

FAIRFAX POINTE

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by L & L Associates, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of certain property in the Town of Blacksburg, Mt. Tabor Magisterial District of Montgomery County, Virginia, which is more particularly described as follows:

All that certain tract or parcel of land, situate, lying and being in the Town of Blacksburg, Mt. Tabor Magisterial District of Montgomery County, Virginia, as shown on a map entitled, "Subdivision Plat of Fairfax Pointe, Located in Town of Blacksburg, Mt. Tabor Magisterial District, Montgomery County, Virginia," dated April 6, 1987 and revised March 23, 1988, designated Plan No. T-87-14A, prepared by D. P. Marks, C.L.S., which plat is of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 14, page 129; and being all the same property conveyed unto L & L Associates, a Virginia General Partnership, from James E. Lucas and Gail C. Lucas, husband and wife, by deed dated the 7th day of September, 1987, which deed is of record in the Clerk's Office aforesaid in Deed Book 579, page 826.

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

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Fairfax Pointe Homeowners Association, Inc., its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is shown as indicated on the plat referenced herein.



Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to L & L Associates, a Virginia partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

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

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

B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

D. The right of individual Owners to the exclusive use of parking spaces as provided in this article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than one automobile parking space, in addition to the garage provided, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association is granted the authority to permanently assign the vehicle parking space for each dwelling.

Section 4. Liability Insurance. The Association shall obtain liability insurance to protect the Association members against liability in the Common Area.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A members shall be all record Owners, with the exception of the Declarant. Class A members shall be entitled to cast one (1) vote for each Lot owned, with each vote valued equally.

Notwithstanding the number of members owning any one Lot, only one (1) vote may be cast per Lot.

Class B. The Class B member(s) shall be the Declarant, and shall be entitled to cast one (1) vote for every vote cast by Class A members plus two (2) so that the Declarant will have a majority of the total votes of all members of the Association. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) on the completion and sale of all units/Lots in the Fairfax Pointe Community, or

(b) on March 1, 1993, whichever comes first.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made; however, any such lien for delinquent assessments is subordinate to a first mortgage or deed of trust. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred Dollars (\$600.00), or a monthly assessment of Fifty Dollars (\$50.00) per month per Lot, payable at least thirty (30) days in advance of due date.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and enforce a lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

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

ARTICLE VI

PARTY WALLS

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

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

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

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

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

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

ARTICLE VII
GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on or upon any Lot or any part of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance, public or private, to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that an Owner's dogs, cats or other household pets may be kept on the Lots, provided that they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. No pet shall exceed thirty (30) pounds in weight. Pets shall not be permitted to stray on Common Areas. Each Owner is responsible for removing his pet's droppings on a continual basis. Notwithstanding the foregoing, no animals or fowl may be kept on the Properties which result in an annoyance or are obnoxious to residents in the vicinity, and in any event, any Lot Owner shall be absolutely liable to each and all remaining Owners, their families, guests and invitees, and to the Association, for any and all damage to person or property caused by any pets brought upon or kept upon the Lots or the Common Properties by any Lot Owner or by members of his family, guests or invitees.

Section 6. Fire Insurance. Each Owner shall maintain fire insurance with extended coverage endorsement covering the improvements on the parcel owned by him, and a copy of such policy shall be delivered to the Association. Each such policy shall be in an amount not less than the value of the improvements. In the event of the failure of any Owner to produce evidence of such policy or insurance to the Association, the Association shall obtain such insurance and the amount of the premium paid therefor shall be assessed to the parcel, and each Owner, by accepting the conveyance to him of a parcel, covenants to himself, his heirs, successors and assigns that such assessment will be paid at the time and in

the manner provided hereinabove, and payment therefor may be enforced in the manner set forth hereinabove.

Section 7. Destruction by Fire. Should the improvements on any parcel or parcels be damaged or destroyed by fire or other casualty, the Owner or Owners thereof shall cause the same to be repaired and restored substantially in accordance with the original plans and specifications therefor, or as approved by the Association. The repairs and restoration work shall be commenced within thirty (30) days after the happening of the destruction or damage and once commenced or carried toward completion with diligence, the Association may elect to repair or restore the same, or to complete work or repair and restoration on behalf of and at the cost of such Owner or Owners. Any amounts expended by the Association for such repair or restoration and not reimbursed to the Association by the Owner shall be assessed against said parcel or parcels proportionately based upon the nature and extent of the same as it affects the parcel of each Owner and such assessments shall constitute a lien on the parcel or parcels affected and the amount thereof shall be paid as provided hereinabove and the payment thereof enforced in the manner set forth hereinabove.

Section 8. No private trucks or trailers and no unlicensed motor vehicles of any type shall be permitted to remain overnight on the property within Fairfax Pointe.

Section 9. No boats of any type shall be permitted on the property within Fairfax Pointe for more than fourteen (14) days unless screened in a manner acceptable to the Architectural Control Committee of the Fairfax Pointe Homeowners Association, Inc.

Section 10. The Owner of each Lot is held responsible for mowing the enclosed rear portion of his property and maintaining the lawn on the same schedule as the Common Area. Any changes in the private yard plans must be approved in writing by the Association.

Section 11. A professional property management agency shall be procured by the Association to handle problems or questions concerning maintenance, exterior of buildings, landscaping, parking, street, Common Area, homeowners' fees or dues or building and liability insurance.

Section 12. No outside radio or television antennas shall be erected on the property within Fairfax Pointe unless and until permission for the same has first been granted by the Architectural Control Committee of Fairfax Pointe Homeowners Association, Inc.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 29th day of April, 1988.

L & L ASSOCIATES, a Virginia Partnership
BY: Lester Development Corporation
Partner

BY: _____
George W. Lester, II, President

BY: _____
James E. Lucas, Partner

BY: _____
Gail C. Lucas, Partner

STATE OF VIRGINIA,

COUNTY OF MONTGOMERY, to-wit:

The foregoing instrument was acknowledged before me this 29th day of April, 1988, by George W. Lester, II, President, Lester Development Corporation, Partner, James E. Lucas, Partner, and Gail C. Lucas, Partner, L & L Associates, a Virginia Partnership.

My commission expires on 2/20/89.

Notary Public