

BOOK 2206 PAGE 284

DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS

WILLIAMSBURG MANOR

THIS DECLARATION is made this *21st* day of *November* 1973, by Williamsburg Manor Associates II, a North Carolina limited partnership, hereinafter referred to as "Declarant".

WHEREAS the Declarant is the owner of certain real property located in Wake County, North Carolina, and more particularly described in Article II hereof, and

WHEREAS the Declarant desires to create thereon a residential community with permanent common areas and community facilities for the use and benefit of said community and

WHEREAS the Declarant desires to provide for the preservation of the environment of and the amenities of said community and for the maintenance of said common areas and community facilities, and to this end desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of said property and the subsequent owners thereof, and

WHEREAS the Declarant has deemed it desirable to create an association which shall have the powers and duties of maintaining and administering such common areas and community facilities and administering and enforcing the covenants and restrictions set out in this Declaration and collecting and disbursing the charges and assessments hereinafter created, and

WHEREAS the Declarant has formed (or intends to form) the Williamsburg Manor Homeowners Association, Inc., a non-profit corporation without capital stock, under the Laws of

the State of North Carolina, for the purposes of carrying out the duties aforesaid,

NOW THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth:

ARTICLE I

Section 1. Definitions.

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

- (a) "Association" shall refer to the Williamsburg Manor Homeowners Association, Inc., and its successors or assigns, or, upon merger or consolidation with another corporation or corporations, the corporation surviving such merger or resulting from such consolidation.
- (b) "Common Areas" or "Community Facilities" shall refer to all real property owned or subsequently acquired by the Association for the benefit, use and enjoyment of its members and the community, together with all improvements located thereon and all personal property incidental thereto which may be owned or subsequently acquired by the Association.
- (c) "Declarant" shall refer to Williamsburg Manor Associates II and/or Williamsburg Manor Associates I, and their successors and assigns if any such successor or assign should acquire from Williamsburg Manor Associates II or Williamsburg Manor Associates I, more than ten (10) Lots for purpose of resale.

- (d) "Dwelling" shall refer to any building or portion of a building situated upon The Property and designated and intended for use and occupancy as a residence by a single family.
- (e) "Lot" shall refer to a subdivided parcel which is part of The Property, other than Common Areas or Community Facilities.
- (f) "Member" shall refer to every person or persons or entity which holds membership in the Association.
- (g) "Mortgage" shall refer also to a Deed of Trust or a Deed to Secure Debt and "mortgagee" shall refer to the holder of record of any such security instrument.
- (h) "Owner" shall refer to the record owners, whether one or more persons or entities, of the fee simple title of any Lot which is part of or located within The Property, including contract sellers but excluding (i) those having such interest solely as security for the performance of an obligation, (ii) Declarant and (iii) the Association.
- (i) "The Property" shall refer to all real property, described in Article II hereof and such additions thereto as may hereafter be made pursuant to the provisions of Article II.

ARTICLE II

Section 1. Property Subject to Declaration.

The real property which is, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used,

occupied and improved subject to this Declaration is located in Wake County, North Carolina, and is more particularly described in "Exhibit A" attached hereto and by this reference made a part hereof.

Section 2. Additions to Property Subject to Declaration.

So long as there are Class B members of the Association, additional property may be annexed to the property described in Exhibit A by the Declarant and such annexation shall not require the consent of the Class A Members of the Association, if any; provided further, that Declarant may, at Declarants sole option at any time prior to July 1, 1978, annex to the property described in Exhibit A hereto all or part of that property described in Exhibit B hereto and such annexation shall not require the consent of the Association or any members thereof. All additional property so annexed must be adjacent to or in the immediate vicinity of The Property. The scheme of the within covenants and restrictions shall be extended to include any additions to the property described in Exhibit A hereto pursuant to the authorizations granted hereby as provided in Section 3 of this Article II.

Section 3. Annexation of Additional Property.

Any annexation of additional property made pursuant to this Article II, or otherwise, shall be made by recording a Supplementary Declaration of Covenants, Restrictions and Easements with the Register of Deeds of Wake County, North Carolina. Such Supplementary Declaration shall extend the scheme of the covenants and restrictions of this Declaration to such annexed property. Such Supplementary Declaration may contain such complimentary additions or modifications to the covenants and restrictions of this Declaration as may be necessary to reflect

the different character or use, if any, of such annexed property; provided however, that in no event shall such additions or modifications in the Supplementary Declaration be inconsistent with the provisions of this Declaration.

ARTICLE III

Section 1. Association Membership.

The Association shall have two classes of voting membership:

- (a) Every person, group of persons or entity other than Declarant who is an Owner of a Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A Member of the Association and shall be so recorded in the books of the Association; provided however, that any person, group of persons or entity who holds an interest in any subdivided parcel designated as a Common Area or Community Facility shall not be a Member on account of such interest. Class A Members shall be entitled to one vote for each Lot of which they are an Owner and such vote may be cast in person or by proxy, subject to the provisions of this Declaration and the By-laws of the Association. If more than one person or entity is an Owner of any Lot, then the Association membership voting right appurtenant to such Lot shall be exercised as such Owners among themselves shall determine; provided however, that no fraction of one vote may be cast by any Member. In the event and so long as such co-Owners of a Lot are unable to

agree on the manner in which the vote appurtenant to such Lot shall be cast, then such vote shall not be regarded as an eligible vote and shall not be counted. The vote of any Owner who is a corporation, trust or partnership may be cast by any officer, trustee or partner, as the case may be, and unless objection by any other officer, trustee or partner of such Owner is noted at the meeting, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote.

- (b) There shall be eight hundred and sixty (860) Class B memberships, all of which shall be issued to Declarant or its nominee or nominees. The Class B Member(s) shall be entitled to one vote for each membership held; provided, however, that each Class B membership shall terminate upon the first to happen of the following events:
- (i) when the total authorized issued and outstanding Class A memberships exceeds one-third (1/3) of the issued and outstanding Class B memberships, or;
 - (ii) on July 1, 1978; or
 - (iii) upon the surrender of all Class B memberships by the then holders thereof
 - (iv) for cancellation on the books of the Association.

Section 2. Organization Prior to Lot Conveyances.

The Association shall be organized and in legal existence prior to the conveyance of any Lot or Dwelling by Declarant to an Owner.

ARTICLE IV

Section 1. Members' Right of Enjoyment.

Every Member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) The Association shall have the right, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and Community Facilities and in aid thereof to mortgage said property. The Association shall not mortgage the Common Areas or Community Facilities except by resolution approved by two-thirds [2/3] of the eligible votes of each class of Members. In the event of a default in and foreclosure of any such mortgage, the lender shall have the right, after taking possession of such property, to collect reasonable admission charges and other fees as a condition to continued enjoyment by Members and their guests of any Community Facility or any recreational facility within the Common Areas.
- (b) The Association shall have the right to take such steps as are reasonably necessary to prevent default in and foreclosure of any mortgage placed on Common Areas or Community Facilities.

- (c) The Association shall have the right to make and enforce rules and regulations pertaining to the use and enjoyment of Common Areas and Community Facilities provided such rules and regulations are consistent with the purposes of this Declaration.
- (d) The Association shall have the right to levy reasonable admission charges and other fees for the use by Members and their guests of any Community Facility or any recreational facility situated within the Common Areas.
- (e) The Association shall have the right to limit the number of Member's guests using the Common Areas and Community Facilities.
- (f) The Association shall have the right to suspend the voting rights and the rights to use of the Common Areas and Community Facilities of any Member and the family and guests of such Member (i) for any period during which any assessment made by the Association against the Lot of such Member remains unpaid for more than thirty (30) days after the due date thereof and (ii) for any period not to exceed sixty [60] days for any infraction of published rules and regulations of the Association by such Member or the family or the guests of such Member.
- (g) The Association shall have the right to dedicate or transfer all or any part of the Common Areas or Community Facilities to any public or municipal agency, authority or utility for

purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by Members; provided, however, that no such dedication or transfer shall be effective unless an instrument establishing such dedication or transfer has been signed by two-thirds [2/3] of the Members of each class and recorded. Written notice of the proposed dedications or transfer shall be sent to every Owner and every first mortgagee of record of a Lot at least sixty [60] days prior to the recordation of such instrument. Except as provided in subparagraphs (a) and (i) hereof and in this subparagraph (f), the Association shall not have the right to subdivide or convey all or any part of the Common Areas or Community Facilities.

- (h) Owners shall have a perpetual easement over any Common Area or Community Facility (i) with respect to such portions of their Dwelling(s) that overhang said Common Areas or Community Facilities, (ii) for support as to a Dwelling adjacent to Common Areas or Community Facilities, (iii) for reasonable pedestrian ingress and egress to and from their Lot(s) or Dwelling(s) and for reasonable vehicular access thereto, and (iv) for the parking of one passenger automobile for each Lot owned in an area (or areas) or in a space (or spaces) designated therefor by the Board of Directors.
- (i) The Association shall have the right to grant to Owners (i) easements of enjoyment of additional property annexed pursuant to Article

II hereof and (ii) licenses for the use of storage spaces which are within the control of the Association.

(j) The Association shall have the right to grant rights-of-way or easements for any public utility purpose to any municipal agency, public utility or to the Declarant for the purpose of the installation or maintenance of such utilities as may be necessary to serve any of the Common Areas or Community Facilities or to serve any Lot; provided however, that such easements or rights-of-way shall not be permanently inconsistent with the enjoyment of the Common Areas and Community Facilities by Members.

Any rights of the Association reserved hereby may be exercised by the Board of Directors of the Association except to the extent to which such rights are directed to be exercised by the Members.

Section 2. Delegation of Right of Enjoyment. Any Member may delegate his right of enjoyment of the Common Areas and Community Facilities to (i) members of his family, to (ii) his guests and to (iii) his tenants who reside within The Property and their families and guests, all subject to the provisions of this Declaration and the Articles and By-Laws of the Association.

Section 3. Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in subparagraph (h) of Section 1 of this Article IV or in Article X hereof shall not be suspended for any reason.

ARTICLE V

Section 1. Covenant for Assessments.

Each person, group of persons or entity who becomes an Owner by acceptance of a deed to a Lot (including Lots in property annexed to the Property as provided in Article II hereof), whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges and (b) special assessments to be fixed, established and collected from time to time, as hereinafter provided. The annual assessments and special assessments, together with interest thereon and costs of collection, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made from the time such assessment is made until paid in full. Each assessment, together with interest thereon and costs of collection, shall also be the joint and several personal obligation of the person, group of persons or entity who was the Owner of such Lot at the time when the assessment became due. No portion of the Common Areas or Community Facilities shall be subject to assessment by the Association.

Section 2. Purpose of Assessment.

The assessments levied by the Association shall be used for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents on The Property and in particular for the improvement and maintenance of the properties and services and facilities related to the use and enjoyment of the Common Areas and Community Facilities and, to the extent herein provided, of the Dwellings situated on The Property, including, but not limited to, the payment of:

- (a) All operating expenses of the Common Areas and Community Facilities including services furnished; and
- (b) The cost of necessary management and administration, including fees paid to any Management Agent; and
- (c) Taxes and assessments levied against the Association or upon any property which it may own or which the Association is otherwise required to pay; and
- (d) The cost of fire and extended liability insurance on the Common Areas and Community Facilities, the cost of blanket hazard insurance on Dwellings and the cost of such other insurance as the Association may procure; and
- (e) The cost of furnishing water, electricity, heat, gas, garbage and trash collection or other utilities to the Common Areas and Community Facilities; and
- (f) The cost of furnishing water to each Lot; and
- (g) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve or a reserve for replacements; and
- (h) The cost of repairs, maintenance and replacements of the Common Areas and Community Facilities made by the Association; and
- (i) The cost of repairs, maintenance and replacements to the exteriors of all Dwellings; and

- (j) The cost of landscaping and maintenance of lawns and plantings on Lots and Common Areas with the exception of the enclosed areas.

Section 3. Annual Assessment.

It shall be the duty of the Board of Directors of the Association to determine the amount of the annual assessment for each Lot for each assessment year. The annual assessment shall be the same for each Lot in an assessment year. The annual assessment for any Lot for any assessment year (after the first annual assessment as provided in Section 5 of this Article V) shall become due and payable and a lien against the Lot on the first day of each calendar year, unless the Board of Directors of the Association shall otherwise provide. The Board of Directors shall give written notice of the annual assessment for each Lot to the Owner thereof, together with the payment dates of periodic installments if the assessment is allowed by decision of the Board of Directors to be paid in installments, at least thirty (30) days prior to the first day of such assessment year. Assessments may be paid on a monthly, quarterly, semi-annual or annual basis in the discretion of the Board of Directors of the Association.

Section 4. Special Assessment.

In addition to the annual assessment authorized by this Article V, the Association may from time to time levy a special assessment for the purpose of defraying in whole or in part the cost of any construction or reconstruction or unexpected repair or replacement of a Community Facility or an improvement located upon the Common Areas, including the necessary fixtures and personal property related thereto; provided however, that any special assessment shall only be levied by a resolution approved by a majority of the eligible votes of each class of

Members. Any special assessment levied by the Association pursuant to the provisions of this Section 4 shall be the same per Lot.

Section 5. Commencement of Annual Assessment.

The annual assessment period for all Lots shall commence on the first day of the month following the first conveyance by the Declarant to the Owner of any Lot. The first annual assessment for all Lots shall be made for the balance of the assessment year and shall become due and payable and a lien on the Lot as of the date of conveyance of the Lot as aforesaid.

Section 6. Assessment of Declarant.

The Declarant shall pay the annual assessment and any special assessment for any Lot in which it has the interest otherwise required for Class A membership; provided however, as to any such Lot not containing a completed Dwelling or containing a completed Dwelling which is unoccupied, the Declarant shall be liable to pay only one fourth [1/4] of any such assessment. The Declarant's liability to pay any assessment shall terminate upon the conveyance by Declarant of any Lot.

Section 7. Reserve for Replacements and Extraordinary Maintenance.

The Association may establish and maintain a reserve fund for replacements and extraordinary maintenance by the allocation and payment periodically to such reserve fund of an amount to be designated from time to time by the Board of Directors of the Association. Such fund shall be conclusively deemed to be a common fund of the Association and shall be credited upon the books of the Association to the "Paid-In-Surplus" account as a capital contribution by the Members. Such fund shall be deposited

in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or of the State of North Carolina or may, in the discretion of the Board of Directors, be invested in obligations which are fully guaranteed as to principal by the United States of America. The reserve may be expended for replacements and extraordinary maintenance to Common Areas and Community Facilities and to the exteriors of Dwellings and for operating contingencies of a non-recurring nature. The proportionate interest of any Member in such reserve shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 8. Assessment Certificates.

The Board of Directors shall prepare and maintain a roster of the Lots and the annual and special assessments and charges currently applicable thereto and shall make such roster available for the inspection of Members upon request. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for any assessment a certificate in writing signed by an officer or other authorized agent of the Association, stating whether such assessment or charge is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment or charge therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

ARTICLE VI

Section 1. Non-Payment of Assessment.

Any assessment or part thereof levied pursuant to these covenants which is not paid on the date when due or any payments

on any assessment allowed to be paid in installments which are not paid on the date when such installments are payable, shall be delinquent and the entire unpaid balance of such assessment including all installments thereof shall, together with interest thereon and costs of collection as hereinafter provided, become due and, as a continuing lien upon the Lot against which such assessment is levied pursuant to Section 1 of Article V hereof. Except for any assessments payable by Declarant, all assessments shall bind such Lot in the hands of an Owner, his heirs, devisees, personal representatives and assigns. The obligation of such Owner to pay such assessment, however, shall also remain his personal joint and several obligation for the statutory period.

If the assessment is not paid within thirty [30] days after the due date thereof or within thirty [30] days after the installment payment dates, if any, established by the Board of Directors, the delinquent amount shall bear interest from the due date thereof until at a lawful rate established by resolution of the Board of Directors at the beginning of each assessment year. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the manner provided by law. In either event, the Association shall recover from such Owner or out of the proceeds of foreclosure accrued interest and costs of collection, including but not limited to, reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas or Community Facilities or by abandonment or non-use of his Lot or Dwelling.

Section 2. Subordination to First Mortgages.

The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage

now or hereafter placed upon any Lot subject to assessment; provided however, that sale or transfer pursuant to a decree of foreclosure or any proceeding or transfer in lieu of foreclosure pursuant to such mortgage shall not relieve such Lot or Owner from liability for any assessments becoming due after such sale or transfer nor from the lien thereof.

ARTICLE VII

Section 1. Exterior Maintenance of Dwellings.

In addition to maintenance of the Common Areas and Community Facilities, as aforesaid, the Association shall, in the interest of the general welfare of the Community and the environment and of all Owners, provide periodic exterior maintenance upon Lots, or Dwellings thereon, including, but not limited to, periodic painting of exterior building surfaces and trim, maintenance and replacement of gutters, downspouts and roofs, care of shrubs, lawns, walks, and other exterior improvements as and when deemed necessary by the Board of Directors or the Architectural Control Committee.

Section 2. Access at Reasonable Times.

For the purposes solely of performing the exterior maintenance required or authorized by this Article VII the Association, through its duly authorized agents or employees, shall have the right to enter upon such Lot or the exterior of the Dwelling thereon and to perform such maintenance upon such Lot or Dwelling at any reasonable daylight hour.

ARTICLE VIII

Section 1. Architectural Control Committee.

The Architectural Control Committee shall be composed of three [3] or more natural persons designated from time to time by

the Board of Directors of the Association and such persons shall serve at the pleasure of the Board of Directors. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Declaration.

Section 2. Improvements and Alterations.

Except for original construction by the Declarant and for purposes of restoration of improvements or structures to their original appearance or as otherwise provided in this Declaration, no building, fence, wall or other improvements or structure shall be commenced, erected, placed, moved or maintained upon The Property, nor shall any exterior addition to or change in any improvement located on The Property be made until the complete plans and specifications showing the precise and exact nature, kind, shape, height, set-back, materials, color and location of the same shall have been submitted in duplicate to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for The Property by the Architectural Control Committee.

Section 3. Approvals of Improvements and Alterations.

Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Declaration, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the

applicant submitting the same. In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications which may be submitted to it within forty-five [45] days after submission, then approval will not be required and this Article VIII shall be deemed to have been fully complied with.

Section 4. Limitations.

Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article VIII shall be commenced within six [6] months following the date upon which the same are approved by the Architectural Control Committee (whether by affirmative action or by forbearance from action, as provided in Section 3 of this Article VIII), and shall be substantially completed within twelve [12] months following the date of commencement, or within such longer period as the Architectural Control Committee shall specify. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Control Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article VIII shall again be required. There shall be no deviations from plans and specifications approved by the Architectural Control Committee without the prior consent in writing of the Architectural Control Committee. Approval for use on any Lot of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Control Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use upon any other Lot or Lots.

Section 5. Certificate of Compliance.

Upon the completion of the construction or alteration of any building, fence, wall or other improvements or structure in

accordance with plans and specifications approved by the Architectural Control Committee in accordance with the provisions of this Article VIII, the Architectural Control Committee shall, at the request of the owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall or other improvements or structure referenced in such certificate has been approved by the Architectural Control Committee and constructed or installed in full compliance with the provisions of this Article VIII and with such other provisions and requirements of this Declaration as may be applicable.

Section 6. Rules and Regulations.

The Architectural Control Committee shall from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, or guidelines and establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary and appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article VIII or any other provision or requirement of this Declaration. The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article VIII. The decisions of the Architectural Control Committee shall be final, except that any Owner who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the Board of Directors. A vote of two thirds [2/3] of the then constituted Board of Directors shall be necessary to overrule a decision of the Architectural Control Committee.

Section 7. Enforcement; Right to Correct Violations.

In the event any building, fence, wall or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any Lot; otherwise than in accordance with the provisions and requirements of this Article VIII, then the same shall be considered to have been undertaken in violation of this Article VIII and without the approval of the Architectural Control Committee required herein. Upon written notice from the Architectural Control Committee, such building, fence, wall or other structure or improvements shall be promptly removed. In the event the same is not removed, or the violation is not otherwise terminated, within fifteen [15] days after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, then the Association shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate such violation and the costs thereof shall be assessed against the Lot upon which such violation occurred. A statement for the amount thereof shall be rendered to the Owner of said Lot at which time the assessment shall become due and payable and a continuing lien upon said Lot, and an obligation of the Owner, and may be enforced as provided in Article VI of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable daylight hour for the purpose of ascertaining whether any violation of the provisions of this Article VIII, or any of the other provisions or requirements of this Declaration, exist on such Lot; provided however, that no such entry and inspection shall be taken without a resolution of the Architectural Control Committee or the Board of Directors and after reasonable notice to the Owner of such Lot. Neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE IX

Section 1. Prohibited Uses and Nuisances.

All Dwellings shall be used for private residential purposes exclusively and except for the activities of the Declarant during original construction or except with the prior written approval of the Board of Directors:

- (a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling located on The Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood, the community or Members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device (except such devices as may be used exclusively for security purposes) shall be located, installed or maintained upon the exterior of any Dwelling or upon the exterior of any other improvements which may be constructed upon The Property.
- (b) The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling located on The Property, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the community or

Members. Pets shall be attended at all times and shall be registered, licensed and innoculated as may from time to time be required by law.

- (c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any Lot.
- (d) No junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat or other machinery or equipment of any kind or character, except for such equipment or machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Dwelling or other improvements located on The Property and except for such equipment or machinery as the Association may require in connection with the maintenance and operation of the Common Areas and Community Facilities, shall be kept on The Property; nor shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or equipment or for the undertaking of such repairs or may waive this prohibition upon the written application of a Member.
- (e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be

kept or maintained upon any Lot. Garbage, trash and other refuse shall be placed in covered containers of a type and size approved by the Architectural Control Committee.

- (f) No Lot shall be divided or subdivided and no portion of any Lot other than the entire Lot shall be transferred or conveyed for any purpose. No portion of any Dwelling other than the entire Dwelling shall be leased. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association.
- (g) No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.
- (h) In order to facilitate the free movement of passing vehicles, no automobiles belonging to Owners shall be parked on the paved portion of any joint driveways or any streets, public or private, or upon any portion of the Common Areas or Community Facilities not designated for such purpose, except during bona fide temporary emergencies.
- (i) No sound hardwood trees measuring in excess of six [6] inches in diameter at a point two [2] feet above the ground shall be removed from any Lot without written approval of the Board of

Directors of the Association. The Board of Directors may from time to time adopt and promulgate such additional rules and regulations regarding the preservation of trees and other natural resources and wildlife upon The Property as it may consider appropriate.

- (j) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such signs as may be erected and maintained by the Declarant or the Association, no signs or advertising devices of any character shall be erected, posted, or displayed upon, in or about any Lot or Dwelling within The Property, provided however, that one temporary real estate sign not exceeding six [6] square feet in area, may be erected upon any Lot or attached to any Dwelling placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot or Dwelling.
- (k) No structure, planting or other material which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels, other than sidewalks, shall be placed or permitted to remain upon any Lot.
- (l) The doors of any storage room or the like shall be maintained in a closed position whenever possible, and any storage spaces made available for the use of Owners shall be neatly maintained.

- (m) No Dwelling or other improvements which are located upon The Property shall be permitted to fall into disrepair and all such Dwellings and other improvements, including lawn and other landscaped areas, shall be maintained in good condition.
- (n) There shall be no violation of any rules for the use of the Common Areas or Community Facilities or other rules and regulations consistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association, and the Board of Directors is hereby authorized to adopt such rules.
- (o) No outdoors clothesline or other device for drying clothes shall be installed on any Lot.
- (p) No bicycles, furniture, packages or objects of any kind shall be stored or maintained in the public walkways, driveways or other Common Areas or Community Facilities nor in front of the Dwellings on the Lots or stoops adjacent to such Dwellings. The public walkways and driveways shall be used for no purpose other than for normal transit through them.
- (q) No antennas or any other exterior structure shall be attached to the buildings without prior approval of the Architectural Control Committee.

Section 2. Right of Association to Remove or Correct Violations of This Article.

The Association may, in the interest of the general welfare of all Members, enter upon any Lot or the exterior of

any Dwelling at any reasonable daylight hour for the purpose of inspecting, removing or correcting any violations or breach of any attempted violation of any of the covenants and restrictions contained in this Article IX, or for the purpose of abating anything herein as a prohibited use or nuisance; provided however, that no such action shall be taken without a resolution of the Board of Directors of the Association and after reasonable notice to the Owner of such Lot or Dwelling. No such entry or inspection shall be considered a trespass or otherwise be considered a wrongful act.

ARTICLE X

Section 1. Party Walls.

Each wall which is built as part of the original construction of any Dwelling on The Property and placed on the

dividing line between Lots shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto to the extent consistent with the provisions of this Article X.

Section 2. Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing.

Notwithstanding any other provision of this Article X, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE XI

Zoning

The provisions of this Declaration shall not be construed to permit any action or use which is prohibited by the Zoning or Subdivision Regulations of Cary, North Carolina, or by any other applicable law, rule or regulation of any governmental authority. In the event of any conflict between any of the provisions of this Declaration and such Zoning or Subdivision Regulations or any such law or regulation, then the most restrictive of such provisions shall control.

ARTICLE XII

Section 1. Management Agent.

The Association may employ a professional management agent [the "Management Agent"], at a rate of compensation to be established by the Board of Directors of the Association, to perform such duties and services as the Board of Directors shall authorize, including but not limited to:

- (a) collection of the assessments provided for in this Declaration and enforcement of liens therefor in a manner consistent with law and the provisions of this Declaration; and
- (b) care, upkeep, maintenance and surveillance of the Common Areas and Community Facilities and Lots and Dwellings, as provided herein; and
- (c) employment of such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas and Community Facilities and Lots and Dwellings, as provided herein; and

- (d) with the approval of the Board of Directors, enforcement of such rules and regulations and such restrictions or requirements, "house rules" or the like as may have been adopted by the Board of Directors respecting the use of the Common Areas and Community Facilities; and
- (e) provision of such other services, including accounting services, for the Association as may be consistent with law and the provisions of this Declaration.

ARTICLE XIII

Section 1. Insurance Proceeds for Losses to Common Areas or Community Facilities.

Insurance proceeds for losses to Common Areas or Community Facilities shall be paid to the Association. Such proceeds shall be applied by the Board of Directors to repair or restore the Common Area or Community Facility damaged; provided however, that by a resolution approved by two thirds [2/3] of the eligible votes of each class of Members such proceeds may be used for any other purpose stated in such resolution.

Section 2. Condemnation Proceeds for a Taking of Common Areas or Community Facilities.

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or part of the Common Areas or the Community Facilities, or for conveyance in lieu of condemnation, shall be paid to the Association. Proceeds for partial condemnation or taking shall be paid by the Board of Directors to each Owner of a Lot affected by such condemnation or other taking as follows:

- (a) The Board of Directors shall employ one or more independent professional real estate appraisers to determine with regard to each Lot whether the fair market value of such Lot and the improvements thereon immediately prior to such condemnation or taking was reduced by such condemnation or taking, and, if so, the fair market value of such Lot and the improvements thereon immediately before and immediately after such condemnation or taking.
- (b) The Board of Directors shall determine the total dollar amount of loss to Lots (i.e., total value of Lots prior to taking minus total value of Lots after taking) based on the figures obtained pursuant to subparagraph (a) above. The Board shall calculate the percentage which the dollar amount of loss suffered by each such Lot represents of the total amount of loss.
- (c) Each Owner shall be paid by the Board of Directors that percentage of the proceeds, after the deduction of all legal and appraisal and other costs incurred in connection with such condemnation or taking and the settlement and disbursement of the award thereof, which is attributable to each Lot as determined pursuant to subparagraph (b) above.

Proceeds for total condemnation or taking shall, after the deduction of costs as provided above, be paid by the Board of Directors to each Owner of a Lot in the proportion which the annual assessment paid or payable by such Owner in the assessment year in

which the taking occurs bears to the total annual assessments paid or payable on all Lots in such assessment year; provided however, a resolution approved by two thirds [2/3] of the eligible votes of each class of Members, Members may provide that such condemnation proceeds shall be applied or disbursed in such manner as the resolution shall designate. The Board of Directors shall deduct from any payment of condemnation proceeds any delinquent assessment(s) owed the Association by any Owner of a Lot.

ARTICLE XIV

Section 1. Rights of First Mortgagees.

Other provisions of this Declaration notwithstanding, the Association, the Board of Directors of the Association and the Members shall not without the prior written approval of all first mortgagees of record of Lots:

- (a) abandon the regime of covenants and restrictions established by this Declaration, or
- (b) partition, subdivide, sell or otherwise dispose of Common Areas and Community Facilities, except as may be provided in Sections 1(a) and (j) Article IV hereof; or
- (c) change the method of determining annual assessments established by Article V of this Declaration; or
- (d) resolve to use insurance proceeds for losses to Common Areas or Community Facilities for any purpose other than the repair or restoration of such Common Areas or Community Facilities.

No first mortgagee of record of any Lot shall

- (a) be required to cure any breach of this Declaration which is not readily curable as to a Lot

acquired by such mortgagee by foreclosure or by proceeding or transfer in lieu of foreclosure; provided however, that such mortgagee is liable for all assessments which become due after such foreclosure or proceeding or transfer in lieu of foreclosure; or

- (b) be affected by any amendment to this Declaration unless prior to such amendment all such first mortgagees of record have been given sixty [60] days' advance written notice of the proposed amendment and at least two thirds [2/3] of such mortgagees have given their approval to such amendment. Approval shall be deemed to have been given by such mortgagee unless written notice of disapproval shall have been delivered to the Association within sixty [60] days after the giving of the notice provided for herein.

Section 2. Notices of Default.

Upon written request therefor, first mortgagees of record shall be given written notice by the Board of Directors of the Association of any default in payment of assessments or in the discharge of other obligations pursuant to this Declaration not cured within thirty [30] days by the Owner of a Lot in which such mortgagee has a security interest.

Section 3. Examination of Records.

First mortgagees of record of Lots shall have the right to examine the books and records of the Association at reasonable times and to obtain upon written request therefor annual reports and financial data prepared by the Association.

ARTICLE XV

Section 1. Duration and Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns for a term of fifty [50] years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten [10] years each. This Declaration may be amended, except where permanent easements or other permanent rights or interests are herein created, by an instrument signed by Owners of record of seventy-five percent [75%] of the Lots and placed of record where this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner and every first mortgagee of record of a Lot at least sixty [60] days but not more than one hundred and eighty [180] days prior to the recordation of such instrument. No such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas or Community Facilities herein created. No change of circumstances or conditions shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner hereinabove provided for. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

Section 2. Incorporation by Reference on Resale.

In the event any Owner sells or otherwise transfers his Lot, any deed purporting to effect such transfer shall contain a

provision incorporating by reference the covenants and restrictions set forth in this Declaration.

Section 3. Notices.

Any notice required to be given to any Member or Owner of a Lot or to any first mortgagee of record of a Lot pursuant to the provisions of this Declaration shall be deemed to have been given when mailed, by certified mail postpaid, to such Member or Owner or mortgagee at his address as it appears in the records of the Association at the time of such mailing.

Section 4. Enforcement.

These covenants and restrictions may be enforced by the Association or any Member or Owner. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity (i) against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, (ii) against any Lot to enforce any lien or covenant or restriction by this Declaration, or (iii) both. The party prevailing in any such proceeding shall be entitled to reasonable attorney's fees and costs incurred in such proceeding. The failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided for in this Declaration shall be cumulative and not exclusive.

Section 5. No Dedication to Public Use.

Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance

of any Common Areas or Community Facilities by any public or municipal agency, authority or utility.

Section 6. Severability.

Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 7. Captions and Gender.

The captions of this Declaration are intended for convenience only and shall not be used to interpret or define the provisions hereof. Wherever the context so requires, all references to the singular shall include the plural and all references to the masculine gender shall include the feminine and, in both instances, vice versa.

IN WITNESS WHEREOF, WILLIAMSBURG MANOR ASSOCIATES II, a North Carolina limited partnership, has on the 21st day of November, 1973, caused this Declaration to be executed by C. Daniel Swansen, its General Partner.

WILLIAMSBURG MANOR ASSOCIATES II

WITNESS:

By

C. Daniel Swansen, General Partner

STATE OF

COUNTY OF

ss:

On this 21st day of November, 1973, personally came before me, Georgette Butt, a Notary Public of the

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County of *Wake*, State of *North Carolina*, C Daniel Swansen, who being by me duly sworn, says that he is General Partner of Williamsburg Manor Associates II, a limited partnership, and that said instrument was signed and sealed by him for and on behalf of said limited partnership, and said C. Daniel Swansen acknowledged said instrument to be the act and deed of said limited partnership.

Witness my hand and official seal.

My Commission expires: *February 23, 1977*

Georgetta C. Britt
Notary Public

STATE OF NORTH CAROLINA)

COUNTY OF) SS:

The foregoing certificate of
a Notary Public of the County of
State of North Carolina, is certified to be correct, this
day of , 1973.

Register of Deeds

Probate fee \$ paid.

By: _____
Deputy Assistant

NORTH CAROLINA—WAKE COUNTY

The foregoing certificate

of *Georgetta C. Britt*

(are) certified to be correct. This instrument was presented for registration and recorded in this office in Book *2206* Page *284*

This *21* day of *Nov.*, 1973, at *4:55* o'clock *P.*M.

J. A. ROWLAND, Register of Deeds.

By *Mary S. Peoples*
Deputy Register of Deeds

EXHIBIT "A"

All of Williamsburg Manor Phase II as shown on map recorded in Book of Maps 1973, page 468, Wake County Registry.

EXHIBIT "B"

All of Williamsburg Manor Phase I as shown on map recorded in Book of Maps 1972, page 393, Wake County Registry together with all lands owned by Swansen Development Corporation adjoining either Phase I or Phase II of Williamsburg Manor.

BY-LAWS
OF
WILLIAMSBURG MANOR HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Name and Location

The name of this Corporation is Williamsburg Manor Homeowners Association, Inc. Its initial principal office is located at 1249-F Quincy Court, Cary, Wake County, North Carolina.

ARTICLE II

Purpose

The purpose of this Corporation is to conserve the environment and amenities of the community known as Williamsburg Manor, to provide for the preservation, maintenance and management of certain Common Areas and Community Facilities located within said community, to provide architectural control for the residential properties located therein and to promote the health, safety and welfare of the residents of said community, all consonant with the provisions of its Articles of Incorporation, these By-Laws and the Declaration of covenants and restrictions hereinafter mentioned.

ARTICLE III

Section 1. Declaration. "Declaration", as used herein, means that certain Declaration made the 21st day of November, 1973,

by Williamsburg Manor Associates II, a limited partnership organized and existing under the laws of the State of North Carolina, which Declaration is recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 2. Corporation. "Corporation" or "Association", as used herein, means Williamsburg Manor Homeowners Association, Inc., and its successors and assigns, or, upon merger or consolidations with another corporation or corporations, the corporation surviving such merger or resulting from such consolidation.

Section 3. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended, all other terms used herein shall have the same meaning they are defined to have in the Declaration.

ARTICLE IV

Section 1. Association Membership. The Association shall have two classes of voting membership:

- (a) Every person, group of persons or entity other than Declarant who is an Owner whose Lot is or becomes subject by covenants of record to assessment by the Association shall be a Class A Member of the Association and shall be so recorded in the books of the Association; provided however, that any person, group of persons or entity who holds an interest in any subdivided parcel designated as a Common Area or Community Facility shall not be a Member on account of such interest. Class A Members shall be entitled to one vote for each Lot of which they are an Owner.

(b) There shall be eight hundred and sixty (860) Class B memberships, all of which shall be issued to Declarant or its nominee or nominees. The Class B Member(s) shall be entitled to one vote for each membership held; provided however, that each Class B membership shall terminate upon the first to happen of the following events:

- (i) when the total authorized issued and outstanding Class A memberships exceeds one third (1/3) of the issued and outstanding Class B memberships, or;
- (ii) on July 1, 1978; or
- (iii) upon the surrender of all Class B memberships by the then holders thereof for cancellation on the books of the Association.

Section 2. Membership Certificates. Membership in the Association shall be evidenced by a membership certificate which shall state the name of the registered holder(s) of the membership and which shall be in such form as shall be approved by the Board of Directors of the Association. Membership certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to the transfer of title to the Lot to which such membership is appurtenant. Membership is not otherwise transferable. Every membership certificate shall be signed by the President or Vice President and the Secretary or an Assistant Secretary of the Association and shall be sealed with the corporate seal of the Association.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate previously issued by the Association and alleged to have been destroyed or lost, upon the making of an affidavit of that fact by the Member holding the certificate said to be lost or destroyed. When authorizing such issuance of a new certificate, the Board of Directors may, in its discretion as a condition precedent to the issuance thereof, require the Member holding such lost or destroyed certificate or his legal representative, to advertise the same in such manner as the Board of Directors shall require and to give the Association a bond in such sum as the Board of Directors shall require as indemnity against any claim that may be made against the Association.

Section 4. Liquidation Rights. In the event of any voluntary or involuntary dissolution of the Association, each Member of any Class of the Association shall be entitled to receive out of the assets of the Association available for distribution to the Members an amount equal to that proportion of such assets which the number of eligible votes held by such Member bears to the total number of eligible votes held by all Members.

ARTICLE V

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors of the Association.

Section 2. Annual Meetings. The first regular annual meeting of Members shall be held within one hundred twenty [120] days

following the lapse of all Class B memberships of the Association. Thereafter, the annual meetings of the members of the Association shall be held on the second Wednesday in May each succeeding year. At such meeting there shall be elected by plurality ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article VI of these By-Laws. Members may also transact such other business of the Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of Members as directed by resolution of the Board of Directors or upon a petition signed by at least one third [1/3] of the Members of each Class and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail postpaid a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member at his address as it appears in the records of the Association at the time of mailing at least ten [10] but not more than sixty [60] days prior to such meeting. Notice may also be accomplished by the delivery of written notice by hand of the Secretary or his designee to Members at their addresses as they appear on the records of the Association at the time of such delivery. Notice by either method shall be deemed given when such notice is deposited in the mails or delivered by hand to such address. Attendance by a Member at any meeting of Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 5. Quorum. The presence, either in person or by proxy, of Members representing at least twenty percent [20%] of the eligible votes held by the then Members of record of each Class, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight [48] hours from the time the original meeting was called. The quorum required for any such adjourned meeting shall be reduced to fifty percent [50%] of the quorum required at the immediately preceding meeting which failed for lack of a quorum to do business.

Section 7. Voting. At every meeting of Members, each Class A Member shall have the right to cast on each question one vote for each Lot of which he is an Owner. Each Class B Member shall have the right to cast on each question one vote for each Class B membership which he holds. Fifty-one percent [51%] of the eligible votes entitled to be cast by Members present at the meeting and voting, in person or by proxy, shall be a majority unless the question is one upon which, by express provision of statute or of the Articles of Incorporation of the Corporation, or of the Declaration or of these By-Laws, a different majority vote is required, in which case such express provision shall govern. If more than one person or entity is an Owner of any Lot, then the Association membership voting right appurtenant to such Lot shall

be exercised as such Owners among themselves shall determine; provided however, that no fraction of one vote may be cast by any Member. In the event and so long as such co-Owners of a Lot are unable to agree on the manner in which the vote appurtenant to such Lot shall be cast, then such vote shall not be regarded as an eligible vote and shall not be counted. The vote of any Owner who is a corporation, trust or partnership may be cast by any officer, trustee or partner, as the case may be, and unless objection by any other such officer, trustee or partner of such Owner is noted at the meeting, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote.

Section 8. Loss of Right to Vote. The vote of any Class A Member who is shown on the books or records of the Association to be more than sixty [60] days delinquent in any payment due the Association shall not be an eligible vote and shall not be counted for purposes of deciding any question so long as such delinquency is not cured; nor shall such Member be eligible to be elected to the Board of Directors.

Section 9. Proxies. A Member may appoint any other Member or the Declarant or the Management Agent as his proxy. Any proxy must be in writing and must be filed with the Secretary in form approved by the Board of Directors before the appointed time of each meeting. Unless limited by its terms, any proxy shall continue until revoked by a written notice of revocation filed with the Secretary or by the death of the Member. In no case may a Class A Member cast, in addition to his own vote, more than one vote as proxy for another Member.

Section 10. Order of Business. The order of business at annual meetings of Members shall be as follows:

- (a) Roll call and certification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Appointment of inspectors of election.
- (i) Election of directors.

In the case of special meetings, items (a) through (e) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of meeting.

ARTICLE VI

Section 1. Number and Qualification of Directors. The affairs of the Association shall be governed by the Board of Directors composed of at least three [3] natural persons and not more than seven [7] natural persons as determined by resolution of Members. After the lapse of all of the Class B memberships as provided in Article IV of these By-Laws, all Directors shall be Members.

Section 2. Initial Directors. The names and residence addresses of three [3] initial directors selected by Declarant to act as such until the first annual meeting, or until such time as their successors are duly chosen and qualified, are:

<u>Name</u>	<u>Address</u>
C. Daniel Swansen	380 Maple Avenue Vienna, Virginia 22180
Fred T. Molthen	380 Maple Avenue Vienna, Virginia 22180
Mary Ellen Swansen	380 Maple Avenue Vienna, Virginia 22180

Section 3. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws or the Declaration

directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to:

- (a) Care, upkeep and maintenance of the Common Areas, Community Facilities, Dwellings and Lots in a manner consistent with law and the provisions of these By-Laws and the Declaration.
- (b) Determination and collection of annual assessments and special assessments from Members, the maintenance of a roster of assessments and charges applicable to each Lot and the enforcement of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.
- (c) Designation, hiring and dismissal of a Management Agent or of the personnel and services and materials necessary for the good working order and operation of the Common Areas and Community Facilities and for the maintenance of Dwellings and Lots as provided in these By-Laws and in the Declaration.
- (d) Promulgation and enforcement of such rules and regulations and admission charges and fees and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Common Areas and Community Facilities, all of which shall be consistent with law and the provisions of these By-Laws and the Declaration.
- (e) Procurement of fire and extended hazard insurance on the Common Areas and Community Facilities and on Dwellings and such other insurance

and such surety or fidelity bonds as the Board of Directors determines to be necessary and appropriate.

- (f) Preparation and distribution to each Member of an annual report which shall include the annual financial statements hereinafter provided and which shall summarize the operations and actions of the Association and its income, expenditures and reserves.

Section 4. Management Agent. The Board of Directors may employ for the Association a management agent [the "Management Agent"] at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize.

Section 5. Election and Term of Office. The term of the Directors named herein and in the Articles of Incorporation shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of Members, the term of office of the Director receiving the greatest number of votes shall be fixed at three [3] years. The term of office of the Director receiving the second greatest number of votes shall be fixed at two [2] years, and the term of office of the other Director or Directors shall be fixed at one [1] year. In the alternative, Members may, by resolution duly made and adopted at such first annual meeting, or at any subsequent annual meeting, elect to fix the term of each Director elected at such meeting at one [1] year. Unless Members shall resolve to fix the term of office of each Director at one [1] year, at the expiration of the initial term of office

of each respective Director, his successor shall be elected to serve a term of three [3] years. The Directors shall hold office until their successors have been elected and qualified.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of Members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by the Members at the next annual meeting to serve out the unexpired portion of the term.

Section 7. Removal of Directors. At a regular meeting, or at a special meeting duly called for such purpose (but only after the first regular meeting of Members as hereinabove provided), any Director may be removed with or without cause by a vote of fifty-one percent [51%] of the eligible votes entitled to be cast by Members, whether or not present and voting thereon. A successor may then and there be elected to fill a vacancy by majority vote of Members present and voting thereon in person or by proxy. Any Director whose removal has been proposed by Members shall be given an opportunity to be heard at the meeting. The term of any Director who is a Class A Member and who becomes more than sixty [60] days delinquent in payment of any assessments or charges due the Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this Article VI.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the lapse of all of the Class B memberships as provided in Article IV of these By-Laws, no remuneration shall be paid to any Director who is also a Class A Member of the Association for services

performed by him for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten [10] days of such election at a place fixed by the newly elected Directors. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least four [4] such meetings shall be held during each fiscal year after the lapse of all Class B memberships. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail to his address as it appears on the records of the Association at the time such notice is mailed or personally delivered, at least six [6] days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President of the Association on three [3] days' notice to each Director given personally or by mail as hereinabove provided, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third [1/3] of the Directors.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed the equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 13. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any resumption of business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Action Without Meeting. Any action taken by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 15. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling

or responsible for Association funds and securities shall furnish adequate fidelity or surety bonds. The premiums on such bonds may be paid by the Association.

ARTICLE VII

Section 1. Designation of Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Prior to the lapse of all of Class B memberships as provided in Article IV of these By-Laws, the officers of the Association need not be Members. The Directors may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor 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 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of Members and of the Board of Directors.

He shall have all of the general powers and duties which are usually vested in the office of president of a corporation, including, but not limited to, the power to appoint special committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be designated to him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of Members. He shall have custody of the seal of the Association and he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct. He shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for the keeping of full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VIII

Advisory Committee

Until the lapse of all Class B memberships, the Board of Directors shall designate not less than three (3) nor more than seven (7) Class A Members who shall serve as an Advisory Committee to the Board. Members of the Advisory Committee shall advise the Board on matters pertaining to the purposes and operations of the Association. To that end, the Advisory Committee may, by majority vote, establish temporary committees and appoint Class A Members to serve thereon. The Chairmen of such Committees shall be members of the Advisory Committee.

ARTICLE IX

Section 1. Liability and Indemnification of Officers and Directors and Former Officers and Directors.

The Association shall indemnify every officer or director of the Association and every former officer or director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association. The officers and directors of the Association shall not be liable to Members for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability

to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association, or former officer or director of the Association, may be entitled.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Association. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association, including the Declarant, in which one or more of the Directors of this Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

- (a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the Minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- (b) The fact of the common directorate or interest is disclosed or known to Members, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

- (c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

A common or interested Director may be counted in determining the presence of a quorum at any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

ARTICLE X

Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, operate and maintain the Common Areas and Community Facilities and, for the benefit of Members and the community, shall enforce the provisions of these By-laws and the Declaration and pursuant thereto shall have the authority to pay:

- (a) All operating expenses of the Common Areas and Community Facilities including services furnished; and
- (b) The cost of necessary management and administration, including fees paid to any Management Agent; and
- (c) Taxes and assessments levied against the Association or upon any property which it may own or which the Association is otherwise required to pay; and
- (d) The cost of fire and extended liability insurance on the Common Areas and Community Facilities and on Dwellings and the cost of such other insurance as the Association may procure; and

- (e) The cost of furnishing water, electricity, heat, gas, garbage and trash collection, or other utilities, to the Common Areas and Community Facilities; and
- (f) The cost of furnishing water to each Lot; and
- (g) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve or a reserve for replacements; and
- (h) The cost of repairs, maintenance and replacements of the Common Areas and Community Facilities; and
- (i) The cost of repairs, maintenance and replacements to the exteriors of all Dwellings; and
- (j) The cost of landscaping and maintenance of lawns and plantings on Lots.

Section 2. Management Agent. The Board of Directors may by resolution delegate any of its ministerial duties, powers or functions to the Management Agent. The Association and the Board of Directors shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power or function so delegated.

Section 3. Easements for Utilities and Related Purposes. The Board of Directors is authorized and empowered to grant such licenses, easements or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, underground conduits or such other purposes related to

the provision of public utilities to the Common Areas and Community Facilities as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Areas and Community Facilities and for the preservation of the health, safety, convenience or welfare of Members, the community or the Declarant.

Section 4. Association Rules. There shall be no violation of any rules for the use of the Common Areas or Community Facilities, or other Association rules, which may from time to time be adopted by the Board of Directors and promulgated.

ARTICLE XI

Section 1. Insurance. The Board of Directors shall obtain and maintain, to the extent available, at least the following insurance:

- (a) Casualty or physical damage insurance in an amount equal to the full replacement value, i.e., 100% of "replacement cost", on improvements on the Common Areas and on Community Facilities with an "agreed amount" endorsement, if reasonably available, and without deduction or allowance for depreciation, such coverage to afford protection against at least the following:
 - (i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement;
 - (ii) such other risks as shall customarily be covered with respect to property similar in construction, location and use as the Board of Directors may from time to time determine, including, but not limited to,

vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage; and

- (b) Blanket casualty or physical damage insurance in an amount equal to the full replacement value, i.e., 100% of "replacement cost" on all Dwellings, with coverage to afford protection as provided in subparagraph (a) above; and
- (c) Public liability insurance in such amounts and in such form as may be considered appropriate by the Board of Directors including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership or use of the Common Areas and Community Facilities or any portion thereof; and
- (d) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and
- (e) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this Article X shall be subject to the following provisions:

- (a) All policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of "BBB+" or better in Best's Insurance Guide.

- (b) Exclusive authority to negotiate losses under policies shall be vested in the Board of Directors or its authorized representative; provided however, the loss payee and the party authorized to negotiate losses under policies pertaining to Dwellings may be an insurance trustee for the use and benefit of Owners.
- (c) All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty [30] days' prior written notice to any and all insureds named therein, including any and all first mortgagees of record of Common Areas or Community Facilities or of Dwellings.
- (d) If reasonably available, all policies shall contain a waiver of any defenses based upon co-insurance or invalidity arising from the acts of the Insured.

ARTICLE XII

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association which shall begin on the date of incorporation. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in

accordance with good accounting practices. The same shall include books with detailed accounts, in chronological order, of the receipts and of the expenditures of the Association and its administration and shall specify the maintenance and repair expenses of the Common Areas and Community Facilities and any other expenses incurred. An account of any reserves established by the Board of Directors, including additions thereto and disbursements thereof, shall also be maintained. That amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by Members.

Section 3. Auditing. At the close of each fiscal year, the books and records of the Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards. Based upon such report, the Association shall furnish its members with annual financial statements reflecting the income, expenditures and reserves of the Association and its condition at the close of such fiscal year.

Section 4. Inspection of Books. The books and accounts of the Association shall be available for examination by Members or their duly authorized agents or attorneys, and to first mortgagees of record of any Lot or their duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts

shall be executed on behalf of the Corporation by either the President or Vice President, and all checks shall be executed on behalf of the Association by the President or Treasurer or such other officers, agents, or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Seal. The Board of Directors shall provide a suitable corporate seal containing the name of the Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be kept and used by the Treasurer or any assistant secretary or assistant treasurer.

ARTICLE XIII

Amendments

These By-Laws may be amended by a vote of fifty-one percent [51%] of the eligible votes entitled to be cast by Members, at any meeting of Members duly called for such purpose. Amendments shall be proposed by the Board of Directors or by petition signed by at least one third [1/3] of Members of each Class. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

ARTICLE XIV

Section 1. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control.

Section 2. Committees. Except for the Architectural Control Committee, there shall be no standing committees of the Association. The Board of Directors may, however, from time to time, appoint such committees as it considers necessary or appropriate from the membership of the Corporation, each of which shall consist of a chairman and at least two [2] other members. Any committee so appointed shall serve at the pleasure of the Board of Directors.

Section 3. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 4. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 5. Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not to be used to interpret or define the provisions of these By-Laws.

Section 6. Number and Gender. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

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