

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE VILLAGE AT TONY TANK CREEK**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE VILLAGE AT TONY TANK CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 28<sup>TH</sup> day of AUGUST, 2001, by Thomas H. Ruark, Inc., a Maryland Corporation ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant by Deed dated May 4, 1997, and recorded among the Land Records of Wicomico County in Liber M.S.B. No. 1541, Folio 819 is the owner of the real property described in Exhibit "A" attached and incorporated herein by reference (the "Property") and more particularly described in a subdivision plat entitled "The Village at Tony Tank Creek" dated February, 2000 and revised April 25, 2001 and recorded among the Land Records of Wicomico County, State of Maryland, in Plat Cabinet M.S.B. No. 13, Folios 130, 131 and 132 (the "Subdivision Plat"). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property made subject to this Declaration and any amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and the interrelationship of the component residential associations, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such Property as are now or may hereafter be subjected to this Declaration; and

WHEREAS, Developer has deemed it advisable for the efficient preservation of the values, easements and common areas in said community to create three homeowners associations to which will be delegated and assigned the powers and responsibilities of owning and maintaining the areas herein referred to, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit "A" be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1.** "Association" shall mean and refer to The Village at Tony Tank Creek Homeowners Association, Inc., its successors and assigns.

**Section 2.** "Board of Directors" shall mean and refer to the Board of Directors of the Association.

**Section 3.** "Cluster Home Area" shall mean and refer to Lots 76-93 in Block "G" and Lots 94-99 in Block "H", "Parcel A Common Area" and "Parcel B Common Area" as shown on the subdivision plat.

**Section 4.** "Common Areas" shall mean and refer to all areas of the Property other than lots, owned by the Association or otherwise available to the Association for the common use, benefit and enjoyment of the Owners. The Commons Areas to be owned in fee simple by the Association shall include "Open Space, Parcel 1", "Open Space, Parcel 2", "Open Space, Parcel 3", "Open Space, Parcel 4", "Open Space, Parcel 5", "Pond 1S", Parcel A and Parcel B as shown on the Subdivision Plat, and each additional area designated by the Declarant as Common Area

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when (a) additional areas, or portions thereof, are added to the Property pursuant to Article XII(1) hereof, or (b) the Declarant elects to convey the residue or part thereof to the Association and designate the residue or part thereof as a Common Area.

Section 5. "Declarant" shall mean and refer to Thomas H. Ruark, Inc., its successors or assigns, who have expressly been assigned Declarant rights.

Section 6. "Duplex Home Area" shall mean and refer to Lots 1-13 in Block "A", Lots 14-18 in Block "B", Lots 19-26 in Block "C", Lots 60-64 in Block "E" and Lots 65-75 in Block "F" as shown on the Subdivision Plat.

Section 7. "Irrigation Supply System" shall mean and refer to the wells and irrigation system installed by Declarant to supply water to the Single Family Dwelling Area for irrigation.

Section 8. "Landscape Medians" shall mean and refer to grass median strips located within the roadbeds of Village Oak Drive and Woodholme Court to be maintained by the Association.

Section 9. "Lawn Maintenance Area" shall mean the portion of a Lot including landscaping and driveway identified on the Subdivision Plat adjacent to a duplex or cluster home.

Section 10. "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision Plat of the Properties to be owned in fee simple by an Owner subject to easements, covenants, conditions and restrictions stated herein.

Section 11. "Member" shall mean and refer to each Record Owner of one or more lots now or hereinafter created on the Property. Whenever in this Declaration any action is required to be taken by a specified percentage "of the then Members" of the Association, such action shall be required to be taken by the specified percentage of the votes of the then total Members of the Association.

Section 12. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter be brought within the jurisdiction of the Association.

Section 13. "Record Owner" shall mean and refer to the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding record title to a Lot on the Property, as said Lot is now or may from time to time hereafter be created or established, either in his, her or its own name, or as joint tenants, tenants in common, tenants by the entirety, or tenancy in co-partnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one person, firm, corporation, trustee or other legal entity, or any combination thereof, holds the record title to any one Lot, whether in a real property tenancy, partnership relationship or otherwise, all of same, as a unit, and not otherwise, shall be deemed a single Record Owner and shall be or become a single Member of the Association by virtue of ownership of such Lot. The term "Record Owner", however, shall not include any contract purchaser, nor the owner of any redeemable ground rent issuing out of any Lot, nor shall it include any Mortgagee named in any Mortgage covering any Lot, designed solely for the purpose of security performance of an obligation or payment of a debt.

Section 14. "Residential Unit" shall mean and refer to a single family dwelling house, duplex or cluster home.

Section 15. "Single Family Dwelling Area" shall mean and refer to Lots 27-47 in Block "D" and Lots 48-59 in Block "E" as shown on the Subdivision Plat.

Section 16. "Storm Water Management Facilities" shall mean and refer to all ponds and drainage easements as shown on the Subdivision Plat and shall include all storm water drainage lines, main facilities, and installation heretofore or hereafter constructed, installed, maintained or operated in under and through the Property.



Section 17. "Subdivision Plat" shall mean and refer to the plat recorded by Declarant entitled "The Village at Tony Tank Creek".

**ARTICLE II**  
**PROPERTY SUBJECT TO DECLARATION**

The real property which is and shall be held, conveyed, encumbered, sold, leased, rented, used, occupied, and improved subject to the terms and provisions of this Declaration is the Property except that portion of land entitled "Residue" on the Subdivision Plat.

**ARTICLE III**  
**COMMON AREAS AND EASEMENT AREAS**

Section 1. Conveyance of Common Areas. Declarant shall grant and convey to the Association, and the latter shall take and accept from the former, a fee simple interest in the Common Areas, all, however, subject to the covenants, conditions, and restrictions, hereinafter set forth, which are hereby imposed upon the Common Areas for the benefit of Declarant, Association, and Record Owners, their respective heirs, personal representatives, successors and assigns, and, in addition, subject to the following: Declarant hereby reserves unto and for itself (including any successors and assigns hereafter constituting the Declarant) the right (i) to discharge surface water on the Common Areas in accordance with the natural flow thereof, or under any drainage or storm water management plan approved by Wicomico County, Maryland, or other governmental entity, (ii) to construct, install, use, operate, inspect, maintain, repair, and replace storm water management and sediment control facilities thereon or therein, (iii) to construct, install, use, operate, inspect, maintain, repair, and replace on, over or under the Common Areas, pipes, mains, conduits, drains, lines and other facilities for water, sanitary sewer, storm water drainage, gas, electric, telephone, television, transmittal, and other utilities to provide adequate utility and other services to any Lot, and (iv) to enter upon said Common Areas for such purposes and for the purpose of making openings and excavations therein, provided the ground and any paved areas be restored and left in good condition.

Section 2. Conveyance of Road Beds. Declarant shall grant and convey to the City of Salisbury, a fee simple interest for the road beds of Village Oak Drive, Creekside Drive, Spring Crest Drive, Oakside Circle, Parkwood Drive, Woodholme Court, Piney Grove Court and a 15 foot strip dedicated to the City of Salisbury for road and utility purposes along the westerly side of South Division Street, reserving; nevertheless, an easement for landscape medians located within the roadbeds of Village Oak Drive and Woodholme Court.

Section 3. Easement to City of Salisbury for Water and Sewer System and Storm Water Management Facilities. Declarant shall grant and convey to the City of Salisbury, and the latter shall take and accept from the former, an easement for a water and sewer system and Storm Water Management Facilities as shown and located on the Subdivision Plat and being more particularly described as follows:

(a) Thirty (30) foot utility easement starting from the easterly side of Canal Park Drive and extending in a Northeasterly direction to a ten (10) foot utility easement on the Southwesterly side of Parkwood Drive.

(b) A ten (10) foot deep utility easement along the street or road frontage of all Lots on the Subdivision Plat.

(c) A twenty (20) foot utility easement extended ten (10) feet on both sides of the property lines between Lots 41 and 42, Block D, and Lots 43 and 44, Block D, from the front of the Lots to the back of the Lots as shown on the Subdivision Plat.

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**Section 4. Easements Reserved By Declarant for Storm Water Management Facilities.**

The Declarant hereby reserves unto and for itself and the Association, and their respective successors and assigns, an easement for the construction, installation, use, operation, inspection, maintenance, repair and replacement of Storm Water Management Facilities located outside City of Salisbury right-of-ways including, storm water drainage lines, mains, facilities, and installations heretofore or hereafter constructed, installed, maintained or operated in, under or through the Property.

**Section 5. Maintenance of Storm Water Management Facilities.**

The Association shall supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain all Storm Water Management Facilities located outside City of Salisbury right-of-ways, all at its own cost and expense, and shall levy against each member of the Association by assessment, as provided in Article VI hereof, a proportionate share of the aggregate cost and expense required for the care, maintenance, and improvement of the Storm Water Management Facilities.

**Section 6. Maintenance of Landscape Medians.**

The Association shall supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain all Landscape Medians, located inside City of Salisbury roadbeds, all at its own cost and expense and shall levy against each member of the Association by assessment, as provided in Article VI hereof, a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the landscape medians.

**Section 7. Other Easements Reserved by Declarant.**

The Declarant reserves for itself, the Association, and their respective successors and assigns, for the purposes incident to its development of the Property, the following easements:

(a) A Utility Easement Area is created and reserved on each Lot and Common Area extending 10 feet deep along the street or road frontage of all Lots for placement and maintenance of electrical, telephone, cable television, above ground street lighting, water supply, gas, sewage systems, drainage systems and facilities and such other utilities as the Declarant shall determine to be appropriate.

(b) Those strips across Lots and Common Areas designated on the Subdivision Plat as Storm Water Drainage Easements, Utility Easements, Access Easements, Pedestrian Easements, Easements, or otherwise designated as an easement area.

**Section 8. Maintenance of Easement Areas.**

On each Lot, the easement areas reserved by Declarant or dedicated to public utility purposes shall be maintained by the Record Owner, but no structures or other activities undertaken may damage or interfere with the installation or maintenance of facilities, or which may change the direction of flow of drainage channels in the easements, or which damage or interfere with established slope rations or create erosion or sliding problems. Improvements within such areas shall be maintained by the respective Record Owner except for those for which a public authority or utility company is responsible.

**Section 9. Use of Common Areas.**

The Common Areas shall be deemed common use areas, property, and facilities, for the use, benefit, and enjoyment, in common, of each present and future Member of the Association, who, by necessity, is a Record Owner of a Lot and any others for which the use thereof has been reserved or granted.

**Section 10. Prohibition of Nuisances.** Neither the Association nor its Members shall engage in any activity upon the aforesaid Common Areas, or do anything thereon which is or is likely to become an annoyance or nuisance to the neighborhood.

**Section 11. Maintenance and Improvement of Common Areas.**

The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore, and maintain the aforesaid Common Areas, as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense, and shall levy against each Member of the Association by assessment, as provided in Article VI hereof, a



proportionate share of the aggregate cost and expense required for the care, maintenance, and improvement of said Common Areas except as provided in Section 15 of this Article.

Section 12. Easement Reserved for Irrigation Supply System Within Single Family Dwelling Area. The Declarant hereby reserves unto and for itself and the Association an easement for ingress and egress to the Lots within the Single Family Dwelling Area for maintaining the Irrigation Supply System.

Section 13. Maintenance of Irrigation Supply System. The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain the aforesaid Irrigation Supply System within the Single Family Dwelling Area, all at its own cost and expense and shall levy against each Member of the Single Family Dwelling Area, by Assessment, as provided herein, a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Irrigation Supply System within the Single Family Dwelling Area.

Section 14. Easement Reserved for Lawn Maintenance within Duplex Home Area. The Declarant hereby reserves unto and for itself and the Association an easement for ingress and egress to the Lawn Maintenance Areas within the Duplex Home Area for the purposes stated herein.

Section 15. Maintenance of Lawn Maintenance Area Within Duplex Home Area. The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain the aforesaid Lawn Maintenance Areas within the Duplex Area, all at its own cost and expense and shall levy against each Member of the Duplex Home Area, by assessment, as provided herein, a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Lawn Maintenance Area within the Duplex Home Area.

Section 16. Easement Reserved for Lawn Maintenance with Cluster Home Area. The Declarant hereby reserves unto and for itself and the Association an easement for ingress and egress to the Lawn Maintenance Areas within the Cluster Home Area for the purposes stated herein.

Section 17. Maintenance of Parcel A and Parcel B and Lawn Maintenance Area within Cluster Home Area. The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain the aforesaid Parcel A and Parcel B and Lawn Maintenance Area within the Cluster Home Area all at its own cost and expense and shall levy against each Member of the Cluster Home Area by assessment as provided herein a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of Parcel A and Parcel B and the Lawn Maintenance Area within the Cluster Home Area.

Section 18. Enforceability. The right of each Member of the Association to use the aforesaid Common Areas shall be subject to the terms, conditions, and provisions set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order, and cleanliness of said Common Areas. All of said terms, conditions, provisions, rules, and regulations shall inure to the benefit of and be enforceable by the Association and Declarant, or either thereof, their respective successors and assigns, against any Member of the Association, or any other person, violating or attempting to violate the same, or any thereof, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association and Declarant shall each have the right summarily to abate or remove any breach of violation by any Member at the cost and expense of such Member; provided that if such abatement or removal requires altering or demolishing any item of construction, judicial proceedings shall be instituted prior to executing any such alteration or demolition.

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**Section 19. Maintenance of Lots and Dwellings.** Each Record Owner shall be responsible for maintaining his or her dwelling and all structures, parking areas and other improvements comprising the Lot, including any landscaping thereon, in a neat, orderly, sanitary, and well-maintained condition. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Record Owner thereof in accordance with Article VI, Section 4 of this Declaration; provided, however, except when entry is required due to any emergency situation, the Association shall afford the Record Owner reasonable notice and an opportunity to cure the problem prior to entry. The Association shall have the right to enter upon each Lot as needed to facilitate the performance of any of its maintenance responsibilities under this Declaration, provided that the Association shall restore the ground and any improvements damaged or disturbed as a result of such entry.

#### ARTICLE IV RECORD OWNERS AND PROPERTY RIGHTS

**Section 1. Rights and Privileges of Record Owners.** Declarant shall hold, and hereafter grant and convey, the Lots subject to the covenants, conditions, and restrictions hereinafter set forth, which are hereby imposed upon said Lots for the benefit of Declarant, Association, and Record Owners, their respective heirs, personal representatives, successors and assigns, to the end and intent that each Record Owner of a Lot shall have and hold his Lot subject to the following: Each Record Owner, in common with all other Record Owners, shall have the right and privilege to use and enjoy the Common Areas for the purposes for which designed. Such right and privilege which shall be appurtenant to and pass with the title to the Lot of each Record Owner, shall include particularly, but not by way of limitation, use and enjoyment of all Common Areas provided for the use, benefit and enjoyment of the Record Owners, together with anyone to whom the use, benefit and enjoyment has been extended, subject, however, to the right of the Association to suspend the voting rights and rights to use of any Common Areas by a Record Owner for any period in which any assessment against his Lot remains unpaid.

**Section 2. Delegation of Rights.** Any Record Owner may delegate, in accordance with rules and regulations as stated in the By-Laws of the Association, his right of enjoyment of the Common Areas with any facilities thereon, to the members of his family, or his tenants or contract purchasers who reside on the Property.

**Section 3. Compliance with Rules, Regulations and Restrictions.** Each Record Owner shall fully and faithfully comply with the covenants, agreements, and restrictions imposed by this Declaration on the use and enjoyment of the Common Areas and with the rules, regulations, and restrictions applicable to use of the Common Areas, as such rules, regulations, and restrictions are from time to time adopted by Association for the safety, care, maintenance, good order, and cleanliness of said Common Areas.

**Section 4. Dedications and Transfers of Common Areas.** The aforesaid rights, privileges, and easements of the Record Owners are at all time subject to the right of the Association to dedicate, or transfer all or any part of its interest in the Common Areas, or to grant any easement, right-of-way, license, permit, lease or similar interest in the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Association.

**Section 5. Declarant's Right to Amend Declaration.** The Record Owner of each Lot on the Property shall take and hold legal title to said Lot SUBJECT to the reserved right, power and authority of Declarant to modify, revise, amend or change in any appropriate manner of public record, any of the terms or provisions of this Declaration without the consent of the Record Owners. This reserved right, power and authority vested in Declarant (a) may be exercised if AND ONLY IF a Secondary Financing Agency shall require such action as a condition precedent to the approval by such agency of the Property, or of one or more Lots thereon, for mortgage financing purposes; (b) shall be subject to the provisions of Articles XIII (4) and (5) hereof; and (c) shall expire automatically, simultaneously and coincident with the issuance of the aforesaid approval by at least three of the four Secondary Financing Agencies or ten (10) years after the date of recordation hereof, whichever shall sooner occur.

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**ARTICLE V**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** The Record Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Voting Rights.** The Association shall have one class of voting membership. Each Member shall be a Record Owner holding title to one or more Lots laid out on the Property. Each Member in good standing shall be entitled to one vote per Lot, for each Lot owned by him, in all proceedings in which action shall be taken by Members of the Association. If more than one person, firm, corporation, trustee or other legal entity, or any combination thereof, holds the record title to any Lot, all of same, as a unit, and not otherwise, shall be deemed a single Member of the Association. The vote of any Member comprised of two or more persons, firms, corporations, trustees or other legal entities, or any combination thereof, shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several constituents may determine, but in no event shall all constituents cast more than one vote per Lot, for each Lot owned by them.

**ARTICLE VI**  
**COVENANTS FOR ASSESSMENTS**

**Section 1. Authorization of Annual and Special Assessments.** The Declarant, for each Lot owned by it within the Property, hereby covenants, and each Record Owner, by acceptance of the Deed hereafter conveying any such Lot to him, whether or not so expressed in such Deed, shall be deemed to have covenanted and agreed to pay to the Association: (i) annual assessments; and (ii) special assessments; such annual and special assessment to be established and collected as hereinafter provided. Each such annual or special assessment, together with interest, costs and reasonable attorneys' fees which may be imposed thereon, shall constitute a lien upon each of the Lots against which such assessment is made. Each such assessment, together with any interest, costs and reasonable attorneys' fees imposed thereon, shall also be the personal obligation of the Record Owners holding title to any Lot at the time when the assessment fell due or was first payable. The personal obligation for any delinquent assessment, however, shall not pass to the Record Owner's successor or successors in title unless expressly assumed by such successor or successors except recorded liens as hereinafter provided.

**Section 2. Declarant Exempt from Assessments.** No other provision of this Declaration to the contrary notwithstanding, however, no annual assessment or special assessment shall be levied against the Declarant or any Lot owned by the Declarant, unless a residence has been constructed on the Lot and occupancy permit granted.

**Section 3. Association's Use of Assessments.** Assessments levied by the Association shall be used exclusively for the following purposes: promotion of recreation, health, safety, and welfare of the residents in or on the Property; operation, maintenance and management of the Association, improvement, operation, care, and maintenance of the Common Areas including casualty, liability, and other insurance deemed necessary therefor; payment of all public charges and assessments applicable to the Common Areas, Landscape Medians and Storm Water Management Facilities; care and maintenance of any easement areas which the Association has responsibility to maintain; charges for utilities used upon the Common Areas, for street lighting, or for which the Association is otherwise obligated; legal and accounting fees; expenses and liabilities incurred by the Association in the enforcement of its rights and duties against Record Owners; the creation of reasonable reserves; and all other expenses deemed by the Board of Directors of the Association to be necessary and proper for management, maintenance, repair, operation and enforcement.

**Section 4. Annual Assessments.** The Association, through its Board of Directors, shall have the power and authority to collect annual assessments as hereinafter set forth. The total anticipated costs of the Association to fulfill its obligations for each fiscal year shall be set forth in a projected budget prepared by the Board of Directors of the Association. Subject to the provision for exemption from the payment of assessments by the Declarant, the costs reflected in the budget shall be apportioned equally among the Lots owned by Record Owners (other than

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Declarant), by dividing the total anticipated costs as reflected in the budget, other than those costs which are properly the subject of a special assessment or charge against the individual Lot and charges for lawn maintenance as provided by Article III, Sections 13 and 15, by the total number of Lots owned by Record Owners (other than Declarant), with the quotient thus arrived at being each Lot's annual assessment.

**Section 5. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost (a) of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Areas, Landscape Medians and Storm Water Management Facilities, including fixtures and personal property related thereto, or (b) of otherwise accomplishing the purposes set forth in Article VI (3) hereof, provided that any such assessment shall first be approved by Members holding a majority of the votes in the Association.

The Association may also levy a Special Assessment against any Member (except Declarant) to reimburse the Association for costs incurred in bringing a Member and his Lot and any improvements thereon into compliance with the provisions of this Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing including reasonable attorneys' fees.

**Section 6. Assessments for Lawn Maintenance Provided by Article III, Sections 13 and 15.** In addition to the annual and special assessments authorized above, the Association shall levy an assessment for lawn maintenance as provided by Article III, Sections 13 and 15 against all Lots within the Duplex Home Area and Cluster Home Area for the purposes stated herein. The Association, through its Board of Directors, shall project the costs of separately maintaining the Lawn Maintenance Areas within the Duplex Home Area and Parcel A and Parcel B and the Lawn Maintenance Areas in the Cluster Home Area which shall be shown as separate items on the annual budget prepared by the Board of Directors of the Association. Subject to the provision for exemption from the payment of assessments by the Declarant, the costs reflected in the budget shall be apportioned equally among the Lots owned by Record Owners within the Duplex Home Area and Cluster Home Area respectively (other than Declarant), by dividing the total anticipated costs as reflected in the budget by the total number of Lots owned by a Record Owner with the quotient thus arrived at being each Lot's annual assessment.

**Section 7. Assessments for Irrigation Supply System to Single Family Dwelling Area.** In addition to the annual and special assessments authorized above, the Association shall levy an assessment, to maintain the Irrigation Supply System, against all Lots within the Single Family Dwelling Area. The Association, through its Board of Directors, shall project the costs of maintaining the Irrigation Supply System within the Single Family Dwelling Area which shall be shown as a separate item on the annual budget prepared by the Board of Directors of the Association. Subject to the provision for exemption from the payment of assessments by the Declarant, the costs reflected in the budget shall be apportioned equally among the Lots owned by the Record Owners within the Single Family Dwelling Area (other than Declarant), by dividing the total anticipated costs as reflected in the budget by the total number of Lots owned by a Record Owner with the quotient thus arrived at as each Lots annual assessment.

**Section 8. Reserve Budget and Capital Contribution.** The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair and replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the reserve budget, with respect both to amount and timing by annual assessments over the period of the budget. The required capital contribution, shall be fixed by the Board and included within and distributed with the budget and assessment.



**Section 9. Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt of any Assessments:

- (a) all Common Areas; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public streets.

**Section 10. Collection of Assessments.** (a) Except as provided in Article VI (2) and (5) herein, both annual and special assessments must be fixed at a uniform rate for all Lots and same may be collected annually, or on a monthly or quarterly installment basis (in advance), at the discretion of the Board of Directors, which shall establish the due date of each such payment.

(b) The first annual assessment shall not begin to accrue until the first day of the first fiscal year, and the first monthly or quarterly installment shall be prorated to said date.

(c) Any special assessment levied under the provisions of Section 5 of this Article VI shall be due and payable fifteen (15) days after the date of levy of such assessment and notice thereof to the Record Owners, or at such other time or times as may be provided by the Board of Directors in making the assessment.

(d) If any annual or special assessment is payable in installments, then upon default in the payment of any such installment on its due date, and the continuation of such default for fifteen (15) days after written notice of such default from the Board of Directors to the defaulting Record Owner, the entire unpaid principal balance thereof may, at the option of the Board of Directors, be accelerated, so that said entire assessment shall forthwith be due and payable.

**Section 11. Annual Assessment Periods.** The fiscal year of the Association shall consist of twelve (12) calendar months, commencing on January 1; except that the first fiscal year shall commence on the earlier of (a) a date to be determined by the Board of Directors, or (b) the sixtieth (60th) day following the first conveyance by the Declarant of the record title to any Lot to a Record Owner other than Declarant, and shall end on December 31, 2001. On or about the thirtieth (30th) day prior to the commencement of the annual assessment period, the Board of Directors shall formally levy against each Record Owner his share thereof, by noting the assessment and levy on the books of the Association and submitting a written billing to each Record Owner for the sum due by him. The failure or delay of the Board of Directors to determine any annual assessment or notify the Record Owners of their respective shares thereof as and when provided above shall not in any manner constitute a waiver or release of any Record Owner's obligation to pay his share of the annual assessment whenever the requisite determination and notification thereof eventually occurs. In the absence of (a) an annual determination of the annual assessment or (b) notification thereof to the Record Owners, each Record Owner shall continue to pay the monthly or quarterly installments due by him during the last annual assessment period for which an annual assessment has been determined and notice thereof has been given, all subject to acceleration or modification by the Board of Directors.

**Section 12. Certification of Payment of Assessments.** The Association shall, upon demand in writing for the benefit of a specific person named therein, and for a reasonable charge, furnish a certificate within fifteen (15) days signed by an officer of the Association setting forth whether or not the assessments and charges on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments and charges on a Lot is binding upon the Association as of the date of its issuance. Failure of the Association to furnish such certificate in timely fashion shall be deemed conclusive proof to the party requesting same and fully binding upon the Association that said assessments and charges are fully paid and current. This provision shall not affect the authority of the Association to enforce its rights against the then Record Owner for any assessments and charges due and unpaid but shall remove the effect thereof as a lien on the



specified Lot if title is transferred of public record within sixty (60) days following such written demand.

**Section 13. Late Payment.** (a) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date, computed at the highest rate allowed by law, not to exceed eighteen percent (18%) per annum, provided, however, that if no maximum rate is established by law, said interest shall be computed at eighteen percent (18%) per annum. The Association may bring an action at law against the Record Owner personally obligated to pay the same, or foreclose the lien against the Lot subject to the assessment, and in either event, the Association shall be entitled to receive interest computed as provided above, actual costs or collection and reasonable attorney's fees, as well as the amount of the unpaid assessment. No Record Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

(b) In foreclosing the lien against the Lot subject to the assessment, the following shall apply (except as otherwise required by law): If there be any default in the payment of any assessment, annual or special, and such default shall continue for a period of thirty (30) days, the Association shall have the immediate right to enforce collection of the assessment through foreclosure in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on real property in the State of Maryland, containing a power of sale or an assent to a decree. By the acceptance of any title to, or ownership of a Lot, the Record Owner shall be deemed to have expressly: (i) authorized enforcement and foreclosure of the lien of the assessment by the Association, in the same manner, and subject to the same requirements, as the foreclosure of mortgages on real property in this State, containing a power of sale or an assent to a decree; (ii) assented to the passage of a decree for the sale of his Lot after the continuance of his default for more than thirty (30) days; and (iii) covenanted, agreed and declared that, after the continuance of his default in payment of the assessment for more than thirty (30) days, any natural person designated as the agent of the Association for such purpose by the recordation by the Association of a Deed of Appointment among the Land Records of Wicomico County, shall have the absolute power, right and privilege to sell the Lot of the defaulting Record Owner in accordance with the Public General Laws of the State of Maryland and the Maryland Rules of Procedure relating to foreclosure of mortgages, as such Laws and Rules are from time to time amended and supplemented; provided, however, that no action may be brought to enforce the lien except after ten (10) days written notice to the defaulting Record Owner, given by certified or registered mail, return receipt requested, at the address of Record Owner shown on the roster or books of the Association. Upon any sale hereunder of a Lot of a defaulting Record Owner, the proceeds shall be applied as follows: first, to the payment of expenses incident to such sale, including reasonable attorney's fees and a commission to the party making the sale; second, to the payment of all claims of the Association against the defaulting Record Owner or the Lot, whether the same shall have matured or not; and third, the surplus, if any, to said defaulting Record Owner, or to whomever may be entitled to same. It is expressly understood that, at any such sale, the Association may be a purchaser of the Lot, free and clear of any right or equity or redemption of the default Record Owner, such right and equity being deemed expressly waived and released. The Association shall have the right both to institute suit for collection of the unpaid assessment and to enforce the lien of such assessment against the Lot of the defaulting Record Owner, provided there be but one satisfaction of the claim.

(c) The foregoing enumeration of the rights of the Association is made in furtherance, and not in limitation, of the rights and remedies conferred by law upon the Association to collect the assessments, annual or special, and to enforce any lien against the Lot of a defaulting Record Owner, and is not intended, by mention of any particular right or remedy, to limit or restrict the Association, which shall have all powers and rights necessary or convenient for collection of the assessments due it.

(d) By the acceptance of any title to, or ownership of a Lot, the Record Owner shall be deemed to have agreed that proper venue for any action involving the Lot, including suit for collection of assessments, shall be in the Circuit Court for Wicomico County, or the District Court of Maryland for Wicomico County.

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**Section 14. Priority of Liens.** The lien of the assessments and charges provided for herein shall be subordinate to general and special assessments for real estate taxes or governmental charges for wastewater treatment on the Lot and the lien of any Mortgage covering the Lot, duly recorded prior to the recordation of a statement of lien covering one or more past due assessments against such Lot, or after receipt from the Association of a certification issued under Article VI (10) hereof. No sale or transfer of a Lot shall relieve the transferee Record Owner of such Lot (a) from liability for any assessments thereafter becoming due or (b) from the lien thereof.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

**Section 1. General Architectural Restrictions.** No Record Owner, except the Declarant, shall construct, reconstruct, install or reinstall any building, porch, deck, driveway, walkway, exterior lighting, well or other structure of any kind on any Lot, or make any addition thereto or any change or alteration therein (including any retreatment by painting or otherwise of any exterior part thereof) until plans and specifications, in triplicate, showing the nature, kind, shape, height, colors, materials, locations, and approximate costs of such building, porch, driveway, walkway, lighting, well, other structure, addition, change or alteration shall have been submitted to and approved in writing by the Architectural Review Board (ARB) comprised of three (3) or more Members appointed by the Declarant, which shall have the absolute right to refuse to approve any such plans and specifications which it deems unsuitable or undesirable, whether based on aesthetic or other reasons. The Architectural Review Board shall have exclusive jurisdiction over all improvements on any portion of the Property. Until one hundred percent (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint, discharge and reappoint all members of the ARB. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by the Defendant. Upon expiration of such rights, the Board of Directors shall appoint the members of the ARB in the same manner as provided above. In so passing upon such plans and specifications, the Architectural Review Board shall have the right to take into consideration the use and suitability of the proposed, building, porch, deck, driveway, walkway, lighting, well, other structure, addition, change, or alteration, the location thereof, the materials of which it is to be built or made, and the color and design thereof, with relation to the site which it is proposed to erect or keep the same, harmony with its surroundings, and the effect on the outlook from adjacent or neighboring Lots. If the designated Architectural Review Board fails to approve or disapprove any well location, building, porch, deck, driveway, walkway, lighting or other structure, or any addition thereto, or change or alteration therein, within sixty (60) days after the plans and specifications therefor, in triplicate, have been submitted to it by the Record Owner, approval will be conclusively presumed so that no further approval will be required for the foregoing and the Record Owner shall be deemed to have fully complied with this Article.

**Section 2. Rebuilding Following Casualty.** Notwithstanding the provisions of Article VII (1) above:

(a) If any building, porch, deck, driveway, walkway, exterior lighting, well, other structure, addition, change or alteration is damaged or destroyed by fire or other casualty, such damages or destroyed improvement may be rebuilt without the approval of the Architectural Review Board, as applicable, provided that such damaged or destroyed improvement is rebuilt substantially in accordance with the plans and specifications used in the original construction of such damaged or destroyed improvement.

(b) If any building, porch, deck, driveway, walkway, exterior lighting, well, other structure, addition, change or alteration is damaged or destroyed by fire or other casualty, and such damaged or destroyed improvement is not rebuilt substantially in accordance with the plans and specifications used in the original construction of such damaged or destroyed improvement, the Record Owner thereof (unless such Record Owner is the Declarant) shall not rebuild the damaged or destroyed improvement until plans and specifications, in triplicate, showing the nature,

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kind, shape, height, colors, materials, locations and approximate cost of the replacement structure shall have been submitted to and approved in writing by the Architectural Review Board, which shall have the right to refuse to approve any such plans and specifications only if it reasonably determines that such replacement structure is not in substantial conformity with the design or architectural treatment of the other dwellings within the Property (regardless of the method of construction planned for the replacement structure).

(c) If any dispute between a Record Owner, on the one hand, and the Association, the Board of Directors, the Architectural Review Board or another Record Owner, on the other hand, arises with respect to the interpretation or application of this Article VII(2) at any time after the termination or expiration of the right of Declarant to appoint all members of the ARB, such dispute shall be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules (or successor rules) of the American Arbitration Association or any successor thereof. This Agreement to arbitrate and any award resulting therefrom shall be specifically enforceable in the courts under the laws of Maryland.

#### ARTICLE VIII RULES AND REGULATIONS

**Section 1. Land Use.** Each Lot shall be used for single family residential purposes only, except as provided as follows, if permitted within the zoning laws applicable to the Property: The Declarant shall have the right to use any Lots, and any improvements thereon, it may own from time to time as sales, rental, and management offices and model units and for such other uses as the Declarant may deem appropriate for the development, marketing (including sales and rentals), and management of any dwellings now or hereafter located upon the Property, and in furtherance thereof, the Declarant may, among other things, install one or more construction and/or sales offices upon any such Lot. The Declarant shall also have the right to erect upon any Lots it may own from time to time, and upon the Common Area, such advertising and directional signs and other materials as the Declarant shall deem appropriate for the development, marketing and management of any dwellings now or hereafter located upon the Property.

**Section 2. Setbacks.** Unless the approval of the appropriate governmental authorities and the Architectural Review Board has first been obtained, no building or other structure of any kind, or any part thereof, shall be located on any lot closer to the front line or to the side lot line than the minimum building setback lines as depicted or noted on the Subdivision Plat. For the purposes of the covenant contained in this Article VIII(2), eaves, steps, open spaces, open porches, bay windows, and chimneys shall be considered as a part of a building or structure.

**Section 3. Lot Subdivision.** No Lot shall be subdivided into two or more lots, except as provided in Article IX(1) of this Declaration or as provided herein. The foregoing provision shall not apply to unsold Lots held by Declarant prior to the first sale or conveyance thereof.

**Section 4. Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot or any portion of the Property, nor shall anything be done thereon which is or is likely to become an annoyance or nuisance to any person using any portion of the Properties.

**Section 5. Temporary Structures.** No structure of a temporary character, shack, garage, barn or other outbuilding permitted to be erected on any Lot shall at any time be used as a residence, either temporarily or permanently.

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**Section 6. Signs.** No sign, advertisement or other informational material of any kind shall be erected, displayed or maintained on any Lot, except as permitted by Article VIII(1) hereof or as expressly authorized by the Board of Directors or the Architectural Review Board. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. The foregoing provision shall not apply to unsold Lots held by Declarant prior to the first sale or conveyance thereof.

**Section 7. Animals, Livestock and Poultry.** No animals, livestock, poultry or other fowl of any kind, shall be raised, bred or kept on any Lot, except that household pets, including dogs, cats and birds, and an unlimited number of fish, may be raised and kept, provided that no such household pet or fish shall be raised, bred or kept for any commercial purposes. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. Dogs which are household pets shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person. Notwithstanding anything to the contrary herein or in the By-Laws, the Association may, but shall not be obligated, to take further action to enforce this section.

**Section 8. Swimming Pool, Fencing, Outbuildings.** No swimming pool, outbuilding or fencing (including dog runs and animal pens) shall be built without the approval of the Board of Directors or the Architectural Review Board, as applicable.

**Section 9. Leases.** Each Lot and the structure(s) thereon may be leased for such term and under such conditions as the Record Owner thereof may desire, except each lease (a) shall be in writing, (b) shall be subject to this Declaration, to the Articles of Incorporation and By-Laws of the Association, and to any rules and regulations adopted by the Board of Directors pursuant to Article XV of the By-Laws, as each such document may be amended from time to time (collectively, the "Association Documents"), (c) shall provide that any breach or violation of any Association Document by the tenant shall constitute a default under the lease, and (d) shall provide that the tenant (as well as the landlord) shall be directly liable to, and subject to enforcement action(s) by, the Association for any breach or violation by the tenant of any Association Document. The Record Owner of any leased Lot or structure shall promptly deliver to the Board of Directors a copy of the form of lease used, and a copy of each amendment which is made thereto from time to time. The Association, through the Board of Directors, shall be entitled, but not obligated, to exercise the default remedies of any Record Owner, as the landlord under any such lease, and upon any breach or violation by the tenant of any Association Document, the Board of Directors, after notice to the Record Owner and tenant of such breach or violation, and the failure of such Record Owner and tenant to correct the same within a reasonable time thereafter, shall be entitled, but not obligated, to summarily evict the tenant from the leased premises, subject to any applicable laws governing the speedy recovery of possession of lands or tenements in redress of a breach or violation of a lease.

**Section 10. Fuel Tanks.** No fuel tank for the storage of fuel shall be permitted upon any lot without the approval of the Architectural Review Board, which have the authority and power to impose such conditions as it deems appropriate as a condition to any such approval.

**Section 11. Clothes Lines, Basketball Hoops.** No outdoor clothes poles and clothes lines and similar equipment shall be allowed on any Lot. Basketball hoops and similar equipment shall be allowed on any Lot only with the approval of the Architectural Review Board.

**Section 12. Occupants Bound.** All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions or use restrictions promulgated pursuant thereto which govern the conduct of Record Owners and which provided for sanctions against Record Owners shall also apply to all occupants, guests and invitees of any Lot. Every Record Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and



regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto.

**Section 13. Sight Distance at Intersections.** All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**Section 14. Ponds.** All ponds within the Property, shall be aesthetic amenities only, and no other use thereof, including, without limitation, swimming, boating, playing or use of personal flotation devices, shall be permitted except with prior written consent of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of ponds within the Property.

**Section 15. Lot Maintenance.** Each Lot, whether occupied or unoccupied, and any improvement placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon. In no event will growth in lawn areas be permitted to exceed six (6) inches in height.

**Section 16. Amenity Facilities.** Any equipment and any amenities furnished by the Association or erected within the Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to the use thereof.

**Section 17. Business Use.** No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the outside of the structure; (b) the business activity conforms to all zoning requirements of Wicomico County; (c) the business activity does not involve persons coming onto the Lots who do not reside on the Lots or door-to-door solicitation of residents of the Lots; and (d) the business activity is consistent with the residential character of the Lots and does not constitute a nuisance, or a hazardous or offensive, or threaten the security or safety of other residents of the Lots, as may be determined in the sole discretion of the Board.

**Section 18. Firearms.** Discharge of firearms is prohibited within the Property.

#### ARTICLE IX

##### DECLARANT'S RIGHTS FREELY TO DEVELOP THE PROPERTY

**Section 1. Resubdivision.** Each Record Owner, by acceptance of a deed for his Lot, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed (i) that Declarant shall have no obligation to build or install any improvement on any of the Common Areas or any other land within the Property; and (ii) that Declarant shall have the right to resubdivide the Property in accordance with Wicomico County, Maryland regulations.

#### ARTICLE X

##### INSURANCE

**Section 1. Types.** The Association, or its duly authorized agent, shall have the authority to and may at all times keep all buildings and improvements now or hereafter owned or leased by, or otherwise available for the use of, the Association and situated on or within the Common Areas, to the extent insurable, insured against loss or damage by fire, flood and other hazards and liability insurance to the extent that such insurance is reasonably available.

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**ARTICLE XI**  
**CONDEMNATION, DESTRUCTION OR DISSOLUTION**

**Section 1. Condemnation.** The Association, immediately upon obtaining knowledge of the threat of the institution or the institution of any proceeding for the condemnation of the Common Areas (other than Reserved then by the Declarant) or any portion thereof, shall notify all Members of the pendency thereof. Each Member hereby assigns, transfers, and sets over unto the Association all compensation, rights of action, the entire proceeds of any award and any claim for damages for any such Common Areas taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. The Association may, at its option commence, appear in, and prosecute, in its own name, any action or proceeding with respect to such Common Areas, or make any compromise or settlement in connection with such condemnation, taken under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including attorneys' fees, in connection with the negotiation, litigation and consummation of such condemnation or taking or sale in lieu thereof, the Association may elect to apply the net proceeds of the award to the restoration or rebuilding of such Common Areas. Any net proceeds not so applied shall be retained by, and used for any proper purpose of the Association.

**Section 2. Destruction.** (a) In case of loss or damage to the Common Areas or improvements thereon owned by the Association by fire or other casualty, the Association may settle and adjust any claim under its insurance policies which insure against such risks and deduct therefrom costs and expenses of collection (including attorneys' fees and expenses), and collect and receipt for any such insurance money. Any and all insurance proceeds received by the Association by reason of any damage or destruction of the Common Areas or improvements thereon shall be used for the cost of the rebuilding or restoration of the Common Area and such improvements, except that if any excess of such proceeds over the cost of such rebuilding or restoration remains, the Association shall notify all Members, who shall vote regarding the use or application of the excess proceeds. If the Members fail to vote regarding such use or application, the excess proceeds shall be retained by, and used for any proper purpose of, the Association.

(b) If the net insurance proceeds shall be insufficient to pay the entire cost of restoration, the Association shall notify all Members, who then shall vote regarding whether to authorize a special assessment for the purpose of making up the deficiency, prior to commencement of the restoration. If the Members fail to authorize such a special assessment, then the Association shall not be obligated to commence restoration.

(c) The term "net insurance proceeds" shall mean insurance money paid to the Association on account of damage or destruction of or to any part of the Common Areas or improvements thereon under the policies of insurance provided for herein, less the costs incurred in connection with the adjustment of the loss and collection thereof, including attorney's fees.

**Section 3. Dissolution.** Upon any dissolution of the Association, after discharge of all corporate liabilities, the Board of Directors shall dispose of the assets of the Association by dedication thereof to any appropriate public agency to be used for purposes similar to those for which the Association was formed. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned, if practicable, to any nonprofit corporation, association, trust or other organization as shall at the time qualify as an organization or organizations exempt from taxation under Section 501(c) or 528 of the Internal Revenue Code of 1954, as amended from time to time, or the corresponding provision of any future United States Revenue laws, as the Board of Directors may determine, preferably to a semi-public agency, to be used in furthering, facilitating or effectuating purposes similar to those for which the Association was formed.

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**ARTICLE XII**  
**AUTHORITY FOR EXPANSION OF THE HOMEOWNERS ASSOCIATION**

**Section 1. Authority to Expand.** The Declarant hereby expressly reserves, for a period of ten (10) years from and after the date of recordation hereof, the unilateral right, privilege, and option from time to time at any time, to expand and add to the Property by subjecting to the covenants, terms, and conditions of this Declaration, in one or more Subsequent Phases or Sections, all or any portion of the following:

(a) **The Residue Areas:** If all or a part of the residue as shown on the Subdivision Plat are added to the Property, the Declarant may, in its sole discretion, designate part or all of the land so added as a Lot, Common Area, Recreational Area or area retained by the Declarant, its successors or assigns. Immediately upon the addition of a residential Lot to the Property, the lot shall become a Lot subject to the covenants, conditions and restrictions of this Declaration, and the Record Owner of such Lot shall become a Member of the Association and shall be entitled to all the rights, and subject to all the obligations, of a Member. If all or a portion of the residue is retained by Declarant but not designated as a Lot, the area so retained shall not be subject to the terms and provisions of the Declaration unless the Declarant so elects. The Declarant reserves the right to convey street beds, and any utilities lying thereunder, to Wicomico County, Maryland or any other governmental authority.

(b) Any lot or parcel of land adjacent to the Property which Declarant may hereafter obtained, and in its sole discretion designate part or all of said land as a Lot, Common Area, Recreation Area which Declarant, in its sole discretion, adds to the Property.

**Section 2. Reservation of Easements.** In addition to the above specified land, the property to be subjected to the covenants, terms, and conditions of this Declaration as part of each Subsequent Phase or Section may include, in the Declarant's sole discretion, any structures, fixtures, and other improvements erected upon or within the land containing within said phase, and any rights, ways, easement, privileges, and appurtenances thereunto belonging, or in anywise appertaining. Each Subsequent Phase may be added to the Property subject to the rights, rights-of-way, covenants, conditions, restrictions, setbacks, and easements deemed necessary or advisable in the sole discretion of the Declarant to facilitate the orderly development, or the construction, operation, and maintenance, of the Property. In particular, but not in limitation of the foregoing, the Declarant shall have the right to grant or reserve, at or prior to the time each Subsequent Phase is added to the Property, such easements and rights-of-ways on, over, under and across such Subsequent Phase as are deemed necessary or advisable in the sole discretion of the Declarant for (a) vehicular and pedestrian access between (i) the residue property of the Declarant, and (ii) any public road or other property which borders upon the Property, on the other hand, (b) vehicular parking for the benefit of any remaining property of the Declarant, and (c) the construction, installation, use, operation and maintenance (including, but not limited to, inspection, cleaning, repair and replacement) of water, sanitary sewer, storm water drainage, telephone, electric, gas, cable TV, and other utility lines, mains, facilities, and installation deemed necessary or advisable in the sole discretion of the Declarant to serve any remaining property of the Declarant.

**Section 3. Construction of Improvements.** Subject to the limitations of Article XII(5) hereof:

(a) Any Lot added to the Property as part of a Subsequent Phase may be unimproved, or may contain improvements which are being constructed or installed or have been completed at the time of such addition, and the Declarant shall be under no obligation to the Association or its members to improve any such Lot or to complete any improvements then being constructed or installed.

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(b) The lands added by the Declarant to the Property as Common Areas or Recreational Area may contain improvements of the type now or then located on the Common Areas within the Property.

(c) The improvements, if any, which are constructed or installed in any Subsequent Phase by the Declarant shall be constructed or installed in accordance with such drawings, design and specifications as the Declarant, in its sole discretion, may deem appropriate.

(d) The Declarant is not required to add any Subsequent Phase to the Property, and the Subsequent Phases, if any, which are added to the Property may be added in any sequence chosen by the Declarant.

(e) The Declarant is not required to construct or install any recreational improvements upon any of the property contained within a Subsequent Phase or Subsequent Section, or to convey any portion of property of Declarant to the Association, and any portion of a Subsequent Phase or Subsequent Section upon which the Declarant constructs or installs improvements may be retained by the Declarant, added to the Property, conveyed to the Association or otherwise disposed of by the Declarant.

**Section 4. Conveyances to the Association.** The Association shall accept from the Declarant any and all Common Areas, Reserved Areas, and/or Recreational Facilities which the Declarant elects to convey to the Association for no consideration in accordance with the requirements of this Article XII(4). Except for the conveyance of the Common Areas to the Association pursuant to Article III(1) hereof, the Declarant shall not be obligated to convey any Common Areas, Reserved Area or Subsequent Phase or Subsequent Section to the Association, whether for consideration or no consideration, but the Association shall not be obligated to accept the conveyance of any Common Area, Reserved Area or Subsequent Phase or Subsequent Section from the Developer unless the conveyance of such property complies with the requirements of this Article III(4), which requirements are as follows:

(a) The property interest so conveyed may be a fee simple interest, an easement, or such other property interest as the Declarant, in its sole discretion, may elect to convey.

(b) Neither the Association nor its Members shall be required to pay any consideration for such conveyance, but the Association will be responsible for the operation, maintenance, repair and replacement of any Common Areas, Reserved Areas and/or Recreational Facilities so conveyed (as more fully described in Article III(11) hereof), and for the payment of all real estate taxes levied against the Association's interest in such Common Areas, Reserved Areas and/or Recreational Facilities, and the expenses of such operation, maintenance, repair, replacement and taxes shall be assessed against the Members pursuant to Article VI hereof.

(c) Any Common Areas, Reserved Areas, or Recreational Facilities so conveyed shall be conveyed free of liens, other than liens for unpaid taxes or City of Salisbury District water or sewer charges or assessments which are not then due and payable.

(d) Any Common Areas, Reserved Areas or Recreational Facilities so conveyed shall be conveyed subject to (i) the covenants, conditions and restrictions of this Declaration, including, without limitation, the covenants, conditions and restrictions set forth in Articles III, IV and XII(2) hereof, and (ii) any additional covenants, conditions and restrictions which the Declarant deems appropriate. All such covenants, conditions and restrictions shall run with the land and shall bind the Association, its Members and their respective heirs, personal representatives, successors and assigns, unless the document creating any such covenant, condition or restriction expressly provides otherwise.

**Section 5. Quality of Construction.** All improvements that are constructed or installed within any Subsequent Phase shall be consistent, in terms of quality of construction, but not

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necessarily in terms of the type of improvements, with comparable improvements, if any, constructed or installed by the Declarant in or on the Property.

**Section 6. Expansion Documents.** Subject to the foregoing, expansion of the Property shall be effected by the Declarant (without need for approval of any Record Owner or Mortgagee) by recordation in the Land Records of Wicomico County of the following: (i) a plat (whether an amendment of or supplement to the Plat, or otherwise) showing the Lots, Open Spaces, Reserved Areas and other Common Areas located on the Property then being added, and (ii) an amendment to the Declaration describing the Property then being added. In such Declaration amendment, the Declarant may (a) identify, and define the boundaries of, each Lot, Open Space, Reserved Area or other Common Area included within said Subsequent Phase, and (b) include such other provisions as are required or permitted by the Declaration.

**Section 7. Development of Non-added Land.** If all or any part of the Reserved Area is not added to the Property, such non-added property may be developed in any manner and to any density that the Declarant, in its sole discretion, may deem appropriate.

#### ARTICLE XIII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Record Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Record Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

**Section 3. Term, Amendment, Termination.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive terms of the (10) years each, unless terminated prior to the end of any such term, effective as of the end of such term, by an instrument signed by Members holding at least seventy-five percent (75%) of the votes of in the Association. However, this Declaration may be amended at any time within twenty (20) years from the date of recordation hereof by an instrument signed by Members holding at least ninety percent (90%) of the votes in the Association, and thereafter by an instrument signed by Members holding at least seventy-five (75%) of the votes in the Association. Any such instrument shall be recorded among the Land Records of Wicomico County. However, this Declaration may not be amended so as to modify, impair or revoke any right or privilege reserved for the benefit of the Declarant, or so as to impose on the Declarant any obligation which is not also imposed on all Record Owners, without the prior written consent of the Declarant and no such amendment shall take effect until an appropriate written instrument executed by the Declarant is recorded in the Land Records of Wicomico County.

**Section 4. Indemnification.** The Association shall indemnify every officer, director, board member and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, board member or committee member in connection with any action, suit, or other proceedings (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director board member or committee member. The officers, directors, board members and committee members shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (to the extent that

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such officers or directors may also be Members 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, director, board member or committee member, or former officer, director, board member or committee may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 5. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each Lot and portion or portions of the Common Areas adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of a Record Owner, tenant, or the Association.

**Section 6. Easement for Utilities, etc.** There is hereby reserved unto Declarant, (so long as the Declarant owns any Lot), and granted unto the Association, County Commissioners of Wicomico County, Maryland and City of Salisbury and the designees of each (which may include, without limitation, any utility), blanket easements upon, across, over and under all of the Property for maintenance, ingress, egress, and installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes, ponds, streams, wetlands, drainage systems, street lights, signage and all utilities, including, but not limited to water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not interfere with the use of any Lot and entry into any Lot shall be made after reasonable notice to the Record Owner or occupant thereof.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors of the Association shall have the right to grant such easement over, across or under the Lot without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

**Section 7. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Voting Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article VI hereof, (c) proceedings involving challenges to assessments or taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

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The Village at Tony Tank Creek Covenants

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28<sup>th</sup> day of August, 2001.

WITNESS

Carol W. Sizemore

THOMAS H. RUARK, INC.

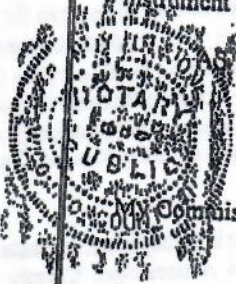
BY:

Thomas H. Ruark  
Thomas H. Ruark - President

STATE OF MARYLAND, WICOMICO COUNTY, TO WIT:

I HEREBY CERTIFY that on this 28<sup>th</sup> day of August, 2001, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Thomas H. Ruark, President of Thomas H. Ruark, Inc., and he acknowledged the foregoing instrument to be his act as such officer.

WITNESS my hand and Notarial Seal.



Commission Expires:

9/1/04

Carol W. Sizemore  
Notary Public

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IMP FD SURE \$	5.00
RECORDING FEE	75.00
TOTAL	80.00
Rest # 1103	Rest # 32366
MSD 6191	RLK # 1661
Aug 20, 2001	10:40 am

Received for Record AUG 28 2001 and  
recorded in the Land Records of Wicomico  
County, Maryland in Liber M.S.B.  
No. 1848 Folios 89-112

Mark A. Brown Clerk