

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by ALLAN H.

GASNER, Trustee, hereinafter referred to as "Declarant"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Fairfax, State of Virginia, which is more particularly described as:

Section One (1), HERITAGE SQUARE, as the same is duly dedicated, platted and recorded as Instrument Number 24643, among the Land Records of Fairfax County, Virginia.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to HERITAGE SQUARE HOMES ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of conveyance of the first lot is described as follows:

Parcel A, containing 181,860 square feet, as dedicated, platted and recorded as the Open Space as part of Section One (1), HERITAGE SQUARE, as instrument NO. 24643 subject to the easements shown on the recorded plat of Section One (1), HERITAGE SQUARE.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and Parcel "C" which is to be conveyed to the Fairfax County Park Authority.

Section 6. "Declarant" shall mean and refer to ALLAN H. GASNER, Trustee, his successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

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

(a) the right of the Association to 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 suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association 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 such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, 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 property.

Section 3. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said lots as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign one (1) vehicle parking space for each dwelling.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A: Class A members shall be all Owners with the exception of Declarant and shall be entitled to one vote for each Lot owned. When more than one 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 vote be cast with respect to any Lot.

Class B: Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership, or

(b) September 1, 1976.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The Declarant, for each Lot owned within the Properties, hereby covenants and agrees to pay annual assessments and special assessments for capital improvements at a rate of Twenty-Five per cent (25%) of the assessments established for and collected from Class A members. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment shall be two Hundred and Sixty Five and 00/100 dollars (\$265.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without the vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a

vote of 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.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots owned by Class A members. The Declarant shall pay at a rate of Twenty-Five per cent (25%) of the rate fixed for all Class A members. These assessments may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. 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 thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six per cent (6%) per annum. The Association may bring action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. 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 mortgage. Sale or transfer of any lot shall not affect the assessment lien. However the sale or transfer of any Lot pursuant to first mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments 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.

Section 10. Exempt Property. All properties dedicated to and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction By Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the party wall to be exposed the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribute Runs With the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article each party shall choose one arbitration, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, and snow removal from the parking areas, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: grass cutting for the front of each lot and for the rear of each lot, beginning at a point twenty (20) feet beyond the rear house line, trash removal services, and maintenance of any lighting equipment installed by the Declarant or the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VIII

GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically extend for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be recorded and any amendment to Articles 1, 2, 3, 4 and 8 must be approved by the appropriate officials of Fairfax County, Virginia, prior to recording.

Section 4. Annexation. If within five (5) years of the date of incorporation of this Association, the Declarant should develop additional lands within Fairfax County, such additional lands may be annexed to the Properties without the assent of the Class A members, provided that the Veterans Administration Authorities determine that the annexation is in accord with the general plan heretofore approved by them. The Common Areas and/or residential properties so annexed shall be governed by the terms of this Declaration and the Owners of the annexed residential properties shall also be governed by the provisions of this Declaration. Subsequent to this five year period, the Association may annex contiguous Common Areas and/or residential properties, provided that any such annexation shall have the assent of two-thirds (2/3) of the membership of each class. The Common Areas and/or residential properties so annexed shall be governed by the terms of this Declaration, and the Owners of the Annexed residential properties shall also be governed by the provisions of this Declaration.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendments of this Declaration of Covenants, Conditions and Restrictions. Provided, however, that such approval shall not be obtained unless the action will affect property for which the Class B member or other developer has allied for FHA Mortgage Insurance or VA Loan Guarantee for new housing financing.

ARTICLE IX

PROTECTIVE COVENANTS AND RESTRICTIONS

1. No fence or other encroachment shall be erected or permitted beyond twenty (20) feet from the rear of any dwelling.
2. No portion of a lot created by this instrument, except for model houses used by Declarant, shall be used for any professional, industrial, mining or commercial activities, except as can be and are in fact conducted from a single family residence as currently defined in Section 30-1.8.15 and 30.1.8.16, Article 1, Definitions, Chapter 30, Zoning, of the Code of Fairfax County, Virginia. These restrictions shall in no way limit those community uses described in Section 30-1.8.36.2, Article 1, Definitions, Chapter 30, of the above Fairfax County Code; or the community use of nursery school or other school (described in Section 30.7.2.6.1.3, Article VII, Special Permits, Chapter 30, of the Fairfax County Code.)

3. No clothing, laundry or wash shall be aired or dried on any portion of the properties.

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

5. No noxious or offensive activity shall be carried on upon any portion of the residential property, or shall anything be done thereon or permitted to remain on any lot which may be or become a nuisance or annoyance to the neighborhood.

6. No sign of any kind shall be displayed to the public view on any lot, except temporary real estate signs not more than four square feet in area advertising the property for sale and except for temporary signs erected by the Declarant in connection with the construction, lease or sale of building and lots, and except for signs not more than two square feet displaying the profession of the occupant.

7. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection, unless in containers approved by the Board of Directors of the Association, or by an Architectural Control Committee approved by the Board. No accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any lot, which shall be maintained in a neat and attractive manner, so as not to detract from the appearance of the entire property.

8. 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 Board of Directors of the Association, or by an Architectural Control Committee appointed by the Board.

9. No outside T.V. antenna or aerial shall be permitted.

10. No junk vehicle, house trailer, boat, or travel or camping trailer shall be kept on any lot or in the Common Areas or parking areas.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set his hand and seal this 7th day of July, 1972.

Signed Allan H. Gasner, Trustee (seal)

STATE OF VIRGINIA }
COUNTY OF FAIRFAX }

to-wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, whose commission as notary expires on the 17th day of August, 1975, do hereby certify that ALLAN H. GASNER, Trustee, whose name is signed to the foregoing writing bearing date on the 7th day of July, 1972, has acknowledged the same before me in my County and State aforesaid.

GIVEN under my hand and seal this 7th day of July, 1972.

Notary Public

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 23rd day of May, 1973, by Allan H. Gasner, Trustee, hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of certain property in the County of Fairfax, State of Virginia, which is more particularly described as:

HERITAGE SQUARE, Section One (1), as the duly dedicated, platted and recorded among the Land Records of Fairfax County, Virginia, in Deed Book 3674 at page 648;

HERITAGE SQUARE, Section Two (2), as the duly dedicated, platted and recorded among the Land Records of Fairfax County, Virginia, in Deed Book 3713 at page 497;

WHEREAS, Declarant subjected aforesaid property to a Declaration of Covenants, Conditions and Restrictions as recorded in Deed Book 3647 at page 671, among the Land Records of Fairfax County, Virginia; and

WHEREAS, The Declarant wishes to amend the aforesaid Declaration in accordance with Section 3 Article VIII.

NOW, THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions as recorded in Deed Book 3647 at page 671, to have the same effect as if an original part of the aforesaid Declaration. Any language in any provision not specifically changed or amended hereby shall remain in full force and effect.

ARTICLE IX: PROTECTIVE COVENANTS AND RESTRICTIONS

ADD:

11. Admission within the swimming pool enclosure and use of any or all of the swimming facilities shall be restricted to only those full time residents of Heritage Square subdi-

vision. This restriction shall become operative at such time as a sewer tap is granted to the Declarant for the use and operation of swimming facilities. Once this restriction becomes operative it shall remain in full force and effect until such a time as the capacity of the Lower Potomac Treatment Plant is increased in capacity from 18 mgd to 36 mgd.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 23rd day of May, 1973.

Signed Allan H. Gasner, Trustee (seal)

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT to Declaration of Covenants, Conditions, and Restrictions made this ___ day of _____, 1986, by the undersigned members of the Heritage Square Homes Association, hereinafter referred to Declarants.

WHEREAS, Declarants constitute 90% or more of the owners of real property located in the subdivision known as HERITAGE SQUARE, which was duly dedicated, plated, and recorded among the land records of Fairfax County in Deed Book 3647 at Page 648 (Section 1) and Deed Book 3713 at Page 497 (Section 2), and

WHEREAS, A Declaration of Covenants, Conditions, and Restrictions is recorded in Deed Book 3647 at Page 671 among the Land Records of Fairfax County, and

WHEREAS, the Declarants wish to amend the aforesaid Declaration in accordance with Section III of Article VIII, now

THEREFORE, Declarants hereby amend the Declaration of Covenants, Conditions, and Restrictions recorded in Deed Book 3647 at Page 671, to have the same effect as if an original part of the aforesaid Declaration. Any language in any provision not specifically or amended hereby shall remain in full force and effect.

ARTICLE VIII: GENERAL PROVISIONS'

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date the Declaration was recorded, after which time they shall automatically extend for successive periods of ten (10) years. The Declaration may be amended by an instrument signed by not less than sixty-six percent of the Lot Owners. Any amendment must be recorded, and where required by State or Fairfax County ordinance, approved by the appropriate officials of Fairfax County, Virginia, prior to recording.

IN WITNESS WHEREOF the undersigned Declarants have set their hands and seals to the foregoing instrument.