

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 21st day of January, 1987, by and between RICHMOND AMERICAN HOMES OF VIRGINIA, INC., a Virginia corporation, hereinafter known as “Declarant”; and THE SECOND GATE POST ESTATES HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation, hereinafter known as “Association.”

WITNESSETH:

WHEREAS, Declarant is the sole owner of certain real property located in Fairfax County, Virginia, known as Lots 1 through 59, both inclusive, and Parcels B and C, GATE POST ESTATES, SECTION THREE, as the same are duly dedicated, platted and recorded by Deed of Dedication, Subdivision, Easement and Conveyance attached hereto and recorded herewith; and

WHEREAS, Declarant and its successors and assigns desire to create thereon a residential community which shall have permanent open spaces and other common facilities for the benefit of the community and to provide for the preservation of the values of the community and such other areas as may be subjected to this Declaration, and for the maintenance of the open spaces and other facilities; and, to this end, does declare and publish its intent to subject the real property as hereinafter described and as may from time to time be dedicated and subdivided into lots and open spaces designated for conveyance to a homeowners association to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that the easements, covenants, restrictions and conditions shall run with said real property and shall be binding on all persons or entities having or acquiring any right, title or interest in said real property or any part thereof, and shall inure to the benefit of each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values of said community to create an agency which shall be delegated and assigned the powers of owning, maintaining and administering the community properties, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereafter created; and

WHEREAS, Declarant has incorporated under the laws of the Commonwealth of Virginia, as a non-stock corporation, THE SECOND GATE POST ESTATES HOMEOWNERS ASSOCIATION for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant, for and in consideration of the premises and

the covenants contained herein, does hereby grant, establish and convey to each owner of a lot mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of lots in and to the use of any Common Area which may hereafter be acquired by the Association; and further, does hereby declare the real property described in the Deed of Dedication recorded immediately prior hereto and designated as Lots 1 through 59, both inclusive, and Parcels B and C, GATE POST ESTATES, SECTION THREE, to be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (hereinafter referred to as "Covenants and Restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title or interest in the described. properties or any part there of, their successors and assigns; and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to THE SECOND GATE POST ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the Office of the Clerk of the Circuit Court of Fairfax County, Virginia.

Section 3. "Property" shall mean and refer to that certain real property described herein above and such additions thereto which, from time to time, may be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) which may hereafter be acquired by the Association for the common use and enjoyment of the Members of the Association.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property upon which a dwelling unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use.

Section 6. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property,

including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 8. “Declarant” shall mean and refer to RICHMOND AMERICAN HOMES OF VIRGINIA, INC, its successors and assigns, if such successors or assigns should acquire from the Declarant (including by foreclosure or deed in lieu of foreclosure) two (2) or more undeveloped Lots for the purpose of development, and any person or entity that may dedicate, subdivide and submit to the Declaration all or a portion of the real property described in Deed Book 6579 at Page 16 and in Deed Book 6238 at Page 1734 among the land records of Fairfax County, Virginia.

Section 9. “Mortgagee” shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area and who has notified the Association of this fact.

Section 10. “Dwelling Unit” shall mean and refer to any portion of the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (in way of illustration but not limitation) patio or zero lot line homes, townhouses and single-family detached homes.

ARTICLE II MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. A Mortgagee in possession of a Lot shall be entitled to exercise the Owner’s rights in the Association with regard thereto.

ARTICLE III VOTING RIGHTS

Section 1. The Association shall have two (2) classes of voting membership:

CLASS A: Class A Members shall be all those Members as defined herein with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than

one person holds such 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 vote be cast with respect to any Lot.

CLASS B: The Class B Member(s) shall be the Declarant as defined herein. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article II; provided that Class B membership shall cease and a Class A membership with one (1) vote for each Lot in which it holds an interest shall issue on the happening of either of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

2. January 1, 1992.

Section 2. Upon annexation by the Declarant of additional properties pursuant to Article XII, Section 5, and in the event that Class B membership shall have ceased as herein above provided, Class B membership shall be revived with respect to those Lots so annexed, provided that, Class B membership in these annexed lots shall cease and be converted to Class A membership on the happening of the following events, whichever occurs earlier:

1. When the total votes outstanding in Class A membership in the annexed property equals the total votes outstanding in the Class B membership in such property, or

2. January 1, 1992.

ARTICLE IV PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to limit the number of guests of Members at such recreational facility;

(c) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Area, including the imposition of fines for the violation thereof;

(d) The right of the Association to suspend the voting rights and rights of a Member to the use of any recreational facilities constructed on the Common Area for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(e) The right of the Association, in accordance with the Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, with the assent of more than two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, to mortgage said property, subject to this Declaration and the easement of enjoyment created hereby, and to acquire property encumbered by the lien or liens of the deed or deeds of trust securing improvements on said property; provided that any such mortgage of the Common Area must state that it is subject to this Declaration and the easement of enjoyment created hereby and shall not be in conflict with its designation as “open space”;

(f) The right of the Association at any time and consistent with the then—existing zoning ordinances of Fairfax County and its designation as “open space”, or upon dissolution, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to conditions as may be agreed to by the Members; provided that any such dedication or transfer shall have the assent of more than two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents;

(g) The right of the Association to grant, with or without payment of damages to the Association and consistent with the “open space” designation thereof, easements for the construction, reconstruction, installation, repair, and/or necessary maintenance of utility lines through or over any portion of the Common Areas. The foregoing shall not be construed, however, to permit acquisition or damage to any improvements situate upon the Common Areas, or other structures or installations situate thereon which would otherwise be deemed to be part of the realty, without the payment of damages, including severance or resulting damages, if any, to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this Commonwealth; and

(h) The right of the Association to lease Common Area, provided however that such lease(s) must:

(i) be only to non-profit organizations;

(ii) require that such organizations give preference to Members of the Association with regard to membership and use of facilities;

(iii) prohibit assignment and subleasing;

(iv) require approval by the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration;

(v) be consistent with the then-existing ordinances of the County; and

(vi) be consistent with the open space designation thereof.

Section 2. Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Member's Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) annual general assessments or charges; and (b) special assessments for capital improvements, or other specified items, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as herein after provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such Lots at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Property, and in particular for the payment of taxes and

improvements and maintenance of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (All Items Index) published by the United States Department of Labor for the Washington, D.C. standard metropolitan area for the year ending the preceding July 1, or five percent (5%), whichever is greater.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased above that established by subparagraph (a) annually provided that any such change shall have the assent by a vote of more than two-thirds ($2/3$) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

(c) After consideration of current maintenance costs and further needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including the fixtures and personal property related thereto, or other specified purposes; provided that any such assessments shall have the assent of more than two-thirds ($2/3$) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less-than twenty-five (25) days nor more than fifty (50) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots not owned by the Declarant. Any unoccupied Lots owned by the Declarant shall be assessed at twenty-five percent (25%) of the rate of Lots not owned by the Declarant so long as the Declarant has Class B membership status As long as the Declarant retains the right to pay only partial assessments for the unoccupied Lots

in any section, the Declarant must also maintain the Common Area in such section at no cost to the Association and fund all budget deficits, including reserves, applicable to such section.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 of this Article V, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all Lots in any section no later than thirty (30) days following the conveyance of the first completed house on a Lot to an Owner other than a Declarant in that section. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Remedies of the Association in the Event of Default. If any assessment is not paid within thirty (30) days after the due date, the assessments shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In addition, the Association in its discretion may:

(a) impose a penalty as previously established by rule;

(b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property, and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessment.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of a first trust or mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by charitable or other organizations exempt from taxation by the laws of the Commonwealth of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI RESTRICTIVE COVENANTS

Section 1. The Property shall be used exclusively for residential purposes. The Declarant, however, for itself, its other for successors and assigns, reserves the right, prior to sale and transfer of any Lot, pursuant to a recorded subdivision plat, to alter, amend, and change any lot lines or subdivision plan. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one dwelling unit, garages and approved structures for use solely by the occupants. Except those related to real estate sales and construction, no sign, advertisement, or message other than for identification purposes shall be displayed or published which offers or implies commercial or professional services, or which may constitute any other kind of business solicitation in, or from, any residence or residential property. Notwithstanding the foregoing, the Declarant or its assigns may, during the construction and/or sales period, and within five (5) years from the date of subdivision of a particular section, erect, maintain, and operate real estate sales and construction offices, model homes, displays, signs, and special lighting on any part of the Property and on or in any building or structure now or hereafter erected thereon while owned by the Declarant.

Section 2. No clothing, laundry, or wash shall be aired or dried on any portion of the Lots or anywhere else within the Property.

Section 3. No tree, hedge or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 4. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance

to the neighborhood. Owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs, and trees, which shall be neatly maintained, all open Lot areas shall be maintained in lawns or other materials approved by the Architectural Review Board. All lawn areas shall be kept mowed and shall not be permitted to grow beyond a reasonable height.

Section 5. No sign of any kind that is illuminated and/or larger than two (2) square feet shall be displayed to the public view on any Lot, except temporary real estate signs not more than four (4) square feet in area advertising the property for sale or rent and except as provided in paragraph 1(a) above. All signs advertising the property for sale or rent shall be removed within three (3) days from the date of execution of any agreement of sale or rental.

Section 6. No horse, pony, cow, chicken, pig, hog, sheep, goat or other domestic or wild animal shall be kept or maintained on any Lot; however, common household pets such as dogs and cats may be kept or maintained, provided that they are not kept, bred, or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are in compliance with applicable Fairfax County ordinances.

Section 7. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

Section 8. No exterior antenna or satellite “dish” for transmission or reception of radio or television signals shall be erected or permitted on any building or Lot or other parcel of the Property.

Section 9. No person shall paint the exterior of any building a color different than the original color of said building without the proposed color having been approved by the Architectural Review Board.

Section 10. The exteriors of all structures, including walls, doors, windows and roofs, shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of no structure shall be permitted to remain in a damaged condition for longer than three (3) months.

Section 11. No structure or addition to a structure shall be erected, placed, altered or

externally improved on any Lot until the plans and specifications, including elevation, material, color and texture and a site plan showing the location of all improvements with grading modifications shall be filed with and approved in writing by the Architectural Review Board. No alterations, additions or improvements shall be made to any garage which would defeat the purpose for which it was intended. "Structure" shall be defined to include any building or portion thereof, wall, fence, pool, pavement, driveway, or appurtenances to any of the aforementioned.

Section 12. No fence or enclosure shall be erected or built on any Lot until approved in writing by the Architectural Review Board as to location, material and design. Any fence or wall built on any Lot shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property.

Section 13. No junk vehicles, recreational vehicles, house trailers, or commercial industrial vehicles, such as but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, hearses, buses, boats, boating equipment, travel trailers or camping equipment shall be regularly or habitually parked on any public streets within the Property, or otherwise within the boundaries of the Property, except upon the written approval of the Architectural Control Committee. The Association shall not be required to provide a storage area for these vehicles.

Section 14. No commercial truck, commercial bus or other commercial vehicle of any kind shall be permitted to be kept or parked overnight upon any portion of the Property.

Section 15. No portion of the Property shall be used for repair of automobiles, nor shall any vehicles other than a private automobile be parked in any of the parking spaces maintained by the Association. After ten (10) days' written notice to the Owner of any vehicle parked in violation of this covenant, the Association may remove such vehicle at the expense of the Owner thereof.

Section 16. The provisions of Sections 5, 7, 8, 9, 10, 11, 12 and 14 of this Article shall not apply to the construction or development or improvements on any Lot or Common Area by the Declarant commencing within five (5) years from the date of submission of said Lot to this Declaration.

Section 17. Any lease or rental agreement must be for a period of at least thirty (30) days and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Any failure by any lessee to comply with the terms of such documents shall be a default under the lease, which must be in writing.

Section 18. The Association shall have the authority to adopt such rules and

regulations regarding this Article as it may from time to time consider necessary or appropriate.

ARTICLE VII ARCHITECTURAL REVIEW BOARD

Section 1. Composition. The Architectural Review Board shall be comprised of three (3) or more members. Members shall serve staggered three (3) year terms as determined by the Board of Directors. As long as Declarant owns any Lots within the Property, the Architectural Review Board shall consist of two (2) committees: the New Construction Committee and the Modification and Change Committee. Thereafter, the New Construction Committee shall be terminated.

Section 2. Method of Selection. RICHMOND AMERICAN HOMES OF VIRGINIA, INC., its successors and assigns, shall nominate the persons to serve on the New Construction Committee. The Board of Directors shall appoint or reject such nominees, and in case a nominee is rejected, RICHMOND AMERICAN HOMES OF VIRGINIA, INC. shall thereupon nominate another person for appointment. The Board of Directors shall appoint the Modification and Change Committee. No member of the Modification and Change Committee may be a Director.

Section 3. Removal and Vacancies. Members of the Architectural Review Board may be removed by the Board of Directors with or without cause. Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment.

Section 4. Officers. At the first meeting of the Architectural Review Board following each Annual Meeting of Members, the Architectural Review Board shall elect from among themselves a Chairman, a Vice Chairman and a Secretary who shall perform the usual duties of their respective offices.

Section 5. Duties. The Architectural Review Board shall regulate the external design, appearance and locations of the Property and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the Architectural Review Board shall:

(a) Review and approve, modify or disapprove, within forty-five (45) days, all written applications of Owners for improvements or additions to Lots or Common Areas; in this regard, during the period the Architectural Review Board is composed of the two committees described above, the New Construction Committee shall act with respect to

the initial construction, development or improvements to the Lots and Common Areas, and the Modification and Change Committee shall act with respect to modifications and changes to the improvements to the Lots and Common Areas. All applications not acted upon within forty-five (45) days shall be deemed approved;

(b) Periodically inspect the Property for compliance with architectural standards and approved plans for alteration;

(c) Adopt architectural standards subject to the confirmation of the Board of Directors;

(d) Adopt procedures for the exercise of its duties; and

(e) Maintain complete and accurate records of all actions taken.

Section 6. Appeal. Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors.

ARTICLE VIII EASEMENTS

Section 1. There is hereby granted a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, firemen, ambulance personnel and all similar persons to enter upon the Property in the exercise of the functions provided by this Declaration and the Articles, By-Laws and Rules of the Association in the event of emergencies and in performance of governmental functions.

Section 2. The rights accompanying the easements provided by Section 1 hereof shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, and with the permission of any Owner or tenant directly affected thereby when not an emergency situation or a governmental function.

Section 3. A Declarant, its agents and employees, shall have a right of ingress and egress over the Common Area as required for construction and development of the Property.

Section 4. There shall be and is hereby reserved to a Declarant a non-exclusive easement over any Lot or any Common Area for the purpose of installing, repairing and/or maintaining utility lines of any sort, including but not limited to, storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines,

telephone lines, telecommunication lines and cables, and the like. This easement shall automatically expire as to any Lot or Common Area five (5) years from the date of submission of such tot or Common Area to this Declaration.

Section 5. There shall be and is hereby reserved to a Declarant a non-exclusive easement over all Lots or any Common Area for the purposes of correcting drainage, regrading, and of maintaining, landscaping, mowing, and erecting street intersection signs, directional signs, temporary promotional signs, entrance features and/or “theme areas”, lights, and wall features, and for the purpose or purposes of executing any of the powers, rights, or duties granted to or imposed on the Association in Article X hereof. This easement shall automatically expire as to any Lot or Common Area five from the date of submission of such Lot or Common Area Declaration.

Section 6. Any rights granted to a Declarant in this Article shall extend only to Lots and Common Areas submitted to this Declaration by such Declarant.

ARTICLE IX PARKING

The Association shall promulgate such rules and regulations needed to regulate the use of any parking areas that may be constructed or authorized on Common Areas for the benefit of all Owners, which rules and regulations may include assignment of parking spaces.

ARTICLE X POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Discretionary Powers and Duties. The Association shall have the following powers and duties, which may be exercised at its discretion:

(a) To enforce any/all building restrictions which are imposed by the terms of this Declaration or which may hereafter be imposed on any part of the Property, provided that nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restrictions in his own name; the right of enforcement shall not serve to prevent such changes, releases or modifications of the restrictions or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists The expense and costs of any enforcement proceedings initiated by the Association shall be paid out of the general fund of the Association as hereinafter provided for;

(b) To provide such light as the Association may deem advisable on streets and for the maintenance of any and all improvements, structures or facilities which may exist or be erected from time to time on any Common Area;

(c) To build facilities upon land owned or controlled by the Association;

(d) To use the Common Area and any improvements, structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(e) To mow and resow the grass and to care for, spray, trim, protect, plant and replant trees and shrubs growing on the Common Area and to pick up and remove from said property and area all loose material, rubbish, filth and accumulations of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order;

(f) To exercise all rights and control over any easements which the Association may from time to time acquire, including but not limited to, those easements specifically reserved to the Association in Article VIII hereof;

(g) To create, grant and convey easements upon, across, over and under all Association property, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving Lots within the Property;

(h) To create subsidiary corporations;

(i) To employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(j) To employ from time to time such agents, servants and laborers as the Association may deem necessary in order to exercise the powers, rights and privileges granted to it, and to make contracts; and

(k) A right of entry on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property.

Section 2. Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

(a) To accept title to the Common Area and to hold and administer said property for the benefit and enjoyment of the Owners and occupiers of Lots within the Property.

The purpose of this provision is to impose on the Association the obligation to accept title to any Common Area and to hold and maintain the same for the benefit of Owners and occupants of GATE POST ESTATES, SECTION THREE;

(b) To make and enforce rules and regulations governing the use of the Common Area;

(c) The Association shall obtain fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall, at a minimum, be equal to the sum of three (3) months' assessments on all Lots in the Property plus the Association's reserve funds, if any.

(d) The Association shall maintain a comprehensive policy of public liability and hazard insurance covering the Common Area. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence.

ARTICLE XI RIGHTS OF MORTGAGEES

All Mortgagees shall have the following rights:

Section 1. A Mortgagee shall be given written notification from the Association of the following:

(a) Any proposed action that would require the consent of a specified percentage of Mortgagees;

(b) Any default in the performance of any obligation under this Declaration or related Association documents by the Lot that is the security for the indebtedness due the which is not cured within sixty (60) days;

(c) Any casualty loss that affects a material portion of the Lot that is the security for the indebtedness due the Mortgagee;

(d) Any casualty loss, condemnation or eminent domain proceeding or proposed acquisition by a condemning authority that affects any portion of the Common Area or any Lot or portion thereof, which is related to the indebtedness due the Mortgagee;

(e) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 2. Any Mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, will not be liable for each such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

Section 3. A Mortgagee shall have the right to examine the books and records of the Association during normal business hours and upon reasonable notice to the Association.

Section 4. As outlined in later sections of this Article, holders of first mortgages or other equivalent liens on Planned Unit Development lots shall have the right, upon request, to receive notice of (1) the decision of the Owners to abandon or terminate the Planned Unit Development; (2) any material amendment to the Declaration, any of the By-Laws, or any of the Articles of Incorporation; and (3) the decision of the Association to terminate professional management and assume self- management.

Section 5. Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives notice to the Association that it has relied on the value of the improvements in making a loan on the Property, then such Mortgagee shall further entitled to the following rights:

(a) Subject to the right of Declarant to annex additional areas, as provided in Article XII, unless sixty-seven percent (67%) of the Owners and Mortgagees representing at least fifty-one percent (51%) of the votes of unit estates that are subject to mortgages have given their prior written approval, as required by this Declaration or related Association documents, the Association shall not:

(i) Fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value;

(ii) Use hazard insurance proceeds for losses to the Common Area or other Association Property for other than the repair, replacement or reconstruction of such property; and

(iii) Add or amend any material provisions of this Declaration or related Association documents concerning the following:

- (1) voting;
- (2) assessments, assessment liens, or subordination of such liens;
- (3) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;
- (4) insurance or fidelity bonds;
- (5) responsibility for maintenance and repair of the Property;
- (6) architectural controls;
- (7) annexation or withdrawal of property to or from GATE POST ESTATES, SECTION THREE (other than annexation of those properties referred to in Article XII, Section 5 hereof);
- (8) leasing of the Property;
- (9) imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his property;
- (10) a decision by the Association to establish self-management when professional management had been required previously by a Mortgagee;
- (11) restoration or repair of the Property after a hazard damage or partial condemnation;
- (12) reallocation of interests in the Common Areas or rights to its use, except as provided in Article IV;
- (13) changing the boundaries of any lot;
- (14) converting lots into Common Areas or vice versa;
- (15) termination of the legal status of THE SECOND GATE POST

ESTATES HOMEOWNERS ASSOCIATION after substantial destruction or condemnation of the subdivision occurs; and

(16) any provisions that are for the express benefit of Mortgagees.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(b) Subject to the right of Declarant to annex additional areas, as provided in Article XII, unless sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the Mortgagees have given their prior written approval, as required by this Declaration or related Association documents, the Association shall not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or other Property owned by the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this clause.

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee or Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association;

(d) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by special assessments;

(e) The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area or Association property unless a decision not to repair, reconstruct or renovate is approved by all Mortgagees;

(f) In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property; and

(g) Should there be excess casualty insurance or condemnation proceeds

after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee.

(h) The Association must provide an audited financial statement for the preceding fiscal year to all Mortgagees upon written request.

(i) Eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to these in no force enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of this Declaration shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 2. Severability. Invalidation of any one of covenants or restrictions by judgment or court order shall way affect any other provisions, which shall remain in full and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of twenty (20) years. The covenants and restrictions of this Declaration may be amended in whole or in part during the first twenty (20) year period with the assent of not less than seventy-five percent (75%) of the votes of the Lot Owners, and thereafter any amendment shall have the assent of sixty-seven percent

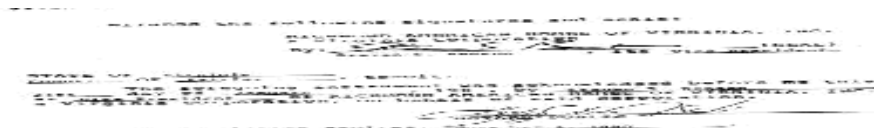
(67%) of the votes of the Lot Owners, at a meeting duly called for this purpose, written notice of which shall be sent to all Lot Owners not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Any amendment must be properly executed and acknowledged (in the manner required by law for the execution and acknowledgment of deeds) by the Association and recorded among the land records of Fairfax County, Virginia.

Section 4. Special Amendment. For a period of one (1) year after the recording of this Declaration, the Declarant may make any Amendment required by any of the federal mortgage agencies, such as the Federal Home Loan Mortgage Corporation, or by the County of Fairfax, Virginia, as a condition of the approval of the documents by the execution and recordation of such amendment following notice to all Owners.

Section 5. Annexation of Additional Property. The Association may, for a period of twenty-one (21) years from the date hereof, annex additional areas and provide for maintenance, preservation and architectural control of residence Lots, and so add as to its membership under the provisions of Article II; provided that any such annexation shall be authorized at a duly held meeting at which a quorum is present by the consent of more than two-thirds (2/3) of each class of the Members voting in person or by proxy. After twenty-one (21) years, annexation may be made with the consent of three-fourths (3/4) of all Members. Provided, however, that during the seven (7) year period commencing with the date hereof, no such consent is required for the annexation of all or any part of the real property described in Deed Book 6238 at Page 1734 of the land records of Fairfax County, Virginia, by the Declarant. Any future improvements will be consistent with the initial improvements in terms of quality of construction.

Section 6. Management Contracts. For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts for the management of the Property; provided however, that once the Declarant loses its Class B membership status, the Association shall have the right to terminate such contracts, with or without cause, upon ninety (90) days' written notice given to the other party.

WITNESS the following signatures and seals:



WITNESS the following signatures and seals:

RICHMOND AMERICAN HOMES OF VIRGINIA, INC.
A Virginia Corporation
By: Steven S. Benson (SEAL)
Steven S. Benson, Its Vice President

STATE OF Virginia, to-wit:
County OF Fairfax

The foregoing instrument was acknowledged before me this
21st day of January, 1988, by Steven S. Benson
as Vice President of RICHMOND AMERICAN HOMES OF VIRGINIA, INC.,
a Virginia corporation, on behalf of said corporation.

[Signature]
NOTARY PUBLIC

My commission expires: November 4, 1990