules in furtherance of this provision.

(b) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written consent of the Board of Directors, provided that this shall not prohibit the vacating of boundaries between adjacent Lots to create a bigger Lot, deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments. The vacation of a boundary line between two Lots to create one bigger Lot shall require the prior written consent of the Architectural Review Board, which consent the Architectural Review Board may grant or withhold in its sole and absolute discretion. If the vacation of a boundary line between two Lots occurs, the Owner of the newly created bigger Lot shall continue to pay assessments based on the original two Lots. The foregoing restriction shall not apply to the Developer.

(c) Rules. From time to time the Board of Directors may adopt general rules, including but not limited to rules to regulate potential problems relating to the use of Properties and the well-being of Members, such as the definition of nuisances, keeping of animals, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, satellite dishes, signs, trash and trash containers, restrictions on sprinkler and irrigation systems, private irrigation wells and uses of lakes, water bodies and wetlands, maintenance and removal of vegetation on the Properties and the type and manner of application of fertilizers or other chemical treatments to the Properties in accord with non-point source pollution control standards (collectively, the "Rules"). All such Rules and any subsequent amendments thereto shall be binding on all Members and occupants of the Properties, including their tenants, guests and invitees, except where expressly provided otherwise in such Rule. Such Rules as adopted from time to time are herein incorporated by reference and shall be as binding as if set forth herein in full; provided, however, that in the event of a conflict between any provision(s) in the Rules and the Governing Documents, the provision(s) set forth in the Governing Documents shall control.

(d) Exceptions. In certain special circumstances, the Board of Directors may issue variances exempting a particular Lot from any of the provisions of this Article VI.

(e) Irrigation. Subject to the rights retained by Developer in Section 7.7, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties, except for those which draw on public water or wells which are authorized by the County, shall be installed, constructed or operated within the Properties except for any irrigation system installed by Developer and maintained, repaired and replaced by the Association in accordance with its obligations hereunder; provided, however, this paragraph shall not apply to the Developer, and may not be amended without Developer's written consent so long as Developer owns any Lots.

(f) Alteration of Grade. Except for the grading work performed on the Properties by the Developer, there shall be no altering and/or regrading of the established grade of any Lot or Common Area without the prior written approval of the Developer (for so long as the Developer owns any Lots) and the Architectural Review Board. All berms, swales and drainage channels created by Developer shall be deemed to be a part of the grading of all Lots and Common Areas.

(g) Permitted Uses, Minimum Size Requirements. Except as otherwise provided in the Governing Documents (including without limitation any applicable Supplemental Declaration), no Lot shall be used for other than residential purposes except as designated by the Developer or as set forth below. Nothing in the Governing Documents shall be construed to prohibit the Developer or its designees from using any Lot owned by the Developer (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots.

Further, the Developer specifically reserves the right to operate a construction office or a rental, brokerage and management office or model dwelling at any time on Lots owned or leased by the Developer (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Area, to the extent permitted by law. The Developer may assign its rights under this section to or share such rights with one or more other persons, exclusively, simultaneously or consecutively with respect to the Common Area and Lots owned or leased by the Developer or such persons.

Plans required under Article V of this Declaration shall be approved only if the proposed house, dwelling unit, or other structures will have the required minimum square footage of enclosed finished dwelling space (i) **as to Village A, which is sometimes referred to as "the Oaks" – (Lots 1 - 56), at least 2300 square feet of living space on the first floor in the case of a one-story building and at least 2600 square feet of living space in the case of a building with more than one story and (ii) as to Village B, which is sometimes referred to as "The Bluff" (Lots 57-82), at least 2500 square feet of living space on the first floor in the case of a one-story building and at least 2900 square feet in the case of a building with more than one story.** The square footage of finished basements may be included in calculating the total square footage of the building at the rate of one-half (1/2) per square foot for each finished square foot in the basement area subject to the following conditions: (a) the

basement is finished to the same standards as the rest of the building; (b) the building will be considered to be a building with more than one (1) story; (c) the basement must be finished no later than the issuance of the Certificate of Occupancy for the building; and (d) the basement is not exposed on more than two (2) sides of the building. The term "living space" as used herein shall be determined by exterior perimeter measurements exclusive of garage, porches, decks, and breezeways. All plans must include a garage with parking for at least two (2) cars.

(h) Hazardous Uses, Waste. Nothing shall be done or kept on the Properties which will increase the rate of insurance applicable for permitted uses for the Common Area or any part thereof without the prior written consent of the Board of Directors, including, without limitation, any activities which are unsafe or hazardous with respect to any person or property. No person shall permit anything to be done or kept on the Properties which will result in the cancellation of any insurance on the Common Area or any part thereof or which would be in violation of any law, regulation or administrative ruling. No vehicle of any size which transports inflammatory or explosive cargo may be kept or driven on the Properties at any time. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, toxic wastes and other environmental contaminants (collectively, the "Hazardous Materials"). No Owner shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about such Owner's Lot, the Common Area or any portion of the Properties, or transport to or from any portion of the Properties any Hazardous Materials except in compliance with the Environmental Laws. No waste shall be committed on the Common Area.

(i) Lawful Use. No improper, offensive or unlawful use shall be made of the Properties or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Properties shall be complied with, by and at the sole expense of the Owner, the Association or the Developer, whichever shall have the obligation for the upkeep of such portion of the Properties, and, if the Association, then the cost of such compliance shall be included in the General Assessment or Limited Common Expense Assessment, as appropriate.

(j) Emissions. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere except for normal residential chimney emissions, no production, storage or discharge of Hazardous Materials on the Properties or discharges of liquid, solid wastes or other environmental contaminants into the ground or any body of water, if such emission, production, storage or discharge may adversely affect the use or intended use of any portion of the Properties or may adversely affect the health, safety or comfort of any person.

(k) Noise. No person shall cause any unreasonably loud noise (except for security devices) anywhere on the Properties, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Properties.

(l) Obstructions. No person shall obstruct any of the Common Area or otherwise impede the rightful access of any other person on any portion of the Properties upon which such person has the right to enter. No person shall place or cause or permit anything to be placed on or in any of the Common Area without the approval of the Board of Directors of the Association. Nothing shall be altered or constructed in or removed from the Common Area except with the proper written approval of the Board of Directors.

(m) Association Property. The Common Area shall be used only for the furnishing of the services and facilities for which the same is reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Area shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Area without the prior written approval of the Board of Directors and then only on a temporary basis.

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

(o) Signs. Except for such signs as may be posted by the Developer for promotional or marketing purposes or by the Association, no signs of any character shall be erected, posted or displayed in a location that is visible from the Common Area, or any other Lot, except as otherwise expressly permitted in the Rules and/or the guidelines adopted from time to time by the Board of Directors and/or the Architectural Review Board.

(p) Rental Signs. "For Rent" signs may only be displayed in windows of homes and may not be displayed in the yard except as otherwise expressly permitted in the Rules and/or the guidelines adopted from time to time by the Board of Directors and/or the Architectural Review Board.

(q) Trash. Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials, garbage, or trash of any other kind shall be permitted on any Lot. Trash containers shall not be permitted to remain in public view from the Common Area, any street or another Lot except on days of trash collection. Trash containers and refuse disposal systems must be maintained and stored in the rear yard or screened from view. Trash, leaves and other materials shall not be burned in violation of local ordinances. No incinerator shall be kept or maintained upon the Properties without the prior written approval of the

Board of Directors. All trash collection and removal shall be in accordance with the Rules.

(r) Landscaping, Sight-lines. 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. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; (ii) in violation of the requirements of such easements; (iii) unless in conformity with public utility standards; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any drainage channels. No water pipe, sewer pipe, gas pipe, drainage pipe, television cable, electrical wire, or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground. No planting other than grass may be planted within the public right-of-way.

(s) Right-of-way. No planting, irrigation system or construction shall be permitted within the boundaries of any public right-of-way as shown on the site plans of each parcel unless permitted by the governmental entity or agency having jurisdiction over such right-of-way and then only subject to the prior approval of the Architectural Review Board in the same manner as Improvements. The placement of a mailbox within a public right-of-way is permitted, subject to the rules and regulations of the governmental entity or agency having jurisdiction over such right-of-way.

(t) Vegetation. No trees of any kind and no live vegetation may be cut without prior approval of the Architectural Review Board. The Board of Directors may set rules for cutting of trees to allow for selective clearing, cutting or pruning.

(u) Temporary Structures. No structure of a temporary character, such as, by way of illustration and not limitation, trailers, tents, shacks, barns, pens, kennels, runs, stables, sheds not anchored on foundations or other temporary accessory buildings shall be erected, used or maintained on any Lot except in connection with construction activities. The guidelines adopted by the Architectural Review Board, from time to time, may contain further limitations with respect to permanent accessory structures, if any, which may be erected, used or maintained on any Lot.

(v) Fences. Except for any fence installed by the Developer or the Association, no fence shall be installed within the Properties other than those approved by the Architectural Review Board.

(w) Vehicles. Except in connection with construction activities, no trucks (other than sport utility vehicles and pickup trucks with a load capacity of one (1) ton or less), trailers, campers, recreational vehicles, boats or other large vehicles, including grounds maintenance equipment, may be parked on any portion of the Common Area, or any portion of a Lot visible from the Common Area, or any other portion of a Lot or on any public right-of-way within or adjacent to the Properties, unless expressly permitted by the Board of Directors and only in such parking areas or for such time periods (if any) as

may be designated for such purpose. Parking of all such vehicles and related equipment, other than on a temporary and nonrecurring basis, shall be in garages or screened enclosures approved by the Architectural Review Board or in areas, if any, designated in the Rules. All vehicles must be parked so as not to impede traffic or damage vegetation. No junk or derelict vehicle or other vehicle on which current registration plates and current city and state inspection permits are not displayed shall be kept upon any portion of the Common Area, or any portion of a Lot visible from the Common Area, or another Lot. Vehicle repairs and storage of vehicles are not permitted, except in accordance with the Rules; provided, however, that noncommercial repair of vehicles is permitted within enclosed structures. All motor vehicles including, but not limited to, trail bikes, motorcycles, dune buggies, and golf carts shall be driven only upon paved streets and parking lots. No motor vehicles shall be driven on community trails, pathways or unpaved portions of the Common Area, except such vehicles as are authorized by the Board of Directors as needed to maintain, repair, or improve the Common Area. This prohibition shall not apply to normal vehicular use of designated streets, and alleys constructed on the Common Area.

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

(y) Professional Offices. No Lot containing a dwelling unit shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose; provided, however, that an Owner may maintain a home occupation as permitted by the County and may maintain an office in the dwelling constructed on such Owner's Lot if (i) such occupation or office generates no significant number of visits (as determined by the Board of Directors) by clients, customers or other persons related to the business, (ii) no equipment or other items related to the business are stored, parked or otherwise kept on such Owner's Lot or the Properties outside of an approved enclosure, and (iii) such Owner has obtained approvals for such use as may be required by the County. As a condition to such use, the Board of Directors may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use.

(z) Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the Common Area, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) without the approval of the Board of Directors, is permitted, subject to such limitations and restrictions as may be set forth in the Rules (including, but not limited to limitations, restrictions and/or prohibitions on the number of pets that may be kept on any Lot and litters of domestic pets); provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Properties upon ten (10) days written notice from the Board of Directors. Pets shall not be permitted upon the

Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Pet droppings shall be removed contemporaneously by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Properties agrees to indemnify and hold the Association, each Owner and the Developer free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties. All pets shall be registered and inoculated as required by law.

(aa) Clothes Drying Equipment. No clotheslines or other clothes drying apparatus shall be permitted outside of an enclosed structure on any Lot, unless approved in writing by the Architectural Review Board. No portion of a Lot shall be used for the drying or hanging of laundry unless such laundry is adequately screened from public view.

(bb) Mailboxes and Newspaper Tubes. Only mailboxes and newspaper tubes, if any shall be permitted according to specific criteria adopted by the Architectural Review Board.

(cc) Lighting. No exterior lighting shall be directed outside the boundaries of any Lot.

(dd) Pools. No above-ground swimming pool shall be erected or maintained on any Lot.

(ee) Construction Activities. This section shall not be construed as forbidding any work involved in the construction or maintenance of any portion of the Properties so long as such work is undertaken and carried out (i) with the minimum practical disturbance to persons occupying other portions of the Properties; (ii) in such a way as does not violate the rights of any person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules, any architectural guidelines, the resolutions of the Board of Directors and the other provisions of this Declaration. The Architectural Review Board may approve temporary structures for construction purposes which may otherwise be in violation of the Governing Documents or the Rules.

(ff) Leasing. No dwelling unit located on a Lot shall be used or occupied for transient or hotel purposes. No dwelling unit located on a Lot shall be leased for an initial period of less than six (6) consecutive months without the approval of the Association and the Developer so long as the Developer owns Lots. No portion of any dwelling unit (other than the entire dwelling unit) shall be leased for any period. No more than twenty percent (20%) of the dwelling units located on Lots subjected to this Declaration may be sold to any individual or entity that purchases such dwelling unit for resale or investment purposes. No Owner shall lease a Lot other than on a written form of lease (i) requiring the lessee to comply with this Declaration and the Rules and Regulations; (ii) providing that failure to comply with such documents constitutes a default under the lease; and (iii) permitting the Association and the Developer, for so

long as the Developer owns Lots, to terminate said lease in the event of an Owner's failure to do so upon the occurrence of such a default, which default is not cured within thirty (30) days after notice thereof from the Owner, the Association, or the Company, as the case may be.

(gg) Archaeological Finds. Subject to applicable state and federal law regarding archaeological finds, all archaeological materials found within the Properties belong to the Association. Upon discovery of archaeological materials during periods of construction or otherwise, the Owner of a Lot shall immediately notify the Board of Directors and cease construction activity. The Board of Directors shall have ten (10) days to notify the Owner if it intends to exercise the Association's right under this section. Thereafter, the Board of Directors shall have a period of sixty (60) days to remove the archaeological materials without compensation to the Owner for the archaeological materials, the use of the Lot or delay in construction. The Association shall not be obligated to remove archaeological materials nor be held liable for failure to remove such materials.

(hh) Septic Tanks. No septic tank shall be installed, used, or maintained on any Lot.

(ii) Outbuildings, Detached and Attached Garages and Storage Sheds. No outbuildings, detached garages, or storage sheds shall be erected or maintained on any Lot unless approved by the Architectural Review Board. The Architectural Review Board may adopt specific criteria for such structures. Garages shall be used for the parking of motor vehicles and may not be converted to living space without the approval of the Architectural Review Board.

(jj) Commencement and Completion of Improvements. Neighborhood Builders who acquire at least ten (10) Lots in a single conveyance from the Developer or its successors in title shall commence construction of improvements on all Lots they acquire within thirty-six (36) months of recordation of the deed conveying the Lots. Neighborhood Builders who acquire more than one (1), but less than ten (10) Lots in one conveyance from the Developer or its successors in title, shall commence construction on all Lots within twenty-four (24) months of the date of recordation of the Deed conveying the Lots. All other Owners must commence construction of improvements on a Lot within twelve (12) months after the date of recordation of the Deed conveying the Lot. Commencement of construction shall be evidenced by the issuance of a building permit for a Lot. All improvements on all Lots must be completed within one (1) year after the issuance of the building permit for that Lot, except if such completion is impossible or will result in great hardship to the owner or the Neighborhood Builder due to strikes, fires, national emergency or natural calamities. A building or dwelling unit may not be occupied, whether temporarily or permanently, until a temporary or permanent certificate of occupancy has been issued by the County. Completion of improvements shall be evidenced by the issuance of a Certificate of Occupancy by the County, whether temporary or permanent. During the continuance of construction, the Lot shall be maintained in a reasonably clean and uncluttered

condition. Provided the Developer has given the Owner or Neighborhood Builder prior written notice of such Owner's or Neighborhood Builder's failure to so complete such improvements and such owner or Neighborhood Builder has failed to complete or caused to be completed the improvements within thirty (30) days from the date of such notice, the Developer shall be entitled to take any action necessary to complete the improvements or, if in the Developer's opinion, it is appropriate to do so, to demolish any uncompleted improvements and restore the Lot to its condition prior to the commencement of construction.

#### Section 6.2. Maintenance of Property

(a) Owner Obligation. Each Owner shall keep all Lots owned by him, and all improvements therein or thereon in good order and repair, free of debris, all in a manner and with such frequency as is acceptable to the Association and consistent with a first-quality development, any Rules adopted by the Association, and the Architectural Guidelines adopted by the Association.

(b) Reconstruction and Repair. If a building or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or other major improvement to substantially the same condition as the original construction, or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Properties. Unless the Architectural Review Board permits a longer time period, such work must be commenced within sixty (60) days after the date of the casualty and substantially completed within twelve (12) months after the date of the casualty.

(c) Failure to Maintain. In the event an Owner shall fail to maintain his Lot and the improvements situated thereon as provided herein, the Association, after notice to the Owner and approval of the Board of Directors shall have the right to enter upon such Lot to correct such failure. All costs related to such correction shall become a special assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided herein for non-payment.

#### Section 6.3. Resales of Lots by Owners Other Than Developer.

Upon the acquisition of record title to a Lot from an owner other than Developer, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$100.00, shall be paid to the Association by or on behalf of the purchaser of the Lot. Such administrative fee shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association.

#### Section 6.4. Security.

Neither the Association, nor Developer shall be held liable for any loss or damage by reason of failure to provide security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and Developer, and committees established by any of the foregoing entities, are not insurers and that each Owner, tenant, guest, and invitee

assumes all risk or loss or damage to persons, to structures or other improvements situated on Lots, and to the contents of any Improvements situated on Lots and further acknowledge that Developer has made no representations or warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

## ARTICLE VII EASEMENTS

### Section 7.1. Utility Easements.

Developer reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, irrigation systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public conveniences or utilities, upon, in or over those portions of the Properties (including Lots and Common Areas) as Developer, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). However, after Developer ceases to be the Owner of a Lot, no Utility Easements shall be placed on the portion of such Lot on which is already located a building which was either constructed by Developer or approved by the Architectural Review Board or on which a building is to be located pursuant to Plans approved by the Architectural Review Board or on any portion of a Lot which is not described or shown as an easement area on a recorded subdivision plat or Supplemental Declaration applicable to such Lot. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Developer or the applicable governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements shall be installed below ground, except as otherwise provided in any Supplemental Declaration. Developer shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association and to any other party or parties.

### Section 7.2. Erosion Control.

Developer reserves a perpetual easement, right and privilege to enter upon any Lot and Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Developer or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Developer or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least ten days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association or by Developer in undertaking such erosion control measures on any Lot shall become a special assessment on such Lot and shall constitute a lien against such Lot and shall be

collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Developer.

Section 7.3. Maintenance of Lots.

Developer reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter on any Lot after at least five days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Developer or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Properties or which may constitute a hazard or nuisance. The cost incurred by the Association in taking any action described in the preceding sentence (including any overhead costs associated therewith) shall constitute a special assessment on the Lot and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Developer.

Section 7.4. Construction Easements and Rights.

Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Developer is engaged in developing or improving any portion of the Properties, Developer shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs and (iii) conduct of sales activities, including maintenance of model residences.

Section 7.5. Right of Entry for Governmental Personnel.

A right of entry on any Common Area is hereby granted to personnel of the County, the Virginia Department of Transportation and any other governmental agency or entity in the lawful performance of their official duties, including but not limited to: law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including but not limited to enforcement of cleared emergency vehicle access; public utility and public works vehicles in the performance of their installation, maintenance and repair duties; and inspections personnel for the purpose of reviewing the Association's proper maintenance of the Common Area.

Section 7.6. Easement for Landscaping, Signs and Related Premises.

There shall be and is hereby reserved to Developer for so long as it retains its rights as Developer and to the Association, a non-exclusive easement over all Common Area and those portions of Lots extending for a distance of twenty (20) feet behind any Lot line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping. Exercise of this easement shall be with the consent of the Owner of the affected Lot, or the Architectural Review Board if such Owner does not consent.

Section 7.7. Easement for Irrigation.

Developer retains the right to lay, install, construct and maintain an irrigation system, including underground irrigation lines, over all Lots, Common Areas or landscaping easement areas granted to the Association for the purpose of providing irrigation to other parcels which may or may not be a part of the Properties.

Section 7.8. Easement for Encroachment.

Each Lot and the Common Areas are hereby declared to have an easement over all adjoining Lots and the Common Areas, for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. 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, settling 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 act or acts with full knowledge 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 unintentional 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.

ARTICLE VIII  
GENERAL PROVISIONS

Section 8.1. Duration.

The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of more than two-thirds of the Lots. Further, any termination of the covenants and restrictions of this Declaration shall be subject to the prior written consent of the County. Notwithstanding the foregoing, the provisions of Section 3.2, Section 7.5 and Section 8.9 shall be perpetual.

Section 8.2. Amendments.

Except as otherwise set forth in this Declaration, this Declaration may be amended either (i) by Developer without the consent of any other Owners in order to correct typographical errors, inconsistent references, scrivener's errors, grammatical mistakes, and incorrect or ambiguous punctuation, for so long as the Period of Developer Control continues or (ii) by a vote of two-thirds of the (A) the Class A votes (including Developer as to Class A votes held by Developer). Notwithstanding the foregoing, the provisions of Article VII and Sections 2.2, 3.7, 4.8, and this Section 8.2 may not be amended in any event without the written consent of Developer regardless of whether the Period of Developer Control has terminated, and the provisions of Sections 2.2, 7.5, 8.9 and Articles III and IX and any provision that is subject to or

addressed by Division 17 of Article IV of the Code of the County or any successor section may not be amended without the consent of the County. In addition, Developer shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Properties to comply with applicable laws now or hereafter enacted or to satisfy the requirements of any Federal Mortgage Agency, including, without limitation, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the U.S. Department of Housing and Urban Development, as the same may be amended from time to time, with respect to their purchase or guaranty of mortgage loans secured by Lots.

Section 8.3. Enforcement.

Developer, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Supplemental Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration or any Supplemental Declaration and such failure continues for at least ten (10) days after notice thereof is given to the Owner, then either Developer or the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are subsequently altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the Owner's Lot(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by the Developer, the Association or any Owner to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the County has certain enforcement rights as set forth in Section 8.9 below.

Section 8.4. Limitations.

As long as the Developer has an interest in developing the Properties, and/or any property adjacent to the Properties, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intent of this Declaration. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 8.5. Severability.

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

Section 8.6. Conflict.

In the event of conflict among the Governing Documents, this Declaration shall control, then applicable Supplemental Declarations, then the Articles, then the Bylaws

except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 8.7. Interpretation.

Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 8.8. Use of the Words "The Oaks at Fenton Mill" or "The Oaks at Fenton Mill Homeowners Association."

No person or entity shall use the words "The Oaks at Fenton Mill" or "The Oaks at Fenton Mill Homeowners Association" or any derivative thereof in any printed or promotional material or on any internet website without the prior written consent of Developer.

Section 8.9. Rights of the County.

(a) Failure of Association to Maintain Common Areas. In the event the Association, or any successor organization, shall at any time after establishment of the development fail to maintain the Common Areas or any improvements thereon in reasonable order and condition in accordance with the plans approved by the County, the County may serve notice in writing upon the Association and upon the Owners within the development setting forth the manner in which the Association has failed to maintain the Common Areas, and/or improvements in reasonable condition, and such notice shall contain a demand that such deficiencies of maintenance be cured which notice, in the discretion of the County, may contain a specified time to cure.

(i) The County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.

(ii) If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within the time specified or any approved extension thereof, the County, in order to preserve the taxable values of the properties within the development and to prevent the Common Areas and/or improvements from becoming a public nuisance, may, subject to budgetary limitations, enter upon such Common Areas and maintain, repair and/or replace, (herein referred to collectively as "maintenance") or contract for the maintenance of, the same for an initial period not to exceed one (1) year.

(iii) Such entry and maintenance shall not vest in the general public any rights to use the Common Areas except when the same is/are voluntarily dedicated to the public by the Owners.

(iv) Before the expiration of such one (1) year period, the County shall, upon its initiative or upon the request of the Association, assess the abilities of the Association to resume maintenance responsibilities.

(v) If the County shall determine that the Association is ready and able to maintain the Common Areas in reasonable condition, the County shall cease to maintain the Common Areas.

(vi) If the County shall determine that the Association is not ready and able to maintain the Common Areas in a reasonable condition, the County may, in its discretion, continue to maintain or contract for the maintenance of, the Common Areas.

(vii) The cost of such maintenance by the County and all associated administrative costs incurred by the County shall be assessed ratably against the properties within the development that have a right of enjoyment of the Common Areas, and shall become a charge on such properties, and may be collected by the County as taxes and levies are collected.

(b) The County and its duly authorized representatives shall have the right, upon reasonable notice and during the Association's business hours, to review the Association's financial and related records at the offices of the Association for the purpose of ensuring the Association's solvency and capacity to maintain the Common Areas, and any improvements located thereon.

(viii) Any decision made by the County under this subsection may be appealed by an aggrieved party to the Circuit Court for the County subject to applicable law.

#### Section 8.10. Approvals and Consents.

All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

#### Section 8.11. Assignment of Developer's Rights.

Any and all rights, powers, easements and reservations of Developer set forth herein and in the Articles and the Bylaws, including the rights, powers easements and reservations of the Developer during the Period of Developer Control, may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner, or to any other party in Developer's sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Developer and its assignee and recorded in the Clerk's Office.

Section 8.12. Successors and Assigns.

The provisions hereof shall be binding upon and shall inure to the benefit of Developer, the Association and the Owners and their respective heirs, legal representatives, successors and assigns.

Section 8.13. Compliance with Property Owners' Association Act.

The Association shall be subject to and comply with the Virginia Property Owners' Association Act as set out in §55-509 et seq., in the Code of Virginia, as amended.

ARTICLE IX  
DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a duly held meeting at which a quorum is present upon the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Class A members. Notwithstanding the foregoing, the Association may not be dissolved without the prior written consent of the County. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the County or other appropriate governmental agency in exchange for compensation in an amount not exceeding the appraisal of a mutually acceptable appraiser. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

ARTICLE X  
NOTICES

All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid. Notices to the Developer shall be sent to The R. A. Lawson Corporation, 373 Edwin Drive, Virginia Beach, VA 23462, Attention: Cynthia Clifton; with a copy to Harry R. Purkey, Jr., Esq., Harry R. Purkey, Jr., P.C., Ocean Plaza Corporate Centre, 303 34<sup>th</sup> Street, Suite 5 Virginia Beach, VA 23451 or to such other address as the Developer shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 8.2. Notices to the Association or to Owners (other than Developer) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Virginia Code.

WITNESS the following signature and seal as of the date first above written.

The R. A. Lawson Corporation, a Virginia corporation

By: Cynthia B. Clifton  
Title: Dr. Vice President

STATE OF VIRGINIA  
CITY/COUNTY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this 21 day of MARCH, 2008 by CYNTHIA B. CLIFTON on behalf of The R. A. Lawson corporation. He/she is personally known to me or produced N/A as identification.

My commission expires: 4-30-09

Paul Carson  
Notary Public

Exhibit A

PROPERTY DESCRIPTION

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, lying, situate and being in the County of York, Virginia, and being known numbered and designated as Lots 1 through 82, inclusive, and those certain parcels designated as "Common Area #1" and "Common Area #2", as shown on that certain plat entitled "Subdivision Plat of The Oaks at Fenton Mill, Bruton Magisterial District, County of York, Virginia", which said plat is duly recorded in the Clerk's Office of the Circuit Court of York County, Virginia, as Instrument Number \_\_\_\_\_.