

**DECLARATION OF RIGHTS, COVENANTS, EASEMENTS,
CONDITIONS AND RESTRICTIONS**

DAYBREAK AT BLUE MOUNTAIN

THIS DECLARATION OF RIGHTS, COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this _____ day of _____, 1993, by NEW DAWN HOMES, INC., a Pennsylvania corporation, (the "Declarant").

BACKGROUND

WHEREAS, on February 14, 1989 Susquehanna Realty Associates I, did execute a Declaration (the "Original Declaration") made pursuant to the provisions of the Uniform Condominium Act, Act No. 82 of July 2, 1980, F.L. 68 of Pa. D.C. §3101 et seq., which Original Declaration was recorded in the Office of the Recorder of Deeds of Dauphin County on March 1, 1989 in Record Book 1240, Page 189, as amended from time to time; and

WHEREAS, the Original Declaration was amended and restated by that certain Daybreak at Blue Mountain Amended and Restated Condominium Declaration dated August 19, 1993 and recorded in Dauphin County Record Book 2037, Page 323 (the "Amended Declaration"); and

WHEREAS, the Declarant acquired, inter alia, the lands described in and subject to the Original Declaration, excepting therefrom units and lands theretofore conveyed to others, by deed dated September 30, 1992 and recorded October 6, 1992 in the Recorder of Deeds Office in and for Dauphin County, Pennsylvania in Record Book 1835, Page 129; and

WHEREAS, the Declarant and the Joining Parties, defined below, have contemporaneously with the execution of this Declaration, but immediately prior in time, terminated the Condominium and have subdivided the property into ninety-four lots (the "Lots"), together with common areas and open space as shown on a Final Development Plan for Daybreak Phase I prepared by Akens Engineering Associates, Inc., Shiremanstown, Pennsylvania, dated August 27, 1993 and approved by Susquehanna Township Board of Supervisors on October 14, 1993 and intended to be recorded in Dauphin County (the "Plan"). Said property is more fully described on Exhibit A attached hereto and made a part hereof (the "Property") and the Plan is attached hereto as Exhibit B; and

WHEREAS, the Declarant and the Joining Parties in order to confirm the ownership of the Lots and Common Area desire to

enter into a confirmatory conveyance of (i) each former condominium unit now a subdivided lot to the owner of such former condominium unit; (ii) the Common Area to the Daybreak at Blue Mountain Homeowner's Association; and (iii) all other Lots and the remainder of the Property to Declarant; and

WHEREAS, the Declarant being the owner of the real estate herein described, excepting as aforesaid, together with those parties signing the Joinder attached hereto (hereinafter sometimes referred to as "Joining Parties"), who have heretofore been conveyed condominium units created pursuant to the Declaration and the original Amended Declaration, desire that each Lot shall be developed, conveyed and owned subject to this Declaration.

NOW THEREFORE, the Declarant and each of the Joining Parties declares that the Property is and shall be held, transferred, sold, conveyed, pledged, mortgaged and occupied subject to the covenants, conditions, restrictions, easements, liens, and charges hereinafter set forth and which shall run with the Property, all of which are hereby established for the purpose of enhancing and protecting the value, desirability, marketability and attractiveness of the Property, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, and shall inure to the benefit of every portion of the Property and any interest therein.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates otherwise, the following words, phrases and terms shall have the following meaning when used herein, or in any amendment hereto:

1.1 "Assessments" mean the assessments imposed upon the Members of the Association for Common Expenses or for any other expense authorized by this Declaration, the Articles or the By-Laws.

1.2 "Association" means the Daybreak at Blue Mountain Homeowner's Association, a Pennsylvania nonprofit corporation, organized on a nonstock basis, the members of which are the Lot Owners, its successors and assigns.

1.3 "Board" means the Board of Directors of the Association.

1.4 "By-Laws" and "Articles" mean respectively the By-laws and the Articles of Incorporation of the Association, which have been or shall be adopted by the Board, as from time to time amended.

1.5 "Common Area" means all portions of the Property which does not constitute a Lot.

1.6 "Common Expense" means all those expenses for which Lot Owners are liable as provided in this Declaration and includes but is not limited to the following:

(a) expenses of administration, management, operation, insurance, taxes (other than real estate taxes on Lots), assessments, utilities, maintenance, repair or replacement of the Common Area and those portions of a Lot which are designated by this Declaration, maintenance of yard areas which are part of the Lots as originally provided by Declarant, exclusive of any yard areas which are fenced and exclusive of additional landscaping materials installed by the Lot Owner. Snow removal, including sidewalks and driveways which are part of a Lot, shall be a Common Expense. Each Lot is separately metered for electricity and each Lot Owner shall be responsible to pay his own electrical charges based upon the meter charge to the individual Lot. Each Lot Owner shall be responsible to pay directly for all trash or refuse collection services provided to such Lot Owner and such Lot Owner's Lot;

(b) expenses declared Common Expenses by this Declaration or by the By-Laws;

(c) expenses agreed upon as Common Expenses by the Association and lawfully assessed against the Lot Owners in accordance with this Declaration or the By-Laws;

(d) expenses of management and administration of the Association, including without limitation, compensation of all employees, managers, accountants, attorneys and other personnel hired by the Association whether as employees, independent contractors or otherwise; and

(e) expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.7 "Declarant" means New Dawn Homes, Inc., its successors and assigns.

1.8 "Declaration" means this Declaration of Rights, Covenants, Easements, Conditions, and Restrictions as same may from time to time be amended.

1.9 "Lot" means each of the Lots shown on the Plan, together with any residence, dwelling unit or other improvements now or hereafter erected on such Lot.

1.10 "Member" or "Lot Owner" means a person or entity, whether one or more, who is a record owner of a fee or undivided fee interest in a Lot subject to the Declaration, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation.

1.11 "Person" means a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

1.12 "Plan" refers to the Subdivision Plan of Daybreak at Blue Mountain prepared by Akens Engineering Associates, Inc., Shiremanstown, Pennsylvania, dated _____, 1993, and recorded in the Office for the Recording of Deeds of Dauphin County, Pennsylvania, at Plan Book _____, Page _____.

1.13 "Project" means the development and improvement of the Property in accordance with the Plan, as the Plan may be amended from time to time by the Declarant in its sole discretion, and the construction and/or sale of a single family dwelling unit on each Lot.

1.14 "The Property" means all real property which is subject to the Declaration, as set forth on Exhibit "A".

ARTICLE II

PURPOSE OF DECLARATION

2.1 It is the intention of the Declarant and the Joining Parties that, with the filing of this Declaration, the Property as shown on the Plan and as more fully described on Exhibit "A" attached hereto and made a part hereof, shall be subject to the terms and conditions of this Declaration.

2.2 The rights, covenants, duties, benefits, easements and regulations created, declared and contained in this Declaration shall benefit and bind the Property and the Declarant, each Lot, all Common Area, each Lot Owner, the Board of Directors, the Association, all purchasers, tenants, users, invitees, mortgagees and lienholders of the Lots, and all of

their respective agents, employees, independent contractors, heirs, successors, personal representatives and assigns, and shall at all times hereafter be appurtenant to, effect and run with each and all of the Lots.

ARTICLE III

EASEMENTS

3.1 Ingress and Egress. Every Lot Owner shall have a perpetual right and easement of enjoyment and ingress and egress in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to limit the number of guests who may use the Common Area and facilities;

(b) the right of the Association to restrict the right to the use of the facilities by an Owner for any period during which any charge, assessment, or fee, as provided in this Declaration against his Lot remain unpaid, and for a period not to exceed thirty (30) days for any infraction of the published rules and regulations relating to such facilities; and

(c) any owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Area to the members of his family or tenants who reside in his Lot.

3.2 Encroachments; Structural Support. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs in the Lots as constructed, repaired, renovated or improved. A valid easement for said encroachments and for the maintenance of such encroachments, so long as they stand, shall and does exist. Every portion of a Lot contributing to the support of an abutting Lot shall be burdened with an easement of support for the benefit of such abutting Lot. Also, a valid easement shall and does exist in favor of each Owner to make reasonable use, not inconsistent with the terms of this Declaration, of the exterior wall of any adjoining Lot where the outer unfinished surface of such wall shall serve and separate any portion of such Owner's Lot and such adjoining Lot.

3.3 Utilities, Pipes and Conduits. There is hereby granted a blanket easement upon, across, over and under all of the Property for ingress, egress; installation, replacing, repairing and maintaining any television antenna system and cable

television system and all utilities including, but not limited to, water, sanitary and storm sewers, gas, telephone, fireplace flues and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company or other responsible party to erect and maintain other necessary equipment in the Property and to affix and maintain utility wires, circuits, conduits and pipes, on, above, across and under the roof and exterior walls of the Lots and provide service of such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said Property except those utilities initially programmed or those approved by the Declarant or hereafter approved by the Association, provided in no event shall any such future easements unreasonably interfere with the use and enjoyment of any Lot. Should any utility furnishing a service covered by the general easement herein provided or should the Declarant request a specific easement by separate recordable document, the Association shall have the right to grant such easement on the Property without conflicting with the terms hereof. The easements provided for in this Article shall not impair any other recorded easement on the Property.

3.4 Pedestrian and Vehicular Traffic and Parking. The Common Area shall be, and are hereby made subject to, an easement in favor of the Lot Owners and their invitees, tenants and servants, the Association and the agents and employees of the Association for pedestrian and vehicular traffic and parking on, over, through and across such portions of the Common Area as may be from time to time paved and intended for such purposes.

3.5 Declarant's Easement for Marketing. The Declarant reserves the right with respect to its marketing of Lots to use the Common Area for the ingress and egress of itself, its officers, employees, agents, contractors and subcontractors and for prospective purchasers of Lots, including the right of such prospective purchasers to park in parking spaces. The Declarant shall also have the right until the conveyance of the last Lot it owns to erect signs on the Property in connection with its marketing of Lots. Any damage to the Common Area resulting from this easement shall be repaired by the Declarant within a reasonable time after the completion of its sales of the Lots or termination of such use of the Common Area, whichever shall first occur. The Declarant agrees to indemnify and to hold the Association harmless from all liabilities resulting from the use of the Common Area in conjunction with the marketing of the Project and the Lots. The Declarant shall have the right from time to time to locate and relocate model homes and a sales office for the marketing of Lots and a sales office in connection

with the marketing of the Project and the Lots. The rights reserved for the Declarant by this Section 3.5 shall remain in effect for as long as the Declarant shall remain a Lot Owner. This section shall not be amended without the prior written consent of the Declarant.

3.6 Declarant's Easement for Construction. The Declarant reserves the right and privilege without hindrance with respect to the construction of the Project to go upon any and all of the Property for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Lots (including without limitation to change the grade of grounds and/or to install drainage control devices so as to control possible drainage and/or run off of storm water in connection with the development of the Property or any adjacent land). The Declarant agrees to indemnify and hold the Association harmless from liabilities resulting from the exercise of this easement. The Declarant shall repair any damages to the Common Area resulting from Declarant's exercise of this easement within a reasonable time after the completion of the Project and its sales of the Lots. This easement shall be appurtenant and shall pass with title to every Lot. The rights hereby reserved for the Declarant shall last for a period of five (5) years after the Declarant has conveyed the last Lot to a third party, other than a successor Declarant, in which event such easement shall continue. This section shall not be amended without the prior written consent of the Declarant.

ARTICLE IV

LOT EASEMENTS

4.1 Lot Easements. Each Lot shall be and is hereby made subject to the following easements:

(a) In favor of the Association or its designee for inspection of the Lots for the purposes of verifying of performance by Lot Owners of all items of maintenance and repair for which they are responsible, for inspection of the building situated on or assessable from such Lot, for correction of emergency conditions in each Lot or casualties to such Lot for necessary repair and replacement in the buildings, to abate any violation of law, orders, rules or regulations of any governmental authorities having jurisdiction, to correct any condition which violates the provisions of any mortgage and for such other purpose as may be reasonably required to carry out its duties, it being understood and agreed that the Association and its agents shall take reasonable steps to minimize any interference with a Lot Owner's use of his Lot resulting from the

Association's exercise of the foregoing rights pursuant to this Section or any other provision of this Declaration;

(b) In favor of the Lots benefitted, for the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, and all other utility lines and conduits which are part of the building and are in common use by all contiguous Lot Owners and which pass across or through a portion of a Lot;

(c) There is hereby granted a blanket easement to the Association or its officers, agents and employees, to any Manager employed by or on behalf of the Association and to all policemen, firemen, ambulance personnel and all other similar persons to enter upon the Property or any part thereof in the proper performance of their respective duties and for repair and maintenance as is required by this Declaration. Except in the event of emergencies, the rights accompanying the easements provided for in this paragraph shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with the permission of the Owner or Owners directly affected thereby and shall not waive any Lot Owner's constitutional rights with regard to unreasonable search or seizure; and

(d) If a Lot shall encroach upon any Common Area or upon any other Lot by reason of original construction or a cause other than the purposeful or negligent act or omission of the Lot Owner, then an easement appurtenant to such encroaching Lot, to the extent of such encroachment, shall exist for so long as such encroachment shall exist. In the event a building is partially or totally destroyed, and then rebuilt, encroachment upon the Common Area and/or Lots, as and to the extent described above, shall be permitted, and a valid easement for said encroachments and the maintenance thereof shall exist for so long as such encroachment continues to exist.

ARTICLE V

EASEMENTS APPURTENANT

All easements and rights described and mentioned in this Declaration are easements appurtenant, running with the Property, Lots and Common Area, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding upon Declarant, its successors and assigns, the Association, the Board of Directors, any Lot Owner, purchaser, mortgagee, lessee, occupant and any other person having interest in the Property, Lots, Common Area or any portion thereof.

ARTICLE VI

USES, PURPOSES AND RESTRICTIONS; LEASES

6.1 The Property referred to in this Declaration is subject to all covenants, restrictions, easements of record and other title exceptions set forth in Exhibit C and to the following restrictions:

(a) No Lot (except those Lots owned by the Declarant or Association on behalf of the Lot Owners) shall be used for any purpose other than as a private residence for the use of one family consistent with this Declaration, By-Laws and any Rules and Regulations promulgated by the Association, nor shall anything be done therein which may be a nuisance to the occupants of neighboring Lots;

(b) Each Lot Owner shall be obligated to maintain his own Lot and keep it in good order and repair, pay all real estate taxes and assessments imposed upon such Lot Owner's Lot by any governmental authority; and to abide by the terms and conditions of this Declaration, the By-Laws and any Rules and Regulations adopted by the Board of Directors;

(c) There shall be no obstruction of the Common Area nor shall anything be stored in or on the Common Area without the prior written consent of the Association or except as hereinafter expressly provided. No Owner or group of Owners shall build, construct or install any structures, plant, or maintain any matter or thing upon, over or under the Common Area except with the express permission of the Association in writing first had and obtained. A Lot Owner may, at its sole cost and expenses, erect a fence in the rear yard of such Owner's Lot, subject to the prior approval of the Association as to the type and aesthetic qualities of such fence, and further subject to such Lot Owner obtaining confirmation of the boundaries of such rear yard by a licensed surveyor. In the event a Lot Owner erects a fence, the Association shall no longer be obligated to maintain the landscaping or cut grass in the rear yard. No trash, garbage, refuse, debris or excess materials of any kind shall be placed on or about the Common Area except in receptacles specifically designated therefor. No one shall burn, chop, or cut anything on, over or above the Common Area. Each Lot Owner is responsible to report promptly to the Association any defect or need for repairs, the responsibility for which is that of the Association;

(d) Nothing shall be done or kept in any Lot which will increase the rate of insurance of any building,

contiguous Lot, or the contents thereof, beyond the rates applicable for residential dwelling units, without prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his Lot which will result in the cancellation of insurance on any building contiguous Lot, or the contents thereof, or which will be in violation of any law;

(e) Lot Owners shall not cause or permit anything to be hung, painted or displayed on the outside of windows or doors or on the outside walls of any building and/or Lot, and no sign, awnings, canopy, shutter or CB or radio or television antenna or satellite dish shall be affixed or placed upon the exterior walls or roof of any building and/or Lot without the prior written consent of the Association, except that Declarant may display reasonable "for sale" signs until all Lots owned by Declarant are sold;

(f) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Lot, except that dogs, cats or other household pets may be kept, subject to the rules and regulations to be adopted by the Association and provided they are not kept, bred or maintained for any commercial purpose. Any such pet causing or creating a nuisance or unreasonable disturbance or noise or causing unreasonable odor, shall be permanently removed from the Property upon three days written notice from the Association;

(g) All Lot Owners will be responsible for the prompt disposal of all pet litter;

(h) No noxious or offensive activity shall be permitted in any Lot or in or on the Common Area nor shall anything be done therein either willfully or negligently which may be or become any annoyance or nuisance to the other Lot Owners or occupants;

(i) Nothing shall be done to any Lot which will impair the structural integrity of any building of which such Lot is a part or which will structurally change the building of which such Lot is a part;

(j) No clothes, sheets, blankets, laundry of any kind or any other articles shall be hung or exposed on any part of the a Lot;

(k) No industry, business, trade, occupation or profession of any kind, be it commercial, religious, educational or otherwise, may be conducted, maintained or permitted on any part of the Property. No commercial vehicles of a size larger than a panel truck may be parked on any part of the Property,

except those vehicles temporarily on the Property for purposes of servicing the Property itself or one of the Lots. No boat trailers or boats shall be parked overnight on or about the Common Area unless Association shall reserve a space there for and designate such space for the Lot Holder. Nothing contained in this sub-paragraph shall prohibit any reasonable activities of Declarant and Declarant's agents, servants and employees in the original sale of all Lots by them owned;

(l) No commercial or other non-passenger vehicle of any type and no unlicensed or non-operational motor vehicles of any type shall be permitted to remain overnight on the Property or Lot, other than as may be used by the Declarant in conjunction with building operations;

(m) No boats of any type shall be permitted on any Lot or the Common Area;

(n) No commercial or recreational vehicle or boat will be permitted in any area except areas specifically designated, if any, within the Common Area for said vehicles or boats;

(o) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed by each Lot Owner and the Association.

6.2 Leases.

(a) No Lot may be leased or subleased for transient or hotel purposes or for an initial term of less than six (6) months;

(b) No Lot may be leased or subleased without a written lease or sublease;

(c) A copy of each lease or sublease shall be furnished to the Board within ten (10) days after execution thereof; and

(d) The rights of any lessee or sublessee of a Lot shall be subject to, and each such lessee or sublessee shall be bound by, this Declaration, By-Laws, and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Lot to pay any Common Expense assessments or special assessments on behalf of the owner of that Lot. The Association shall have the right to enforce the provisions of any

lease or sublease of a Lot directly against the tenant or subtenant if such tenant or subtenant defaults under any covenant, condition or restriction set forth in this Declaration, By-Laws, or the Rules and Regulations, if any, provided, however, that the Association has first given written notice of such default to the Lot Owner subject to the lease or sublease, and such default has not been cured within the period specified in such notice.

(e) The provisions of Subsections 6.2(a) through (d), inclusive, shall not apply to a holder of a first mortgage who is in possession of a Lot following a default in such mortgage, pursuant to a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

ARTICLE VII

MEMBERSHIP ASSOCIATION; VOTING RIGHTS; POWERS AND DUTIES

7.1 Organization. The Association is a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania charged with the duties and vested with the powers prescribed by law and set forth in the Declaration, the Articles and the By-Laws. The officers and the directors of the Association shall be required to be either (i) members of the Association or (ii) officers, directors, agents, representatives or employees of Declarant or its successors or assigns.

7.2 Membership.

(a) Definition. Members shall include the Declarant and all Lot Owners. Membership shall be mandatory and appurtenant to ownership of each Lot and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Declaration.

(b) Member's Rights and Duties. Each Member shall have the rights, duties and obligations set forth in the Declaration and the By-Laws.

(c) Rights. Each Lot Owner, including Declarant, shall be a Member of the Association. Membership shall be appurtenant to ownership of a Lot and shall not be severable from such ownership of a Lot and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to the Lot and then only to the transferee of such Lot. Any transfer of title to a Lot shall

operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

7.3 Voting.

(a) Members shall be entitled to one (1) vote for each Lot occupied by such Member, provided however that if the Lot Owner is two or more persons or legal entities, the voting for such Lot shall be exercised as these persons or legal entities among themselves determine. In no event shall more than one (1) vote be cast with respect to any one Lot. Cumulative voting shall not be permitted for any purpose.

7.4 Powers. The Association shall have all the powers and duties of a nonprofit corporation organized in the Commonwealth of Pennsylvania and as are provided by this Declaration, the By-Laws and those established by law. The powers and duties of the Association shall include, but not be limited to, the following:

(a) To provide for the operation, care, upkeep and maintenance of the Common Area and those limited portions of the Lots designated by this Declaration and to provide for all reasonable and necessary insurance coverages for damage to those portions of the Lots which the Association has maintenance responsibility as designed by this Declaration, the Common Area and personal property owned by the Association and appropriate liability insurance, workman's compensation, officers and directors liability insurance and fidelity bonds in a manner consistent with the law and the provisions of this Declaration and the By-Laws;

(b) To provide for the establishment and collection of charges from the Lot Owners and the assessment and/or enforcement of liens therefore in a manner consistent with law, the provisions of this Declaration and the By-Laws;

(c) To provide for the employment of personnel, contractors or others necessary to maintain, operate, renovate and improve the Common Area and the provision of services for the Common Area in the manner consistent with law and the provisions of this Declaration and the By-Laws;

(d) To provide for the promulgation and enforcement of such rules and regulations, restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Common Area, all of which shall be consistent with law and the provisions of this Declaration and the By-Laws, but which may either supplement or elaborate upon the provisions of this Declaration and the By-Laws; and

(e) To provide for such bank accounts as shall be advisable into which all Common Assessments shall be deposited and from which withdraws shall be made only to fund Common Expenses and other expenses of the Association as provided in this Declaration. No withdrawals from such account shall be made for any other purpose.

(f) To take or to cause to be taken any and all other actions which are required or permitted under law, this Declaration and the By-Laws.

7.5 Board of Directors. A Board of Directors of five individuals elected by the Association for a term of two years shall be vested with the authority to act on behalf of the Association consistent with law and the provisions of this Declaration and the By-Laws; provided, however, until the election, which shall occur within sixty (60) days of the date of this Declaration, there shall only be three (3) members of the Board of Directors. The original term of office shall commence the date hereof and shall continue for a period of one year. The Board shall have the powers to act on behalf of the Association except that the Board may not amend the Declaration.

7.6 Appointment of Board of Directors. The original members of the Board shall be appointed by Declarant. No later than sixty (60) days after conveyance of seventy-five (75%) percent of the Lot to Lot Owners other than the Declarant, the members of the Board shall be elected by Lot Owners including the Declarant. Not later than sixty (60) days after the date of this Declaration, two (2) members of the Board shall be elected by Lot Owners, other than Declarant. Consistent with the foregoing, for a period of time not to exceed three (3) years, or 180 days after conveyance of 75% of the Lots to Lot Owners, other than the Declarant, whichever first occurs, and beginning on the date of the conveyance of the first Lot by Declarant hereunder (not including those Lots owned by the Joining Parties), Declarant may, at its option, control the Association and shall specifically have the power to appoint and remove officers and members of the Executive Board. The Declarant reserves the right to send representatives to observe all meetings of the Board of Directors while the Declarant hold legal title to a Lot.

7.7 Indemnification of Officers and Directors. The Association shall indemnify every member of the Board and officers, his heirs, executors and administrators, against all loss, costs and expenses, including attorneys' fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a member of the Board or an officer except as to matters as to which he shall be finally adjudged in such action, suit or

proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matter covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such directors or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such director or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses; provided, however, that nothing in this Section shall be deemed to obligate the Association to indemnify any person, who is or has been a director or an officer with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Association.

ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

8.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot for which a certificate of occupancy has been issued, hereby covenants, each Joining Party with respect to the Lot(s) owned by such Joining Party, and each subsequent Owner of any Lot whether or not it shall be so expressed in the deed to such Lot, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot (including all improvements thereon) against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became effective. The personal obligation for delinquent assessments shall not pass to a Lot Owner's successor in title unless expressly assumed by them.

8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners of Lots, for the restoration, improvement, maintenance and insurance of the Common Area, and certain portions of the Lots identified in

Section 8.4(a) below and all services and facilities relating to the use and enjoyment thereof.

8.3 Initiation Fee. There shall be an initiation fee charged to each Lot Owner for each Lot in the amount of \$100.00 to be paid upon conveyance of title. All Lot Owners who purchased a Lot or condominium unit from anyone other than the Declarant (not including those who may have paid the assessment pursuant to Section 8.3 of the Amended Declaration) shall pay for each Lot owned the sum of \$150.00 as an Assessment to be paid within thirty days after the recordation of this Declaration. Such sums shall be applied by the Association to a reserve account.

8.4 Annual Assessments for Common Expenses. The Association shall levy and collect, in each fiscal year, an annual assessment upon each Lot liable therefor to provide revenues to pay all Common Expenses, including inter alia, the following:

(a) Repair and maintenance of roofs of Lots, exterior siding, soffits and trim, and all installations intended for common use by the Lot Owners;

(b) Lawn care of Lots and yards as originally landscaped by Declarant (excluding yard areas enclosed by fences and additional landscaping materials installed by a Lot Owner), maintenance of driveways, and walkways, and other unimproved areas of lots, including repair, replacement, reconstruction, snow removal, and cleaning of streets, roadways, pathways, walkways and parking areas;

(c) Trash and refuse collection with respect to common receptacles in the Common Area only, snow removal, landscaping, vermin extermination, or other similar services, if any, provided to any part of the Lots or Common Area only. All trash collection, refuse and garbage removal provided to a Lot shall be the responsibility of the Owner of such Lot and shall in no event be the responsibility of the Association.

(d) Comprehensive liability insurance coverage, covering liability for loss or damage to persons or property, insuring to the extent available, the Owners, the Declarant and the Association against any liability to the public or to Owners, their tenants or invitees, relating in any way to the ownership and/or use of the Common Area and/or any part thereof; limits of liability shall be at least Five Hundred Thousand (\$500,000.00) Dollars per occurrence. The scope and amount of coverage of all liability insurance policies shall be reviewed at least once each year by the Board of Directors and may be increased in its discretion;

(e) Fire and extended coverage insurance covering damage to property for all of the Common Area and personal

property owned by the Association and such workmen's compensation insurance and other such insurance as Board of Directors may deem advisable;

(f) Management fees and salaries or such expenses as the Association may deem necessary or desirable for the operation and maintenance of the Common Area and otherwise determined by the Association in fulfilling its obligations under this Declaration;

(g) Legal, accounting, engineering or other professional fees and administrative costs necessary and proper for any one or more of: Operation and Maintenance of the Common Area, conduct of the affairs of the Association, or enforcement of the Declaration, or any rules and regulations;

(h) Officers and directors liability insurance and fidelity bonds as the Association may deem necessary or advisable;

(i) Maintenance, improvements and additions to the Common Area, as the Association may deem necessary and proper, as well as any materials, supplies, labor, services, structural alterations, insurance and tax assessments which apply thereto and/or which the Association is required to secure or pay by law, by this Declaration or which the Board Directors deems necessary and proper in its discretion;

(j) Mechanics and materialmen's liens arising as a result of the Association's maintenance responsibilities hereunder;

(k) Real estate, sale and use and all other taxes or other governmental charges due or paid with respect to use, ownership or occupancy of the Common Area; provided, however, that real estate taxes on the Common Area shall be paid only to the extent that such taxes are assessed against the Association as the Owner of record of the Common Area. Any portion of the Common Area included within the tax assessment of a particular Lot by the appropriate taxing authorities shall be the responsibility of the Owner of such Lot and shall in no event be a responsibility of the Association;

(l) Amounts necessary to recover any deficits from operations of the Association in prior years; and

(m) Adequate reserves, as determined by the Board of Directors for: (i) repair, replacement or depreciation of the Common Area, or any portion thereof and other portion of the Lots which the Association is obligated to repair and maintain; (ii)

uncollectible accounts and (iii) any other contingency for which a reserve account reasonably may be established pursuant to sound accounting practices.

8.5 Maximum Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner after the date of this Declaration the monthly assessment shall be: Forty-Four Dollars (\$44.00) per month per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner after the date hereof, the assessment may be increased by the Board each year not more than 10% above the maximum assessment for the previous year without a vote of the membership;

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the assessment may be increased above 10% by a vote of two-thirds (2/3) or of the Members who are voting in person or by proxy, at a meeting duly called for this purpose; and

(c) The Association, through its Board of Directors, may fix the assessment at an amount not in excess of the maximum.

8.6 Special Assessments for Capital Improvements. In addition to the assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, those portions of the Lots which the Association is obligated to maintain, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

8.7 Supplemental Annual Assessments. If the cash requirement estimate at the beginning of any fiscal year (commencing on or after the calendar year 1994) shall prove to be insufficient to cover the actual Common Expenses for such fiscal year for any reason including (by way of illustration and not limitation) any Owner's nonpayment of his assessment, the Board may, at any time it deems necessary and proper, levy a supplemental annual assessment against each Lot except that in the event such supplemental annual assessment is required because of the failure of one or more Owners to promptly pay an annual assessment, the supplemental annual assessment against other Lots may be determined based upon the anticipated failure of such

defaulting Owner or Owners to pay its or their share of such supplemental annual assessment.

8.8 Billing Annual Assessments. Annual assessments are due and payable on the first day of each fiscal year. Annual assessments may be billed in monthly, quarterly or any other periodic installments as may be determined by the Board of Directors. Each Owner shall pay any assessment bill levied hereunder within thirty (30) days.

8.9 Failure of Board to Fix Annual Assessment. If an annual assessment for Common Expenses for any fiscal year is not fixed before the expiration of the previous fiscal year, the Owners shall continue to pay the same sums they were paying in the fiscal year just ended as if such sums were the new annual assessment, and such failure to fix a new annual assessment shall not constitute a waiver, modification or release of any Owner's obligation. If the Association shall change the annual assessment at a later date due to the fact that the Association failed to fix an annual assessment prior to the expiration of the prior fiscal year, an increase in the total assessment amount as a result of such new assessment shall be treated as if it were a supplemental assessment hereunder and be retroactive to the beginning of the fiscal year.

8.10 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board.

8.11 Other Special Assessments. The Board shall have the authority to fix, determine, assess and collect special assessments for the following purposes:

(a) Any expenditure which the Association shall be required to make for the maintenance of all or any part of the Common Area or part of a Lot for which the Association has maintenance responsibility because of any injury thereto or misuse thereof by one or more Owners or their tenants, guests, invitees or licensees or resulting from theft or in damage to any portion of the Common Area shall be assessed as a special assessment against the Lot owned by the Owner or Owners responsible for such injury, loss or misuse, or whose tenants, guests, invitees or licensees caused such injury, loss or misuse; and

(b) If the Association shall have made any expenditures on behalf of any Owner or Owners for any reason deemed necessary by the Board, the Board shall levy such expenditures as a special assessment upon the Lot owned by the Owner benefitted or who is responsible for the expenses. Such

special assessments shall be levied promptly, and the debt arising from such special assessment shall be treated and due in the same manner as the assessment.

8.12 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen per cent (18%) per annum to be compounded daily. The Association may bring an action at law against the Owner personally obligated to pay the assessment. In addition, owner shall likewise be responsible for payment of reasonable attorneys fees and costs if the assessment and interest is more than sixty (60) days in default. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot, or any other reason. The obligation to pay assessments is absolute and unconditional and shall not be subject to counterclaims or set offs.

8.13 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of, any mortgage or mortgages now or hereafter placed upon the Property, or any part thereof subject to the assessment. Sale or transfer of any Lot will not affect the assessment lien provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any other proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to payments which became due prior to the six-month period immediately preceding such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX

NOTICE

All notices required to be served upon Lot Owners pursuant to the Act, this Declaration or the By-Laws shall be sufficient if delivered to the Lot or mailed to the Lot Owner at the Lot mailing address by regular mail. The effective date of a notice shall be the date of delivery to the Lot in the case of actual delivery and a date five (5) days after deposit in the mail in the case of notice sent by mail.

ARTICLE X

MORTGAGEE PROVISIONS

10.1 Reports and Notices. Upon the specific written request of a holder of a mortgage on a Lot, the mortgagee shall be entitled to receive some or all of the following as designated in the request to the same extent as a Lot Owner: copies of budgets, notice of assessment; audited or unaudited financial statements; notices of meetings; notice of decision of Lot Owners to make any material amendment to this Declaration; notices of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property; and the right to examine the books and records of the Association. Failure to comply with the requirements set forth above shall in no way invalidate otherwise proper actions of the Association and/or the Board.

ARTICLE IX

AMENDMENTS OF THIS DECLARATION

11.1 Amendments. This Declaration may be amended from time to time by the Declarant or by affirmative vote adopted by eighty (80%) percent of all Members; provided, that the Declarant shall have first consented to such amendment in writing.

11.2 Recording of Amendment. Each amendment permitted by this Article shall be effective upon recordation in the Recorder's Office of an appropriate instrument reciting that this Declaration has been amended in accordance therewith, duly executed and acknowledged on behalf of Declarant or the Board, as the case may be.

11.3 Amendment of By-Laws and Articles. The Articles and By-Laws may be amended from time to time as therein and by law permitted but not in any way that is inconsistent with this Declaration, as amended, and in the event of any inconsistencies, this Declaration shall prevail.

ARTICLE XII

CONFIRMATORY CONVEYANCE

The Declarant and the Joining Parties, with intent to be legally bound, have granted, bargained and sold, released, confirmed and quitclaimed, and by these presents do grant, bargain and sell, release, confirm and quitclaim unto the Grantee(s), noted on Exhibit D attached hereto, his/her its/their

heirs, executors, successors and assigns all that certain Lot and/or other real estate, so set forth opposite the name of the appropriate Grantee on Exhibit D under and subject to this Declaration, the By-Laws, and all agreements, covenants, easements of record and all title objections listed in Exhibit C.

Together with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the state, right, title, interest, property, claim and demand whatsoever of the Declarant and the Joining Parties as well at law as in equity, of, in and to the same.

To have and to hold the said Lot and parcel of ground, the hereditaments and premises hereby granted, or mentioned and intended and intended so to be, with the appurtenances, unto the said Grantee(s) his/her its/their heirs, executors, successors and assigns, to and for the only proper use and behoof of the said Grantee(s) his/her its/their heirs, executors, successors and assigns forever, subject as aforesaid.

ARTICLE XIII

GENERAL PROVISIONS

11.4 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect or the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

11.5 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

11.6 Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

11.7 Headings. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.