

34922

## WEXFORD DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF Wexford, hereinafter known as "Declaration," is made this 6th day of February, 1992, by Equity Resources, Inc., a Virginia corporation, hereinafter known as "Developer," and Wexford Conservancy, a Virginia non-stock Conservancy hereinafter known as "Conservancy".

## W I T N E S S E T H :

WHEREAS, Developer is the owner of the real property located in Prince William County, Virginia, known as Wexford, as the same is duly subdivided, platted, and recorded in Deed Book 1835, at page 1253, among the land records of Prince William County, Virginia; and more particularly described as Lots 1 thru 6, and Parcels A & B in Section 1, Lots 1 thru 88 and Parcels A-1 & C in Section 2, Lots 1 thru 77 and Parcel D in Section 3, and Lots 1 thru 97 and Parcel E in Section 4; and

WHEREAS, the above-referenced property is located in the proposed residential community of Wexford.

WHEREAS, the Board of Supervisors of Prince William County has specified that a single association be formed for all residential uses in the Community; and

WHEREAS, in order to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety, and welfare of residents and for the maintenance of the land and improvements thereon, the Developer desires to subject the real property described above to the covenants, restrictions,

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12500 Lake Ridge Drive  
Woodbridge, Virginia 22192

easements, charges, and liens of this Declaration of Covenants, Conditions, and Restrictions; and said covenants, restrictions, easements, conditions, and charges running with said real property and binding all persons or entities having or acquiring any right, title, or interest in said real property or any part thereof, and inuring to the benefit of each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth and the intents and requirements of the County of Prince William, the Developer has incorporated under the laws of the State of Virginia.

NOW, THEREFORE, Developer does hereby grant, establish, and convey to each owner mutual non-exclusive rights, privileges and easements of enjoyment on equal terms in common with all other owners in and to the use of the common facilities; and does hereby declare the above-described real property to be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens 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 above-described real property or any portion thereof, their successors and assigns, and shall inure to the benefit of each owner thereof.

AND FURTHER, the Developer hereby delegates and assigns to Wexford Conservancy the powers of owning, maintaining, and administering all common areas, administering and enforcing the

covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

## ARTICLE I

### DEFINITIONS

Section 1. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights, or a formal letter stating "no objection."

Section 2. "Assessable Unit" shall mean and refer to any real property within the Properties which is subject to assessments, as provided in Article V.

Section 3. "Book of Resolutions" shall mean and refer to the document containing the rules and regulations and policies of the Wexford Conservancy as they may from time to time be amended.

Section 4. "Builder" shall mean and refer to a person or entity which acquires a portion of the Properties for the purpose of improving such portion in accordance with the conceptual Development Plan for resale to Owners.

Section 5. "Common Area" shall mean and refer to all real property and improvements thereon owned or leased by the Conservancy for the use and enjoyment of Members.

Section 6. "Conservancy" shall mean Homeowners' Association.

Section 7. "Declaration" shall mean and refer to the covenants, conditions, and restrictions and all other provisions herein set forth in this Declaration of Covenants, Conditions and

Restrictions.

Section 8. "Developer" shall mean and refer to Equity Resources, Inc., its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law. The rights and obligations set forth herein of the Developer, as Developer, shall cease when new Living Unit construction contemplated by the Conceptual Development Plan is substantially completed or after five years have lapsed since the filing of the last Supplementary Declaration establishing a Neighborhood.

Section 9. "Development Limits" shall mean and refer to the total of potential land which may become a part of the Properties as provided herein.

Section 10. "Federal Mortgage Agencies" shall mean and refer to those Federal Agencies who have an interest in the Properties, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 11. "First Mortgagee" shall mean and refer to an Institutional Lender who holds the first deed of trust on a Lot or Living Unit and who has notified the Conservancy of his holdings.

Section 12. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Conservancy, this Declaration,

Supplementary Declarations, and the Bylaws of the Conservancy, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

Section 13. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 14. "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured a loan of such a lender, or any combination of any of the foregoing entities.

Section 15. "Living Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a Single Family.

Section 16. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of Common Area as heretofore defined, and to any condominium unit created under the Condominium Act of Virginia, as such may be amended from time to time.

Section 17. "Members" shall mean and refer to members of the Conservancy which shall consist of all Owners.

Section 18. "Neighborhood" shall mean and refer to one or more lots which are subject to the same Supplementary Declaration.

Section 19. "Neighborhood Common Area" shall mean and refer to portions of the Common Area which are designated as Neighborhood Common Area in the Governing Documents and which are for the primary use and enjoyment of Members residing in such Neighborhood.

Section 20. "Notice" shall mean and refer to (1) written notice delivered personally or mailed to the last known address of the intended recipient, or (2) notice published at least once a week for two consecutive weeks in (a) a newspaper having general circulation in Prince William County, or (b) the newsletter of the Conservancy delivered personally or mailed to each Member.

Section 21. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether one or more persons or entities, including contract sellers; the term shall exclude those having such interest merely as security for the performance of any obligation.

Section 22. "Properties" shall mean and refer to all real property which is hereby subjected to the Declaration, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 23. "Registered Notice" shall mean and refer to any Notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. Refusal of an intended recipient to acknowledge such Notice shall in no way

affect the validity of any Registered Notice.

Section 24. "Single Family" shall mean and refer to a single housekeeping unit which includes not more than three adults who are legally unrelated.

Section 25. "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions which may be recorded by the Developer or a Builder, which extends the provisions of this Declaration to a Neighborhood or which contains such complementary provisions for such Neighborhood as are deemed appropriate by the Developer and as are herein required.

Section 26. "Recreational Facilities". As used herein, the term Recreational Facilities shall mean tennis courts, two tot lots, recreational vehicle parking lot, or other facilities located on the Common Area.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

#### ADDITIONS THERETO

Section 1. "The Properties." The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Prince William, State of Virginia.

Section 2. Additions to the Properties. Additional properties may become subject to this Declaration in the following manner:

(a) Additions by the Developer. The Developer shall have the right to subject to the Declaration any additional property which

lies within the Development Limits provided that not more than five (5) years have lapsed since the filing of the last Supplementary Declaration which subjects a Neighborhood to this Declaration. Said property includes approximately 38 acres of land acquired by the Developer by a Deed recorded in Deed Book 1701 at page 1835.

(b) Other Additions. Additional land, other than that described above, may be annexed to the Properties upon approval of two-thirds (2/3) of the votes of each class of Members.

The additions authorized under subsection (a) and (b) shall be made by complying with the requirements of the Zoning Ordinance, by securing the Approval of the Federal Mortgage Agencies, by filing of record one or more Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional property, and by filing with the Conservancy the preliminary plat for such additions.

Section 3. The Development Limits Land.

(a) Purpose. The Development Limits Land, which consists of the land described in Section 2(a) above, is the maximum limit for the Properties. Because the Development Limits is an outside limit, it shall not bind the Developer to add to the Properties any or all of the lands which are shown on the Development Limits or to improve any portion of such lands unless and until a Supplementary Declaration is filed by the Developer for such property which subjects it to this Declaration. Thereupon, the Developer shall then be obligated to complete development of such Neighborhood.

(b) Unsubmitted Land. Subject to the approval of Prince



William County, the Developer hereby reserves the right to develop the land depicted in the Development Limits and not yet submitted to this Declaration in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the land or to changes in requirements of government agencies and financial institutions.

Section 4. Merger. In accordance with its Articles of Incorporation, the property, rights, and obligations of the Conservancy may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the property, rights, and obligations or an association similar in corporate nature and purposes may by operation of law be added to the property, rights, and obligations of the Conservancy as a surviving operation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidations, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Properties except as hereinafter provided. Such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each class of Members.

### ARTICLE III

#### THE CONSERVANCY

Section 1. Organization.

(a) The Conservancy. The Conservancy is a nonprofit, non-

stock corporation organized and existing under the laws of Virginia charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents than this Declaration shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Institutional Plan. As the operating responsibilities of the Conservancy expand from those related to the Properties as originally constituted to those required by the full development of the residential uses in the Wexford Conservancy, this Declaration and the Governing Documents shall guide the controlled and orderly evolution of the Conservancy into a comprehensive community institution.

(c) Subsidiary Corporations. The Conservancy shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority vote of the Board of Trustees. Without limiting the generality of the foregoing, one or more subsidiary corporations may be formed for the operation and maintenance of any specific Area or to perform any function within the Properties; however, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot or Living Unit giving rise to such membership, and shall not be

assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except as provided in the Governing Documents.

(b) Member's Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

(c) Voting Rights. The Conservancy shall have two classes of voting membership:

Class A. Class A Members shall be all Owners except the Class B Member. Class A Members shall be entitled to one vote for each Lot owned.

Class B. The Class B Member shall be the Developer who shall have 804 Votes less the number of Class A votes outstanding at the time a vote is taken.

The Class B membership and the Class B voting rights shall cease upon the earlier of the following events: when the total number of Class A votes equals the total number of Class B votes or on January 2, 2000. Thereafter, the Developer shall have Class A membership rights for each Lot it may own.

(d) Exercise of Vote. The vote for any membership which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted.

Section 3. Board of Trustees.

(a) Composition. The number of Trustees and method of selection shall be as provided in the Bylaws. As long as the

Developer has rights hereunder, as Developer, it shall have the right to appoint at least two Trustees and the remainder shall be selected as provided in the Bylaws.

(b) Extent of Power.

(1) The Board of Trustees shall have all powers for the conduct of the affairs of the Conservancy which are enabled by law or the Founding Documents which are not specifically reserved to Members or the Developer by said Documents.

(2) The Board of Trustees shall exercise its powers in accordance with the Governing Documents.

(c) Powers and Duties. Without limiting the generality thereof the Board shall have the power and obligation to perform the following duties:

(1) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Conservancy, except the acquisition, mortgage, or disposal of Common Area and/or improvements shall be subject to the provisions of Article II and Article IV, respectively.

(2) Rule Making. To establish rules and regulations for the use of property as provided in Articles IV and VI and to review, modify, and approve Architectural standards adopted by the Architectural Review Board; and

(3) Assessments. To fix, levy, and collect assessments as provided in Article V; and

(4) Easements. To grant and convey easements to the Common Area as may become necessary and as provided in Article VII; and

(5) Employment of Agents. To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Conservancy; and

(6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II; and

(7) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, to enforce or effectuate any of the provisions of the Governing Documents, subject to any appeal which may be filed and is pending.

Section 4. The Architectural Review Board.

(a) Composition. The Architectural Review Board shall consist of three or more members appointed by the Board of Trustees until there are 100 Class A Members.

Thereafter, until the Developer's rights as Developer cease the Architectural Review Board shall be composed of:

(1) A New Construction Panel, composed of three members appointed by the Developer; and

(2) A Modification and Change Panel, composed of three Members, appointed by the Board of Trustees.

When the Developer's rights as Developer cease, the Architectural Review Board shall consist of three or more persons who shall be appointed by the Board of Trustees as provided in the Bylaws.

(b) Powers and Duties. The Architectural Review Board shall regulate the external design, appearance, and location of the Properties 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 Board shall:

(1) Review and approve, modify, or disapprove written applications of Owners and of the Conservancy, for improvements or additions to Lots, Living Units, or Common Areas. Notice of any disapprovals of applications shall be by Registered Notice. Approvals shall be sent by regular mail. In this regard, during the period the Board is composed of the panels described above, the New Construction Panel shall act with respect to initial improvements to the Common Areas and Lots; the Modification and Change Panel shall act with respect to modification and changes to all the Common Area and Lots, including improvements thereon; and

(2) In accordance with the Bylaws and Book of Resolutions, monitor Lots for compliance with Architectural standards and approved plans for alteration; and

(3) Adopt Architectural standards subject to the confirmation of the Board of Trustees; and

(4) Adopt procedures for the exercise of its duties and

enter them in the Book of Resolutions.

(c) Failure to Act. In the event the Architectural Review Board fails to approve, modify, or disapprove, in writing, a correctly filed application within forty-five (45) days, approval will be deemed granted. Total or partial disapproval will include the reasons for such disapproval.

(d) Appeal. An applicant may appeal an adverse decision of the Modification and Change Panel to the Board of Trustees, which may reverse or modify such decision.

(e) Other Controls. Approval by the Architectural Review Board shall not relieve an applicant of assuring compliance with governmental rules or other relevant controls.

Section 5. Fidelity Bond. The Conservancy shall obtain fidelity coverage against dishonest acts on the part of Trustees, officers, managers, employees, or agents responsible for handling monies collected and held for the benefit of the Conservancy.

Section 6. Insurance. The Conservancy shall maintain hazard insurance policies for any improvements on the Common Areas and a comprehensive policy of public liability 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 Conservancy 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.

#### ARTICLE IV

## COMMON AREA

Section 1. Obligations of the Conservancy. The Conservancy, subject to the rights of the members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members of the Common Area conveyed to it and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order and repair, in compliance with standards contained in the Book of Resolutions.

### Section 2. Easement of Enjoyment.

(a) Common Areas. Subject to the provisions herein, every Member 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.

(b) Neighborhood Common Areas. Subject to the provisions herein, the Owners of Lots within a Neighborhood shall have a priority right and easement of enjoyment in and to the areas designated as Neighborhood Common Areas by the Governing Documents or an amendment thereto.

Section 3. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Conservancy to establish reasonable admission and other fees for the use of the Common Areas;

(b) The rights of the Conservancy to suspend the right of a Member to use the recreational facilities for any period during



which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Conservancy to suspend the right of a Member to use the recreational facilities for a period not to exceed sixty (60) days for any other infraction of the Governing Documents;

(c) The right of the Conservancy to mortgage any or all of the Common Area with the assent of two-thirds (2/3) of the votes of each class of Members. In the event of a default upon any mortgage the Lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge reasonable admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Conservancy and all rights of the Members hereunder shall be fully restored;

(d) The right of the Conservancy to convey or transfer all or any part of the Common Area, subject to the prior approval of Prince William County and assent of two-thirds (2/3) of the votes of each class of Members;

(e) The right of the Conservancy to license portions of the Common Area to Members on a uniform, non-preferential basis;

(f) The right of the Conservancy to regulate the use of the Common Area for the benefit of Members.

(g) The right of the Association, at any time or times, consistent with the then existing zoning ordinances of Prince

William County, and pursuant to a recorded subdivision or resubdivision plat, to transfer part of the Common Area to the Developer or any Builder for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Properties, and provided that: (1) such transfer shall not reduce the portion of the Properties designated as "open space" below the minimum level of "open space" required in the subdivisions comprising the Properties by Prince William County at the time of the transfer, (2) the appropriate governmental authorities within the Prince William County government approve such Lot line adjustments.

Section 4. Delegation of use. Any Member may delegate his right of enjoyment to the Common Area and Recreational Facilities to the members of his family, to his guests, and to any tenant or subtenant, subject to such general regulations as may be established from time to time by the Conservancy, and included within the Book of Resolutions.

Section 5. Title to Common Area. The Developer hereby covenants that areas designated as open space, which the Developer conveys to the Conservancy as Common Area or to a governmental agency as park land shall be free and clear of liens and financial encumbrances at the time of conveyance. The Developer shall convey such areas in each section at the time of subdivision of each section.

#### ARTICLE V

#### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Conservancy such General, Neighborhood, and Special Assessments as are established herein and paid in the manner hereinafter provided.

All such assessments, together with interest thereon and costs 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 interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them. 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 Assessable Unit.

Section 2. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Assessable Unit shall not affect the assessment lien. However, the sale or transfer of any Assessable Unit pursuant to foreclosure of a first mortgage or first deed of trust 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 Assessable Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3. Method of Assessment. All assessments shall be levied by the Conservancy against Assessable Units and collected and disbursed by the Conservancy. The Board of Trustees shall fix the amount of the assessments as provided hereinafter and set the dates such assessments shall become due.

Section 4. Annual Assessments shall consist of General and Neighborhood Assessments.

(a) General Assessment.

(1) Purpose. The General Assessment shall be used exclusively to promote the health, safety, and welfare of the Members and in particular to improve, maintain, and operate the Common Area and Recreational Facilities, and shall include the funding of appropriate reserves for future maintenance, repair, and replacement for those parts of the Common Area which may be replaced or require maintenance on a periodic basis.

(2) Basis for Assessment. For General Assessment purposes, there shall be two classes of Assessable Units, all of which shall be assessed at a uniform rate within each class:

Class I: All Living Units which are or have been occupied by a Single Family shall be assessed at one hundred percent (100%) of the General Assessment rate.

Class II: All Lots which are not otherwise assessable under the Class I provision shall be assessed at twenty-five percent

(25%) of the General Assessment rate, except that a Lot for which a Building Permit has been issued shall be assessed at twenty-five percent (25%) of the General Assessment rate for each Living Unit to be constructed on such Lot. As long as the Developer pays a Class II assessment for any Lot in a particular section, the Developer shall fund all budget deficits for that section.

(3) Maximum. Until the first day of the fiscal year following commencement of assessments, the maximum Annual General Assessment rate shall be Four Hundred Twenty Dollars (\$420.00) per lot.

(4) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Trustees may increase the maximum each year by the greater of: (i) a factor of not more than five (5) percent of the maximum for the current fiscal year, or (ii) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the U.S. Labor Department for the Metropolitan Washington Area; such increase shall become effective the first day of the next fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board with the assent of two-thirds (2/3) of the votes of each class of Members.

(b) Neighborhood Assessments.

(1) Purpose. Neighborhood Assessments shall be used for such purposes as are authorized by the Supplementary Declaration for a given Neighborhood.

(2) Basis. The Supplementary Declaration shall set forth the basis by which all Assessable Units shall be assessed.

(3) Maximum. The Supplementary Declaration shall set forth the maximum annual Neighborhood Assessment and methods by which such maximum may be changed.

(4) Recreational Facility Charge. A Supplementary Declaration may provide that the Neighborhood Assessment will include any annual charge for Recreational Facilities. Owners paying such charges may use the Recreational Facilities without other payments, except for standard guest or similar extra cost or use control fees.

(c) Method of Assessment. By a vote of two-thirds (2/3) of the Trustees, the Board shall fix the General and Neighborhood Assessments at an amount not in excess of the current maximum for each assessment, provided, however, that the General Assessments shall be sufficient to meet the obligations imposed by the Declaration and the Supplementary Declarations. In the event the Board fails to fix an assessment for any fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the Board acts.

(d) Date of Commencement of General and Neighborhood Assessments. The first General and Neighborhood Assessments provided for therein shall commence as to all Lots within a

Neighborhood on the first day of the month following the conveyance of the Common Area contained within the Neighborhood, provided, however, that if there is no Common Area within a specific Neighborhood then the first General Assessments as to all Lots within that Neighborhood shall commence on the first day of the month following the recording of the Supplementary Declaration establishing the Neighborhood.

Section 5. Special Assessments.

(a) Capital Improvement Assessment. The Conservancy may levy in any assessment year a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) succeeding years, 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, or other specified purpose, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of a Quorum of Members. Special Assessments for Capital Improvements to Neighborhood Common Areas, which will primarily benefit and be maintained by the Owners of that Neighborhood, require only the approval of two-thirds (2/3) of the votes of a Quorum of Owners of the affected Neighborhood.

(b) Restoration Assessment. The Conservancy may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, Section 2, or who fails to provide such maintenance funds as may be required by the

Supplementary Declaration for such Lot. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection itself.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Conservancy. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Conservancy shall provide Notice of such delinquency and may (a) declare the entire balance of such General or Special Assessment due and payable in full; (b) charge interest from the due date at a percentage rate no greater than the statutory maximum, such rate to be set by the Board for each Assessment period and charge a penalty to be set by Board of Trustees; (c) give Registered Notice to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of such notice, then the expressed contractual lien provided for herein shall be foreclosed; or (d) upon Registered Notice to the Owner, suspend the right of such Owner to vote or to use the Recreational Facilities until the assessment and accrued interest are paid in full.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (2) all Common Areas; and (3) all properties exempted from taxation by the state or county government upon the terms and to the extent of such legal



exemption, provided that no Property utilized for residential purposes shall be exempt.

## ARTICLE VI

### USE OF PROPERTY

#### Section 1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to jeopardize property values or be detrimental to the well-being of Members.

(b) Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments; and, provided, that this shall not prohibit the division or combination of condominium units in accordance with law, or the creation of condominiums.

(c) Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work, which in any way alters the exterior of any Lot or Common Area of the improvements located thereon from its natural or improved state, existing on the date such property was first subject to this Declaration, shall be made or done without the prior approval of the Architectural Review Board. No building, residence, or other structure, fence, wall, or landscaping in lieu

thereof, shall be commenced, erected, maintained, improved, altered, made, or done on such property without the prior written approval of the Architectural Review Board.

(d) Rules. From time to time the Board of Trustees shall adopt general rules, including, but not limited to, rules to regulate potential problems relating to the use of property and the well-being of Members, such as keeping of animals, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash and trash containers, maintenance and removal of vegetation on the Properties, and the type and manner of application of fertilizers or other chemical treatments to the Properties in accord with non-point source pollution control standards. Ninety (90) days after conveyance of the first Lot to an Owner, who is not a Builder, such general rules may only be adopted or amended by a two-thirds (2/3) vote of the Board, following a hearing for which due notice has been provided to all Members. All such general rules and any subsequent amendments thereto shall be placed in the Book of Resolutions and shall be binding on all Members, except where expressly provided otherwise in such rule.

(e) Exceptions. The Board of Trustees may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Developer or Builders are engaged in developing or improving any portion of the Properties, such persons shall be exempted from

Rules affecting movement, disposition, and storage of building materials and equipment, erection, and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Living Units. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Properties.

Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in a Supplementary Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is consistent with good property management.

(b) Failure to Maintain. In the event an Owner of any Lot in the properties shall fail to maintain the premises and the improvements situated thereon as provided herein, the Conservancy, after Notice to the Owner and approval by two-thirds (2/3) vote of the Board of Trustees, shall have the right to enter upon said Lot to correct drainage and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Conservancy and remedies provided for herein for non-payment.

Section 3. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration as well as any applicable Supplementary Declaration.

(b) Notification. Further, the Contract Seller of a Lot shall notify the Board of Trustees of the Contract Purchaser and the scheduled date and place conveyance will be accomplished.

(c) Estoppel Certificate. The Board thereupon shall prepare an Estoppel Certificate which shall set forth any assessments and charges due upon such Lot at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Lot as of the date of preparation of such Certificate. This Certificate shall be delivered to the place of closing, and outstanding assessments, if any, and a reasonable charge to cover the cost of providing such Certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Conservancy.

ARTICLE VII

EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across, over, through, and under the Properties for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television,

cable, or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the Properties, to excavate for such purpose and to affix and maintain wires, circuits, and conduits on, in, and under the roofs and exterior walls of Living Units, providing such company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (1) no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Developer prior to the conveyance of the first Lot in a Neighborhood to an Owner or by the Conservancy thereafter, and (2) it shall not be construed to apply to the relocation, installation or removal of utility lines within a Living Unit which serve only that unit. This easement shall in no way affect any other recorded easements on the Properties.

Section 2. Developer's Easements to Correct Drainage. For a period of two years from the date of conveyance of each Lot, the Developer reserves an easement and right on, over, and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any grading of the land, or to take any other similar action reasonably necessary, following

which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights.

Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer or Builders are engaged in developing or improving any portion of the Properties, such persons shall have an easement of ingress, egress, and use over any lands not conveyed to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities, including maintenance of model Living Units. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Properties.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Conservancy for ingress and egress on any Lot, (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with Architectural standards and/or approved plans for alterations and improvements, and (b) performing such maintenance as is required by the Supplementary Declaration on such Lots, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three days in advance

thereof and such inspection is performed during reasonable hours.

Section 5. Easement for Governmental Personnel. A right of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 6. Easement for Landscaping, Signs, and Related Purposes. There shall be and is hereby reserved to the Developer for so long as it retains its rights as Developer, a nonexclusive easement over all Lots and Common Areas for a distance of twenty-five (25) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas", lighting, stone, wood, or masonry wall features, and/or related landscaping. Exercise of this easement will be with the consent of the Owner of an Affected Lot, or the Architectural Review Board if the said Owner does not consent.

Section 7. Common Area Easement. The Board of Trustees is empowered to grant easements over the Common Area.

#### ARTICLE VIII

##### RIGHTS OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

Section 1. Consents. Subject to the right of the Developer to annex additional areas, as provided in Section 2(a) of Article II, unless fifty-one percent (51%) of the First Mortgagees and the Owners, as required by this Declaration or related Conservancy

documents, or if no provision is made for Member approval, then seventy-five percent (75%) of a Quorum of Members, having given their prior written approval, the Conservancy shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area or other property owned by the Conservancy. The granting of easements for public utilities or other public purpose' consistent with the intended use of the Properties, or in accordance with Articles VII, shall not be deemed a transfer within the meaning of this clause;

(b) Fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Conservancy 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, including land value;

(c) Use hazard insurance proceeds for other than the repair, replacement, or reconstruction of such property; or

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

(i) voting,

(ii) assessments, assessment liens, or subordination of such liens,

(iii) reserves for maintenance, repair, and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis,

(iv) insurance or fidelity bonds,

(v) responsibility for maintenance and repair of the



Properties,

- (vi) Architectural controls,
- (vii) annexation or withdrawal of property to or from the Properties, subject to the provisions of Article II,
- (viii) leasing of Living Units,
- (ix) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his property,
- (x) a decision by the Conservancy to establish self management when professional management had been required previously by a First Mortgagee,
- (xi) restoration or repair of the Common Areas or any improvements thereon after a hazard, damage, or partial condemnation,
- (xii) termination of this Declaration after substantial destruction or condemnation occurs, and
- (xiii) any provisions that are for the express benefit of First Mortgagees.

An addition or amendment to this Declaration or related Conservancy documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A First 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.

Section 2. Notice and Other Rights. The Conservancy shall

maintain a file of all First Mortgagees, with a proper designation of the property in which they have an interest; and shall send a copy of such list to the Lead Lender at least once every twelve months.

If requested, the Conservancy shall provide to all First Mortgagees:

(a) Written notification of any default in the performance of any obligation under the Governing Documents by the Owner of a Lot which is the security for the indebtedness due the First Mortgagee, which is not cured within sixty (60) days.

(b) Written notice of any condemnation or eminent domain proceeding or other proposed acquisition by a condemning authority of any portion of the Common Area or of a Lot which is the security for the indebtedness due the First Mortgagee.

(c) Written notice, with right to attend, of all meetings of the Conservancy.

(d) Any casualty loss that affects a material portion of the Lot that is the security for the indebtedness due the First Mortgagee,

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

Section 3. Books and Records. All Institutional Lenders who have an interest in the Properties shall have the right to examine the books and records of the Conservancy during normal business hours. The Conservancy shall provide an audited statement for the preceding fiscal year to any Institutional Lender requesting such

statement.

Section 4. Notice of Actions. The Board shall give to the Lead Lender and such other First Mortgagees as may request it, expeditious notice of any civil action or liens lodged against the Conservancy or officers or Trustees regarding their conduct in administering the affairs of the Conservancy.

Section 5. Payment of Taxes. A First 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 therefore from the Conservancy.

Section 6. Approvals. As long as the Developer has Class B membership rights, the following actions require the prior approval of the Federal Mortgage Agencies and Prince William County: annexation of additional properties outside of the Development Limits, dedication of the Common Area and amendment of this Declaration, any Supplementary Declaration or of the Development Plan.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after

which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by not less than seventy-five percent (75%) of the Class A Members, the consent of the Class B Member if it exists, and sixty-seven percent (67%) of the First Mortgagees. A termination must be approved by Prince William County and be recorded in order to become effective.

Section 2. Amendment. For a period of ten (10) years after the recording of this Declaration, the Developer may make any amendment required by the Federal Mortgage Agencies or the County of Prince William, Virginia, as a condition of approval of the documents by the execution and recordation of such amendment following Registered Notice to all Owners. After such ten (10) year period, or to make any amendment which is not one required by such agencies, any amendment shall be accompanied by a document signed by not less than ninety percent (90%) of the Class A Members, the Class B Members if it exists, and evidence of the Approvals required by Article VIII. Any amendment must be recorded in order to become effective.

Section 3. Enforcement. The Conservancy, any Member or First Mortgagee, as their interest may appear, 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 and of Supplementary Declarations. Failure to enforce any covenants or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Developer. For such time as the Developer shall own Lots, its rights and interest shall not be prejudiced by any of the following actions unless it shall, in writing, join in such actions.

There shall be no amendments to the Founding Documents which:

(a) Discriminate or tend to discriminate against its rights as an Owner.

(b) Changes Article I, Definitions, in a manner which alters its rights or status.

(c) Alters its rights under Article I as regards annexation of additional properties.

(d) Alters the character and rights of membership or the rights of the Developer as set forth in Article III.

(e) Alters previously recorded or written agreements with public or quasi-public agencies as regards easements and rights-of-way.

(f) Denies the right to convey Common Areas to the Conservancy so long as such common areas lie within the Land Area represented in the Development Plan.

(g) Alters its rights as set forth in Article VI relating to design controls.

(h) Alters the basis for assessments.

(i) Alters the provisions of the protective covenants as set forth in Article VI.

(j) Alters the number or selection of Trustees as established in the Bylaws.

(k) Alters the Developer's rights as they appear under this Article.

Section 5. Management Contracts. Until such time as the Class B membership expires, the Developer shall have the right to enter into professional management contracts for the management of the Properties; provided however, that such contracts shall not be for more than one (1) year, and once the Developer loses its Class B membership status, the Conservancy shall have the right to terminate such contracts, with or without cause, upon ninety (90) days written notice given to the other party.

Section 6. Limitations. As long as the Developer has an interest in developing the Properties as defined in Article I, hereof, the Conservancy may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intents of the Development Plan for the Wexford Conservancy. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 7. 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 8. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then

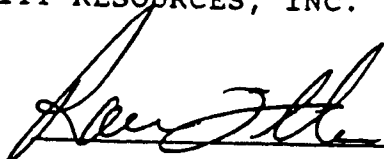
Supplementary Declarations, then the Bylaws, then the Book of Resolutions; except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 9. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 10. Declaration for Public Purpose. Upon the valid dedication for public use of any portion of the Properties, the declaration shall no longer be applicable to the land so dedicated.

IN WITNESS WHEREOF, the Developer, Equity Resources, Inc., a corporation chartered under the laws of Virginia, has caused these presents to be duly executed this 6th day of February, 1992.

EQUITY RESOURCES, INC.

By: 

Robert L. Fitton, President

STATE OF VIRGINIA

COUNTY OF PRINCE WILLIAM, to-wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, whose commission expires on the 9th day of April, 1993, do hereby certify that Robert L. Fitton, as President of Equity Resources, Inc., whose name is signed to the foregoing Declaration of Covenants, Conditions and Restrictions, personally appeared before me and acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 6th day of February, 1992.



Notary Public

RECORDED WITH CERTIFICATE ANNEXED

92 MAR 12 PM 1:09

PRINCE WILLIAM CO., VA

TESTE: 