

BY-LAWS  
OF  
FAIRFAX POINTE HOMEOWNERS ASSOCIATION, INC.

County of Montgomery, Virginia

ARTICLE I

IDENTITY

These are the By-Laws of Fairfax Pointe Homeowners Association, Inc., a non-profit, non-stock corporation organized under the laws of the Commonwealth of Virginia, the Articles of Incorporation of which were filed with the Virginia State Corporation Commission March 28, 1988. The Fairfax Pointe Homeowners Association, Inc., (the "Association") has been organized for the purpose of operating and managing the Fairfax Pointe Community situate in the County of Montgomery, Virginia.

Section A. Provisions of Declarations and Articles of Incorporation to Control. The provisions of these By-Laws are applicable to the Fairfax Pointe Community, and the terms and provisions hereof are expressly subject to those terms, definitions, provisions, conditions and authorizations contained in the Articles of Incorporation of the Fairfax Pointe Homeowners Association, Inc. ("Articles") and the Declaration of Covenants, Conditions, and Restrictions of the Fairfax Pointe Community ("Declaration") which have been recorded in the Clerk's Office of the Circuit Court of Montgomery County, Virginia. The terms and provisions of the Articles and Declaration shall control wherever the same may be in conflict herewith.

Section B. Defined Terms and Coverage.

1. Unless otherwise specifically defined in these By-Laws or the Declaration, the applicable terms herein shall be defined as follows:

a. "Affiliate" shall mean a person or entity related to or affiliated with the Developer and includes, but is not limited to, a joint venture, partnership or corporation in which the Developer or any of its stockholders have an interest.

b. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.

c. "Assessment" shall mean and refer to a Member's share of the Common Expenses from time to time assessed against a Member by the Association in the manner herein provided.

d. "Association" shall mean and refer to the Fairfax Pointe Homeowners Association, Inc., its successors and assigns.

e. "Association Property" shall mean and

refer to the real property owned by the Association described in the Plat attached hereto.

f. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

g. "Common Areas" shall mean all portions of the Property including easements to parking area and driveways, designed for the use, enjoyment and access of all Members.

h. "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of the Declaration.

i. "Common Maintenance Areas" shall mean the areas to be maintained by the Association which shall include all Association Property and the exterior of all lots. The exterior to be maintained shall include all shrubbery, grass, wooded areas, sidewalks, decks, railings, door bells, if any, door lights, window screens, if any, exterior railings, exterior steps or stairs, patios, balconies, porches, outside walls (excluding glass), outside roof and trim.

j. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of the Fairfax Pointe Community, as the same now exists or may be hereafter amended.

k. "Developer" shall mean and refer to L & L Associates, a Virginia general partnership, and any successors or assigns.

l. "Lot" or "Lots" shall refer to any or all of the townhouse area with dwellings and improvements thereon, designated as Lots 1 through 20, Map of Fairfax Pointe, recorded in Plat Book 14, page 129, in the Clerk's Office of the Circuit Court of the County of Montgomery, Virginia.

m. "Member" shall mean and refer to all those Members who are Members of the Association as provided in Article II, Section A of the Declaration.

n. "Mortgage" shall mean and refer to any mortgage, deed of trust or similar instrument encumbering a Lot as security for the performance of any obligation.

o. "Occupant" shall mean and refer to any person, including without limitation, any guest, invitee, tenant, lessee or family member of a Member, occupying or otherwise using or visiting in a Townhome.

p. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

q. "Property" shall mean and refer to the real property described in the plat attached hereto and all subsequent additions thereto, which includes all Townhomes, Association Property and Common Areas.

2. Coverage. All present or future owners, present or future tenants, the employees of tenants or owners, or any other person who might use the Association or any of the facilities thereof in any manner, are subject to all the terms and provisions of these By-Laws.

Section C. Office. The office of the Association shall be at 2001 South Main Street located in Blacksburg, Virginia, or such other place as the Board of Directors shall designate from time to time.

## ARTICLE II

### THE ASSOCIATION

Section A. Qualification of Members. The qualification of Members of the Association, the manner of their admission to membership and termination of such membership shall be as set forth in the Declaration. For all purposes having to do with the administration of the Association Property, the Association shall act as an agent for the Members of the Association.

Section B. Powers of the Association. The Association shall have, in addition to those powers listed in the Articles of Incorporation, all the powers reasonably necessary to implement and effectuate the rules and objectives set forth in the Declaration, these By-Laws and all other documents pertaining to the Association.

Section C. Annual Meetings. The Annual Meetings of the Association shall be held on the second Tuesday of November of each year. At such annual meetings, the Directors of the Association shall be elected by ballot of the Members in accordance with the requirements of Section J of this Article. Meetings of the Association shall be held on the premises of the Association, at the principal office of the Association, or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

Section D. Special Meetings.

1. The President of the Association shall call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed

and presented to the Secretary by Members of not less than one-third of the aggregate voting interest. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a Special Meeting except as stated in the notice.

2. On the earlier of (a) a day within thirty days after one hundred percent of the deeds of conveyance of Property as defined herein or Lots in the Property have been delivered to Lot Owners by the Developer, or (b) not more than thirty days after March 1, 1993, a Special Meeting of the Association shall be held at which all the Directors of the Association designated by the Developer shall resign, and the Members, including the Developer, if the Developer owns one or more Lots in the Property, shall thereupon elect successor Directors of the Association to act in the place and stead of those resigning. The Board of Directors shall be divided into three classes: The first class shall have one Director, the second class shall have two Directors, and the third class shall have two Directors, with the term of office of one class expiring each year. The Director of the first class shall be elected to hold office for a term of office expiring at the next succeeding annual meeting, the Directors of the second class shall be elected to hold office for a term of office expiring at the second succeeding annual meeting and the Directors of the third class shall be elected to hold office for a term of office expiring at the third succeeding annual meeting. Upon expiration of the term of the Directors, other persons who would qualify under the provisions contained in these By-Laws shall be elected at the annual meeting of the Association to be Directors for a term of three (3) years in the place of the Director or Directors whose terms have expired.

X Section E. Notice of Meeting. The Secretary shall mail to each Member a notice of each annual or regularly scheduled meeting of the Members at least twenty-one but not more than thirty days, and of each special meeting of the Members, at least seven but not more than thirty days, prior to such a meeting, stating the time, place and purpose thereof. The mailing of a notice of meeting in the manner provided in this Section and in Section A of Article XI of these By-Laws shall be considered proper service of notice.

Section F. Adjournment of Meetings. If at any meeting of the Association a quorum or the required percentage of attendance is not present, Members representing a majority of the total voting interest present at such meeting in person or by proxy may adjourn the meeting to a time when a quorum of the required percentage of attendance is present.

Section G. Order of Business. The order of business at all meetings of the Association shall be as follows:

1. Roll Call and certifying of proxies.
2. Proof of Notice of Meeting.
3. Reading of minutes of preceding meeting.
4. Report of Board of Directors and Officers.

5. Reports of committees, if any.
6. Election or appointment of inspectors of election (when required).
7. Election of Directors (when so required).
8. Unfinished business.
9. New business.
10. Adjournment.

Section H. Title to Lots. The Association may acquire, hold, and transfer full legal title to one or more Lots or Common Areas in the Property in its own name.

Section I. Proxies and Multiple Owner Voting. Votes may be cast in person or by proxy. No proxy shall be revocable except by actual notice to the person presiding over the meeting by any one or more of the Lot Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice aforesaid, or if the signatures of any of those executing the same has not been witnessed by a person who shall sign his full name and address. The proxy of any person shall be void if not signed by a person having authority at the time of execution thereof to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy.

In the instance where a Lot is owned by more than one person, if one of the co-owners of the Lot is present at an Association meeting, that person shall be entitled to cast the vote for the Lot. If more than one of such persons is present, the vote appertaining to the subject Lot shall be cast only in accordance with their unanimous agreement and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to the subject lot without protest being made forthwith by any of the other co-owners to the person presiding at the meeting.

Section J. Voting. Voting at all meetings of the Association shall be on a one equal vote per Lot. The Members representing at least forty percent of the total voting interest voting in person or by proxy at one time at a duly convened meeting at which a quorum is present are required to adopt decisions made at any meeting of the Association. No Member may vote at any meeting of the Association or be elected to serve as any Officer of the Association if said Member is delinquent in the payment of any assessment.

Section K. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Members representing forty percent or more of the Lots shall constitute a quorum at all meetings of the Association.

Section L. Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted and all transactions occurring at

the meeting. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or the Articles. All votes shall be tallied by inspectors appointed by the President or other Officer presiding over the meeting.

### ARTICLE III

#### BOARD OF DIRECTORS

Section A. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of three to five persons, who shall be appointed by the Developer so long as the Developer is a Class B Member and thereafter Directors shall be elected by the Members of the Association. During the times when it has the right to designate who the Directors will be, the Developer shall have the right in its sole discretion to replace any Director or Directors and to designate their successors.

Section B. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things not prohibited by the Declaration or Articles. The Board of Directors shall have the power from time to time to adopt any rules and regulations ("Rules and Regulations") deemed necessary for the benefit and enjoyment of the property provided; however, that such Rules and Regulations shall not be in conflict with the Declaration or the Articles. The Board of Directors shall delegate to one of its Members or to a person employed for such purpose the authority to act on behalf of the Board of Directors on such matters relating to the duties of the Managing Agent (as defined in Section P of this Article), which may arise between meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors, shall, on behalf of the Association:

1. Prepare an annual budget, in which there shall be established the assessments of each Member for the Common Expenses.

2. Make assessments against Members to defray the costs and expenses of the Association, establish the means and methods of collecting such assessments from the Lot Owners and establish the period of the installment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Member for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.

3. Provide for the operation, care, upkeep and maintenance of all the Property and services of the Association.

4. Designate, hire and dismiss the professional

management necessary for the maintenance, operation, repair and replacement of the Association Property and Common Maintenance Areas and provide services for the Association and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the property owned by the Association.

5. Collect the assessments against the Members, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration and purposes of the Association.

6. Pay all taxes, charges and assessments which are or may become liens against any part of the Association, other than individual Lots and the appurtenances thereto, and assess the same against the Members and their respective Lots subject to such liens.

7. Make, or contract for the making of, repairs, and improvements to the Association Property and repairs to and restoration of the Association Property, in accordance with these By-Laws, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

8. Enforce by legal means the provisions of the Declaration, the Articles of Incorporation, these By-Laws, the Rules and Regulations, and act on behalf of the Members with respect to all matters arising out of any eminent domain proceedings.

9. Obtain and carry insurance against casualties and liabilities, as provided in Article VI of these By-Laws, pay the premiums therefor and adjust and settle any claims thereunder.

10. Pay the cost of all authorized services rendered to the Association and not billed to Members of individual Lots.

11. Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property and the administration of the Association, specifying the expenses of maintenance and repair of the Association Property and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the Members, or their duly authorized agents or attorneys during general business hours on working days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the Members. All books and records shall be kept in accordance with good and accepted accounting practices, and the same shall be audited at least once a year by an independent accountant retained by the Board of Directors who shall not be a resident of a Lot or a Member. The cost of such audit shall be a Common Expense.

12. Notify all Mortgagees of all or any Lots in the Property (the "Mortgagees") of any default hereunder by any

Member subject to such mortgage, in the event such default continues for a period exceeding thirty days.

13. Acquire, lease, manage, hold and dispose of Lots and mortgage the same if such expenditure and hypothecations are included in the budget adopted by the Association.

14. Do such other things and acts not inconsistent with the Declaration or the Articles which the Board of Directors may be authorized to do by its own resolution.

Section C. Organizational Meeting. Within 30 days after the election of Directors in accordance with Article II, Section D (2) of these By-Laws, a meeting of the Board of Directors shall be held to elect Officers of the Association.

Section D. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be determined from time to time by a majority of the Members of the Board, but such meetings shall be held at least once every three months during each fiscal year. Notice of regular meetings of the Board shall be given to each Member of the Board by mail or telegraph or actual delivery at least five business days prior to the day named for such meeting.

Section E. Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each Member, given by mail or telegraph, or actual delivery, which shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or in like manner and on like notice on the written request of at least two Members of the Board.

Section F. Waiver of Notice. Any Member may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time, place and purpose of such meeting, unless such Member attends for the specific purpose of challenging such notice. If all Members are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section G. Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the Board shall constitute a quorum for the transaction of business, and the votes of a majority of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the meeting may be adjourned to a new time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section H. Compensation. Directors' compensation, if any, shall be determined by the Members of the Association.



Section I. Conduct of Meetings. The President who shall be a director shall preside over all meetings of the Board of Directors and the Secretary, who may be but does not have to be a Director, shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Declaration or the Articles.

Section J. Action without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the Members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section K. Vacancies. Vacancies in the Board of Directors may be filled by the remaining Directors selecting someone to serve until the next Annual Meeting. In the event of three or more vacancies on the Board, a special meeting of the Association shall be called by the President and the vacancies filled by an election for such purpose, except that should any vacancy in the Board of Directors be created in any Directorship previously filled by any person designated and selected by the Developer, such vacancy shall be filled by the Developer designating and selecting, by written instrument delivered to any Officer of the Association, the successor Director to fill the vacated Directorship for the unexpired term thereof.

Section L. Liability of the Board of Directors, Officers, Members and Association.

1. The Officers and Members of the Board of Directors of the Association shall not be liable to the Association for any mistake of judgment caused by negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each Member of the Association (including Officers and Directors who are not Members) from and against all contractual liability to others arising out of contracts made by the Officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration, Articles of Incorporation, or these By-Laws, in which case those persons dealing in bad faith or dealing knowingly in a contrary manner to the aforesaid provisions shall not be indemnified. Other than as previously stated in this Section, Officers and Members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association and shall be considered only as acting as agents for the Association. The liability, if any, of any Member arising out of any contract made by the Officers or Board of Directors or out of the aforesaid indemnity in favor of the Members of the Board of Directors or Officers, or for damages as a result of injuries arising in connection with the Association or its property, or for liabilities incurred by the Association, shall result solely by virtue of his

ownership of a Lot and shall be limited to the total liability per Lot multiplied by a fraction created by one as the numerator and the total number of Lots as the denominator. Every agreement made by the Officers, the Board of Directors, or the Managing Agent on behalf of the Association shall, if obtainable, provide that the Officers, the Members of the Board of Directors, or the Managing Agent, as the case may be, are acting only as agents of the association and that they shall have no personal liability thereunder (except as Members), and that each Member's liability thereunder shall be limited to the liability thereunder, if any, multiplied by said fraction.

2. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to any person or property caused by the elements or by any Member, or any other person, or resulting from electricity or water, snow, or ice which may leak or flow from any portion of the Association's Property or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Association's Property. No diminution or abatement of any assessments, as elsewhere provided herein, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to other Association Property, or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any municipal or other governmental authority.

Section M. Common or Interested Members. Each Officer of the Association shall exercise his powers and duties in good faith and with a view to the best interests of the Association. No contract or other transaction between the Association and any of its Members, or between the Association and any corporation, firm or association (including the Developer) in which any of the Members of the Association are Members or officers or are pecuniarily or otherwise interested, is either void or voidable because any such Member is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

1. The fact of the common Membership or interest is disclosed or known to the majority of the Board of Directors or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

2. The fact of the common Membership or interest is disclosed or known to at least a majority of the Members, and the Members approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

3. The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested Members may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize or disallow any contract or transaction with like force and effect as if such Member were not such Member or officer of the Association or not so interested.

Section N. Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Two Thousand Dollars shall be executed by any two persons designated by the Board of Directors. All such instruments for expenditures or obligations of Two Thousand Dollars or less may be executed by any one person designated by the Board of Directors.

Section O. Managing Agent. The Board of Directors may employ for the Property a "Professional Managing Agent" at a compensation to be established by it.

1. Requirements. The Managing Agent shall employ persons possessing a high level of competence in the technical skills necessary for proper management of the Property. The Managing Agent must be able to advise the Board of Directors regarding the administrative operations of the Property and may with the consent of the Board of Directors employ personnel expert in the areas of insurance, accounting and Property regulations.

2. Duties. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these By-Laws other than the powers set forth in paragraphs (2), (13) and (14) of Section B of this Article III and other than its power to make and amend any Rules and Regulations issued by the Board of Directors. The Managing Agent shall perform the obligations, duties and services relating to management of the Association, relating to the rights of Mortgagees and relating to the maintenance of reserve funds in compliance with the provisions of these By-Laws.

3. Standards. The Board of Directors shall impose appropriate standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board of Directors:

a. Cash accounts of the Association shall not be commingled with any other accounts except with the express permission of the Board of Directors.

b. No remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder fees, service fees or otherwise;

c. Any discounts received shall benefit the Association; and

d. Any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

Section P. Removal. Any one or more of the Members of the Board of Directors may be removed, either with or without cause, at any time by an affirmative vote of the majority of Members at any special meeting called for such purpose, or at an annual meeting; provided, however, that only the Developer shall have the right to remove a Director appointed by it.

#### ARTICLE IV

##### OFFICERS

Section A. Number of Officers. The Officers of the Association shall be a President, who shall be a Director, a Vice-President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed, with or without cause, by a vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be Vice-President, Secretary or an Assistant Secretary. The Board of Directors shall, from time to time, elect such other Officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

Section B. President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the president of any association, including, but not limited to, the power to appoint committees from among the Members from time to time, as he may, in his discretion, determine appropriate to assist in the conduct of the affairs of the Association.

Section C. Vice-President. The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

Section D. Secretary. The Secretary shall keep the minutes of all the proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the Directors or the President.

Section E. Treasurer. The Treasurer shall have custody

of all of the property of the Association, including funds, securities and evidence of indebtedness. He shall keep, or supervise the keeping of, the assessment rolls and accounts of the Members; he shall keep the books of the Association in accordance with good accounting practices; and shall perform all other duties incident to the office of the Treasurer.

Section F. Compensation. The compensation, if any, of all Officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

Section G. Vacancies. Vacancies in any office of the Association shall be filled by a vote of the majority of the Board of Directors at a special meeting held for such purpose promptly after the occurrence of such vacancy. Each person so elected shall be an Officer of the Association for the remainder of the term of the Officer being replaced and until a successor shall be elected at the next Annual Meeting of the Board of Directors.

## ARTICLE V

### OPERATION OF THE ASSOCIATION

Section A. Determination of Common Expenses and Assessments Against Owners.

1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors, except that in the initial year of the Property's operation, the fiscal year shall commence with the recordation of the Declaration.

2. Preparation and Approval of Budget.

a. On or before the fifteenth day of September of each year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the costs of maintenance, management, operation, repair and replacement of the various portions of the Association Property, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be Common Expenses as provided by the Declaration, these By-Laws or a resolution of the Association and which will be required during the ensuing fiscal year of the administration, operation, maintenance and repair of the Association Property and Common Maintenance Areas and the rendering to the Members of all property related services.

b. Such budget shall include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. On or before the date of the

Association's Annual Meeting, the Board of Directors shall deliver to each Member a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Member. Such budget shall constitute the basis for determining each Member's assessment for the Common Expenses of the Association.

3. Assessment and Payment of Common Expenses. Subject to the provisions of Section A of Article IX hereof pertaining to expense caused by carelessness, conscious act of neglect or a Member and certain other persons, the total amount of the estimated funds required for the operation of the Association set forth in the budget adopted by the Board of Directors shall be assessed against each Member on an equal fractional basis, divided among all the Lots and shall be a lien against each Member's Lot as provided in Article IX, Section B of these By-Laws. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven months in such fiscal year, each Member shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board of Directors), one-twelfth of such assessment. Within ninety days after the end of each fiscal year the Board of Directors shall supply to all Members an itemized accounting of Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems it advisable, be credited according to each Member's account to the next monthly installment due from Members under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Members in accordance with their obligations and shall be payable either: (a) in full with payment of the next monthly assessment due; or (b) in not more than six equal monthly installments, as the Board of Directors may determine.

4. Reserves. The Association through the Board of Directors shall build up and maintain reasonable reserves for working capital, operation, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Member's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Members according to their respective Percentage Interests, which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten days after the delivery of such notice of further assessment. All Members shall be obligated to pay the assessment. All Members shall be obligated to pay the adjusted monthly amount or, if such

further assessment is not payable in installments, the amount of each assessment. Such assessment shall be a lien as of the effective date as set forth in the preceding paragraph 3.

5. Initial Capital Payment and Initial Payment of Assessments.

a. Upon taking office, the first Board of Directors elected or designated pursuant to these By-Laws shall determine the budget, as defined in this Section, for the period commencing thirty days after such election or designation, and ending on the last day of the fiscal year in which such election or designation occurs. Assessments shall be levied and become a lien against the Members during such a period as provided in paragraph 3 of this Section.

b. The Developer and/or the closing attorney, as the agents of the Board of Directors, will collect from each initial purchaser of a lot at the time of settlement an "initial capital payment" equivalent to the estimated monthly assessment for Common Expenses for the Association. The Developer and/or the Closing attorney will additionally collect at closing the initial estimated monthly assessment for Common Expenses prorated based on the number of days left in the month at the time of closing. The Developer and/or the closing attorney will deliver these funds to the Board of Directors to provide the necessary working capital for the Association.

6. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Member's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Member shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notice of the monthly payment is received that is based on the new annual or adjusted budget.

7. Accounts. All sums collected by the Board of Directors with respect to assessments against the Members or from any other source may be compiled into a single fund, but shall be held for each Member in accordance with his assessment obligation.

Section B. Further Provisions Concerning Payment of Common Expenses.

1. Liability to Association upon Resale. Each Member shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section A of this Article V. No Member may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any part of the Association Property or Common Maintenance Areas or by abandonment of his Lot. No Member

shall be liable for the payment of any part of the Common Expenses assessed against his Lot subsequent to the date of recordation of a conveyance by him in fee of such Lot. Prior to or at the time of any such conveyance all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the seller of such Lots for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from said Seller amounts paid by the purchaser therefor. Any such purchaser shall be entitled to a statement setting forth, among other things, the amount of the unpaid assessments against the said Seller within five days following a written request therefor to the Board of Directors or Managing Agent and such purchaser shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount therein set forth.

2. Rights to Association Assets upon Resale. When an owner ceases to be a Member of the Association by reason of his divestment of ownership of a Lot(s), by whatever means, the Association shall not be required to account to that Member for any share of the fund or assets of the Association since all the monies which any Member has paid to the Association are to be used in the operation and management of the Association.

Section C. Collection of Assessments. The Board of Directors or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Member which remain unpaid for more than thirty days from the due date for payment thereof, together with authorized late charges. Assessments not paid when due shall bear interest from the date of delinquency until paid at twelve percent (12%) per annum, or the maximum rate allowed by law, whichever is greater. The Board of Directors will suspend the voting rights of the Member or may suspend the rights of the Member and his Occupants to use the Association Property or Common Maintenance Areas of the Association during the period in which any assessment or portion thereof remains unpaid. After at least ten (10) days written notice is given to the Member as aforesaid, the Association may bring an action at law against the Member personally obligated to pay the assessment(s) and late charges or foreclose its lien against such Member's Lot, in which event late charges, interest and costs of collection shall include court costs, the expenses of sale, and any expenses required for the protection and preservation of the Lot, and reasonable attorney's fees in the amount of 25% of the total claimed.

Section D. Statement of Common Expenses. The Board of Directors shall promptly provide any Member, contract purchaser, or mortgagee of any Lot so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Member. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation to the extent permitted by law. Such statement may be signed by an officer or the Managing Agent of the Association.



Section E. Maintenance, Repair, Replacement and Other Common Expenses.

1. By the Association. The Association shall be responsible for all maintenance, repair and replacement, whether structural or otherwise, of the Association Property and Common Maintenance Areas including easements to parking areas and driveways as described in the Declaration, or as may be determined by the Association. However, any expense incurred by the negligence, misuse or neglect of a Member or Occupant of the Association Property or Common Maintenance Areas shall be charged to the responsible Member or Occupant.

2. By the Member. No Member shall be responsible for the operation and maintenance of Association Property or Common Maintenance Areas except for expenses incurred by the Association due to the negligence or misuse of such areas by a Member or his guest.

3. Manner of Repair and Replacement. All repairs and replacements to Association Property and Common Maintenance Areas including easements for driveways and parking areas shall be of quality workmanship and shall meet all provisions of the building codes used by the applicable jurisdiction. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors. To preserve architectural appearance of Townhouses no construction, paint or other changes whatsoever shall be commenced or maintained with respect to the exterior of any structure on the Lot except as originally constructed by Developer unless approved by the Board of Directors. No alteration of original landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like), or changes in the exterior of any structure on the Lot, including color, except as made by the Developer, even after a Lot is sold, will be permitted unless approved by the Board of Directors.

Section F. Additions, Alterations or Improvements by Developer. Developer reserves the right to make architectural, engineering (so long as Developer owns any property as defined herein or any Lot), landscaping (which term shall be defined in its broadest sense as including grass, fences, hedges, vines, trees and the like) and decorative changes of any nature before or after the conveyance of any Lots, to any portion of the Association Property or Common Maintenance Areas including Common Maintenance Areas belonging to a Lot Owner other than the Developer. Under this provision, Developer shall have the right to make changes to structures on Lots that have been conveyed to other persons during the time Developer owns any property within the Fairfax Pointe Community. No other Member or the Association shall have such right to alter the structure, design, landscaping or decoration of the Association Property or Common Maintenance Areas.

Section G. Additions, Alterations or Improvements by Members or the Association. No Member nor the Association shall have the right at any time to make architectural, engineering, landscaping or decorative changes of any nature

to any portion of the Association Property or Common Maintenance Areas and the same shall be maintained in such a fashion to preserve the original architectural, engineering and decorative design in every aspect.

The provisions of this Section G shall not apply to the Developer. The Developer shall have the right to make such alterations without consent of the Board of Directors and the Board of Directors shall execute any application required by any Governmental Body. The Developer shall pay the costs of filing such application.

## ARTICLE VI

### INSURANCE

#### Section A. Authority to Purchase.

1. All insurance policies relating to the Association Property shall be purchased by the Board of Directors. Neither the Board of Directors nor the Managing Agent nor the Developer shall be liable for failure to obtain any coverage required by this Article VI or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from an insurance company having the qualifications set forth in subsection four (4) of this Section or if, in the opinion of the Board of Directors, such coverage is prohibitively expensive.

2. Each such policy shall provide that:

a. The insurer waives any right to claim by way of subrogation against the Developer, the Association, the Board of Directors, the Managing Agent or the Lot Owners, and their respective agents, employees, guests and, in the case of the Lot Owners, the Members of their households;

b. such policy shall not be canceled, invalidated or suspended due to the conduct of any Lot Owner (including his invitees, agents and employees) or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and without sixty days having elapsed after such a demand without a cure of the defect.

c. Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Mortgagees.

3. The Developer, so long as it shall own any Lot, shall be protected by all such policies as a Lot Owner.

4. All policies of insurance shall be written by reputable companies licensed to do business in the Commonwealth of Virginia and holding a rating of "AAA", or

better, by Best's Insurance Reports and a policyholder's rating of "A" or better. Physical damage policies shall be in form and substance acceptable to the Mortgagees of the Property.

Section B. Fire and Extended Coverage.

1. All Lot Owners shall be responsible for securing policies for fire and extended coverage, vandalism, malicious mischief, windstorm, debris removal, and water damage endorsements, for the structures on each individual Lot, in an amount equal to 100% of the then current replacement cost of the Property (exclusive of the land, excavations, foundations, and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage). All such policies shall be approved by the Board of Directors of this Association and the Board of Directors shall be a named party as their interests may appear.

2. Copies of all policies and any renewals shall be filed with the Board of Directors of this Association.

Section C. Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage for Officers) and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring each Member of the Board of Directors, the Officers, the Managing Agent, each Lot Owner and the Developer against any liability to the Lot Owner and the Developer against any liability to the public or to the Lot Owners (and their invitees, agents and employees) arising out of, or incident to, the ownership and/or use of the Association Property or Common Maintenance Areas. Such insurance shall be issued on a comprehensive liability basis and shall contain: (1) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (2) hired and non-owned vehicle coverage; (3) host liquor liability coverage with respect to events sponsored by the Association; (4) deletion of the normal products exclusion with respect to events sponsored by the Association; and (5) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Lot Owner because of neglectful acts of the Association or of another Lot Owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be maintained.

Section D. Other Insurance. The Board of Directors shall obtain and maintain:

1. Workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

2. Such other insurance as the Board of Directors may

determine or as may be requested from time to time by a majority of the Lot Owners.

Section E. Insurance Trustees.

1. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Lot Owners, their Mortgagees and the Developer, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed Twenty-Five Thousand Dollars then all such proceeds shall be paid in trust to such lending institution in the general vicinity of where the property is located with trust powers as may be designated by the Board of Directors (which Trustee is herein referred to as the Insurance Trustee). If such proceeds do not exceed Twenty-Five Thousand Dollars then all such proceeds shall be paid to the Board of Directors to be applied pursuant to the terms of Article VII.

2. The Board of Directors may enter into an Insurance Trust Agreement with the Insurance Trustee which shall provide that the Insurance Trustee shall not be liable for the payment of premiums, the renewal of the policies, the sufficiency of coverage, the form of contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these By-Laws for the benefit of the insureds and their beneficiaries thereunder.

Section F. Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent for each Lot Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or any other interest in the Property to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon payment of claims.

ARTICLE VII

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section A. When Repair and Reconstruction are Required. Except as otherwise provided in Section D of this Article, in the event of damage to or destruction of the Association Property as a result of fire or other casualty in excess of Twenty-Five Thousand Dollars as set forth in Article VI, Section E, the Board of Directors under the direction of the Insurance Trustee shall arrange for and supervise the prompt repair and restoration of the Association Property. In the event of damage to or destruction of Townhouse, the Owner thereof shall immediately proceed to repair and restore such property under the supervision of the Board of Directors. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Townhouse to include the same materials, fixtures, paint colors, landscaping, etc., as the original construction.

Section B. Procedure for Reconstruction and Repair.

1. Cost Estimates. Immediately after the fire or other casualty causing damage in excess of Twenty-Five Thousand Dollars, the Board of Directors under the direction of the Insurance Trustee shall obtain reliable and detailed estimates of the cost of repairing and restoring the Association Property to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Insurance Trustee determines to be necessary.

2. Assessments. If the proceeds of the insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete reconstruction and repair may be obtained from the appropriate reserve for replacement and/or shall be deemed a Common Expense and a special assessment therefor shall be levied.

3. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Association Property to include same materials, fixtures, paint colors, landscaping, etc. as original construction.

Section C. Disbursements of Construction Funds.

1. Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors or Insurance Trustee from collections of assessments against Members on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a. If the estimated cost of reconstruction and repair is less than Twenty-Five Thousand Dollars, then the construction fund shall be disbursed in payment of such costs under order of the Board of Directors.

b. If the estimated cost of reconstruction and repair is Twenty-Five Thousand Dollars or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in Virginia and employed by the Insurance Trustee to supervise such work, with payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that (1) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and material furnished; (2) there is no

other outstanding indebtedness known to such architect or engineer for the services and materials described; and (3) the cost as estimated by such architect or engineer for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

2. Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the funds is established, such balance shall be divided among all the Members in proportion to their assessment obligations.

3. Certificate. The Insurance Trustee shall be entitled to rely upon a certificate executed by the President and the Secretary, certifying:

a. The name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the Members; and

b. All other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

Section D. Construction Required. In event of fire or other casualty, regardless of the extent of same, the Members and Association shall cause all portions of the Association Property to be rebuilt, including all landscaping and decorating in the same manner as originally constructed and designed by the Developer.

## ARTICLE VIII

### MORTGAGES

Section A. Notice to Board of Directors. A Member who mortgages his Lot shall notify the Board of Directors of the name and address of his Mortgagee and shall file a conformed copy of the note and mortgage with the Board of Directors. In the event of a sale or transfer of a lot to a third party, the purchaser or transferee shall notify the Association in writing of his interest in the Lot purchased or received.

Section B. Notice of Default, Casualty or Condemnation. The Board of Directors when giving notice to any Member of a default in paying an assessment for Association Expenses or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such Lot. Each Mortgagee shall also be promptly notified of any casualty giving rise to a possible claim under any insurance purchased under Article VI, of all actions taken under Article VII and of any taking in condemnation or by eminent domain and actions of the Association with respect thereto. For purposes of this Section only, when notice is to be given to a Mortgagee, the Board of Directors shall also give such notice to the Federal

Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing Mortgages of Lots if the Board of Directors has notice of such participation.

Section C. Notice of Amendment of Declaration or By-Laws. The Board of Directors shall give notice to all Mortgagees seven days prior to the date on which the Members meet, in accordance with the provisions of these By-Laws, to materially amend the Declaration or By-Laws.

Section D. Mortgagees' Approvals. Unless all Mortgagees shall have given their prior written approval, neither the Association nor any Member shall change the obligations and rights of any Member other than the obligations of assessments which may be changed without Mortgagee approval.

Section E. Other Rights of Mortgagees. All Mortgagees or their representatives shall be entitled to attend meetings of the Association and shall have the right to speak thereat. All such Mortgagees shall have the right to examine the books and records of the Association, to receive the annual report filed by the Developer and to require the submission of annual financial reports and other budgetary information.

## ARTICLE IX

### COMPLIANCE AND DEFAULT

Section A. Relief. Each Member shall be governed by, and shall comply with, all of the terms of the Declaration, Articles of Incorporation, these By-Laws, and any Rules and Regulations set forth by the Board of Directors. Default by a Member shall entitle the Association, acting through its Board of Directors or through the Managing Agent, to the relief as set forth in the following paragraphs:

1. Additional Liability. Each Member shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his conscious act, neglect or carelessness or that of any Member of his family or his employees, tenants, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, or misuse, of any Association Property or Common Maintenance Areas. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

2. Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a Member, the Association shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the Court. If any unsuccessful action is brought against Developer, for any reason whatsoever, the party so filing same must pay Developer's costs and reasonable attorneys fees.

3. No Waiver of Rights. The failure of the Developer, the Association, the Board of Directors or of a Member to enforce any right, provisions, covenant or condition which may be granted by the Declaration or By-Laws shall not constitute a waiver of the right of the Developer, the Association, the Board of Directors or the Member to enforce such right, provisions, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Member pursuant to any term, provision, covenant or condition of the Declaration or By-Laws shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the aforesaid documents or at law or in equity.

4. Interest. In the event of a default by any Member in paying any sum assessed against him for Association Expenses which continues for a period in excess of five days, the principal amount paid, in addition to the late charge, shall at the option of the Association, bear interest at the rate of twelve percent per annum, or at the highest rate allowed by law whichever is greater, from the date due until paid.

5. Abating and Enjoining Violations by Members. The violations of any of the Rules and Regulations adopted by the Board of Directors, the breach of any By-Laws contained herein or the breach of any provision of the Declaration, By-Laws, or Articles of Incorporation shall give the Board of Directors or its Managing Agent the right, in addition to any other rights set forth in these By-Laws to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

6. Legal Proceedings. Failure to comply with any of the terms of the Declaration, the Articles, these By-Laws and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for nonpayment of all assessments, any other relief provided for in these By-Laws or any combination thereof including reasonable attorney's fees, and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the Managing Agent and, if appropriate, any aggrieved Member and shall not constitute an election of remedies.

#### Section B. Lien for Assessments.

1. The total annual assessment of each Member for Common Expenses or any special assessment made pursuant to these By-Laws is hereby declared to be a lien filed against the Lot of such Member, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Association, and, as to special assessments, on the first day of the next month which begins more than ten days after delivery to the Member of notice of such special assessment. The Board of Directors or the



Managing Agent may file or record such other or further notice of any such lien, or such other or further document, as may be desirable.

2. In any case where an assessment against a Member is payable in installments, upon a default by such Member in the timely payment of any two consecutive installments the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Member and his Mortgagee of this Lot by the Board of Directors or the Managing Agent.

3. The lien for assessments may be enforced and foreclosed in the manner provided by the laws of the Commonwealth of Virginia by action in the name of the Board of Directors or the Managing Agent, acting on behalf of the Association. During the pendency of such suit the Member shall be required to pay a reasonable rental for the Lot for any period prior to the sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the Commonwealth of Virginia.

4. A suit to recover a money judgment for unpaid contributions may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section C. Supplemental Enforcement of the Lien. In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declaration or By-Laws, all of the Members may be required by the Developer or the Board of Directors to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby and may likewise be required to secure the payment of such obligations by a declaration of trust recorded among the land records of the Property's jurisdiction granting unto a trustee or trustees appropriate powers to the end that, upon default in the performance of such bond the aforesaid declaration of trust may be foreclosed by the trustee or trustees acting at the direction of the Board of Directors. In the event any such bonds have been executed and the declaration of trust is recorded, then any subsequent purchaser of a Lot shall take title subject to the declaration of trust and shall assume the obligations provided for therein.

Section D. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these By-Laws upon any Lot (and any penalties, interest on assessments, late charges, attorneys fees, or the like) shall be subordinate to, and shall in no way effect the rights of a First Mortgage so long as such mortgage or deed of trust was made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and

payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure. Such sale or transfer shall not relieve the purchaser of the Lot at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments, which lien shall have the same effect and be enforced in the same manner as provided herein.

## ARTICLE X

### AMENDMENT TO DECLARATION AND By-Laws

Section A. Amendment and Termination. The Declaration or the By-Laws may not be terminated unless 80% of the total voting interest in the association consents.

Section B. Methods of Amending.

1. The Declaration and these By-Laws may be amended in the following manner: An Amendment or Amendments may be proposed by the Board of Directors of the Association acting upon a vote of more than two-thirds of the Directors, or by more than two-thirds of the Members, whether meeting as Members or by instrument in writing signed by them. Upon any Amendment or Amendments being proposed by the Board of Directors or Members, which proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a special meeting of the Members of the Association. It shall be the duty of the Secretary to give each Member written or printed notice of the special meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form. Any Member may, by written waiver of notice Signed by such Member, waive such notice and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of more than seventy-five percent (75%) of the Members in order for such Amendment or Amendments to become effective. Thereupon such Amendment or Amendments shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment or Amendments, shall be recorded in the Clerk's Office, Circuit Court of Montgomery County, Virginia, within ten (10) days from the date of which the same were approved by the Members, such Amendment or Amendments to specifically refer to the recording date identifying the Declaration or By-Laws which are affected by such Amendment or Amendments. Thereafter, a copy of the Amendment or Amendments in the form in which the same were placed of record by the Officers of the Association shall be delivered to all the Members, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of the Amendment or Amendments. At any meeting held to consider the Amendment or Amendments, the written vote of any Members of the Association shall be recognized if such Member is not in attendance at such meeting or represented there by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

2. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of a Mortgagee shall be made without prior written consent of all Mortgagees being first had and obtained.

3. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Developer shall be made without the written consent of the Developer being first had and obtained.

#### Section C. Termination.

1. Termination of the Association may be affected only by affirmative vote of eighty percent (80%) of the Members and only after a termination agreement has been executed by such Members and recorded in the Clerk's Office, Circuit Court of Montgomery County, Virginia. In addition to the foregoing, termination shall not be allowed unless two-thirds of the holders of all mortgages or deeds of trust that are liens on the Lots consent in the aforesaid termination agreement.

2. In the event of termination, the Members shall own the Association Property as tenants in common in undivided shares with any holders of mortgages or deeds of trust on Lots having a lien on such undivided shares. Such undivided share of each Member shall be in the entire Association Property on an equal fractional basis with all other Members. So long as the tenancy in common last, each Member, or his heirs, successors or assigns, shall have an exclusive right of occupancy of the Association Property. All funds held by the Association including insurance proceeds, if any, shall be held for the Members in the same proportion as their former fractional interests. Any costs incurred by the Association in connection with the termination shall be considered an Association expense.

3. Following termination, the property that was formerly the Association Property may be partitioned and sold upon the application of any Member. Following a termination, if the Board of Directors determines by not less than a majority vote to accept an offer for the sale of the Association Property, each Member shall be bound to execute such deeds and other documents reasonably required to effect such sales at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the Association Property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

4. The Members of the Board of Directors acting collectively as agent for all Members, shall continue to have such powers as are granted in this Article notwithstanding the fact that the Association itself may be dissolved upon termination.

### ARTICLE XI

#### MISCELLANEOUS

Section A. Notices. All notices, demands, statements or

other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally (1) if to a Member, at the address which Member shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Member; or (2) if to the Association, the Board of Directors or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section. If a Lot is owned by more than one person, each person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

Section B. Captions. The captions used herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provision thereof.

Section C. Gender, Singular/Plural. The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context requires.

IN WITNESS WHEREOF, the foregoing By-Laws have been adopted as the By-Laws of the Fairfax Pointe Homeowners Association, Inc. at the organizational meeting of its Board of Directors held this 29th day of April, 1988.

FAIRFAX POINTE HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_  
President

COPY

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF VIRGINIA            )  
  )     To-Wit:  
COUNTY OF MONTGOMERY    )

The foregoing instrument was acknowledged before me this 29th day of April, 1988, by Gail C. Lucas, President and James E. Lucas, Secretary, respectively of the Fairfax Pointe Homeowners Association, Inc., on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires:  
February 20, 1989