

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

GATEWAY PARK AT WASHINGTONIAN CENTER

HOMEOWNERS ASSOCIATION, INC.

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MOLLY Q. RUHL
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MONTGOMERY COUNTY, MD

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Substantive Abstract

THIS DECLARATION is made on this 28th day of January, 1998, by Rocky Gorge at Washingtonian, LLC, a Maryland limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in Montgomery County, Maryland, described in Article II hereof, and desires to create and develop thereon a residential community with permanent common areas for the benefit of said community; and

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WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas 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 and all of which are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas, administering and enforcing the within covenants and restrictions, and disbursing the charges and assessments hereinafter created; and

WHEREAS, Declarant has formed (or intends to form) Gateway Park at Washingtonian Center Homeowners Association, Inc., as a non-profit corporation, without capital stock, under the laws of the State of Maryland, for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, 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, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for the improvement of said property, and shall be deemed to run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Declarant, its successors and assigns, and any person acquiring or owning an interest in said property and improvements, including, without limitation, any person, group of persons, corporation, trust or other legal entity, or any combination

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thereof, who or which holds such interest solely as security for the performance of an obligation.

ARTICLE I
DEFINITIONS

Section 1. Definitions. The following words, when used in this Declaration, shall have the following meanings:

A. "Association" shall mean and refer to Gateway Park at Washingtonian Center Homeowners Association, Inc., and its successors and assigns.

B. "Common Area" or "Common Areas" shall mean and refer to all real property owned or leased by the Association, or otherwise available to the Association, for the benefit, use and enjoyment of its members, and include, as may be applicable, all private streets and roadways, recreational facilities, stormwater management facilities, and other features which are constructed on the Common Areas. Notwithstanding the foregoing, in the event the Association maintains all or any portion of any Lot(s), such property shall not be considered part of the Common Areas.

C. "Declarant" shall mean and refer to Rocky Gorge at Washingtonian, LLC, its successors and assigns.

D. "Lot" shall mean and refer to all subdivided parcels of land which are part of the Property and shown on any recorded subdivision map of the Property, with the exception of the Common Areas.

E. "Master Association" shall mean and refer to The Washingtonian Center Association, Inc.

F. "Master Association Covenants" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for the Master Association, dated May 23, 1986, and recorded among the Land Records of Montgomery County, Maryland, in Liber 7144, folio 287, as the same have been and may be amended and supplemented, from time to time.

G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated on the Property, including contract sellers, but excluding those having such interest solely as security for the performance of an obligation.

H. The "Property" shall mean and 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 **PROPERTY ENCUMBERED**

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 Montgomery County, Maryland, and is more particularly described on Exhibit "A" attached hereto and, by this reference, made a part hereof.

Section 2. Additions. Additional property may be annexed to the above-described Property with the approval of two-thirds (2/3) of the members of the Association. The scheme of the within covenants and restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on Exhibit "A" as hereinafter provided.

Any annexations of additional property made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Covenants among the Land Records for Montgomery County, Maryland, which Supplementary Declaration shall extend the scheme of this Declaration to such annexed property.

Any Supplementary Declaration may contain such complementary additions and modifications to the covenants and restrictions set forth in the within 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 any such addition or modification be substantially inconsistent with the provisions of the within Declaration. Such annexations need not be made by the Declarant. Any such annexation must, however, be consented to by the Declarant so long as the Declarant is a Class B member of the Association.

Section 3. Deannexation. The Declarant may deannex any property that Declarant owns and has not yet been improved with a residential dwelling from the Property for a period of ten (10) years from the date of recordation of this Declaration. Such deannexed property shall no longer be subject to the covenants and restrictions of this Declaration, except for any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant, pursuant to this Declaration, which affect the deannexed property. Such deannexation shall be made by recording a Supplementary Declaration among the Land Records of Montgomery County, Maryland, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assignee or transferee thereof, for any lawful purpose or use.

The foregoing notwithstanding, no property may be deannexed if such property provides the only access to a Lot which is not itself being deannexed, unless and until an alternative access to such Lot has been provided and is either subject to this Declaration or publicly dedicated.

Section 4. Resubdivision. In the event that the Declarant resubdivides any part of the Property which has been subjected to this Declaration, which right the Declarant expressly reserves unto itself, such resubdivided property shall continue to be subject to the terms hereof, without further action by the Declarant, unless and until the Declarant shall deannex such property pursuant to the provisions above. Any such resubdivision shall be in accordance with all applicable Montgomery County and City of Gaithersburg codes and ordinances.

ARTICLE III **MEMBERSHIP**

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot, including contract sellers, shall be a member of the Association; provided that any such person or entity who or which holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2. Voting Rights. The Association shall have two (2) Classes of voting membership, which shall be known as "Class A" and "Class B":

Class A: Class A members shall be all Owners with the exception of the Declarant (with respect to any Lot for which the Declarant holds a Class B membership). Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast by a Class A member with respect to any Lot.

Class B: The Class B member(s) shall be the Declarant, its nominee or nominees. The Class B member or members shall have one (1) Class B membership for each Lot in which such member holds the interest otherwise required for Class A membership. Each Class B member shall be entitled to three (3) votes for each Class B membership which such member holds. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(1) when all of the Lots have been acquired by Class A members;

or

(2) five (5) years from the date of recordation of the Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Property and the construction of dwelling units thereon, on account of a sewer, water or building permit moratorium, or any other cause or event beyond the Declarant's control, the aforesaid five (5) year period shall be extended by a period of time equal to the length of the delays or two (2) years, whichever is less; or

(3) upon surrender of Class B membership, in writing, by the Class B member.

Upon the lapse or surrender of all of the Class B memberships as provided for in this Article, the Declarant shall thereafter remain a Class A member of the Association as to each and every Lot in which the Declarant then holds the interest otherwise required for such Class A membership.

The members of the Association shall have no preemptive rights, as such members, to acquire any memberships of this Association that may, at any time, be issued by the Association, except as may be specifically provided in this Article.

ARTICLE IV **PROPERTY RIGHTS**

Section 1. Member's Right of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to, and shall pass with, the fee title to every Lot, subject to the following:

A. The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas in a manner designed to promote the enjoyment and welfare of the members and, in aid thereof, to mortgage the Common Areas with the consent of a majority of the members; and

B. The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration; and

C. The right of the Association to adopt reasonable rules respecting use of the Common Areas, including the private streets and roadways thereon, and to reasonably limit the number of guests of members to the use of any facilities which are developed upon the Property; and

D. The right of the Association to suspend the voting rights and the rights to use the Common Areas for any period during which any assessment remains unpaid; and

E. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration, and provided that any such dedication or transfer shall also be subject to the limitations provided for in the Articles of Incorporation, however, in no event shall the Association dedicate or transfer title to any part of the Common Areas used as a private street, alleyway or accessway which would involve the expenditure of public funds of the City of Gaithersburg for the repair and maintenance thereof; and

F. The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, cable television franchisee, the Declarant or any other person; provided, however, that no such licenses, rights-of-way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Areas; and

G. The right of Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Areas for display and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than ten (10) years after the conveyance of the Common Areas to the Association, or the sale of all residential Lots within the Property, whichever is the earlier; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise restrict the members in their use and enjoyment of the Common Areas; and

H. The right of Declarant, its sales agents and representatives and prospective purchasers of Lots to the exclusive use of parking spaces within the Common Areas in front of and adjacent to Lots 7 through 11 and Lots 37 through 39 during the hours that the Declarant's sales office and/or model home are open to the public.

I. The right of the Association to impose reasonable fines for any infraction of the provisions of this Declaration or of the published rules and regulations provided, however, that any member against whom a fine may be imposed shall have first been given the right to a hearing before the Board of Directors.

J. The right of the Association to convey portions of the Common Areas and/or execute and deliver plats of resubdivision in the event that the Declarant determines, in its sole discretion, that the resubdivision of a part or parts of the Property is necessary or advisable.

Section 2. Member's Ingress and Egress Easement. Notwithstanding any statement contained in Section 1 of this Article IV, if ingress or egress to any Lot is over the Common Areas, including the private streets and roadways, any conveyance or encumbrance of any such Common Area shall be subject to an easement for ingress and egress benefitting such Lot Owner unless and until ingress and egress are provided by some alternative route, in which event, such easement shall be automatically terminated.

Section 3. Delegation of Rights of Use. Any member of the Association may delegate his rights to the use and enjoyment of the Common Areas to the members of his family who reside permanently with him, and to his tenants, contract purchasers and guests, all subject to such reasonable Rules and Regulations which the Association may adopt and uniformly apply and enforce.

Section 4. Parking Rights.

A. It is currently intended that each dwelling unit on a Lot will have a two (2) car garage and appurtenant driveway for the parking of vehicles belonging to such Owner and such Owner's guests. In the event that a Lot is improved with such a garage and driveway, parking by an Owner and such Owner's guests will occur only within such garage and within the driveway appurtenant thereto. It is hereby expressly disclosed that, due to the configuration of certain Lots, as required by the City of Gaithersburg, not all Lots will have the same size driveway. Some driveways will contain twenty-four foot (24') long tandem parking spaces. Some driveways will contain twenty foot (20') long tandem parking spaces. Some driveways will be less than twenty feet (20') long and therefore will not have parking spaces long enough to be counted as parking spaces for the purposes of the approval by the City of Gaithersburg of the required number of parking spaces for the overall community. Owners must review a copy of the approved site plan for the Property in order to determine which Lots contain which driveways.

B. Parking is available to all Owners' guests, on a first come, first served basis in parking areas located within the Common Areas.

C. Parking is strictly prohibited within any of the private streets and alleyways within the Common Areas and anywhere on the Lots but within the garage and paved driveway area.

D. The Board of Directors of the Association shall be entitled to establish supplemental rules concerning parking on any portion of the Common Areas, including private streets and roadways and Lots, including, without limitation, reasonable fines and provisions for involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules.

Section 5. Limitations.

A. Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the private streets and roadways for both vehicular and pedestrian ingress and egress to and from his Lot.

B. Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the Common Areas for necessary, ordinary and reasonable pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Area for stormwater drainage, electrical energy, water, sanitary sewer, natural gas, CATV service, telephone service or similar utilities and services to the Lots.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. General Maintenance Assessment. Except as the assessments of the Declarant are limited by the provisions of Article VI of this Declaration, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who or which becomes a fee owner of a Lot within the Property, by acceptance of a Deed therefor, 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, in advance, a monthly sum (hereinelsewhere sometimes referred to as a "general assessment") equal to one-twelfth (1/12) of the member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

A. The cost of all operating expenses of the Common Areas and the services furnished to or in connection with the Common Areas, including charges by the Association for any services furnished by it, including, but not limited to, maintenance and repair of any facilities installed thereon; and

B. The cost of necessary management and administration of the Common Areas, including fees paid to any management agent; and

C. The amount of all taxes and assessments levied against the Association or upon the Association's Common Areas; and

D. The cost of such insurance as the Association may effect; and

E. The cost of utilities and other services or facilities which may be provided by the Association for the Common Areas, including, but not limited to, street

lights, site lights, monument lighting, pathway lighting, underground irrigation systems, if any, gang mailboxes, retaining walls (either located within the Common Areas or within the Lots), stormwater management facilities and oil/grit separators; and

F. The cost of maintaining, replacing, repairing and landscaping the Common Areas;

G. The cost of funding those reserves established by the Board of Directors of the Association, including that established for the non-recurring repair and replacement of the private streets and roadways, in whole or in part; and

H. The cost of trash removal from the Lots; and

I. The cost of maintaining the entrance monuments, brick entrance piers and identification signs for the community, landscaping for the same and any and all fencing or railings associated with the entrance monuments, brick entrance piers and community identification signs whether all of the above is located on the Common Areas or upon a Lot; and

J. the cost of maintaining, replacing and repairing the private streets and roadways within the Common Areas, in whole or in part, including, and without limitation, snow removal, parking area striping, sweeping and washing; and

K. the cost of mowing and/or landscaping areas of the Lots should the Board of Directors elect, in its sole discretion, to do so.

L. The assessments levied against the Association by the Master Association (the "Master Association Assessment").

The Board of Directors shall determine the amount of the general assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, annual assessments may be levied and collected, in installments, on a quarterly, semi-annual or annual basis, rather than on the monthly basis hereinabove provided. Any Class A member may prepay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of, an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of the Common Areas. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual general assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the general assessments applicable thereto, which shall be kept in the office of the

Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the general assessment shall, thereupon, be sent to the members. The omission by the Board of Directors before the expiration of any assessment period to fix the amount of the general assessment hereunder for that or the next period shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any member from the obligation to pay the general assessment, or any installment thereof, for that or any subsequent assessment period, but the general assessment fixed for the preceding period shall continue until a new general assessment is fixed. No member may exempt himself from liability for assessments by abandonment of any Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas.

Except as may be specifically provided for herein, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the dwellings or their appurtenances, and the responsibility and duties of the Association for maintenance and repairs shall be limited to the Common Areas. The owner of any Lot shall, at his own expense, maintain his Lot and dwelling, and any and all appurtenances thereto, in good order, condition and repair, and in a clean, sightly and sanitary condition at all times.

Section 2. Special Assessments. In addition to the general assessments authorized by this Article, the Association may levy, in any assessment year, a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming a part of, the Common Areas, including the necessary fixtures and personal property related thereto, inordinate maintenance (including snow removal), repair or replacement of the private streets and roadways and sidewalks that are a part of the Common Areas, or for such other purpose as the Board of Directors may consider appropriate.

Section 3. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacement of the Common Areas by the allocation, and payment monthly to such reserve fund, of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any State or by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested.

The reserve for replacement of the Common Areas may be expended only for the purpose of effecting the replacement of the Common Areas, major repairs, equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature, relating to the Common Areas, including the private streets and roadways and sidewalks, and for such exterior maintenance of the Lots as may be provided for herein.

The Association may establish such other reserves for such other purposes as the Board of Directors may, from time to time, consider necessary or appropriate. The proportional interest of any member in any such reserves 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.

ARTICLE VI
PAYMENT OF GENERAL ASSESSMENTS

Section 1. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner(s), his heirs, devisees, personal representatives and assigns. The personal obligation of the member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland, and may, by resolution of the Board of Directors, subject the member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix, and the Association may bring an action at law against the member personally obligated to pay the same, or foreclose on the lien against the Lot then belonging to said member in the manner now or hereafter provided for in the Maryland Contract Lien Act, or as may otherwise, from time to time, be provided by law, in which event interest, costs and reasonable attorneys' fees shall be added to the amount of each assessment.

In the event any proceeding to foreclose the lien for any assessment due the Association pursuant to this Article is commenced with respect to any Lot in the Property, then the Owner of such Lot, upon resolution of the Board of Directors, may be required to pay a reasonable rental for the dwelling unit located thereon, and the Association shall be entitled to the appointment of a receiver to collect the same.

The Board of Directors may post a list of members who are delinquent in the payment of any assessments or other fees which may be due the Association, including any installment thereof which becomes delinquent, in any prominent location upon the Property.

Section 2. Assessment Certificates. The Association shall, upon request, at any time furnish to any member liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate, in writing, signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Thirty Dollars (\$30.00) may be levied in advance by the Association for each certificate so delivered.

Section 3. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, the entire balance of said annual assessment may be accelerated, at the option of the Board of Directors, and be declared due and payable in full.

Section 4. Priority of Lien. The lien established by this Declaration shall have preference over any other assessments, liens, judgments or charges, of whatever nature, except the following:

A. General and special assessments for ad valorem real estate taxes on the Lot; and

B. The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment thereon of the lien provided for in this Declaration, or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot, as in this Article provided, shall be subordinate to the lien of any deed of trust, mortgage or other encumbrance duly recorded on such Lot and made in good faith and for value received, and shall in no way affect the rights of the holder of any such deed of trust, mortgage or other encumbrance; provided, however, that such subordination shall apply only to assessments, or installments thereof, which have become due and payable prior to a sale or transfer of the Lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Such sale, foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the mortgagee in possession, or the purchaser at any foreclosure sale, from liability for any assessments thereafter becoming due, or from the lien of any such subsequent assessments, which lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation

of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this section to the holders of mortgages (or of the indebtedness secured thereby) not otherwise entitled thereto.

Section 5. Additional Default. Any recorded first mortgage secured on a Lot in the Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby); but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 4 of this Article shall not be altered, modified or diminished by reason of such failure.

Section 6. Commencement of Annual Assessments. Except as may be otherwise resolved by the Board of Directors of the Association, the annual assessments for each Lot shall commence on the date a deed for the Lot is delivered by the Declarant to the member. The first monthly installment of each such annual assessment shall be made for the balance of the month during which a deed for the Lot is delivered to the member and shall become due and payable and a lien on the date a deed for the Lot is delivered to the member. Except as hereinelsewhere provided, the monthly installments of each such annual assessment for any Lot for any month after the first month shall become due and payable and a lien on the first day of each successive month.

Section 7. Assessment of Declarant. The Declarant shall not pay any assessments for Lots owned by the Declarant.

Section 8. Exempt Property. No portion of the Common Areas shall be subject to assessment of any kind by the Association.

Section 9. Working Capital Fund. At the time of the first conveyance of each Lot by the Declarant to an Owner, each such Owner shall pay to the Association a non-refundable contribution to the Association's Working Capital Fund in an amount equal to One Hundred Dollars (\$100.00). The Board of Directors shall have the right to increase the amount of the Working Capital Fund contribution at any time in the future, in its sole discretion, such increase to apply to each purchaser signing a contract for the purchase of a Lot at any time after the Board of Directors adopts a resolution providing for such an increase. This payment shall be in addition to, and shall not be credited toward, the general assessment due from each Owner. The Working Capital Fund shall be used by the Association to assist in defraying its initial and ongoing operating expenses.

ARTICLE VII
ARCHITECTURAL CONTROL - USE RESTRICTIONS

Section 1. Covenants Committee. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Declarant; and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures (including, but not limited to, any lighting, shades, screens, awnings, patio covers, fences, wall, slabs, sidewalks, curbs, gutters, patios, balconies, porches, decks or driveways) shall be commenced, directed, placed, moved, altered, installed, erected, attached, applied, pasted, hinged, screwed, built, removed, constructed or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon or upon any Common Areas be made, nor shall two (2) or more dwellings be combined or otherwise joined, or partitioned after combination, until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Covenants Committee (sometimes hereinafter referred to as the "Committee")) shall have been submitted 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 community by, the Board of Directors of the Association or by a Covenants Committee appointed by the Board of Directors.

All of the responsibilities and duties herein delegated to the Covenants Committee shall be carried out by the Board of Directors of the Association, unless and until the Board appoints such a Committee. References hereinafter to the Covenants Committee shall apply with equal force to the Board of Directors acting in the capacity of such a Committee.

Section 2. Covenants Committee - Operation. The Board of Directors may appoint a Covenants Committee. The Covenants Committee shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors. The affirmative vote of a majority of the members of the Covenants 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 Article. Said Committee may, from time to time, delegate its ministerial and policing functions to the managing agent.

Section 3. Approvals, etc. Upon approval by the Covenants Committee of any plans and specifications submitted pursuant to the provisions of this Article, 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 Committee fails to approve or disapprove any plans and specifications which may be submitted to it

pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Covenants Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with. Design approval by the Covenants Committee or by the Board shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, safety or other qualities of the item being reviewed nor shall it in any way relieve the Owner of the Owner's obligation to secure necessary approvals or permits from relevant governmental authorities. The Board of Directors or the Covenants Committee shall have the right to charge a reasonable fee for reviewing such application in an amount not to exceed Fifty Dollars (\$50.00). Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at the Owner's cost and expense.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the Covenants Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date on which the same are approved by the Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall, again, be required. There shall be no deviation from the plans and specifications approved by the Committee without the prior consent, in writing, of the Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the 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 in any other instance.

Section 5. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Covenants Committee in accordance with the provisions of this Article, the Covenants Committee shall, at the request of the Owners thereof, issue a certificate of compliance, which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Covenants Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Declaration as may be applicable.

Section 6. Rules and Regulations, Etc. The Covenants Committee may, from time to time, adopt and promulgate such rules and regulations regarding the form and

content of plans and specifications to be suitable for approval and may publish and record such statements of policy, standards, guidelines and establish such criteria relative to architectural styles or details, fences, colors, set-backs, materials or other matters relative to architectural control and the protection of the environment as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Covenants 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. The decisions of the Covenants Committee shall be final, except that any member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may appeal said decision of the Covenants Committee to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association as hereinafter provided.

Section 7. Appeals. Any member dissatisfied with a decision of the Covenants Committee may, within fifteen (15) days after the rendering of such decision, make an appeal thereof to the Board of Directors. Not less than fifteen (15), nor more than sixty (60), days after the noting of such appeal, the Board of Directors shall conduct a hearing thereon. Within fifteen (15) days of such hearing, the Board of Directors may affirm, reverse, modify or remand the decision appealed. Two-thirds (2/3) of the Board of Directors shall be required to reverse a decision of the Covenants Committee. The Board of Directors is hereby authorized and empowered to promulgate reasonable rules of procedure for the conduct of such appeals and hearings. In the event that the Board of Directors itself acts in the capacity of the Covenants Committee, no such right of appeal will lie and the decision of the Covenants Committee will be final.

Section 8. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction or development of the community, or except with the prior written approval of the Board of Directors of the Association or the Covenants Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Areas:

A. No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, or light, 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.

B. The maintenance, keeping, boarding 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, 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 neighborhood or other members. The Board of Directors or, upon resolution of the Board of Directors, the Covenants Committee shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from, time to time, be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. Each member who walks a pet on the Property, including the Common Areas, is required to clean up any and all solid waste deposited by their pet within that area. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may, from time to time, consider necessary or appropriate.

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. Except as hereinelsewhere provided, no junk vehicle, vehicle larger than a 3/4-ton truck and/or with more than two (2) axles and not to exceed four (4) wheels, house trailer, motor home, camper, vehicle with commercial lettering and signs (not including vehicles of a governmental agency), boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas) shall be kept upon the Property (including streets, driveways, Lots and on Lot parking spaces) nor (except in bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Covenants Committee, promulgate such additional rules and regulations in this regard as it deems necessary or desirable.

E. Trash and garbage containers shall be stored within the garages of each dwelling unit and shall not be permitted to remain in view, except on days of trash collection and then only in those places permitted by the Board of Directors. No incinerator shall be kept or maintained upon any Lot. Garbage, trash and other refuse shall be placed in covered containers.

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 sub-section 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, the Declarant or any other person for any purpose.

G. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained on any Lot above the surface of the ground.

H. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

I. No sound hardwood trees measuring in excess of six (6) inches in diameter two (2) feet above the ground shall be removed from any Lot without written approval of the Board of Directors. 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 as it may consider appropriate. The removal of any and all trees may be subject to obtaining a permit therefore from the City of Gaithersburg.

J. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on any Lot at any time, without the prior written consent of the Covenants Committee.

K. Except for entrance signs, directional signs, private security system signage affixed to the exterior of a dwelling and not exceeding eight and one-half inches by eleven inches (8 ½" x 11"), signs for traffic control or safety, and such promotional sign or signs as may be 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, provided, however, subject to the City of Gaithersburg sign ordinance, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a dwelling where an office is maintained, and provided, further, 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 sign shall be removed promptly following the sale or rental of such dwelling.

L. No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

M. No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicle traffic on streets and roadways.

N. No outside television aerial or radio antenna, or other aerial or antennae for either reception or transmission, shall be maintained upon the Property except that such aerials or antennae may be erected and maintained within the dwellings located upon the Property. No satellite dishes shall be permitted unless first approved by the Board of Directors, subject to guidelines established by the Board of Directors, from time to time, governing such criteria as size, location and screening and unless any permit therefore required by the City of Gaithersburg is obtained by the Owner.

O. No member shall make any private or exclusive or proprietary use of any of the Common Areas except with the specific prior written approval of the Covenants Committee, such approval if given, to be only for use on a temporary basis, and no member shall engage or direct any employee of the Association on any private business of the member during the hours such employee is employed by the Association, nor shall any member direct, supervise or in any manner attempt to assert control over any employee of the Association.

P. No all terrain vehicles ("ATVs"), off-road motorcycles or off-road motor vehicles of any kind shall be allowed on any of the Common Areas.

Q. No member shall convert any area originally constructed as a garage into a living or storage space; all garages shall be used for their intended purpose.

Section 9. Residential Use. All primary dwellings on the Lots shall be used for private residential purposes exclusively, except that a home office may be maintained in a dwelling, provided that (a) such office is registered with the Board of Directors, (b) such maintenance and use is limited to the person actually residing in the dwelling, (c) such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation, (d) any and all permits required by Montgomery County, the City of Gaithersburg or the State of Maryland are obtained, (e) such use does not include meeting with more than one (1) client, customer or employee within the home office at a time, and (f) no materials for the business are stored outside the dwelling. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any Lot or dwelling for promotional or display purposes, or as "model homes", a sales office, or the like.

Section 10. Family Day Care. The use of any dwelling unit within the Property as a "family day care home", as defined in §11B-111.1 of the Maryland Homeowners Association Act, as amended (the "Act") is hereby expressly prohibited. This express prohibition may be eliminated by approval of a simple majority of the members eligible to

vote pursuant to the voting procedures set forth in the By-Laws. In the event that the express prohibition is eliminated pursuant as set forth in the preceding sentence, then the Board of Directors and the Covenants Committee may promulgate any such requirements thereon as deemed necessary and any such family day care home shall comply with all applicable State, Montgomery County and City of Gaithersburg laws and regulations.

Section 11. Leasing. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject, in all respects, to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing and a copy thereof shall be filed with the Association's Board of Directors.

Section 12. Fences. Any fence constructed upon the Property shall be substantially similar in design, dimension and material to the fences, if any, installed by Declarant. Front yard fences, if any, shall only be permitted on Lots with rear entrance garages and shall not exceed thirty-six inches (36") in height. Back yard fences shall only be permitted on Lots with rear lot lines adjacent to open space Common Areas. Chain link and other wire fencing is specifically prohibited. The erection of all fences shall be subject to the provisions of Section 1 of this Article. The erection of all fences shall also be subject to those requirements imposed by the City of Gaithersburg which, as of the date of recordation of this Declaration, require approval by the Planning and Code Enforcement Departments of the City prior to the issuance of a permit for the construction of such fence.

Section 13. Driveways. The City of Gaithersburg has required, as part of its approval of the subdivision, that all Lots with front load garages have exposed aggregate concrete driveways. Owners of Lots with such driveways shall only use the same or similar materials to repair, maintain or replace said driveways.

Section 14. Decks. Any deck constructed upon any Lot shall be substantially similar in design, dimension and material to decks, if any, installed by the Declarant. The erection of all decks shall be subject to the provisions of Section 1 of this Article. The erection of all decks shall also be subject to those requirements imposed by the City of Gaithersburg which, as of the date of recordation of this Declaration, require approval by the Planning and Code Enforcement Departments of the City prior to the issuance of a permit for the construction of such deck.

Section 15. Community Rules, Etc. There shall be no violation of any rules for the use of the Common Areas and any other community rules and regulations (not inconsistent with the provisions of this Declaration) which may, from time to time, be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

Section 16. Reconstruction After Fire or Other Casualty Loss. In the event any dwelling is partially or completely destroyed by fire or other casualty, and in the absence of a resolution to the contrary by the Board of Directors, the Owner of such dwelling shall promptly restore or reconstruct such dwelling, at his own expense, in accordance with the original plans and specifications, or with such amended plans and specifications as may be approved in writing by the Board of Directors at the request of such Owner.

Section 17. Enforcement - Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any Lot, or in the event of any other conduct in violation of any of the provisions or requirements of this Article, and without the approval of the Board of Directors or the Covenants Committee required herein, and, upon written notice from the Board of Directors or such Committee, then the same shall be considered to have been undertaken in violation of this Article, such violation shall be promptly removed or abated. In the event the same is not removed or the violation is not otherwise terminated or abated within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, or to the member responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such member, then the Association shall have the right, through its agents and employees (but only after a resolution of the Board of Directors or Covenants Committee either to take such action as is provided in Article XII, Section 4 hereof and/or to enter upon such Lot and take such steps as may be necessary to remove or otherwise terminate or abate such violation, and the costs thereof and reasonable attorneys' fees incurred thereby may be assessed against the Lot upon which such violation occurred, and when so assessed, 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 such Lot, and a binding personal obligation of the Owner of such Lot in all respects (and subject to the same limitations) as provided in Article V 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 time for the purpose of ascertaining whether any violation of the provisions of this Article or any of the other provisions or requirements of this Declaration exist on such Lot; and 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.

Section 18. Enforcement - Fines. In addition to the means for enforcement provided elsewhere herein, the Association shall have the right to levy fines against an Owner or his guests, relatives, lessees or invitees in the manner set forth herein, and such fines shall be collectible as any other assessment such that the Association shall have a lien against the Lot of such Owner as provided in this Declaration, the By-Laws and the Articles of Incorporation, and such fine(s) shall also become the binding personal obligation of such Owner.

A. The Board of Directors, or a duly appointed Covenants Committee, shall be charged with determining where there is probable cause that any of the provisions of this Declaration, the By-Laws, Articles of Incorporation or the rules and regulations of the Association regarding the use of the dwelling units, Lots, Common Areas or other Association property are being, or have been, violated. In the event that the Board of Directors or the Covenants Committee determines an instance of such probable cause, it shall cause the Board of Directors to provide written notice to the person alleged to be in violation, and the Owner of the Lot which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed Twenty-five Dollars (\$25.00) for each offense. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging, in writing, that the violation occurred as alleged and promising that it will henceforth cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

B. If a hearing is timely requested, the Board of Directors shall hold the same and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner or the Board of Directors or Covenants Committee may produce. Any party at the hearing may be represented by counsel.

C. Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board of Directors shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board of Directors determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.

D. a fine pursuant to this section shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is the Owner of that Lot, and shall be collectible in the same manner as any other assessment, including by the Association's lien rights as provided in this Declaration. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting his Lot payment of the amount of any fine(s) assessed against that Lot.

E. Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the By-Laws, Articles of Incorporation or rules and regulations, including, but not limited to, legal action for damages or injunctive relief.

ARTICLE VIII
MANAGEMENT

Section 1. Management Agent. The Board of Directors may, but shall not be required to, employ for the Association a professional management agent or manager 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 in writing. The management agent shall perform such duties and services as the Board of Directors shall authorize in writing, including, without limitation:

a. To establish (with the approval of the Board of Directors of the Association) and provide for the collection of the general assessment and any other assessments provided for in this Declaration, and to provide for the enforcement of liens therefor, in a manner consistent with law and the provisions of this Declaration; and

B. To designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas, including the private streets and roadways thereon; and

C. To promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas, including the private streets and roadways thereon; and

D. To provide such other services (including accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Section 2. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense fund, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas, including the private streets and roadways thereon. No diminution or abatement of assessments, as hereinelsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas, including the private streets and roadways thereon, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

Section 3. Self-Management. The Board of Directors of the Association may elect to self manage the Association instead of retaining for the Association a management agent as set forth above.

ARTICLE IX **EASEMENTS**

Section 1. Reservation of Easement Rights by the Declarant.

a. The Declarant hereby reserves to itself, its successors and assigns, a non-exclusive easement and right-of-way in, through, over and across the Common Areas, including private streets and roadways thereon, for the purpose of the storage of building supplies and materials, and in, through, over and across the Common Areas, including private streets and roadways thereon, and Lots for the installation, construction, maintenance, reconstruction and repair of sanitary sewer lines, water lines, cables, storm drains and appurtenances to any of the same, and for all other purposes reasonably related to the completion of construction, the achievement of uniform grading on adjoining Lots, the furnishing of required warranty services and the provisions of utility services, whether public or private, to the community and to other property adjacent to, or in the vicinity of, the community. Any and all instruments of conveyancing made by the Declarant to the Association with respect to any of the Common Areas and to each member with respect to a Lot shall be conclusively deemed to incorporate this reservation, whether or not specifically set forth in such instruments.

B. The Declarant hereby reserves the absolute right to grant easements and rights-of-way, both temporary and permanent, over the Lots and Common Areas, including private streets and roadways thereon, to any and all governmental or quasi-governmental authorities and to any and all public utilities, including, without limitation, Montgomery County, Maryland, The City of Gaithersburg, the Washington Suburban Sanitary Commission, the Potomac Electric Power Company, the Washington Gas Light Company and Bell Atlantic.

Section 2. Easement for the Installation and Maintenance of Entranceway Monuments, Brick Entrance Piers and Signs. There shall be reserved to the Declarant a perpetual easement for the construction of entrance monuments, brick entrance piers and signs for the community to be located on the Common Areas and on a Lot or Lots to be designated by the Declarant. There shall be reserved to the Association a perpetual easement for the maintenance, repair, and replacement of any such monument, brick entrance pier or sign constructed by the Declarant on a Lot or Lots.

Section 3. Easements for Utilities and Related Purposes. The Association is authorized and empowered to grant (and shall, from time to time, grant) such other licenses, easements and rights-of-way over the Common Areas, including private streets

and roadways thereon, for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, cables, underground conduits, and such other purposes related to the provisions of utility and cable television services, to the community as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Areas and for the preservation of the health, safety, convenience and welfare of the Owners of the Lots or the Declarant.

Section 4. Existing Utilities. The rights and duties with respect to previously installed sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

a. Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon, or have a utility company enter upon, any portion of the Property in which said installation lies, to repair, replace and generally maintain said installations.

B. The right granted in sub-paragraph a above, shall be only to the extent necessary to entitle the Owner or Association served by said installation to its full and reasonable use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 5. Parking and Sidewalk Easements. There is hereby established for the benefit of the Owners of the Lots a perpetual and non-exclusive easement and right-of-way for pedestrian and vehicular ingress, egress and regress, and for the parking of motor vehicles, in, through, over and across any and all private streets and roadways in, through, over and across the sidewalks and leadwalks constructed upon the Common Areas or the Lots. Any grant of a Lot made by the Declarant shall be conclusively deemed to incorporate this easement and right-of-way, whether or not specifically set forth in such grant.

Section 6. Easement for Original Construction. With respect to any step, patio, deck, downspout or yard drain, driveway, air conditioning unit, heat pump or other similar structure that may benefit any Lot and is constructed or installed by the Declarant and which may encroach upon any other Lot or portion of the Common Areas, there is hereby

reserved for the benefit of the Lot for which step, patio, deck, downspout, drain, driveway, air conditioning unit, heat pump or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Lot or Common Areas, but only to the extent the Declarant's original construction thereof encroaches within the Lot or Common Areas. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association or the adjoining Lot Owner harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

Section 7. Retaining Wall Easements. There is hereby reserved for the benefit of the Association a perpetual and non-exclusive easement and right-of-way for the maintenance, repair and replacement of any retaining walls constructed by the Declarant on any Lot or Lots.

Section 8. Easement for Support and Access. Each Owner shall have an easement in common with the Owners of all other affected Lots for the use of and access for the purposes of maintenance to any pipes, wires, ducts, flues, chutes, cables, conduits, structures, facilities and public utility lines located within any of the other Lots to serve his Lot and the dwelling unit constructed thereon. Each Lot shall be subject to an easement in favor of the Owners of all other affected Lots for the use of and access for the purposes of maintenance to any pipes, ducts, flues, chutes, cables, wires, conduits, structures, facilities and public utility lines which serve such other Lots and the dwelling unit constructed thereon but are located within such Lot. Every structure located within a Lot which contributes to the structural support of a dwelling unit or appurtenant structure within another Lot shall be burdened with an easement of structural support for the benefit of such Lot.

ARTICLE X **PARTY WALLS, WING WALLS AND SHARED DECK SUPPORTS**

Section 1. Party Walls. The rights and duties of the Owners of Lots with respect to party walls shall be governed by Article X of the Master Association Covenants.

Section 2. Additional Shared Facilities. In addition to the sharing of party walls, the project will contain certain other facilities or structures which will be located on one Lot but serve another, or which will be located across a Lot line on two (2) Lots, and will serve both Lots on which it is located. These structures and facilities are, at this time, planned to include wing walls located in the front yards of the Lots to which will be affixed utility meters, heat pumps and air conditioning units located on a cement slab which will overlap Lot lines and cement piers which support back yard decks, which cement piers will be located on a Lot line, or on one Lot, but which will support decks on two (2) Lots. With respect to these shared structures and facilities (the "Shared Facilities"), the following rules shall govern:

A. **General Rules of Law to Apply.** The general rules of law regarding party walls, joint driveways and similar shared facilities, and of liability for property damage due to negligence or willful acts or omissions, shall apply to Shared Facilities.

B. **Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** The cost of maintaining any Shared Facility shall be borne by the Owners benefitting from or served by such Shared Facility in proportion to their respective use of or benefit from the Shared Facility (the "proportionate share"). If any such Shared Facility is damaged or destroyed by fire or other casualty, or by some cause other than the act of one of the Benefitted Owners (including ordinary wear and tear and deterioration from lapse of time), then and in such event all such Benefitted Owners shall proceed forthwith to rebuild or repair the same to as good a condition as it was in formerly, in proportion to their proportionate share.

C. **Repairs of Damage Caused by One Owner.** If any such Shared Facility is damaged or destroyed through the act of one Benefitted Owner, or any of his agents, guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other Benefitted Owner(s) of the full use and enjoyment of such Shared Facility, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good a condition as it was in formerly, without cost to the other Benefitted Owner(s).

D. **Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make addition(s) to or rebuild his residence in any manner which requires the extension or other alteration of any Shared Facility, shall first obtain the written consent of the other Benefitted Owner(s).

E. **Right to Contribution Runs with Land.** The right of any Benefitted Owner to contribution from any other Benefitted Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. **Right to Contribution Includes Cost of Collection.** Any judgment rendered in any action brought to recover contribution from a Benefitted Owner shall include costs and reasonable attorneys' fees.

G. **Dispute.** In the event of a dispute between Benefitted Owners with respect to the repair or rebuilding of a Shared Facility, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

H. Facilities Not Shared. In the event that a facility or structure located on one Lot solely serves or benefits another Lot and/or the dwelling located thereon, the Owner of the Lot or dwelling served or benefitted by such facility or structure shall be solely responsible to maintain, repair or replace such structure or facility. In the event that such Owner does not so maintain, repair or replace such structure or facility, the Owner of the Lot on which such structure or facility is located may, but is not required to do so and the cost thereof shall be assessed against the Owner benefitting from or served by such structure or facility and the rules set forth in sub-paragraphs E and F shall apply.

ARTICLE XI **EXTERIOR MAINTENANCE**

Section 1. Duty to Maintain the Lots. Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, the removal of snow and ice from all leadwalks and sidewalks located within such Lot, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to maintain the Lot and the improvements situated thereon, as provided in this Declaration and in the By-Laws, the Board of Directors may appoint someone to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lot, and such lien may be enforced in the same manner as an annual assessment levied in accordance with Article V hereof. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect such lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding or act in lieu thereof, shall extinguish any such lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 2. Easement for Exterior Maintenance. If any dwelling or other appurtenance is situated on or near a Lot line, such that proper exterior maintenance and repair of the dwelling or appurtenance cannot reasonably be accomplished exclusively on such Owner's Lot, then that Owner shall have an easement over that portion of the adjoining Lot as is reasonably necessary for such exterior maintenance and repair, including, but not limited to, painting, cleaning, washing and repairing windows.

Section 3. Duty to Maintain Common Areas and on Lot Retaining Walls. The Association shall be responsible to maintain the Common Areas, and all improvements thereon, in good order and repair, in a manner and with such frequency as is consistent with good property management. The Association shall also be responsible to maintain, repair and replace, as necessary in the sole discretion of the Association, those portions of the retaining walls located on the Lots.

Section 4. Inclement Weather. While the Association is responsible to maintain the Common Areas, it will only be able to do so as and when personnel and equipment provided by contractors retained by the Association are able to perform such work. In the event of snow or ice, such services may be delayed and Owners are cautioned to use prudence in traveling over streets, alleys and other Common Areas. In no event shall the Association be responsible for damage occurring to person or property due to an Owner's failure to observe inclement weather and act prudently with respect thereto.

Section 5. MISS UTILITY. In the event that an Owner contemplates any construction, alteration, installation or any other type of repair or improvement to any portion of a Lot outside of the dwelling unit, including even the installation of a tree or bush, or the making of an alteration to existing landscaping, the Owner must first contact MISS UTILITY to determine the location of all utilities. The Association, when contemplating any similar outside activity within the Common Areas, including again even the installation of a tree or bush, or the making of an alteration to existing landscaping, the Association must first contact MISS UTILITY to determine the location of all utilities.

Numerous utilities are located within the Property in close proximity to one another and to the surface. Because of the density of the project, which increases the difficulty of installing utility service to the dwelling units, landscaping within the Property has been or will be installed over existing utility lines. While the installation of landscaping over utility lines is not prohibited, in the event that it becomes necessary for a utility company to perform work, and excavate the area within which the line or facility is located, the utility company will not restore, or pay to restore, any landscaping installed within the easement area provided for such utility line or facility. In such an event, if the excavation has been performed upon a Lot, it will be the Lot Owner's responsibility to restore any landscaping removed which such Owner wishes to have restored. If the excavation has been performed within the Common Areas, it will be the Association's responsibility to restore any landscaping it wishes to have restored.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Amendment. This Declaration may be amended only with the consent of a majority of the members of the Association. If Class B membership has not lapsed, any amendment must also be consented to by the Declarant. Such an amendment shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

Section 2. Amendments by Declarant. Notwithstanding the foregoing, this Declaration may be amended by the Declarant without the vote of the members, at any time prior to the lapse of Class B membership.

Section 3. Duration. Unless amended in accordance with the provisions of Sections 1 and 2 of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, 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 the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date of recordation of this Declaration, after which date the said covenants shall be automatically extended for successive periods of ten (10) years each.

Section 4. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating, or attempting to violate, any covenants or restrictions, either to restrain or enjoin such violation, to remove such violation or to cover damages, or all of the foregoing, and against any Lot to enforce the lien created hereby, all at the cost, including court costs and reasonable attorneys' fees, of the Owner in violation; and the failure or forbearance by the Association or the Owner of any Lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any Owner or any mortgagee of any Lot which becomes subject to the provisions hereof, and by any other person, firm, corporation or other legal entity who or which has any right to the use of any of the Common Areas owned by the Association.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation, breach or attempted violation or breach of any of the within

covenants or restrictions cannot be adequately remedied by action at law or exclusively by the recovery of damages.

Section 5. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers, or any part of them, of the Declarant hereunder may be assigned and transferred (exclusively or non-exclusively) by the Declarant, with or without notice to the Association.

Section 6. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 7. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage pre-paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 8. 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 by any public or municipal agency, authority or utility, and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas.

Section 9. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 10. Taxes and Assessments. It is the intent of this Declaration that insomuch as the interests of each Owner to use and enjoy the Common Areas is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Common Areas shall be included in the assessment for each such Lot and, as a result, any assessment directly against such Common Areas should be of a nominal nature reflecting that the full value of the same should be included in the several assessments of the various Lots.

Section 11. Captions and Gender. The captions contained in this Declaration are for convenience only, are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

Section 12. Master Association. Each Lot which is made subject to this Declaration shall previously have been subjected to the Master Association Covenants.

In the event of any conflict between this Declaration and the Master Association Covenants, the Master Association Covenants shall control. This Declaration shall be subject and subordinate, in all respects, to the Master Association Covenants.

Section 13. Notice of Adjacent Substation. All Owners are hereby notified that the community is adjacent to a Potomac Electric Power Company ("PEPCO") generating substation. Declarant has no knowledge of any dangers presented by the existence or operation of such substation and Owners should contact PEPCO directly with any questions or concerns they may have with regard thereto. Neither the Declarant nor the Association shall be liable to any Owner or any Owner's family members or guests with regard to any claims that may arise from the maintenance or operation of the substation.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on its behalf by its undersigned Manager, such Manager being thereunto duly authorized and empowered.

ROCKY GORGE AT WASHINGTONIAN, LLC

BY: *Chris S. Dormeht* (SEAL)
Christopher S. Dormeht, General Manager

STATE OF *Virginia*, COUNTY OF *Fairfax*, to wit:

I HEREBY CERTIFY that on the *28* day of *January*, 199*8*, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Christopher S. Dormeht who acknowledged himself to be the General Manager of Rocky Gorge at Washingtonian, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained as the duly authorized principal of said company by himself as the General Manager.

WITNESS my hand and notarial seal the year and day first above written.

Vivian D. Maginnis
NOTARY PUBLIC

VIVIAN D. MAGINNIS
Printed Name

My Commission Expires: *Sept 30, 2000*

ATTORNEY'S CERTIFICATION

THIS IS TO CERTIFY that the undersigned is a Member, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by him or under his supervision.



Michael A. Faerber

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Master Tax ID No. 9-201-778263

GATEWAY PARK AT WASHINGTONIAN CENTER
HOMEOWNERS ASSOCIATION, INC.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "A"

Townhomes

Lots 1 through 11, Block E and Lots 15 through 43, Block F in a subdivision known as "Washingtonian Center" as per thereof recorded among the Land Records of Montgomery County, Maryland in Plat Book 185, Plat No. 20497.

Lots 12 through 40, Block E and Lots 1 through 14, Block F in a subdivision known as "Washingtonian Center" as per thereof recorded among the Land Records of Montgomery County, Maryland in Plat Book 185, Plat No. 20496.

Common Areas

Parcel D, Block E and Parcels A, B, E and F, Block F in a subdivision known as "Washingtonian Center" as per thereof recorded among the Land Records of Montgomery County, Maryland in Plat Book 185, Plat No. 20497.

Parcels A, B and C, Block E and Parcels C and D, Block F in a subdivision known as "Washingtonian Center" as per thereof recorded among the Land Records of Montgomery County, Maryland in Plat Book 185, Plat No. 20496.