

**HIDDENBROOK HOMES ASSOCIATION
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

Dated: August 8, 1972
Recorded: Aug. 16, 1972
Deed Book: 3675, page 224
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Deed Book: 3738, page 232

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 8th day of August, 1972, by DAVID H. MILLER and GORDON V. SMITH, TRUSTEES, hereinafter known as Declarant,

WHEREAS, Declarant is the owner of certain real property located in the Dranesville District, Fairfax County, Virginia, and desires to create thereon a residential community with permanent open spaces, and other common facilities for the benefit of the said community, and

WHEREAS, Declarant desire to provide for the preservation of the values and amenities in said community and such other area as may be subject to this Declaration by Declarant or other owners and developers as land is subdivided and dedicated for lots, and for the maintenance of said open spaces and other facilities; and, to this end, desires to subject the real property known as "SECTION ONE, HIDDENBROOK," to the covenants, restrictions, easements, conditions, charges and liens, hereinafter set forth. These easements, covenants, restrictions and conditions shall run with said real property and shall be binding on all parties having or acquiring any right, title or interest in the properties 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 and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Virginia, as a non-stock corporation, HIDDENBROOK HOMES ASSOCIATION, for the purpose of exercising the function aforesaid;

NOW THEREFOR, the Declarant declares the real property described in Deeds of Subdivision and Dedication recorded prior hereto designated as "Section One, Hiddenbrook", described by metes and bounds therein, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, conditions, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Hiddenbrook Homes Association, its successors and assigns.

Section 2. "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 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "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.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to David H. Miler and Gordon V. Smith, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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 contrast 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. No Owner shall have more than one membership. 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.

ARTICLE III VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners as defined in Article II 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 person 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 shall be the Declarant. The Class B member shall be entitled to four (4) votes for each Lot in which it holds the interest required for membership by Article II, provided that 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 the Class A membership equal twice the total votes outstanding in the Class B membership, provided there are at least three hundred (300) Class A memberships outstanding, or
- (b) On January 1, 1978.

ARTICLE IV PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall 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 limit the number of guests and members;

- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property and to acquire property encumbered by deed of deeds of trust securing improvements on said property.
- (d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed ninety (90) days for any infraction of its published rules and regulations;
- (e) The right of the Association at any time or upon dissolution to dedicate or transfer, subject to approval of the Fairfax County Planning Engineer or his successor, 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 members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance.

Section 2. Delegation of Use. Any member 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. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association.

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 above-mentioned properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association:

- (a) Annual assessments or charges, and
- (b) Special assessments for capital improvements, 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 cost of collection thereof, as hereinafter provided, 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 such 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 shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes 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 Properties 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 the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Fifty Dollars (\$50) per Lot for lots other than those owned by the Declarant and Ten Dollars (\$10) per Lot for lots owned by Declarant.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount than the maximum and may increase the maximum by as much as fifteen percent (15%), cumulative, over the maximum amount set for the previous calendar year without a 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 more than fifteen percent (15%), cumulative, above the maximum assessment for the previous year by a vote of the members provided that any such change shall have the assent of two-third (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, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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 or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary 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, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate Of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Section 3 of this Article.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of 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 requirement 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 on the first day of the month following the conveyance of the

first lot to an owner. 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 to 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 be have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of the assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse 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 or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lien of the foreclosure therefore, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments 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 properties dedicated to and accepted by a local public authority; (b) the common area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvement devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, antenna, swimming pool or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to 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 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 to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII PROTECTIVE COVENANTS AND RESTRICTIONS

1. No portion of a lot created by this instrument 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 Sections 30-1.8.15 and 30-1.8.16, Article 1, Definitions, Chapter 30, Zoning, the County Code of Fairfax, 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 Code of the County of Fairfax; or the community use of

a nursery school or other school (described in Section 30-7.2.6.1.3, Article VII, Special Permits, Chapter 30 of the Code of the County of Fairfax, Virginia).

2. No clothing, laundry or wash shall be aired or dried on any portion of the Properties in any area other than in the rear yards of the lots.

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

4. Except as provided in paragraph 3, no tree of a diameter of more than four inches measured two feet above ground level, lying without the approved building and driveway area, shall be removed without the approval of the Board of Directors or the Architectural Control Committee appointed by said Board.

5. No noxious or offensive activity shall be carried on upon any portion of the residential property, nor 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 that is illuminated and/or larger than two square feet 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 or rent and except for temporary signs erected by Declarant in connection with the construction, lease or sale of building and lot.

7. No horses, pony, cow, chicken, pig, hog, sheep, goat or other domestic or wild animal shall be kept or maintained on any lot other than common household pets, provided that they are not kept, bred or maintained for commercial purposes.

8. 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.

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

10. No structure or addition to be a structure shall be erected, placed or altered on any lot until the plan and specification, including elevation, material, color and texture and a site plan showing location of improvement with grading modifications shall be filed with and approved in writing by the Board of Directors of the Association or an Architectural Control Committee appointed by the Board. Structure shall be defined to include any building or portion thereof, fence, pavement, driveway or appurtenances to any of the aforementioned.

11. No junk vehicles or house trailer shall be kept on any lot. No storage of boats, boating equipment, travel trailers or camping equipment shall be visible from the street. The location and design of enclosures for boating, camping, traveling (other than automobiles) and related equipment shall be approved by the Architectural Control Committee as required under Paragraph 10.

**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. Preservation of Common Area. Common area or open space not contained in lots and streets shall not be denuded, defaced nor otherwise disturbed in any manner at any time without the approval of the appropriate County Departments and in concurrence with the County Planning Engineer.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. 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 of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) percent of the Lot Owners, and thereafter by an instrument signed by not than seventy-five (75) percent of the Lot Owners. Any amendment must be properly executed, and approved by the Director of County Development, Fairfax, Virginia.

IN WITNESS WHEREOF, the said Declarant has caused this Declaration to be signed pursuant to due and proper authority duly heretofore had.

WITNESS the following signature and seals:

_____(seal)
DAVID H. MILLER, TRUSTEE

_____(seal)
GORDON V. SMITH