

# **ARTICLES OF INCORPORATION**

## **OF**

### **EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC.**

In compliance with the requirements of Chapter 10 of Title 13.1 of the Code of Virginia (the “Act”), 1950, as amended, the undersigned, hereby creates Eden View Property Owners Association, Inc., a Virginia nonstock corporation, not for profit.

#### **ARTICLE I**

##### **NAME OF CORPORATION**

The name of the corporation is EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC. hereinafter called the "Association".

#### **ARTICLE II**

##### **REGISTERED OFFICE**

The registered office of the Association is located at 7989 Kings Highway, King George, Virginia 22485. The registered office is located within the County of King George, Virginia.

#### **ARTICLE III**

##### **REGISTERED AGENT**

The initial registered agent is Stephen Allen West, Jr. who is a resident of Virginia, and a director and officer of the Association, and whose business address is the same as the Registered Office, located in King George, Virginia.

#### **ARTICLE IV**

##### **DEFINITIONS**

Except as expressly defined herein, all capitalized terms used herein shall have the respective meanings set forth in the Eden View Declaration of Covenants, Conditions, and Restrictions (the “Declaration”) or in the Bylaws of the Association (the “Bylaws”).

#### **ARTICLE V**

##### **PURPOSE AND POWERS OF THE ASSOCIATION**

The Association does not contemplate pecuniary gain or profit to its members, and the specific purposes for which it is formed are to provide for maintenance, preservation and

architectural control of residential lots, and to own, improve, maintain and preserve the Common Area within the EDEN VIEW Subdivision in the County of King George, Virginia, and to promote the health, safety and welfare of the owners and residents within such areas as may come within the jurisdiction of the Association and any additions thereto as may be brought within the jurisdiction of the Association by annexation, as provided for herein, and for these purposes shall have the power:

1. to exercise all of the powers, rights and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration as the same may be amended from time to time, and as set forth in the Bylaws of the Association, said Declaration and Bylaws being incorporated herein by reference;
2. to perform upkeep and otherwise manage the Common Areas in accordance with the provisions of the Declaration;
3. to perform upkeep with respect to, and enter into maintenance agreements regarding, any portions of the Property which the Association is obligated or entitled to maintain pursuant to the terms of the Declaration;
4. to employ or contract with a manager (which may be an affiliate of an Owner) to perform all or any part of the duties and responsibilities of the Association, and delegate its powers to committees, officers and employees;
5. to adopt Rules and Regulations to implement the objectives of the Declaration;
6. to fix, levy, collect, and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration;
7. to pay all expenses including all licenses, taxes, or governmental charges levied or imposed against the Association or the property of the Association;
8. to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, encumber, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property;
9. to borrow money;
10. to build facilities upon land owned or controlled by the Association;
11. to create subsidiary corporations in accordance with Virginia law; and
12. to have and to exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

## ARTICLE VI

### MEMBERSHIP

Section 1. Every Owner of a Lot which is subject to the Declaration, except the Class B Member(s), shall be a Class A Member of the Association. Except for the Class B Member, membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Declaration. Ownership of such Lot shall be the sole qualification for Class A membership. No Class A Member shall have more than one (1) membership in the Association for each Lot it owns.

Section 2. The Class B Member shall be the Declarant, including any successor to or assignee of the Declarant.

## ARTICLE VII

### VOTING RIGHTS

The Association shall have two (2) classes of voting membership:

Class A: A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by the Article entitled "Membership" herein.

Class B: The Class B Member shall have one hundred twenty (120) votes. A Class B Member shall cease to be a Class B Member upon the happening of any of the following events, whichever occurs first:

- (a) ten (10) years from the date of recordation of the Declaration;
- (b) the completion of construction of all homes within the Property by the Declarant and Participating Builders and the release of all improvement bonds posted with the State, County or other municipal agency by the Declarant or a Participating Builder in connection with the Property; or
- (c) the recordation among the Land Records of a written instrument signed by the Class B Member, specifically terminating such rights.

## ARTICLE VIII

### BOARD OF DIRECTORS

The affairs of the Association shall be managed by a board of directors, who need not be members of the Association. The initial number of directors shall be (1), which number may be changed pursuant to the Association's Bylaws. The name of the person who is to act in the

capacity of the initial board of directors of the Association until the selection of its successors is Stephen Allen West, Jr.

At the first annual meeting of the Members after the termination of the Class B membership, the number of directors shall become three (3), and the Members shall select one (1) director for a term of one (1) year; one (1) director for a term of two (2) years; and one (1) director for a term of three (3) years; and as the terms of such directors expire, new directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each.

## ARTICLE IX

### LIMIT ON LIABILITY AND INDEMNIFICATION

Section 1. No Personal Liability. The directors, officers and committee members shall not be liable to the Association or any Owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or criminal acts. Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association. No Owner shall be liable for the contract or tort liability of the Association by reason of ownership or membership therein. Every agreement made by the Board of Directors, the officers or the managing agent on behalf of the Association shall, if obtainable, provide that the directors, the officers or the managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

Section 2. Indemnification. The Association shall indemnify the directors, officers and committee members to the extent that it is contemplated a non-stock corporation may indemnify its directors, officers, committee members and employees pursuant to Sections 13.1-875 through 13.1-883 of the Act; provided, however, that before the Association uses association funds for indemnification, all insurance proceeds must be obtained and applied toward such indemnification. The foregoing right of indemnification shall not be exclusive of any other rights to which a person may be entitled by law, agreement, vote of the Owners or otherwise.

## ARTICLE X

### DISSOLUTION

The Association may be dissolved with the adoption of a resolution by more than two-thirds (2/3) of each class of Members.

## ARTICLE XI

### DURATION

The Association shall exist perpetually unless terminated or dissolved in accordance with the Declaration.

## ARTICLE XII

### AMENDMENT

These Articles of Incorporation may be amended with the approval of two-thirds of the votes entitled to be cast by the Association's Members.

## ARTICLE XIII

### SPECIAL AMENDMENTS

Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these Articles (a) to make a non-material, clarifying or corrective change, or (b) as it deems necessary to obtain approval of any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by a local governmental agency, or (c) as it deems necessary or desirable for the orderly development of the EDEN VIEW subdivision or the operation of the Association, by the filing of Articles of Amendment with the Virginia State Corporation Commission, and shall give written notice to the Members of any amendments made pursuant to clauses (b) and (c). The right of the Declarant to amend these Articles as aforesaid shall continue notwithstanding the lapse of the Declarant's Class B membership.

### INCORPORATOR:

\_\_\_\_\_  
Date

\_\_\_\_\_, Incorporator

**BYLAWS**  
**OF**  
**EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Plan of Ownership**

**Section 1.1.** Applicability. These Bylaws provide for the governance of Eden View Property Owners Association, Inc., a Virginia nonstock corporation (the "Association"). Capitalized terms used herein without definition shall have the meanings specified for such terms in the Articles of Incorporation of Eden View Property Owners Association, Inc. (the "Articles") or in the Eden View Declaration of Covenants, Conditions, and Restrictions, dated as of \_\_\_\_\_, 2020, and recorded in the Clerk's Office of the Circuit Court of the County of King George, Virginia, as Instrument Number \_\_\_\_\_, as the same may hereafter be amended, restated or supplemented, (collectively, the "Declaration").

**Section 1.2.** Compliance. Every Owner and all those entitled to occupy a Lot or Parcel shall comply with these Bylaws.

**Section 1.3.** Office. The principal office of the Association is located at 7989 Kings Highway, King George, Virginia 22485, but meetings of Members and directors may be held at such places within the Commonwealth of Virginia as may be designated by the Board of Directors.

**ARTICLE II**

**Meetings of Members**

**Section 2.1.** Annual Meetings. The first annual meeting of the Members shall be held within twelve (12) months after the incorporation of the Association and each subsequent regular annual meeting of the Members shall be held approximately twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors.

**Section 2.2.** Special Meetings. Special meetings of the Members may be called at an time by the President of the Association, the Board of Directors, or upon written request of Members who are entitled to vote at least one-fourth (1/4) of all of the votes of either class of Members. The notice of any special meeting shall state the time, place, and purpose thereof. Only business within the purpose or purposes described on the notice of a special meeting shall be transacted at the meeting.

**Section 2.3.** Place of Meetings. Meetings of the Members shall be held at such suitable place as may be designated by the Board of Directors.

**Section 2.4.** Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting, by delivering or mailing a copy of such notice, postage prepaid, at least fifteen (15) but no more than sixty (60) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**Section 2.5.** Adjournment of Meetings. If at any meeting of the Members a quorum is not present, Owners holding a majority of the votes, who are present at such meeting in person or by permitted proxy, may adjourn the meeting to a time not less than forty-eight hours after the time the original meeting was called. Notice of an adjournment of any meeting of the Association shall be posted at a conspicuous location, and shall state the time and place for the meeting to be reconvened. Notice may also be posted on any website of the Association; however, posting of notice on such a website shall not constitute official notice of such meeting. If a meeting is adjourned to a different date, time, or place, the notice required pursuant to Section 2.4 above need not be given if the new date, time, or place is announced at the meeting before adjournment.

**Section 2.6.** Voting. Voting at all meetings of the Association shall be on the basis set forth in the Articles of Incorporation. Where the ownership of a Lot or Parcel belongs to more than one person, the person who shall be entitled to cast the vote appurtenant to such Lot or Parcel shall be the person owning such Lot or Parcel who is present at a meeting, whether in person or by proxy. If more than one person owning such Lot or Parcel is present, then such vote shall be cast only in accordance with their unanimous agreement, and absent such unanimous agreement, the vote appurtenant to such Lot or Parcel may not be cast at such meeting. Wherever the approval or disapproval of an Owner is required by the Declaration, the Articles, or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Lot or Parcel at any meeting of the Association. Except where a greater number is required by law, the Declaration, the Articles, or these Bylaws, Owners holding more than one-half of the aggregate membership votes, present in person or by proxy at a duly convened meeting at which a quorum is present ("Majority of Owners"), are required to adopt decisions at any meeting of the Association.

**Section 2.7.** Proxies. A vote may be cast in person or by proxy. Proxies shall be duly executed in writing by one with authority to execute deeds pursuant to the requirements of Section 13.1-847 of the Virginia Code, and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt of notice of revocation by the person presiding over the meeting, from any of the persons owning such Lot or Parcel. Except with respect to proxies in favor of a Mortgagee (hereinafter defined), no proxy shall, in any event, be valid for a period in excess of eleven months after the execution thereof, and, in any event, any proxy shall terminate automatically upon the adjournment of the first meeting, or any continuance thereof, held on or after the date of the proxy.

**Section 2.8.** Alternative Voting Procedures. Notwithstanding any other provision of these Bylaws, to the extent permitted by the laws of Virginia, including, but not limited to, Section 13.1-846 of the Virginia Code, and provided the Board of Directors deems it to be in the

best interest of the Association, any vote to be taken of the Members for the election of directors may be taken by mail or electronically by e-mail or similar service that satisfies the requirements of Section 13.1-846 of the Virginia Code, and the number of votes necessary for election as a director shall be the same as if the vote were taken at a meeting.

**Section 2.9.** Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of the Owners holding at least ten percent (10%) of the votes of each class of Members shall constitute a quorum at all meetings of the Members of Association.

**Section 2.10.** Conduct of Meetings. The President (or, in the absence of the President, the Vice-President or other duly designated officer) shall preside over all meetings of the Association, and the Secretary (which may be a recording secretary) shall keep the minutes of the meeting and record in a minute book all resolutions adopted, and a record of all other transactions occurring, at the meeting.

## **ARTICLE III**

### **Board of Directors**

**Section 3.1.** Number and Qualification. The affairs of the Association shall be managed by a Board of Directors (the "Board") who need not be Members. No Member whose Lot's Assessment (as defined in the Declaration) is more than thirty (30) days past due shall be eligible to be a Director. Any Director whose Lot's Assessment is more than thirty (30) days past due shall be subject to removal by a majority vote of the other Directors. The initial Directors shall be appointed by the Declarant (as defined in the Declaration) or its designee, and shall serve until the first annual meeting of Members after the termination of the Class B membership. The initial number of Directors shall be one (1), which number may be increased to three (3) by a majority vote of the Directors so long as there is a Class B membership. After the termination of the Class B membership the Board of Directors shall consist of not less than three (3) nor more than five (5) natural persons as determined at any annual meeting by the members.

**Section 3.2.** Election. At the first annual meeting of Members after the termination of the Class B membership, the Members shall elect one (1) director for a term of one (1) year; one (1) director for a term of two (2) years; and one (1) director for a term of three (3) years; and, as the terms of such directors expire, new directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**Section 3.3** Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee, if one is formed. Nominations may also be made from the floor at the annual meeting. If a Nominating Committee is created, it shall consist of a Chairperson, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors sixty (60) to ninety (90) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. The



Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

**Section 3.4** Replacement. Any Director may be removed from the Board in accordance with Section 13.1-860 of the Act, with or without cause, by a majority vote of the Members in accordance with Virginia law. In the event of death, resignation or removal of a Director, that Director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

**Section 3.5** Compensation. Except for Directors appointed by the Declarant, no Director shall receive compensation for any service he/she may render to the Association in his/her capacity as a Director. A Director appointed by the Declarant may receive compensation from someone other than the Association. Any Director may be reimbursed for his/her actual, reasonable expenses incurred in the performance of his/her duties as a Director, as permitted by Virginia law.

**Section 3.6** Action Taken Without a Meeting. The Board shall have the right, in the absence of a meeting, to take any action which they could take at a meeting by obtaining the written approval of all of the Directors in accordance with Virginia law. Any action so taken shall have the same effect as though taken at a meeting of the Board.

**Section 3.7** Indemnification. Each Director, in consideration of his/her services as such, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he/she may be a party by reason of his/her past or present role in the Association, unless such action was a result of gross neglect or willful misconduct of the Director.

## **ARTICLE IV**

### **MEETINGS OF DIRECTORS**

**Section 4.1** Regular Meetings. Regular meetings of the Board of Directors shall be held at least once per year, without notice of the date, time, place or purpose of the meeting required.

**Section 4.2** Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or, after the termination of the Class B membership, by any two (2) Directors after not less than three (3) days' notice to each Director.

**Section 4.3** Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## **ARTICLE V**

### **POWER AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 5.1** The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things as are by applicable law, the Declaration, the Articles, or by these Bylaws required to be exercised and done by the Association. The Board of Directors shall have the power from time to time to adopt and enforce rules and regulations as more particularly described in the Declaration; provided however, such rules and regulations shall not be in conflict with the Declaration, applicable Supplemental Declarations, the Articles, or these Bylaws. The Board of Directors may, from time to time, elect to have the Association treated as a "homeowner's association" within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors, on behalf of the Association, shall have the power and duty to:

(a) Prepare an annual budget in which there shall be established the Annual Assessments of each Owner;

(b) Make Annual Assessments and, to the extent permitted by the Declaration, special assessments against Owners to defray the costs and expenses of the operation of the Association and the Common Areas and Limited Common Areas and the services provided by the Association, establish the means and methods of collecting such assessments from the Owners, and establish the period of the installment payments of the assessments. Unless otherwise determined by the Board of Directors (which determination may be made from time to time by resolution of the Board of Directors), and except as set forth in the Declaration, the regular assessment against each Lot and Parcel shall be payable in equal quarterly installments, each such installment to be due and payable in advance of each quarter;

(c) Provide for the operation, care, upkeep, maintenance and servicing of the Common Areas and Limited Common Areas;

(d) Designate, hire, and dismiss the personnel necessary for the operation, care, upkeep, maintenance, and servicing of the Common Areas and Limited Common Areas and such other areas of responsibility of the Association and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) Collect the assessments against the Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors, or prudently invest the same (for which purpose the Board of Directors may retain an investment adviser) to the extent such proceeds are not immediately required, and use the proceeds to carry out the administration of the Association;

(f) Establish fees for the use of the Common Areas and Limited Common Areas;

(g) Open bank accounts on behalf of the Association and designate the signatories thereon;

(h) Make, or contract for the making of, repairs, additions, demolition, and improvements to or alterations of the Common Areas and Limited Common Areas in accordance with the Declaration;

(i) Enforce, by legal means, the provisions of the Declaration, the Supplemental Declaration, the Articles, these Bylaws, the Rules, and the Architectural Guidelines;

(j) Obtain and carry insurance as provided in the Declaration and in Article X of these Bylaws;

(k) Pay the cost of all authorized services rendered to the Association and not billed to Owners or otherwise provided for;

(l) Keep books with detailed accounts of the receipts and expenditures affecting the Association and the administration of the Common Areas and Limited Common Areas, specifying the expenses of maintenance and repair of the Common Areas and Limited Common Areas and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting principles consistently applied (but may be on the cash method of accounting);

(m) Acquire (by gift, purchase, or otherwise) own, improve upon, operate, maintain, convey, encumber, sell, lease, transfer, dedicate for public use or otherwise, dispose of Lots, Parcels, Common Areas, Limited Common Areas, and other property of whatsoever nature;

(o) Enter into land contracts, leases and maintenance agreements, cost sharing, shared use, and cross access arrangements with any person, including, without limitation, any other property owners' association providing services and/or shared facilities in the vicinity of the Property;

(p) Do such other things and acts not inconsistent with the Declaration, the Supplemental Declarations, the Articles, or these Bylaws, which the Board of Directors may be authorized to do under applicable law or by a resolution of the Association;

(q) Grant permits, licenses and easements under, through, and over the Lots and Parcels (as provided in the Declaration) and the Common Areas and Limited Common Areas, for drainage, utilities, roads and access, and other purposes which are reasonably necessary to the ongoing development and operation of the Common Areas and Limited Common Areas and any development adjoining the Common Areas and Limited Common Areas;

(r) When it is authorized to do so as set forth in the Declaration, appoint members of the Architectural Review Board;

(s) Borrow money and mortgage, lien, pledge, or hypothecate any or all of the real or personal property owned by the Association, as security for money borrowed or debts incurred; and

(t) Grant to any person or persons a license and/or similar right to make exclusive use of portions of the Common Areas and Limited Common Areas, provided such grant is evidenced by a duly executed resolution of the Board of Directors.

## ARTICLE VI

### Officers

**Section 6.1.** Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be desirable. All Officers must be members of the Board of Directors and members of the Association.

**Section 6.2.** Election of Officers. The officers of the Association shall be elected annually by the Board of Directors, at the first meeting of the Board of Directors following each annual meeting of the Members, and shall hold office (unless sooner removed) until the next annual meeting of the Board or until their replacements are elected.

**Section 6.3.** Removal of Officers. Any officer may be removed, either with or without cause, and a successor may be elected, at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

**Section 6.4.** President. The President shall be the chief executive officer of the Association, preside at all meetings of the Association and of the Board of Directors, and have all of the general powers and duties which are incident to the office of president of a corporation organized under the Virginia Nonstock Corporation Act.

**Section 6.5.** Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him or her by the Board of Directors or by the President.

**Section 6.6.** Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Owners and Mortgagees requesting notices shall be delivered; upon request by a conveying Owner, deliver statements of all unpaid assessments applicable to the Lot to be conveyed; execute notices of delinquent assessments in accordance with the Declaration; execute notices of and releases of the lien for delinquent assessments as described in the Declaration; and, in general, perform all the duties incident to the office of secretary of a corporation organized under the Virginia Nonstock Corporation Act.

**Section 6.7.** Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data, and be responsible for the deposit of all monies and other valuables in the name of the Board of Directors, the Association, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all the duties

incident to the office of treasurer of a corporation organized under the Virginia Nonstock Corporation Act.

**Section 6.8. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to this Article.

**Section 6.9. Compensation of Officers.** No officer shall receive any compensation from the Association for acting as such; however, any officer may be reimbursed for actual expenses incurred as such officer.

## **ARTICLE VII**

### **Committees**

**Section 7.1. Committees.** The Board of Directors may create one or more committees and may appoint members of the Board, officers of the Association, Members, or Residents (as defined below) to such committees. All residents, including Owners, Owner's families in residence, and renters (collectively, "Residents"), may serve on committees but not chair any committee. Committees shall perform such tasks and serve for such periods as may be designated by resolution adopted by the Board. Each committee shall operate in accordance with the terms of resolution of the Board of Directors designating such committee or with rules adopted by the Board. The provisions of these Bylaws which govern meetings, action without meetings, notice and waiver of notice, quorum, and voting requirements of the Board of Directors, shall apply to committees as well.

**Section 7.2. Eligibility.** To be eligible to be appointed to, and/or to serve on, a committee, Members and their Lots must be in financial good standing as indicated on the books and records of the Association, and must remain in financial good standing during the committee member's term. In addition, to be eligible for service, a committee member's Lot must not be in violation of the Governing Documents during the committee member's term. For the purposes of this Section 7.2, a Member's Lot shall be deemed to be in violation if the Association has notified the Owner of such Lot of a violation of the Governing Documents and such Member has not cured the violation within the time specified by the Association (or if no time is specified by the Association, within a reasonable time after the date of such notice from the Association). Finally, Members wishing to serve on a committee must not be involved in a dispute with the Association at the time they seek appointment or at any time during their term. For the purposes of this paragraph, a "dispute" shall mean (i) a legal claim or cause of action; or (ii) a threat of a claim or cause of action, against the Association, its officers, directors or agents; provided, however, that a dispute does not include a good faith disagreement (but not a claim) regarding an Association policy or interpretation of the Governing Documents, provided the member asserts such disagreement in a professional and non-adversarial manner, and abides by the Board of Directors disposition of such disagreement.

## **ARTICLE VIII**

### **Architectural Review**

**Section 8.1.** Architectural Review Board. There shall be an Architectural Review Board as provided in the Declaration. The number of members, the method of their appointment or election, and their duties and powers shall be as set forth in the Declaration. The provisions of these Bylaws governing meetings, action without a meeting, notice and waiver of notice, and quorum and voting of the Board of Directors shall apply to the Architectural Review Board as well.

## **ARTICLE IX**

### **Operation of the Property**

**Section 9.1.** Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

**Section 9.2.** Adoption of Budget and Establishment of Assessments. The Board of Directors shall adopt a budget (which shall include any proposed capital expenditures) for each fiscal year, as set forth in the Declaration, and shall establish the amount of the annual assessment for every Member subject thereto. In adopting a budget, the Board of Directors shall provide for a reserve fund including a reserve for the deductible on physical damage insurance policies. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year after the initial budget is adopted shall not constitute a waiver or release in any manner of an Owner's obligation to pay his assessment as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner liable therefor shall continue to pay each periodic installment at the rate established for the previous fiscal year.

**Section 9.3.** Payment of Assessments. Each Owner shall pay the assessments established by the Declaration, the Supplemental Declaration applicable to such Owner's Lot, and these Bylaws. No Owner shall be liable for the payment of any part of the assessment against his Lot or Parcel and due subsequent to the date of recordation of a deed by him in fee of such Lot or Parcel to a successor Owner (except a conveyance as security for the performance of an obligation). Each Owner waives the benefit of the homestead exemption as to any assessments levied against either the Lot or Parcel or the Owner. Each such assessment, together with the interest at the highest lawful rate, late charges as established by the Board of Directors, and all attorney's fees and costs of collection shall also be the personal obligation of the Owner at the time the assessment fell due.

**Section 9.4.** Collection of Assessments. The Board of Directors, or the Managing Agent at the request of the Board of Directors, may take action to collect any assessments, interest, late charges, attorney's fees, and costs of collection due from any owner. Each defaulting Owner shall also pay all attorney's fees and costs of collection, incurred in the collection of any unpaid assessment, and shall also pay any expense incurred as a result of a

check being returned to the Association without payment. Any installment of an Annual Assessment or a Special Assessment not paid on or before the due date shall be delinquent, in which case the Board of Directors may exercise any remedies available to the Association at law, under these Bylaws and/or the Declaration. In addition, if such installment is not paid within thirty (30) days after the due date, the Board of Directors shall have the right, upon notice to the Owner, to accelerate the installments owed and declare the entire balance of any Annual Assessment or Special Assessment due and payable in full.

**Section 9.5.** Statement of Assessments and Access to Records. The Board of Directors shall promptly provide any Owner, contract purchaser, or Mortgagee so requesting the same in writing, with a written statement of the amount of the general and any special assessment levied against a Lot or Parcel and all unpaid assessments due from such Owner. The Association shall keep detailed records of its operation and administration and make the same available for inspection as provided in Section 55.1-1815 of the Virginia Code. The Association may impose and collect a charge, reflecting the actual cost of materials and labor, before providing copies of any books and records to a Member.

**Section 9.7.** Maintenance, Repair, Replacement and Other Expenses. The Association shall be responsible for such maintenance, repair, and replacement of the Common Areas and Limited Common Areas as is set forth in the Declaration. Unless otherwise determined by the Board of Directors, all repairs and replacements shall be substantially similar to the original construction and installation and shall be of good quality. The method of approving payment vouchers for repairs and replacements performed by the Association shall be determined by the Board of Directors.

## **ARTICLE X**

### **Insurance**

#### **Section 10.1.** General Requirements.

(a) Purchase of Insurance. All insurance policies relating to the Common Areas and Limited Common Areas shall be purchased by the Association. Neither the Board of Directors nor the Managing Agent shall be liable for failure to obtain any coverage required by the Declaration, by this Article X or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverage is available only at unreasonable cost.

(b) Required Provisions in Policies. Each insurance policy for the Common Areas and Limited Common Areas shall provide that:

(i) The insurer waives any right to claim (A) by way of subrogation against the Association, the Board of Directors, the Managing Agent, or the Owners and their respective lessees, and (B) invalidity arising from acts of the insured.

(ii) Such policy may not be cancelled, not renewed or substantially modified, without at least thirty (30) days prior written notice to the Association and the Managing Agent, and in the case of physical damage and fidelity insurance, to all Owners and Mortgagees and mortgage loan servicers.

(iii) The Association and the Managing Agent, if any, shall be named insureds.

(c) Insurance Companies. All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and, in the case of the physical damage insurance, holding a rating of B/III or better by Best's Insurance Reports.

#### **Section 10.2. Physical Damage Insurance.**

(a) All Risk Coverage. The Association shall obtain and maintain a policy of insurance against fire and such other hazards within the meaning of "all risk", insuring the improvements to the Common Areas and Limited Common Areas (including fixtures and building service equipment and personal property), naming the Association as insured for the use and benefit of all Owners in an amount equal to not less than 100% of the then current replacement cost of the improvements to the Common Areas and Limited Common Areas (exclusive of land, excavations, foundations and other items usually excluded from such coverage), such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage. Any deductible shall not exceed the lesser of \$10,000 or 1% of the amount of coverage, and such deductible shall be considered in establishing the level of reserves.

(b) Required Provisions. Such policy shall also provide (unless otherwise provided):

(i) A waiver of any right of the insurer to repair, rebuild, or replace any damage or destruction if a decision is made not to do so.

(ii) The following endorsements (or equivalent) if applicable and available: (A) "contingent liability from operation of building laws", "demolition cost" and "increased cost of construction", (B) "agreed amount" or its equivalent and "inflation guard," and (C) "steam boiler and machinery coverage" with minimum liability per accident of not less than the lesser of the insurable value of the building housing the boiler or machinery (if applicable) or \$2,000,000.

(iii) That any "no other insurance" clause expressly excludes individual Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Mortgagees, unless otherwise required by law.



(c) Delivery of Policies to Mortgagees. A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer, at least ten days prior to the expiration of the then current policy, to any Mortgagee requesting the same.

(d) Prohibited Provisions. The Association shall not obtain a policy where (i) under the terms of the carrier's charter, bylaws, or policy, contributions or assessments may be made against any Owner or Mortgagee or mortgage loan servicer or become a lien on the Property; or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) that could prevent the Association from collecting insurance proceeds.

**Section 10.3. Liability Insurance.** The Association shall obtain and maintain comprehensive general public liability and property damage insurance in such limits as the Board of Directors may from time to time determine (but not less than \$1,000,000 for bodily injury or property damage), insuring the Association, each member of the Board of Directors, the Managing Agent, and each Owner, against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of, or incident to, the ownership and/or use of the Common Areas and Limited Common Areas and other areas (if any) under the supervision of the Association, including, to the extent applicable and available: host liquor liability, elevator collision liability, comprehensive automobile liability, contractual liability, garage keeper's liability, and bailee's liability. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying liability to an owner because of negligent acts of the Association or of another Owner. The Board of Directors shall review such limits once each year. "Umbrella" liability insurance in excess of the primary limits may also be obtained.

**Section 10.4. Other Insurance.** The Association shall obtain and maintain:

(i) Fidelity coverage to protect against dishonest acts on the part of officers, directors, employees, and agents (including the Managing Agent) of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall: (A) name the Association as an obligee; (B) be written in an amount to cover the maximum funds that will be in the custody of the Association or the Managing Agent at any time, and in any event not less than three (3) months' aggregate assessments on all Lots plus reserves; and (C) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(ii) Worker's compensation and employer's liability insurance if and to the extent necessary to meet the requirements of law and which, if carried, shall name the Managing Agent (if any) as an additional insured; and

(iii) Such other insurance as the Board of Directors may determine or as may be requested from time to time by Owners of a majority of the Lots.

**Section 10.5.** Separate Insurance by Owners. Each Owner shall have the right and responsibility, at his own expense, to obtain insurance for his own Lot or Parcel and improvements thereon and for his own benefit; provided, however, that no Owner shall be entitled to exercise his right to obtain such insurance coverage so as to decrease the amount that the Association, on behalf of all Owners, may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner. Each Owner shall obtain liability insurance with respect to his Lot or Parcel in the amount of at least \$100,000.00. All such policies shall contain waivers of subrogation as against the Association and its Board of Directors, and the Managing Agent (if any), and their respective agents and employees. No Owner shall obtain separate insurance policies in conflict with this Section 10.5.

**Section 10.6.** Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact (coupled with an interest) for each Owner, each Mortgagee, other named insureds and their beneficiaries, and any other holder of a lien or other interest in the Property, to adjust and settle all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims, and to pursue and settle all claims arising out of the taking by way of eminent domain of any of the Common Areas and Limited Common Areas.

## **ARTICLE XI**

### **Mortgages**

**Section 11.1.** Notice to Board of Directors. An Owner who acquires a Lot shall promptly notify the Board of Directors of his name and address. Any holder or beneficiary of a mortgage or deed of trust on a Lot or Parcel may give written notice to the Association of its name and address, and the address of the Lot or Parcel to which its mortgage applies, and in such notice may explicitly request all notification and approval rights hereunder, and any such party that strictly complies with such shall be defined hereunder as a "Mortgagee".

**Section 11.2.** Notice of Default. Upon request, the Association shall give notice to any Mortgagee of the Owner's default in paying an assessment or any other default with respect to that Mortgagee's Lot or Parcel, which has not been cured within 60 days of the date such assessment became due or the date the Association notified such Owner of the default, respectively.

**Section 11.3.** Other Rights of Mortgagees. Upon written request, any Mortgagee shall be entitled to receive written notice of meetings of the Association, and all Mortgagees or their designees shall be entitled to attend meetings of the Association and shall have the right of a member to speak at such meetings. All Mortgagees shall have the right of a member to examine the books and records of the Association.

**Section 11.4.** Mortgagees' Approvals. Unless two-thirds of the Mortgagees holding first liens on Lots and Parcels (voting on the basis of one vote for each Mortgage owned), or two-

thirds of the Owners of Lots and Parcels, have given their prior written approval, the Association shall not be entitled to:

(i) By act or omission, seek to abandon, partition, subdivide, mortgage, sell, or transfer the Common Areas and Limited Common Areas (except that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Limited Common Areas by the Owners and lawful occupants of the Property shall not be deemed a transfer within the meaning of this clause);

(ii) Use hazard insurance proceeds for losses to any portion of the Common Areas and Limited Common Areas for other than the repair, replacement or reconstruction of the Common Areas and Limited Common Areas; or

(iii) Fail to maintain fire and extended coverage on insurable Common Areas and Limited Common Areas on a current replacement cost basis in an amount at least equal to 100% of the insurable current replacement cost.

## **ARTICLE XII**

### **LIABILITY AND INDEMNIFICATION**

**Section 12.1.** No Personal Liability. The directors, officers and committee members shall not be liable to the Association or any Owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or criminal acts. Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association. No Owner shall be liable for the contract or tort liability of the Association by reason of ownership or membership therein. Every agreement made by the Board of Directors, the officers or the managing agent on behalf of the Association shall, if obtainable, provide that the directors, the officers or the managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

**Section 12.2.** Indemnification. The Association shall indemnify the directors, officers and committee members to the extent that it is contemplated a non-stock corporation may indemnify its directors, officers, committee members and employees pursuant to Sections 13.1-875 through 13.1-883 of the Act; provided, however, that before the Association uses association funds for indemnification, all insurance proceeds must be obtained and applied toward such indemnification. The foregoing right of indemnification shall not be exclusive of any other rights to which a person may be entitled by law, agreement, vote of the Owners or otherwise.

**Section 12.3.** Directors and Officers Liability Insurance. The Association shall have the power, pursuant to the Declaration, to purchase and maintain insurance on behalf of any person who is or was a director, officer or committee member against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this section. Further, the availability of the Association's indemnity shall not relieve any insurer of any liability under an insurance policy held by the Association.

## **ARTICLE XIII**

### **Miscellaneous**

**Section 13.1.** Notices. All notices, demands, requests, statements or other communications under these Bylaws shall be in writing and shall be either delivered by overnight express mail, in person, or if sent by U.S. first class mail, postage prepaid, return receipt requested, (i) if to an Owner, at the address which the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Owner, or (ii) if to the Association, at the address of its Managing Agent, or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section, or (iii) if to a Mortgagee, to the address provided by the Owner or to such other address as the Mortgagee may specify by written notice to the Association. All such notices, demands, requests, statements, or other communications shall be deemed to have been given when sent to the appropriate address above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request, statement, or other communication. The Association may utilize electronic forms of communication to serve notices, demands, requests, statements, or other communications to the extent such forms of communication are authorized for such purposes under applicable law.

**Section 13.2.** Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

**Section 13.3.** Gender, Etc. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

**Section 13.4.** Construction. These Bylaws are intended to comply with applicable laws and shall be so interpreted and applied. In the event of conflict between the Declaration, any Supplemental Declaration, or the Articles and these Bylaws, the Declaration, Supplemental Declaration, or Articles shall control.

**Section 13.5.** Amendments. These Bylaws may be amended at a duly noticed regular or special meeting of the Members where a quorum is present by a majority vote of Members entitled to vote and voting at the meeting in person or by proxy.

**Section 13.6.** Special Amendments. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these Bylaws (a) to make a non-material, clarifying or corrective change, or (b) as it deems necessary to obtain approval of any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by the County of King George, Virginia, or (c) as it deems necessary or desirable for the orderly development of the EDEN VIEW subdivision or the operation of the Association, and shall give written notice to the Members of any amendments made pursuant to clauses (b) or (c). This right of the Declarant to amend these By-laws as aforesaid shall continue notwithstanding the lapse of the Declarant's Class B membership.

IN WITNESS WHEREOF, we, being all of the initial Directors of Eden View Property Owners Association, Inc., have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Stephen Allen West, Jr., Director

12841458.2 034598.00029

Prepared by:  
Hirschler Fleischer  
725 Jackson Street, Suite 200  
Fredericksburg, Virginia 22401  
  
Tax Map Parcels 25-62 and 25-62C

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC.**

**County of King George, Virginia**

Grantor: **EDEN RD LLC**, a Virginia limited liability company (“Declarant”)

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## **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

### **EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made as of this \_\_\_\_ day of November, 2020, by **EDEN RD LLC**, a Virginia limited liability company (the "Declarant").

#### **RECITALS:**

- A. The Declarant is the owner of the Property (as hereinafter defined).
- B. The Declarant desires to create on the Property a residential community which shall have permanent open spaces and other common facilities for the benefit of the community.
- C. The Declarant desires to provide for the preservation of the values of the community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.
- D. The Declarant has deemed it desirable for the efficient preservation of the values of said community to create an association to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.
- E. The Declarant has incorporated EDEN VIEW PROPERTY OWNERS ASSOCIATION, INC. as a non-stock corporation under the laws of the Commonwealth of Virginia, for the purpose of exercising the functions of the Association.

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants and restrictions contained herein, grant, establish and convey to each owner of a Lot (as hereinafter defined), mutual, non-exclusive rights, privileges and easements of enjoyment as set forth herein and in common with all other owners of Lots in and to the use of any Common Area (as hereinafter defined) and facilities; and further, Declarant declares the Property to be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

**Section 1.1.** "Additional Area" shall have the meaning set forth in Section 2.1 of this Declaration.

**Section 1.2.** "Annual Assessment" shall have the meaning set forth in Section 5.3 of this Declaration.

**Section 1.3.** "Architectural Review Board" shall have the meaning set forth in Section 6.1 of this Declaration.

**Section 1.4.** "Articles" means the Articles of Incorporation of Eden View Property Owners Association, Inc., as the same may be amended from time to time.

**Section 1.5.** "Association" means Eden View Property Owners Association, Inc., a Virginia nonstock corporation, its successors and assigns.

**Section 1.6.** "Bylaws" means the Bylaws of Eden View Property Owners Association, Inc., as the same may be amended from time to time.

**Section 1.7.** "Clerk's Office" means the Clerk's Office of the Circuit Court of the County of King George, Virginia.

**Section 1.8.** "Common Area" means (i) real estate and/or easements specifically designated as "Common Area" or "Common Area Easement" on recorded plats of the Property, in any Supplemental Declaration or in any amendment to this Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office; (ii) the portions of the Property, if any, designated for "open space," "buffer zones," "scenic easements," "natural open space area," "conservation areas," "landscape easement," "trail easement" and "BMP" or similar purposes on recorded plats of the Property 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 and such non-Owners, if any, who have been authorized to use such Common Area pursuant to Sections 4.2 and/or 4.6 hereof.

**Section 1.9.** "Declarant" means Eden Rd LLC, its respective assigns to whom Eden Rd LLC assigns any or all of its rights and/or obligations as Declarant pursuant to this Declaration by assignment recorded in the Clerk's Office.

**Section 1.10.** "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as the same may from time to time be supplemented or amended.

**Section 1.11.** "General Assessments" shall have the meaning set forth in Section 5.3 of the Declaration.

**Section 1.12.** "Governing Documents" means the Articles, the Bylaws, this Declaration, and any Supplemental Declaration, as the same may be amended, restated or supplemented from time to time.

**Section 1.13.** "Improvement" shall have the meaning set forth in Section 6.2 of this Declaration.

**Section 1.14.** "Land" means real property together with any and all improvements thereon and appurtenances thereunto belonging.

**Section 1.15.** "Limited Common Area" means a portion of the Common Area, more particularly described in Section 4.4 hereof, for the exclusive use of one or more, but less than all, of the Owners and such non-Owners, if any, who have been authorized to use such Limited Common Area.

**Section 1.16.** "Living Unit" means any single building structure or any portion of a structure located on the Property designed and intended to use as a residence, including without limitation, a single family detached dwelling, a townhouse, a condominium unit, or an apartment (as applicable).

**Section 1.17.** "Lot" means any lot which is shown on a recorded subdivision plat (or any subsequently recorded subdivision plat) of any portion of the Property subject to the Declaration or, with respect to condominiums, a governmentally approved site plan, and on which is constructed or is to be constructed (i) a single family, detached residence; (ii) a townhouse; (iii) a zero lot line residence or other type of cluster house; or (iv) any condominium unit within a condominium created pursuant to the Condominium Act of Virginia, § 55.1-1900 et. seq. of the Virginia Code, as the same may be amended from time to time. The term "Lot" shall not include any portion of the Property which, at the time in question, is not included in a recorded subdivision plat of any portion of the Property, or with respect to condominiums, a governmentally approved site plan, nor shall "Lot" include Common Areas, Limited Common Areas, public streets, or property dedicated to and accepted by a public authority.

**Section 1.18.** "Member" means every Person who holds membership in the Association.

**Section 1.19.** "Owner" means the record holder, whether one or more Persons, of fee simple title to any Lot or Parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.20.** "Parcel" means any portion of the Property subdivided from the residue thereof for the purpose of resubdivision into Lots.

**Section 1.21.** "Person" means any natural person, corporation, limited liability company, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government, or any agency or political subdivision thereof, or any other separate legal entity. "Person" shall also mean and include, without limitation, a property or condominium unit owners association.

**Section 1.22.** "Property" means the property described on Exhibit A attached hereto and incorporated herein by this reference, together with such other real property as may from time to time be subjected in whole or in part to this Declaration, pursuant to the provisions contained herein, as and when such other real property is subjected.

**Section 1.23.** "Supplemental Declaration" shall have the meaning set forth in Section 2.1(c) hereof.

**Section 1.24.** "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 provided herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such 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.

## **ARTICLE II ADDITIONS TO THE PROPERTIES**

**Section 2.1.** **Staged Development.** Any portion of the Additional Land owned by the Declarant, or, if not owned by the Declarant, with the consent of the owner and of the Declarant, may be annexed to the Property for development of additional Living Units and Common Area at any time by recordation of a "Supplemental Declaration" executed by the Declarant and the owner, if other than the Declarant, and recorded in the Clerk's Office. No approval by the Owners other than the Declarant and the owner of the Additional Land, if other than the Declarant, shall be required to effect such annexation. Land other than the Additional Land may be annexed to the Property under this Declaration for development if a Supplemental Declaration applicable to the land is approved by no less than seventy-five percent (75%) of the members in attendance at a duly-called meeting of the Association at which a quorum is present. A Supplemental Declaration may include (a) an effective date for the annexation later than the date of recordation in the Clerk's Office; (b) amendments to the exhibits to this Declaration as applicable, and (c) such other provisions as are deemed desirable or necessary by the Declarant with respect to the Additional Land, or the Association with respect to any other land, including, without limitation, occupancy restrictions and confirmation procedures for age-restricted homes as provided in Federal and state fair housing laws and regulations. Any additional Lots shall be subject to assessment in accordance with Article V. The Declarant shall be free to rezone and use any portion of the Additional Land not annexed hereunder in any manner it desires. The Declarant expressly disclaims any warranty that it shall annex any portion of the Additional Land or otherwise develop any portion of the Additional Land as residential homes for sale.

## **ARTICLE III OWNERS ASSOCIATION**

**Section 3.1.** **Membership.** Every Owner of a Lot which is subject to the Declaration, except the Class B Member(s), shall be a Class A Member of the Association. Except for the Class B Member, membership shall be appurtenant to and may not be separated from ownership of any Lot which

is subject to the Declaration. Ownership of such Lot shall be the sole qualification for Class A membership. No Class A Member shall have more than one (1) membership in the Association for each Lot it owns.

**Section 3.2.** The Class B Member shall be the Declarant, including any successor to or assignee of the Declarant.

**Section 3.3.** **Voting Rights.** The Association shall have two (2) classes of voting membership:

Class A: A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by the Article entitled "Membership" herein.

Class B: The Class B Member shall have one hundred twenty (120) votes. A Class B Member shall cease to be a Class B Member upon the happening of any of the following events, whichever occurs first:

- (a) ten (10) years from the date of recordation of the Declaration;
- (b) the completion of construction of all homes within the Property by the Declarant and the release of all improvement bonds posted with the State, County or other municipal agency by the Declarant or a Participating Building in connection with the Property; or
- (c) the recordation among the Land Records of a written instrument signed by the Class B Member, specifically terminating such rights.

**Section 3.4.** **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. The Board of Directors, after appropriate due process, may also suspend the voting rights of any Member who is in violation of the Governing Documents or the rules or architectural guidelines promulgated by the Association and/or who allows a violation to exist of his Lot if such violation remains uncorrected after the last day of a period established by the Association.

**Section 3.5.** **Articles and Bylaws to Govern; Property Owners' Association Act.** Except to the extent expressly provided in this Declaration and any applicable Supplemental 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. 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, § 55.1-1800 et. seq. of the Virginia Code, as the same may be amended from time to time.

## **ARTICLE IV COMMON AREA**

**Section 4.1.** **Obligations of the Association.** The Association, subject to the rights of the Members set forth in this Declaration, and subject to the rights of non-Owners, but only to the extent non-Owners are granted rights pursuant to the provisions of this Declaration, shall be responsible for the maintenance, management, operation and control of the Common Areas and Limited Common Areas and all improvements thereon (including fixtures, personal property and equipment related thereto). The Association shall keep the Common Areas and Limited Common Areas and all improvements thereon and thereunto belonging in good, clean and attractive condition, order and repair and in accordance with this Declaration and the Governing Documents.

In addition to the Association's responsibilities regarding the Common Areas and Limited Common Areas, the Association shall have the express right and authority to enter into cost sharing, shared use and cross access arrangements with any Person, including, without limitation, any other property owners' association providing services and/or shared facilities in the vicinity of the Property.

The Association's performance of its obligations under this Section 4.1 shall be for the benefit of its Members and such non-Owners, if any, who have been authorized to use the Common Areas and Limited Common Areas hereunder, provided, however, that the rights of such Members and non-Owners, if any, shall be subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws and such rules and regulations as may be adopted from time to time by the Association's Board of Directors.

**Section 4.2.** **Owners' Rights of Enjoyment and Use of Common Areas.** Subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and such rules and regulations as may be adopted from time to time by the Association's Board of Directors, 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 and Parcel. The Common Areas shall be used by Owners only for the purpose or purposes for which the Common Areas may have been improved by 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. Without limiting the generality of the foregoing, the Association reserves the right to grant to any Person or Persons a license and/or similar right to make exclusive use of portions of the Common Areas on a temporary basis or, in the instance of parking on a permanent basis; provided that any such grant is evidenced by a duly adopted resolution of the Board of Directors of the Association if granted by the Association.

**Section 4.3.** **[Intentionally Deleted]**

**Section 4.4.** **Limited Common Areas.** The Association shall have the power to restrict portions of the Common Area for the primary use of the Owners of one or more specific Lots (and such

non-Owners, if any, who have been authorized to use such areas) by designating such portions of Common Area as "Limited Common Area".

The Association may either: (i) indicate the locations of the Limited Common Area appertaining to one or more Lots by depicting such Limited Common Area and the Lots to which it is appurtenant on a plat attached to or recorded with a Supplemental Declaration; (ii) label a portion of the Common Area as "Common Area that may be assigned as Limited Common Area" on a plat attached as an exhibit to the applicable Supplemental Declaration and thereafter assign such Limited Common Area to one or more specific Lots by unilaterally amending the Supplemental Declaration to indicate the assignment depicting the Limited Common Area being assigned and the Lots to which it is appurtenant; or (iii) indicate that such Common Area is Limited Common Area by a description in a document recorded in the Clerk's Office.

Subject to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, Bylaws, and the Rules, the Owners of Lot(s) to which Limited Common Area has been assigned and such non-Owners, if any, who have been authorized to use such Limited Common Area, shall have the exclusive right of enjoyment in and to the Limited Common Area assigned, which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot to which such Limited Common Area is appurtenant. The Limited Common Areas shall be used by Owners of Lots to which such Limited Common Areas have been assigned and such non-Owners, if any, who have been authorized to use such Limited Common Area, only for the purpose or purposes for which the Limited Common Areas may have been improved by the Declarant or the Association. Any Limited 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 of a Lot to which such Limited Common Area is appurtenant shall not damage or disturb such natural condition or the enjoyment thereof by other Owners of Lots to which such Limited Common Area is appurtenant. Without limiting the generality of the foregoing, the Association reserves for itself the right to grant any person(s) a license and/or similar right to make exclusive use of portions of the Limited Common Areas.

**Section 4.5. General Limitations on Owners' Rights.** The Owners' rights of enjoyment in the Common Areas shall be subject to the following:

- (a) the right of the Association's Board of Directors to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Areas and Limited Common Areas;
- (b) the right of the Association to grant to any Person or Persons licenses and/or similar rights to make exclusive use of such areas on a temporary basis or, in the instance of parking on a permanent basis;
- (c) the right of the Association's Board of Directors to suspend the right of an Owner to use or benefit from any of the Common Areas and Limited Common Areas for the period during which any assessment against his Lot or Parcel is delinquent, as may be limited by the last sentence of § 55.1-1825(C) of the Virginia Code as in effect on the date hereof;



- (d) the right of the Association's Board of Directors to suspend the right of an Owner to use or benefit from any of the Common Areas and Limited Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules and regulations promulgated by the Association's Board of Directors pursuant to this Declaration, remains uncorrected after the last day of a period established for correction by the Association's Board of Directors (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);
- (e) the right of the Association's Board of Directors to mortgage any or all of the Common Areas and Limited Common Areas as further addressed in the Bylaws;
- (f) the right of Declarant or the Association's Board of Directors to grant or assign utility easements across the Common Areas and Limited Common Areas as provided in Article VIII;
- (g) the right of the Association's Board of Directors to dedicate or transfer all or any part of the Common Areas and Limited Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired;
- (h) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Lots, the Common Areas, and Limited Common Areas;
- (i) the right of the Association's Board of Directors to permit use of any facilities situated on Common Area and Limited Common Areas by use of Persons other than Owners, their families, lessees, and guests upon payment of use fees or other consideration established by the Board of Directors;
- (j) the right of the Association's Board of Directors to determine, in its sole and absolute discretion, whether to remove any improvements, equipment or other facilities located on any Common Area and Limited Common Areas due to obsolescence, age, non-use, and/or if the cost of repairing, operating and/or maintaining the same becomes unreasonable in light of the then-benefit, if any, to the affected Owners.

**Section 4.6. Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Areas and Limited Common Areas 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's Board of Directors.

**Section 4.7. Damage or Destruction of Common Area by Owner.** In the event any Common Area or Limited 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. If the Association undertakes to repair such damage, 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 Limited Common Area or improvement may have been theretofore modified or altered by the

Association, in the discretion of the Association's Board of Directors. 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.

## **ARTICLE V ASSESSMENTS**

**Section 5.1.** **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot or Parcel 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. The assessments, together with interest thereon, late charges, and costs of collection including all attorneys' fees, shall be a continuing lien upon the Lot or Parcel 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 or Parcel 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 Limited Common Areas, abandonment of his Lot or Parcel, a claim that the Association is or has violated the Governing Documents, or by a claim that the Association is not or has not provided certain services that it is otherwise obligated to provide. Each assessment that is not paid when due, shall bear interest at the rate established by the Association's Board of Directors, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within seven (7) days of its due date shall, at the option of the Association, incur a late charge and administrative fee as each may be established from time to time by resolution duly adopted by the Board of Directors of the Association. The Association may establish a collection policy that sets forth the procedure for the collection of Assessments.

**Section 5.2.** **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 Limited Common Areas and improvements thereon and other property owned or acquired by the Association of any nature whatsoever; for the discharge of all taxes and other levies and assessments against the Common Areas and Limited 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 the Association's contractual and legal obligations; for funding and/or providing educational and training activities for directors and officers of the Association and to Association volunteers and Owners; for the provision of services by the Association, its contractors, employees, and agents, as authorized in this Declaration, any applicable Supplemental Declaration and/or in the Articles or Bylaws; for water and any other utilities that may be provided by or through the Association, or which may merely be paid for directly by the Association; 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 5.3.** **Annual Assessments.** "Annual Assessments" shall mean "General Assessments," and "Limited Common Expense Assessments."

(a) **General Assessments.**

1. **Purpose.** "General Assessments" shall mean those assessments used for the general purposes set forth in Section 5.2 above except that the General Assessments shall not be used for those purposes for which Limited Common Expense Assessments shall be used.
2. **Basis.** The General Assessments shall be established upon the basis of an annual budget adopted by the Board of Directors of the Association and increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

(b) **Limited Common Expense Assessments.**

1. **Purpose.** "Limited Common Expenses" are those costs of providing certain services to individual Lots. The purpose of the "Limited Common Expense Assessment" is to provide a means whereby the Owners of Lots, which directly benefit from certain services applicable to individual Lots, pay their proportionate share of the Limited Common Expenses attributable to such services.
2. **Basis.** Limited Common Expenses may be assessed by the Association only against the Lots benefited in proportion to their relative General Assessment liability, inter se or based on usage, as appropriate. Such Limited Common Expenses shall be determined as follows:
  - (i) Any expenses incurred in the managing, maintaining, improving, caring, operating, renovating, repairing, establishing appropriate reserves for, and replacing Limited Common Area may be assessed only against the Lots served by such Limited Common Area;
  - (ii) Any expenses designated in a Supplemental Declaration as Limited Common Expenses to be paid by the Owners of designated Lots subject to such Supplemental Declaration;
  - (iii) Any expenses proposed by the Board of Directors or a specific group of Owners as Limited Common Expenses against a specific group of Lots and agreed to by Owners of such Lots, assessed against such Lots as such Owners may agree or in proportion to their relative General Assessment liability, inter se; and
  - (iv) Any service to individual Lots based on usage.

**Section 5.4. Special Assessments.** In addition to the General and Limited Common Expense 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 for; (1) the maintenance and upkeep, including capital expenditures, of the Common Area (or of the Limited Common Area, provided the special assessment is levied against only those Lots served by such Limited Common Area),

and (2) the discharge of taxes, the procurement of insurance, the establishment of reserves, payment of costs and expenses incurred by the Association in the course of its operations, and the discharge of such services and other obligations as may be assumed by the Association pursuant to its Articles, Bylaws, the Declaration or Supplemental Declaration or any cost sharing, use or cross easement arrangements entered into with any other Person, and for such other purposes as authorized by or pursuant to the Articles or Bylaws.

**Section 5.5.** **Date of Commencement of Annual Assessments.** Subject to Section 5.9, the Annual Assessments provided for herein shall commence as to each Lot or Parcel on the date of the recordation of the deed to such Lot or Parcel to an Owner who purchases the same (and shall be pro-rated, if applicable, to account for the date not falling on a regular due date for such installment). The first Annual Assessment on a Lot or Parcel 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 5.6.** **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 §55.1-1833 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 or Parcel. 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 all attorney's fees and costs of collection shall be added to the amount of such assessment and secured by the assessment lien. In addition, if any installment of any Annual Assessment or Special Assessment is not paid within thirty (30) days after the due date, the Board of Directors shall have the right, upon notice to the Owner, to accelerate the installments owed and declare the entire balance of any Annual Assessment or Special Assessment due and payable in full.

**Section 5.7.** **Subordination of Lien to Mortgages.** The lien upon each of the Lots and Parcels securing the payment of the assessments shall have the priority set forth in §55.1-1833(A) of the Virginia Code.

**Section 5.8.** **Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) all Lots owned by Declarant which are unoccupied as a residence; (ii) all properties dedicated and accepted by a public authority; (iii) all Common Areas and Limited 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 5.9.** **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. The Board of Directors may amend and/or modify any previously adopted annual budget at any time and from time to time during the Association's fiscal year, and shall

have the right to amend and/or modify the annual level of assessments payable pursuant to such amended and/or modified annual budget.

**Section 5.10. Capital Contribution.** Upon the acquisition of record title to a Lot by a Person, a mandatory capital contribution shall be made by or on behalf of such Person to the Association in the initial amount equal to fifty percent of the Annual Assessment against such Lot (the “Capital Contribution”). This amount may be increased from time to time by resolution of the Board of Directors. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed there to the Association for its capital reserve fund(s), or if there is no settlement, shall otherwise be paid directly to the Association upon such person obtaining title. Amounts payable under this Section 5.10 are in addition to any assessments and any fees associated with the Association’s preparation and delivery of the Disclosure Packet pursuant to the Virginia Property Owners’ Association Act (§55.1-1800 *et. seq.*, of the Code of Virginia, as amended). The amount of any unpaid Capital Contribution shall constitute a lien on such Owner’s Lot or Parcel and shall be deemed a special assessment upon such Lot or Parcel and such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided herein for non-payment. Persons who acquire title to a Lot or Parcel are obligated to pay such contribution to the Association regardless of whether such Person acquired title to such Lot or Parcel by purchase (with or without consideration), gift or devise.

**Section 5.11. Administrative Fee Upon Transfer of Title.** In addition to the Capital Contribution stated above in Section 5.10 upon the acquisition of record title to a Lot, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be one hundred dollars (\$100.00), shall be paid to the Association by or on behalf of the Person who acquires title to the Lot. Such administrative fee shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association (or if there is no settlement, such Person shall pay such amount directly to the Association upon such Person obtaining title).

## **ARTICLE VI ARCHITECTURAL CONTROL**

**Section 6.1. Architectural Review Board.** The Association shall maintain a board (the “Architectural Review Board”) for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Architectural Review Board shall be composed of three persons, who shall be Members of the Association, from time to time appointed by the Board of Directors of the Association. The Board of Directors 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 the Board of Directors of the Association, as the case may be.

**Section 6.2. Plans to be Submitted.** Before commencing the construction, erection or installation of any building, addition, patio, deck, pool, fence, wall, animal pen or shelter, 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 or Parcel, 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 but not limited to paint color) of the Improvement or of the Lot or the Parcel on which it is situated, each Owner shall submit to the Architectural Review Board a completed application on the form provided by the Architectural Review Board (“Application”), a proposed construction schedule and a set of plans and specifications of the proposed construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include (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 guidelines adopted by the Architectural Review Board, (ii) as to Improvements initially constructed on a Lot or a Parcel, 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, “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 the Association in the same manner as notices are to be sent to the Association pursuant to Article XI.

**Section 6.3.** **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 6.4.** **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 or Parcel. An Owner whose application has been disapproved by the Architectural Review Board may appeal such decision to the Board of Directors if such Owner notes his/her appeal in writing to the Association and such notice of appeal is received by the Association on or before the date that is five (5) days after the date of the Architectural Review Board's decision.

**Section 6.5. No Structures to be Constructed, etc. Without Approval.** No Improvement shall be constructed, erected, installed or maintained on any Lot or Parcel, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including, without limitation, paint color) of the Improvement or of the Lot or the Parcel 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 and in compliance with all applicable federal, state and local building codes. 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 6.6. Guidelines May Be Established.** The Architectural Review Board may, subject to the approval of the Board of Directors, in its discretion, establish guidelines and standards (collectively, "Architectural Guidelines") to be used in considering whether to approve or disapprove Plans. Such Architectural Guidelines may vary by Lot or Parcel and may include, without limitation, uniform standards for signage and mailboxes and mailbox supports. Such Architectural Guidelines may, at the Board's discretion, contain the appeals process for any Architectural Review Board decision. However, nothing contained in this Declaration shall require the Architectural Review Board to approve the Plans for Improvements on a Lot or a Parcel 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 or Parcel.

**Section 6.7. Limitation of Liability.** The approval by the Architectural Review Board (or by the Association's Board of Directors as applicable) of any Plans, and any requirement by the Architectural Review Board (or by the Association's Board of Directors as applicable) that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board (or by the Association's Board of Directors as applicable) 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 (or the Association's Board of Directors as applicable) 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 (or the Association's Board of Directors as applicable) have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (incidental, consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Board's (or the Association's Board of Directors) approval, disapproval or conditional approval of any Plans.

**Section 6.8. Other Responsibilities of Architectural Review Board.** In addition to the responsibilities and authority provided in this Article VI, 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 VII USE OF PROPERTY**

### **Section 7.1. Protective Covenants.**

(a) **Nuisances.** No nuisance shall be permitted to exist on any Lot or Parcel. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of noise (such as barking dogs) and/or annoyance, shall not be conducted or permitted on any Lot, Parcel, the Common Area, the Limited 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 or Parcel 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, 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 and provided that this shall not prohibit the division or combination of condominium units in accordance with law, or the creation of condominiums. Any such vacation of Lot boundaries require the prior written consent of the Association, which consent the Association may grant, withhold, or condition in its sole and absolute discretion. Any Owner who vacates a boundary between two Lots, as well as such Owner's successors in title, will thereafter be obligated to pay assessments to the Association for the number of original Lots prior to the vacation of the boundary.

(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 Property 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, parking of vehicles, assignment of parking spaces, 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 Property and the type and manner of application of fertilizers or other chemical treatments to the Property in accord with non-point source pollution control standards (collectively, "Rules"). All such Rules and any subsequent amendments thereto shall be binding on all Members and occupants of the Property, 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 or Parcel from any of the provisions of this Article VII.



(e) **Irrigation.** 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 Property shall be installed, constructed or operated within the Property without the written approval of the Association, and the Association shall have the right to draw upon water from such water bodies for irrigation of the Common Area and Limited Common Area. All sprinkler and irrigation systems shall be subject to approval in accordance with Section 6.5 of this Declaration. Provided, however, this paragraph may not be amended without the approval of the Association. Further, the Association shall have the right to utilize reclaimed water for irrigation purposes.

(f) **Lakes and Water Bodies.** The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other water bodies within the Property.

(g) **Permitted Uses.** 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.

(h) **Hazardous Uses; Waste.** Nothing shall be done or kept on the Property which will increase the rate of insurance applicable for permitted uses for the Common Area and Limited 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 Property which will result in the cancellation of any insurance on the Common Area and Limited 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 Property 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 ("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, "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, the Limited Common Area, or any portion of the Property, or transport to or from any portion of the Property, any Hazardous Materials except in compliance with the Environmental Laws. No waste shall be committed on the Common Area or Limited Common Area.

(i) **Lawful Use.** No improper, offensive or unlawful use shall be made of the Property 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 Property shall be complied with, by and at the sole expense of the Association. 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 Property, 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 Property 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 Property, nor shall any person permit or engage or allow such persons, dogs or other pets to engage in any activity, practice or behavior which causes unreasonable annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.
- (l) **Obstructions.** No person shall obstruct any of the Common Area or Limited Common Area, or otherwise impede the rightful access of any other person on any portion of the Property 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 or Limited 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 or Limited Common Area except with the prior 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 authorized hereunder or otherwise 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 Association, no signs of any character shall be erected, posted or displayed in a location that is visible from the Common Area or Limited Common Area or any other Lot or street, except as otherwise expressly permitted in the Rules and/or the Architectural Guidelines.
- (p) **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 Areas or Limited Common Areas or another Lot, except on days of trash collection and as provided in the Rules. Trash, leaves and other materials shall not be burned in violation of local ordinances. No incinerator shall be kept or maintained upon the Property without the prior written approval of the Board of Directors. All trash collection and removal shall be in accordance with the Rules. Exceptions may be made on case by case basis.

(q) **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 items 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; (iv) if such items block view corridors as determined by the Architectural Review Board; or (v) if such items 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 except as otherwise expressly permitted as provided in subparagraph (gg) below.

(r) **Vegetation.** No live trees with a diameter in excess of five (5) inches, measured three (3) feet above ground, nor trees in excess of three (3) inches in diameter, similarly measured, which are generally known as flowering trees (such as dogwood or redbud) or as broad leaf evergreens (such as holly, laurel, or rhododendron), no live vegetation on slopes of greater than 25 percent (25%) gradient, or marked "no cut" areas on approved site plans, 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 or cutting, and the Board of Directors shall have the sole and absolute discretion to determine whether to remove trees within the Common Area and Limited Common Area.

(s) **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 or otherwise specifically permitted in the Rules. The Architectural Guidelines may contain further limitations with respect to permanent accessory structures that may be erected, used, or maintained on any Lot.

(t) **Fences.** Except for any fence installed by the Declarant or the Association, no fence shall be installed except in conformance with standards established by, and with the prior written approval of, the Architectural Review Board. No chain link fencing will be permitted on the Property; provided, however, that the Declarant or its designees may erect a chain link fence for the temporary storage of building materials, for the protection of building sites, around tennis courts or such other areas as required by applicable law, building code and/or governmental regulation.

(u) **Vehicles.** Except in connection with construction activities, no trucks (except for private passenger trucks), trailers, commercial vehicles, construction trucks, campers, recreational vehicles, all-terrain vehicles, personal watercraft, jet skis, boats or other large vehicles, including grounds maintenance equipment, may be parked on any portion of the Common Area or Limited Common Area, or any portion of a Lot visible from the Common Area or Limited Common Area or any other Lot, or on any public right-of-way within or adjacent to the Property, or any grass area, 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. 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/county and state inspection permits are not displayed shall be kept upon any portion of the Common Area or Limited Common Area or any portion of a Lot visible from the Common Area or Limited Common Area or another Lot, or any public or private right-of-way. 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 snowmobiles shall be driven only upon paved streets and parking areas. No motor vehicles, motorized scooters, "Segways" or similar motorized equipment shall be driven on community trails, pathways, or unpaved portions of the Common Area or Limited Common Area except (i) such vehicles as are authorized by the Board of Directors as needed to maintain, repair, or improve the Common Area or Limited Common Area and (ii) motorized wheelchairs or other devices to assist disabled persons.

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

(i) **Owner Occupancy.** The Lots are intended to be Owner-occupied, and shall not be leased, rented, licensed, or let in whole or in part (collectively referred to as "leased") except as expressly authorized in this Section. Lots shall be deemed to be Owner-occupied if the Lot is occupied by at least one of the Owner(s) of the Lot and/or at least one member of the Owner's family. For the purpose of this Section, "family" shall include two (2) or more persons related by blood, marriage, adoption or legal guardianship (including the designee of such parent or other person having such custody, with the written permission of such parent or other person). If a Lot is occupied by the family member(s) of the Owner of that Lot, but not by the Owner(s), such Lot shall not be considered as "leased" unless a portion of the Lot is occupied by persons who are neither Owners nor family members of the Owner(s). Lots shall not be sold or conveyed to any person or entity who intends to acquire title to the Lot for investment purposes and/or for the purpose of leasing the Lot or any portion thereof to another person or entity.

(ii) **Limitation on Leasing.** At no time shall more than the lowest number required to equal or exceed twenty percent (20%) of the Lots, be leased in whole or in part (hereinafter referred to as the "Leasing Limit"), except as expressly authorized in Section 7.1(v)(vi) below. The Association shall permit the leasing of Lots needed to reach the Leasing Limit, as more particularly described herein.

(iii) **Leasing Prerequisite.** Any Owner intending to lease a Lot must have owned the Lot for at least one (1) year before such Owner is eligible to lease the Lot.

(iv) **Request and Approval.**

(1) Any Owner who intends to lease his Lot must be in good standing, including being current on any and all assessments. Any Lot Owner intending to lease his Lot shall submit a written request form, which may be obtained from the Association's community manager (the "Written Request"), to the Board, indicating the Lot Owner's desire to lease the Lot. It shall be the Owner's responsibility to ensure that the Association receives the Written Request.

(2) Owners must seek and obtain the written consent of the Association prior to entering any lease. The number of Lots leased at the time an Owner seeks to lease his Lot has no bearing on the Owner's obligation to seek and obtain such Association consent.

(3) Upon receiving the Written Request to lease, the Association shall, within fifteen (15) calendar days thereof, notify the Owner if the Owner's request has been accepted or declined. Permission will be granted or denied by the Board of Directors solely on the basis of whether the Leasing Limit has been reached, the order in which the Written Request was received by the Board of Directors and the compliance of the proposed lease with the requirements set forth in Section 7.1(v)(v) below.

(4) An Owner who receives approval to lease his Lot has up to ninety (90) days in which to obtain a written lease agreement and provide the executed "Lease Addendum" (as hereinafter defined) to the Association. If an Owner has not obtained an executed lease agreement and provided the executed Lease Addendum to the Association within 90 days of receiving written approval from the Board of Directors, such approval shall automatically expire.

(5) If an Owner wishes to lease his Lot and the Leasing Limit has been reached, the Association shall maintain a waiting list under such terms and conditions as set forth in the Rules of the Association.

(v) Lease Requirements. The following provisions shall govern all Lot leases.

(1) No Lot may be leased for a term of less than twelve (12) months, nor more than twenty-four (24) months. At the conclusion of an initial term of at least twelve (12) months, an Owner and an existing tenant-lessee may continue the rental relationship on a month-to-month basis. In this event, such Owner must execute and submit to the Association a new Lease Addendum reflecting the month-to-month terms of the lease.

(2) No more than three (3) unrelated persons may occupy a Lot.

(3) Subletting is not permitted.

(4) Any Owner whose request to lease a Lot is approved shall promptly provide to the tenant-lessee(s), at the Owner's expense, a copy of the Governing Documents and the Rules. All tenant-lessees shall be required to execute a "Lease Addendum," which form may be obtained from the Association's community manager, upon approval of the written request, and which shall provide, among other things, that (a) the tenant-lessee(s) shall be bound by the Governing Documents and the Rules, (b) a breach of the Governing Documents or Rules by the tenant-lessee(s) shall be a breach of the lease and (c) the tenant-lessee agrees that the Board shall have the right to enforce compliance with the Governing Documents and Rules directly against the tenant(s)-lessee(s).

(5) The tenant-lessee(s) of any Lot shall be responsible for any damage to the Common Area, any adjoining Lot, or any other property subject to this Declaration (collectively, the "Damaged Property"), caused by the tenant-lessee and/or its guests and invitees, and shall be responsible for all legal fees, court costs, or other costs incurred by the Association in removing the tenant-lessee(s). The ultimate responsibility for the conduct of any tenant-lessee, however, rests with the

Owner(s). As such, Owners and their tenant-lessees are jointly and severally liable for any damage to the Damaged Property.

(6) Prior to the occupancy of the Lot pursuant to a lease agreement, the Owner shall provide to the Association a copy of the Lease Addendum, the full names of all tenants and occupants, and the permanent address and emergency telephone number of the Owner.

(vi) Exceptions. The Board of Directors may, in its sole discretion, authorize a lease that will exceed the maximum of leased Lots provided for in Section 7.1(v)(ii) above (the "Hardship Exception") only upon a showing by the Owner of a hardship that will result from the Board of Directors' denial of the lease request. Such hardships may include:

(1) Owners who are active duty members of the United States Armed Services (or Owners who have been called onto active duty), who have been deployed to serve in a location more than fifty (50) miles away from the Lot, for an engagement reasonably expected to exceed one hundred twenty (120) consecutive days. Such Owners may apply in writing to the Board of Directors for a temporary waiver of the restrictions set forth herein. The Board of Directors may condition any granting of a Hardship Exception on such terms and conditions as the Board of Directors may specify, in its sole discretion.

(2) An Owner suffering from a personal or financial hardship. Such Owners may apply in writing to the Association for a Hardship Exception to lease his Lot. Any waiver or extension thereof shall only be valid if it is in writing and signed by the president of the Association. (Examples of personal or financial hardships may include, but are not limited to, (i) the sale of a Lot by an Owner with a temporary lease-back by the selling party, of no more than six months, to ease the original Owner's transition from one residence to another; (ii) a lease arrangement with a live-in aide for medical or care giving purposes; (iii) the settlement of an estate upon the death of the Owner, in which the inheriting party/parties wish to lease the Lot to a third-party for no more than twenty-four (24) months; or (iv) a lease arrangement to share with a roommate/companion all or part of the Lot. Note: The foregoing examples are illustrative only, and the ultimate determination of whether to grant an exception for personal or financial hardship is in the sole discretion of the Board of Directors. The existence of one of the foregoing examples does not in any way guarantee an exception will be granted).

(3) Owners seeking a Hardship Exception shall provide such other supporting information as the Board reasonably requests. Such information shall be kept confidential.

(4) In the event a Hardship Exception is granted, such excepted Lot shall count against the total number of leased Lots. Therefore, upon the total number of leased Lots dropping below the Leasing Limit, such excepted Lot shall take the place of a Lot that is no longer leased, and be counted as one of the Lots constituting those included in the Leasing Limit.

(vii) No Landlord-Tenant Relationship. In no event shall it be determined that a landlord-tenant relationship exists between the Association and the occupant(s) of a leased Lot.

(viii) Leases in Effect When Declaration Recorded. Lots that are leased as of the date of recordation of this Declaration shall continue until the Lot is sold or re-occupied by the Owner, the current tenant moves out, or the lease (including any renewal terms) terminates, whichever

occurs first. Any Owner whose Lot is leased as of the date of recordation of this Declaration shall (to the extent he has not already previously done so) provide the Association with the full names of all tenants and occupants, the permanent address and emergency telephone number of the Owner(s) and the term of the lease, including any renewal terms, within thirty (30) days of the date of recordation of this Declaration.

(ix) **Authority of Board of Directors.** The Board of Directors shall have the authority to adopt reasonable rules and regulations regarding procedures associated with leasing of Lots and the administration of the requirements set forth herein. Such rules and regulations may include, but are not limited to, administrative fees to be paid by an Owner, payment of maintenance and repair costs, if any, associated with negligent or reckless conduct by tenant-lessees, wait list procedures and maintenance issues.

(x) **Not Applicable to Lenders/Mortgagees.** The provisions and restrictions on leasing as contained in this Section 7.1(v) shall not apply to foreclosing lenders or impair the right of first mortgagees to foreclose or take title to a Lot, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, to take possession and lease an acquired Lot or to otherwise act upon their mortgages.

(w) **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 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 Property outside of an approved enclosure, and (iii) such Owner has obtained approvals for such use as may be required by the locality (if any). 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.

(x) **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 or Limited 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 the Rules; 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 Property upon ten (10) days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area or Limited Common Area unless accompanied by someone who can control the pet, and unless carried or leashed. Pet droppings shall be removed by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Property agrees to indemnify, defend, and hold the Association 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 Property. All pets shall be registered and inoculated as required by law.

(y) **Clothes Drying Equipment.** Only such clotheslines or other clothes drying apparatus expressly permitted under, and meeting the criteria set forth in, the Rules and/or any Architectural Guidelines, shall be permitted outside of an enclosed structure on any Lot.

(z) **Mailboxes and Newspaper Tubes.** Only mailboxes and newspaper tubes approved by the Architectural Review Board shall be permitted. The Architectural Review Board may adopt specific criteria applicable to mailboxes and newspaper tubes.

(aa) **Lighting.** No exterior lighting shall be directed outside the boundaries of any Lot, unless otherwise approved by the Association. All exterior lighting requires pre-approval by the Architectural Review Board prior to installation.

(bb) **Pools.** No above-ground swimming pool shall be erected or maintained on any Lot. No in ground swimming pool shall be erected or maintained on any Lot unless approved by the Architectural Review Board and enclosed by a fence that has been approved by the Architectural Review Board.

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

(dd) **[Intentionally Deleted].**

(ee) **Garage Sales and the Like.** Except with respect to any community-wide “garage sale” held pursuant to a resolution of the Board of Directors, no Owner shall use his Lot, nor permit his Lot to be used, for the conducting of a “garage sale”, “yard sale”, “tag sale”, “flea market” or other similar purpose. The Rules of the Association may contain additional restrictions with respect to the use of Lots in connection with community-wide garage sales.

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

(gg) **Antennas and Similar Devices.** Only those antennas expressly permitted under the Federal Communications Commission’s Over-the-Air Reception Devices (OTARD) Rule implementing Section 706 of the Telecommunications Act of 1996, as amended from time to time, are allowed. All others are expressly prohibited. As of the date of the recording of this instrument, the following are permitted under OTARD: (a) direct broadcast satellite (DBS) antenna one (1) meter or less in diameter or diagonal measurement; (b) antennas designed to receive Multipoint Distribution Services (MDS) that are 39.37 inches (one (1) meter) or less in diameter, (c) antennas designed to receive television broadcast signals of any size; (d) transmission-only antennas if they are necessary for the use of a covered reception antenna and are one (1) meter or less in diameter;



and (e) masts used in conjunction with any of these antennas (collectively, the foregoing are referred to as “Covered Antennas”). The foregoing list is subject to change pursuant to changes in OTARD and/or any other applicable laws. Covered Antennas shall be located in accordance with the Architectural Guidelines, to the extent such restrictions are not prohibited by the OTARD Rule, and an application for Architectural Review Board approval must be submitted for any device deviating from the following:

1. Television broadcast Covered Antennas must be installed inside a Living Unit whenever possible.
2. No roof antenna shall extend more than ten (10) feet above the highest point on the roof.
3. Satellite dish antenna, if eighteen inches or less, shall be located on the rear of the Living Unit either just below the roof ridge or the fascia board below the roof eaves, or if larger than eighteen inches, be located behind the rear foundation of the Living Unit.
4. Any cable associated with a satellite dish or other antenna shall be buried or shall not be visible on the structure to which it is attached or extended. If the satellite dish is mounted on a pole affixed to the ground, the pole and the cable associated with such satellite dish should be screened such that the pole and cable are not visible from the street(s) adjoining the Lot.

(hh) **Holiday/Seasonal Decorations.** Holiday/Seasonal decorations may be displayed without approval of the Board of Directors so long as such decorations are displayed in accordance with adopted Rules relating to such.

(i) **Flags.** Flags may be displayed on Lots in strict accordance with the following and with any additional Architectural Guidelines of the Association:

1. One Flag of the United States which is bracket-mounted to the front side of the residence, which flag must be flown and maintained in accordance with the standards specified in the United States Flag Code; and
2. Up to one other decorative flag not to exceed 6 ft by 4 ft, which may be displayed on a temporary basis for a special occasion, and shall be taken down on the same day. Example: a flag in support of a particular sports team on the day of a game.

(ii) **Delivery Drones.** No Owner, family member of an Owner, or tenant shall direct or permit an unmanned aerial vehicle containing a package for delivery (a “Delivery Drone”) to land in or on the Common Area, unless such lands in a portion of the Common Area that has been designated by the Board of Directors as a landing site for a Delivery Drone. Pursuant to such, the Board of Directors may designate and restrict a portion of the Common Area to be used for the sole and exclusive use of the landing of Delivery Drones and the retrieving of such delivered packages. The Board of Directors may adopt more extensive rules and regulations governing the use of Delivery Drones and the landing site for such. Nothing contained herein shall obligate the Association to establish a landing site on the Common Area for Delivery Drones.

(jj) **Declarant's Activities.** The provisions of this Article shall not apply to the development of the Property or the construction of improvements on the Property by the Declarant or its assigns. The Declarant and its assigns may, during their construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon.

(kk) **Rules and Regulations.** The Declarant and the Board of Directors shall have the authority to enforce these covenants and restrictions and the Governing Documents and to adopt such further rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

## **Section 7.2. Maintenance of Property.**

(a) **Owner Obligation.** To the extent that exterior maintenance is not provided for in this Declaration or in a Supplemental Declaration, each Owner shall keep all Lots and Parcels 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.

(b) **Reconstruction and Repair.** If a building or other major Improvement located upon a Lot or Parcel is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or other major improvement, or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Property. 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 or Parcel 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, but not the obligation, to enter upon such Lot or Parcel to correct such failure. All costs related to such correction shall become a special assessment upon such Lot or Parcel, 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 7.3. Security.** The Association shall not 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 committees established by the Association 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 Parcels, and to the contents of any Improvements situated on Lots and parcels, and further acknowledge that the Association 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 VIII EASEMENTS**

**Section 8.1.** **Reservation of Easement for Ingress/Egress.** In addition to any easements reserved elsewhere in this Declaration or by separate plats or instruments of record, the following easements may apply to the Property (including but not limited to Lots, Parcels, Common Areas, and Limited Common Areas). Declarant reserves, for the benefit of each Owner, an easement over the Common Areas for purposes of ingress and egress from his Lot.

**Section 8.2.** **Blanket Easements.** The Declarant grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

**Section 8.3.** **Development.** The Declarant and its agents and employees shall have a right of ingress and egress over the Common Area as required for construction on and development of the Property. The Declarant shall have an easement over the Lots and Common Area to perform inspections required by the County and to perform or complete any work required by the County.

**Section 8.4.** **Exercise of Easement Rights.** When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Sections 1 and 2 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of, any Owner or tenant directly affected.

**Section 8.5.** **Encroachments.** If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any driveway which encroaches over a Lot's boundary line and draining of rainwater from roofs, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for both the encroachment and its maintenance for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct or excuse the violation of County ordinances.

**Section 8.6.** **Utilities.** Declarant reserves a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive

easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the “open space” designation thereof.

**Section 8.7. Release of Public Improvement Bonds.** Declarant reserves the right to (a) grant and reserve easements and licenses across any portion of the Property, (b) vacate or terminate easements, rights-of-way and licenses across any portion of the Property, (c) impose additional restrictions or covenants on any portion of the Property, (d) create and establish “areas” such as buffer areas, conservation areas, soil reinforcement areas, etc. on any portion of the Property, and (e) enter into agreements or other instruments on behalf of the Association relating to the maintenance or operation of any part of the Property, including agreements concerning the maintenance of stormwater management facilities or best management practices within the Property, in each case under (a) through (e) as may be required by any governmental agency, authority or utility in connection with the release of improvement bonds, the satisfaction of conditions or requirements of plats, plans, permits, proffers, licenses, waivers, subdivision documents or the like, or the acceptance of public streets for state maintenance.

**Section 8.8. Declarant-Retained Easement Rights.** There is reserved to the Declarant a right to grant easements over any portion of the Property for the purposes of drainage, re-grading, maintenance, landscaping, mowing, erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, public or private utilities, and any other purpose the Declarant deems necessary or desirable for the development of the Property, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein.

**Section 8.9. Street Tree and Streetscape Maintenance Easement.** A Lot may include street tree(s) or other landscaping required by a governmental authority to meet regulations. The Declarant reserves and grants to the Association an easement to enter upon any Lot to mulch, prune, treat, remove or replace required street trees and other landscaping. An Owner shall not remove a street tree(s) or other landscaping without prior approval by the Association.

## **ARTICLE IX GENERAL PROVISIONS**

**Section 9.1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property (subject, however, to the right to amend as provided for herein) for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, subject to termination by amendment as provided in Section 9.2. Notwithstanding the foregoing, the provisions of Section 4.2 and Article VIII shall be perpetual except to the extent that a shorter period is specified therein.

**Section 9.2. Amendments.** Except as otherwise set forth in this Declaration, this Declaration may be amended (i) by a two-thirds vote of the Owners, or (ii) by a vote of two-thirds (2/3) of the Board of Directors pursuant to the authority set forth in §55.1-1830 of the Code of Virginia.

**Section 9.3. Special Amendment.** Notwithstanding anything herein to the contrary, the Declarant, without the approval or joinder of the Association or any Owner or Mortgagee, may

unilaterally amend this Declaration (a) to make a non-material, clarifying or corrective change, or (b) as it deems necessary to obtain approval of this Declaration or any subdivision documents, plats or plans by any of the federal mortgage agencies, such as the Veterans Administration, Federal Housing Administration, Fannie Mae or Freddie Mac, or by a local governmental agency, as a condition of the approval of this Declaration, the Association, or any subdivision documents, plats or plans or for the release of any improvement or maintenance bonds, or (c) as it deems necessary or desirable for the development of the Property or the administration of the Association, by the execution and recordation of such amendment, and shall give written notice to the Members of any amendments made pursuant to clauses (b) or (c). This right of the Declarant to amend this Declaration as aforesaid shall continue notwithstanding the lapse of the Declarant's Class B membership, and shall survive for a period ending five (5) years following the lapse of the Class B membership.

#### **Section 9.4. Enforcement.**

(a) **Authority.** 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. Any attorney's fees and costs incurred by the Association in taking legal action to enforce the provisions of this Declaration or any Supplemental Declaration, shall, upon vote of the Board of Directors, become a special assessment upon such Lot or Parcel, 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. Failure by 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. There is a rebuttable presumption that violations of the provisions of this Declaration or any Supplemental Declaration, other than the assessment obligations, may not be adequately remedied at law. Each Owner hereby agrees (and waives any right to assert the contrary) that in the event the Association seeks any injunctive relief, the Association shall be relieved of any requirement of posting bond as a condition thereof.

(b) **Charges.** Pursuant to Section 55.1-1819 of the Virginia Code, the Board of Directors may assess charges against any Member for any violation of this Declaration or the Rules, for which the Member or his family members, tenants, guests, or other invitees are responsible.

(c) **Rights Suspension.** Pursuant to Section 55.1-1819 of the Virginia Code, the Board of Directors may suspend a Member's right to use facilities or services, including utility services, provided directly through the Association, for nonpayment of any assessments provided for herein, which are more than 60 days past due, to the extent that access to the Lot through the Common Areas is not precluded, and provided that such suspension shall not endanger the health, safety, or property of any Owner, tenant, or occupant.

**Section 9.5. 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 9.6. 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 9.7. 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 9.8. Use of the Words "Eden View".** No person or entity shall use the words "Eden View," "Eden View Property Owners Association, Inc.," or any derivative thereof, in any printed or promotional material without the prior written consent of the Association.

**Section 9.9. 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 9.10. Successors and Assigns.** The provisions hereof shall be binding upon, and shall inure to the benefit of, the Association and the Owners and their respective heirs, legal representatives, successors and assigns.

**Section 9.11. 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 §55.1-1800 et. seq., in the Code of Virginia, as amended.

**Section 9.12. Waiver; Changes to Plan.** The Declarant, as the initial most interested party in maintaining the high quality of development which by these covenants, conditions and restrictions ("Restrictions") sought to be assured for the Property, hereby expressly reserves unto itself, so long as these Restrictions are in effect, the unqualified right to waive or alter from time to time such of the herein contained Restrictions as it may deem best, as to any one or more of the Lots. The Declarant reserves the right to make any changes to the community it deems desirable, including but not limited to changing the Property's community plan, the styles and types of homes to be constructed, the zoning, and the types of uses throughout the Property.

**Section 9.13. County Plans, Applications, Rezoning and Proffer Condition Amendments.** So long as there is a Class B Member, to the extent the approval and consent of any Owner is required under State or local law to make any Site Plan or Subdivision Plan submission, to make any subdivision submission, or to apply for or obtain any rezoning or proffer condition amendment, then each Owner appoints the Declarant as its attorney-in-fact to sign such application and any other related and required documents on behalf of the Owner, or in the alternative and at the Declarant's option, upon request each Owner agrees to sign the application or other documents required for such action; provided, however, that such joinder shall be without liability or cost to

such Owner unless such liability or cost is expressly accepted by such Owner; and provided, further, that this covenant does not apply to any proffer condition amendment which would materially, adversely affect an Owner's ability to use such Owner's Lot for its intended purposes or significantly increases such Owner's development costs.

**Section 9.14. Management Contracts.** So long as there is a Class B Member, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Board (or the Declarant while there is a Class B Member) shall have the right to terminate such contracts, with cause upon thirty (30) days' written notice to the other party and without payment of a termination fee, and without cause upon sixty (60) days' written notice to the other party and without payment of a termination fee.

## **ARTICLE X DISSOLUTION OF THE ASSOCIATION**

The future dissolution of the Association would likely be conditioned on the prior consent of the County of King George. In addition, dissolution of the Association would require the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Members at a duly held meeting at which a quorum is present. 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 locality in which they are situated. 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 XI 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 Association or to Owners may be sent to the address which the Bylaws provide. 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 §55-1833© of the Virginia Code.

The foregoing notwithstanding, at such time, if any, as Virginia law authorizes notices to be sent by means other than as set forth above, the Association may utilize such alternative means of notifying Owners to the fullest extent authorized by law.

WITNESS the following signatures and seals as of the date first above written.

**EDEN RD LLC**, a Virginia limited liability company

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me, a Notary Public, this \_\_\_\_ day of November, 2020, by \_\_\_\_\_, who is either: \_\_ personally known to me or \_\_ who produced \_\_\_\_\_ as identification, as \_\_\_\_\_ of Eden Rd LLC, a Virginia limited liability company, on its behalf.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Notary # \_\_\_\_\_

AFFIX NOTORIAL SEAL HERE:



EXHIBIT A  
Legal Description

All those certain lots, pieces, and parcels of land, lying, situated, and being in Rappahannock Magisterial District, King George County, Virginia, and being more particularly described as (i) Lot 1 through Lot 33, inclusive, (ii) Open Space Parcel A, and (iii) Open Space Parcel B, as shown on that certain plat of survey prepared by Bagby, Foroughi and Goodpasture, PLLC, dated August 24, 2020, as last revised October 15, 2020, entitled "PLAT OF CONSOLIDATION AND SUBDIVISION OF T.M. 25-62 AND T.M. 25-62C EDEN VIEW RAPPAHANNOCK MAGISTERIAL DISTRICT KING GEORGE COUNTY, VIRGINIA," which plat is attached to that certain Deed of Consolidation, Subdivision, Dedication, and Easement, recorded as Instrument Number \_\_\_\_\_ in the Clerk's Office of the Circuit Court of King George County, Virginia.

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