

DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS, CONDITIONS,
AND OBLIGATIONS FOR THE MT. TABOR MEADOWS
HOMEOWNERS ASSOCIATION

24 January 2020

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**DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS, CONDITIONS, AND
OBLIGATIONS
FOR THE MT. TABOR MEADOWS HOMEOWNERS ASSOCIATION**

THIS DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS, CONDITIONS, AND OBLIGATIONS FOR THE **MT. TABOR MEADOWS**, dated as this 1st day of January 2008, made by **3B DEVELOPMENT, LLC**, a Virginia limited liability company, its successors and/or assigns (hereinafter referenced as the "Declarant"), and **GREEN VALLEY BUILDERS, INC.**, a Virginia Corporation (additional GRANTOR FOR INDEXING PURPOSES), recites and provides as follows:

RECITALS

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

SEE EXHIBIT A

The Plat identified in Exhibit A is hereby incorporated herein by reference and made a part hereof (hereinafter referenced as the "Plat or Plats") and which property will hereinafter be referenced collectively as the "Property".

WHEREAS, the Declarant has subdivided all or part of the Property into a planned residential development together with common areas and recreational facilities and may likewise in the future subdivide the remainder of the Property.

WHEREAS, the Declarant desires to provide for the preservation of the value of the Property, including any amenities, and for the maintenance of such common areas, and recreational facilities, if any, and, to this end, desires to subject the Property to the rights, covenants, restriction, conditions, obligation, easements, charges, and liens as hereinafter set forth for the benefit of the Property and each Owner thereof;

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the value of the Property, including any common areas, to create an association to which will be delegated and assigned the powers and duties of maintaining and administering the common areas and recreational facilities, if any, administering and enforcing the covenants and restrictions herein set forth, and levying, collecting, and disbursing the assessments and charges hereinafter created;

WHEREAS, the Declarant has incorporated under the laws of the Commonwealth of Virginia a nonstock, corporation, **THE MT. TABOR MEADOWS HOMEOWNERS ASSOCIATION** (hereinafter referenced as the "Association"), for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires that the covenants and restrictions herein shall run with, burden, and bind the Property including, but not limited to, all lots, any common areas, and any recreational facilities.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares that the Property, including the Common Areas and recreational facilities, if any now and in the future, are and shall be held, transferred, sold, conveyed, occupied, and used subject to the provisions of this Declaration and the other terms and conditions hereinafter set forth, as the same may be amended from time to time hereafter for and during the period of time hereinafter specified.

ARTICLE I

DEFINITIONS

The following terms and phrases when used in the Declaration or any supplement hereto (unless the content shall prohibit) shall have the following meanings:

- (a) **"Affiliate"** shall mean a person or entity related to or affiliated with the Declarant and includes, but is not limited to, a joint venture, partnership, or corporation in which the Declarant or any of its members have an interest
- (b) **"Architectural Control Board"** or **"ACB"** shall mean the board established in Article VII herein for the purpose of regulating the external design, appearance and use of the Common Area, Lots and improvements thereon,
- (c) **"Association"** shall mean and refer to Mt. Tabor Meadows Homeowners Association, a Virginia nonstock Corporation, and its successors and/or assigns.
- (d) **"Board of Directors"** or **"Board"** shall mean and refer to the Board of Directors of the Association, which shall initially be three (3) in number and appointed by the Declarant during the Declarant Control Period and then, after the expiration of the Declarant Control Period, there shall be up to seven (7) in number and elected by the members of the Association as provided herein or in the Bylaws.
- (e) **"Clerk's Office"** shall mean and refer to the office of the Clerk of the Circuit Court of Montgomery County, Virginia, or any successor depository of public records, wherein documents must be recorded to impart constructive notice of matters affecting title to real property to purchasers of real property.
- (f) **"Common Area"** or **"Common Areas"** shall mean all portions of the Property designated as such from time to time by the Declarant or the association for the common use and enjoyment of the Association and shown on recorded of survey of the Property. The term "Common Area" or "Common Areas" shall also include the Recreational facilities, if any, any improvements on common areas, and any personal property acquired or leased by the Association if said the property is so designated.
- (g) **"Declarant"** shall mean and refer to 3B DEVELOPMENT, LLC, a Virginia limited liability company, and any of its affiliates, successors and/or assigns.
- (h) **"Declarant Control Period"** shall mean and refer to the period of time beginning upon the date that this Declaration is put of record in the Clerk's Office and ending upon the first to occur of either (i) twenty (20) years after the date at which this Declaration is put of record in the Clerk's Office, or (ii) when one-hundred percent (100%) of the Lots permitted by the zoning approval for the Development have certificates of occupancy issued for the residences constructed thereon and have been conveyed to parties other than the Declarant or its principals or builders/developers holding title for the purpose of construction and

resale, or (iii) when the Declarant voluntarily terminates the Declarant Control Period.

- (i) **"Declarant's Utility Rights"** is defined as the exclusive, alienable and assignable rights, powers, easements and privileges hereby reserved by the Declarant to go on, over, under, and upon every portion of the Property, Including the Common Area, to erect, lay, implant, construct, maintain, extend, use and repair electric, television and telephone poles, wires, cables, and construct, drainage ways, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas water, sewer drainage and other public and private conveniences and utilities, including right to locate, construct, maintain, use and repair wells, pumping stations and water pressure regulating vaults. These rights Include the right to cut trees, bushes or shrubbery, and the right to make any grading of the soil or take any similar action reasonably necessary to provide and extend economical and safe installation and maintain reasonable standards of health, safety and appearance. The Declarant's Utility Rights shall also include the exclusive and alienable right to sell, grant and convey or dedicate storm drainage and run-off retention right to owners of land adjacent to or near the Development or to extend permitted and pursuant to any conditions imposed by the Town of Blacksburg, Virginia, as well as the roadways and other means of vehicular and pedestrian ingress and egress throughout the Development. The Declarant's Utility Rights shall continue to remain vested exclusively in the Declarant even after such time as the Declarant has conveyed some or all of Its other rights, title and interest in and to the Common Area, Lots and all other portions of the Property, unless specifically assigned or conveyed.
- (j) **"Declaration"** shall mean and refer to the covenants, conditions, restrictions, easements, obligations, liens and charges and all other provisions herein set forth in this document, as the same may from time to time be amended or supplemented.
- (k) **"Development"** shall mean the residential subdivision known as Mt. Tabor Meadows as described herein, and such other real property as may be brought within the jurisdiction of the Association as provided under Article II.
- (l) **"Lot"** shall mean any lot within the Property depicted on any subdivision plat approved by the Town of Blacksburg, Virginia and recorded In the Clerk's Office which is intended to as a dwelling site and to any separate numerically designated plot of land within the Property with the exception of the Common Area.
- (m) **"Members"** shall mean and refer to the Declarant and to every person or entity who holds membership as an Owner in the Association.
- (n) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities or the Declarant, of the fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired fee simple title pursuant to foreclosure or any proceedings in lieu of foreclosure.

- (o) **"Plat"** shall mean and refer to the recorded property Plat as the same may be amended from time to time.
- (p) **"Property"** shall mean and refer to the property described herein and shown on Exhibit A and all additions thereto as are subject to this Declaration or any supplemental declaration recorded under the provisions of Article II hereof.
- (q) **"Public Roads"** shall mean and refer to the entire platted right of way for the public roads on the Property as described on the Plat, together with such additional public roads as may be hereafter dedicated to service such additional real property as may be added by supplemental declaration.
- (r) **"Recreational Facilities"** shall mean and refer to any land, buildings, and facilities which are initially privately owned by Declarant, its successors and assigns, and which are operated as recreational facilities, whether public or private, which may, at the Declarant's sole and absolute discretion, include parks, playgrounds, barns, walking rails, bike paths, club houses, pool house, tennis court(s) and related recreational facilities which shall be included as part of the Common Areas.
- (s) **"Schedule of Fees and Assessments"** shall mean and refer to amounts due from lot owners. This schedule shall be published annually and provided to lot owners together with the invoice for the Annual Assessment. The following items will be listed in the Schedule:
 - a. **Membership Fee** = amount due upon purchase of a property in the HOA. *Cf. Article V Section 3 and Amendment 1.*
 - b. **Annual Assessment** = annual HOA membership fee;
 - c. **Special Assessments** = amounts due from homeowner(s) in order to (a) defray unexpected costs of maintenance; or (b) pay for neighborhood improvements approved by the HOA;
 - d. **Correction Assessments** are amounts due from a homeowner because of (a) noncompliance with this Declaration; and/or (d) to cover the cost of remediating a non-compliant property.

The definitions and text contained in the Article are substantive and not solely illustrative or prefatory. The provisions of the Article shall be given full force and effect and shall govern the construction of the Declaration.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Description. The real property subject to this Declaration is all that property located in Montgomery County, Virginia, as shown on Exhibit A as the same may, however, be amended from time to time by reason of the expansion or contraction of the Development.

Section 2. Additions to the Property by the Declarant or the Association. With the approval of the Town of Blacksburg and the County of Montgomery, if required, the Declarant may, during the Declarant Control Period, annex additional real property in the vicinity of the subdivision and brought within the plan and operation of this Declaration. At the expiration of the control period, the Association may exercise the forgoing power with the vote of two-thirds (2/3s; i.e., 34 votes) of the Class A Membership at a meeting duly called for such purpose. Any such annexation shall not be effective without the filing for record in the Clerk's Office of a supplemental declaration with respect to such additional land together with a plat showing the newly annexed land.

As an additional condition of any annexation, any annexed residential property - in terms of the quality and size of housing, roads, common areas, and other important subdivision features - must integrate and be generally consistent with the existing subdivision herein.

Section 3. Other Additions. Upon approval in writing of the Declarant or Association pursuant to a vote as provided in Sections 2 of this Article II, the Owner of any property who desires to add it to the scheme of this declaration and subject it to the jurisdiction of the Association may upon the approval of the Town of Blacksburg, if required, and the County of Montgomery, if required, file for record in the aforesaid Clerk's Office a supplemental declaration so effecting the same, together with a plat of survey describing the property added.

As an additional condition of any annexation, any annexed residential property- in terms of the quality and size of housing, roads, common areas, and other important subdivision features - must integrate and be generally consistent with the existing subdivision herein.

Section 4. Effect of Annexation. In the event that any additional lands are annexed to the Property pursuant to Section 2 or Section 3 of this Article II:

- (a) Such additional lands shall be considered within the definition of the Property for all purposes of this Declaration and amendments hereto; and
- (b) All voting of each class of the membership of the Association, and all voting by the Members hereunder, shall be aggregated, it being intended that (i) any voting requirements need not be fulfilled separately for the real property described in a supplemental declaration and (ii) any Class B Member shall have a majority of the votes of the Association in accordance with Article III, Section 3 below.

ARTICLE III
ASSOCIATION MEMBERSHIP: VOTING

Section 1. Duties. Declarant has incorporated under the laws of the Commonwealth of Virginia the Association to which shall be delegated the powers of owning, maintaining and administering the Common Area and Recreational Facilities, including, without limitation, on or off-site storm water detention and runoff control, snow removal on paths, if any, enforcing compliance with this Declaration as it relates to the improvements on Common Areas and Lots as set forth herein, collecting and disbursing the assessments and charges hereinafter created, and promoting the health, safety, common good and general welfare of the residents of the Development.

Section 2. Members. The Declarant and every person or entity who is a record owner of the fee or undivided fee interest in a Lot, which is subject to assessment by the Association, shall be a Member of the Association. The foregoing definition of a Member is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, unless and until such persons or entities have succeeded to the fee simple interest in such Lot by enforcement of such security interest. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot, and ownership of a Lot (or Property in the case of the Declarant) shall be the sole qualification for membership.

Section 3. Classes of Membership and Voting Rights. Pursuant to the above definition of Members, the Association shall have the following two (2) classes of voting Membership:

- (a) **Class A.** The Class A Members shall consist of all Owners, excluding the Declarant during the time that it may exercise rights as a Class B Member under subsection (b) of this Section 3. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person owns the fee interest in any such Lot, all persons owning an interest shall constitute a single Member. The vote for such co-owned Lot shall be exercised as the co-owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (b) **Class B.** During the Declarant Control Period, the Association shall have a Class B Member, which shall be the Declarant, which shall also include the affiliates, successors and/or assigns of the Declarant. The Declarant, as the Class B Member, shall be entitled to cast a total number of votes equal to the total number of votes to which all Class A Members would then be entitled to cast plus two (2), so that the Declarant, during the Declarant Control Period, will have a number of votes greater than the votes of all Class A Members of the Association. The Class B membership shall cease and terminate at such time that the Declarant has no rights or interest in the Property, which shall include any property annexed under the terms of this Declaration, but shall, in any case, terminate on the twentieth (20th) anniversary of the date this Declaration is put on record in the Clerk's Office. The Class B membership shall cease and terminate automatically upon the expiration of the Declarant Control Period or upon Declarant's delivery to the Association of a written waiver and relinquishment of its Class B membership.

The Declarant is absolutely free to transfer any interest that it may have as a Declarant; and, upon such transfer, the transferee shall succeed to any remaining voting rights held by the Declarant as a Class B Member.

Section 4. Primary Point of Contact (PPOC) Registration. The majority of official communications about the Association, including Voting, Surveys, Assessments, Invoices, and other association-related business are communicated by email. To facilitate the conduct of official business by the Association, each property shall register a Primary Point of Contact (PPOC) for the property with the Secretary of the Board. The PPOC information provided to the Secretary shall include: the PPOC's name, preferred email address and one or more telephone numbers. All election notices, online ballots, invoices for annual dues or other assessments, and other official business will be sent to the PPOC. It is the responsibility of the property owner(s) to ensure that the PPOC information is kept up to date. In turn, the Board shall provide property owners with official Board email addresses and contact information.

Section 5. Maintenance Obligations of the Association as to the Common Areas.

- (a) **In General.** The Common Areas shall be maintained by the Association in perpetuity to assure that they remain in substantially the condition they were in when their completion was approved by the Town of Blacksburg. The Board shall adopt standards for maintenance of the Common Areas that will require routine maintenance, including the replacement, reconstruction and the correction of defects or damage of Common Areas to preserve their consistency with the overall design of Mt. Tabor Meadows, to enhance safety and health and to mandate timely amelioration of unsafe conditions, and preserve the Property for the benefit of the Members. Regular maintenance shall in no case occur less than annually, and amelioration of unsafe conditions shall occur as soon as practicable after the Association receives actual notice of the condition. The cost of construction, repair, maintenance, upkeep or replacement of Common Areas, if any, shall not be borne by the Town of Blacksburg, the County of Montgomery, the Virginia Department of Transportation or any public agency.
- (b) **Storm Water and Drainage Easement Maintenance.** Maintenance of the storm water and drainage easement areas shall include, but not be limited to, the following:
 - (i) Reparations to embankments and dewatering device caused by flooding, excavation, vandalism, erosion, etc.
 - (ii) Cleaning/clearing the dewatering device.
 - (iii) Removal of sediment to maintain the original design volume.
 - (iv) Clearing trees, brush, etc. that would decrease the facility's volume.
 - (v) Maintaining a grass cover on the facility to reduce the chances of erosion. Long non-mowed grasses are acceptable.

Any other measures that may be necessary for proper operation of detention ponds so that storm water is properly managed, and the system maintained in accordance with the Town of Blacksburg, County of Montgomery and Virginia Department of Transportation standards, as applicable.

Section 6. Improvements. The Declarant or the Association shall have the right, but not the obligation, to develop or improve the Common Areas and Recreational Facilities for the use and benefit of the Members and the public, to the extent required or approved by the Town of Blacksburg in accordance with the Plat.

Section 7. Mergers. The Association may merge or consolidate with other similar associations or corporations. Such merger shall be accomplished in accordance with the Bylaws of the Association, if any, this Declaration, and the laws of the Commonwealth of Virginia.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON AREAS
AND RECREATIONAL FACILITIES

Section 1. Members Easements of Enjoyment. Subject to the remaining provisions of this Declaration, every Member shall have a right and easement of enjoyment in and to the Common Areas and the Recreational Areas, if any, located within the Property and the Members' Easements of Enjoyment shall be appurtenant to and shall pass with the title to every Lot, which right shall be subject to:

- (a) The right of the Association to charge reasonable membership, admission and other fees for the use of any facility, which may be situated upon the Common Area from time to time; limit the number of Members who may use a Common Area or Recreational Facility;
- (b) The Declarant's Utility Rights;
- (c) The right of the Association, subject to Declarant's Utility Rights and the provisions of any easement agreements of record, 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 of the Association; and
- (d) The right of the Association to suspend a Member from the use of the Common Areas (including any Recreational Facilities) during any period in which any assessment against a Lot is due and remains unpaid.

Section 2. Title to Common Areas. The Declarant shall have the absolute and unilateral right to transfer all Common Areas, Including Recreational Facilities, or any other property to the Association. Upon such tender of transfer, the Association shall be required to accept the same and receive the property transfer, whether it be real or personal, provided that such property be in usable condition and in reasonably good working order with allowance of normal and ordinary wear and tear without further claim against the Declarant or its successors or assigns. The transfer of title and control and maintenance responsibilities of existing designated Common Areas and Recreational Facilities to the Association shall take place no later than the end of the Declarant's Control Period. Notwithstanding the foregoing to the contrary, the Declarant shall in its sole discretion in all events be entitled to retain title to said Common Areas and Recreational Facilities, if any, for a period of ten (10) years after the date on which the Declarant sells the first Lot within the Development.

Section 3. Declarant's Rights to Grant Easements. The Declarant shall have the unilateral right, prior to the termination of the Declarant Control Period, to grant and reserve, easements and rights-of-way through, under, over, and across the Property for construction purposes and for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, and other utilities. The Declarant also reserves the right, prior to the termination of the Declarant Control Period, to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between one portion of the Property and any other portion of the Property or future portion of the Property provided; however, the Owners of such other portions may be required to bear a *pro rata* share of the cost thereof in proportion to the relative number of Lots on such portion and in the entire development.

Section 4. Delegation of Use. Delegation of a Member's rights of enjoyment of the Common Areas and Recreational Facilities, if any, shall not be permitted without the written consent of the Board.

Section 5. Notice of Conveyance. At any time an Owner conveys his or her lot, the transferor and the transferee shall be jointly obligated to notify the association of the transferee's name, mailing address and date of transfer. The association will provide a written notice of all payments due upon the transfer of any lot.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed In any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) assessments or charges to be collected on an annual basis (herein "Annual Assessments"), (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided (herein "Special Assessments"), and (3) assessments for noncompliance or correction of noncompliance with this Declaration or the correction of unsightly conditions as implemented by the Association (herein "Correction Assessments"), all of which are collectively referred to as "Assessments." Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in the manner as hereinafter provided, and subject to certain prior liens upon the Property as hereinafter provided in Section 8 of this Article. Each Assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property assessed at the time when the Assessment fell due. The personal obligation shall not pass to such Owners' successors in title unless expressly assumed by them in writing.

Section 2. Purpose of Assessments. Annual Assessments levied by the Association shall be used for the purpose of promoting the enjoyment, health, safety and welfare of the residents in the Development and in particular for the maintenance, improvement, provision, repair, enhancement and replacement of Common Areas and Recreational Facilities, if any, and such other facilities devoted to common purposes, the maintenance of insurance in accordance with Article IX below, and enforcement of the terms of this Declaration generally and also with reference to the provision of Articles VII and VIII, as the same may be amended or supplemented, below.

The Association shall use such Annual and Special Assessments, to the extent such Assessments are sufficient, for the general purposes stated above, and in addition thereto, at such times and in such manner as determined by the Board of Directors, the Association shall use such Assessments for:

- (a) Maintenance of all Common Areas and access roads and provision of snow removal;
- (b) Construction, reconstruction, repair, replacement, maintenance and operation of Recreational Facilities as it deems fit and proper, including provision of necessary fixtures and personal property related thereto, and implementation of such extra charges as it deems proper for the use of such facilities;
- (c) Maintenance of all sewer and storm water systems within the Property and all electrical equipment and apparatus within the Property to the extent that such ownership is allowed by the appropriate utility, unless the same is owned, maintained, or accepted by a lawfully constituted governmental or quasi-governmental agency or body.
- (d) Provision, maintenance and replacement, as necessary, of such Common Area signs, fencing, lighting, and landscaping, as well as pedestrian facilities wherever located, as deemed appropriate by the Board of Directors, and compliance with such maintenance bond requirements as may be imposed by governmental agencies;
- (e) Maintenance of open space not dedicated for public use, pocket parks, and/or front yards of residential uses.
- (f) General control of the entire Property, and the adoption of any reasonable regulations consistent with the purposes stated herein for control of such and prevention of nuisances;

- (g) Maintenance of liability insurance for Common Areas and Club Facilities, if any, and payment of any and all taxes on the Common Area and Recreational Facilities as levied by the appropriate jurisdictional agency; and
- (h) Establishment and maintenance of reasonable reserves to accomplish all of the above.
- (i) Nothing in this Article shall be construed to limit the ultimate obligations of an Owner to properly maintain, repair, replace, or rebuild the improvements located on its Lot, all as herein specified.

Section 3. Initial Contribution: Basis and Maximum of Annual Assessments.

- (a) The Initial Contribution (Membership Fee) shall be listed in the annual Schedule of Fees and Assessments published each year by the Board of Directors. The Board of Directors, after due consideration of current costs and needs of the Association, may increase the Membership Fee by up to ten percent (10%) per year effective January 1 of each year without a vote of the Members. All transferees of lots shall pay, at closing, the initial contribution (Membership Fee) to the Association upon conveyance of the Lot by the Declarant and each subsequent Owner.
- (b) The Annual Assessment for all lots shall be listed in the annual Schedule of Fees and Assessments published each year by the Board of Directors. The Board of Directors, after due consideration of current costs and needs of the Association, may increase the Annual Assessments by up to ten percent (10%) per year effective January 1 of each year without a vote of the Members.
- (c) Any increase in the Annual Assessments or other assessments requested by the Board of Directors in excess of the ten percent (10%) described in Sections 3(b) above shall be approved by a vote of two-thirds (2/3; i.e., 34 votes) of the members.
- (d) Not less than 100% of all Annual Assessments shall be deposited upon receipt by the Board of Directors into a separate account and used exclusively for the provision, maintenance and replacement, as necessary, of Common Areas and Recreational Facilities, if any.

Section 4. Special Assessments. The Association may levy in any fiscal year a Special Assessment, applicable to that year only, for all Lots for the purpose of defraying, in whole or in part, an unexpected or unusually large expense or anticipated expense, the cost of any construction or reconstruction, insurance costs, and unexpected repair or replacement of a private road, sidewalk, or curb or other capital improvement upon the Common Area or the Recreational Facilities, including the necessary fixtures and personal property related thereto, the cost of extraordinary maintenance for Common Area and Recreational Facilities, wherever located, or for any other reason found by the Board of Directors to be in the best interests of the Association. Any Special Assessment shall be approved by a vote of two thirds (2/3; i.e., 34 votes) of the votes cast by Members who are voting in person or by proxy at a meeting duly called for this purpose, except that the Declarant may approve any such Special Assessments required within the Declarant Control Period. The Association shall provide notice to each Owner of the Special Assessment and the date or dates upon which it shall be due and payable.

Section 5. Uniform Rate of Assessment. Both Annual and Special Assessment shall be fixed at a uniform rate for all Improved Lots and at a separate uniform rate for all platted but unimproved Lots. Correction Assessments shall be fixed on a case-by-case basis and need not be uniform.

Section 6. 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 a Lot to an Owner other than the Declarant. 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 by November 30 each year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. Unless otherwise established by the Board of Directors, the Annual Assessments shall be due in advance and shall be prorated where sale is made between the annual reassessment dates. The Association shall upon written request by an Owner at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 7. Effect of Non-payment of Assessments; Remedies of the Association. Any assessment not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, it shall bear a ten percent (10%) late fee and shall bear interest from the date of delinquency until paid at twelve percent (12%) per annum and all costs of collection, including reasonable attorney's fees shall also be payable by the Owner. The Association may bring an action at law against the Owner personally obligated and/or foreclose the lien against the Lot. 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 8. Lien for Payment of Assessments and Subordination of Lien to First and Second Mortgages. There shall be a continuing lien upon each of the Lots herein, in order to secure the payment of the Assessments (including interest, costs of collection and reasonable attorney's fees) provided under this Declaration, but such lien shall be subject to and subordinate to any first deeds of trust placed on the Lot at any time prior to perfection of the lien by filing in the Clerk's Office a verified Memorandum of Lien in accordance with §55-516 of the Code of Virginia. Prior to filing a Memorandum of Lien, ten (10) days' written notice of the Association's intent to file such a Memorandum shall be given to the Owner by certified mail at his last known address. The Association may thereafter perfect its lien by filing a Memorandum of Lien in the Clerk's Office prior to the expiration of twelve (12) months from the time of the first delinquent assessments became due and payable. Once perfected, the lien shall have priority over all subsequent liens and encumbrances except as set forth in §55-516 of the Code of Virginia. No suit to enforce any lien shall be brought after thirty-six (36) months from the time when the Memorandum of Lien was recorded as set forth in §55-516(E). A statement from the Association showing the balance due on any Assessment shall be prima facie proof of the current Assessment balance due and delinquency, if any, due on a particular Lot.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by a local utility or public authority (such as AEP, VDOT, Verizon, Town of Blacksburg or County of Montgomery Water and Sewer Authorities); (b) the Common Area; and (c) all properties (except Lots) owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt for said Assessments except as set forth in Article V, Section 1.

Section 10. Declarant's Obligation to Pay Assessments. There shall be no obligation on the part of the Declarant, its members, any of its affiliates, successors or assigns, to pay assessments on any Lot(s) owned by the Declarant, its members, its affiliates, successors and/or assigns unless the lot has been sold to a third party.

Section 11. Correction Assessments. The Association may impose Correction Assessments upon any Lot or Owner in the manner set forth in Article V, Section 1.

ARTICLE VI
GENERAL RESTRICTIONS

Section 1. Residential use.

- (a) **Residential Use.** All Improved Lots shall be used for single-family residential purposes exclusively. The use of a portion of any Improved Lot for business purposes by the Owner or occupant thereof shall be considered a residential use only if the Improved Lot is used for residential purposes as well and if such business use: (i) is not detectable by sight, sound or smell from the exterior of the residence; (ii) is consistent with zoning and does not violate applicable law; (iii) does not increase the liability or casualty insurance premium or obligation of the Association or of the residence; and (iv) does not create any customer or client traffic to and from the Improved Lot.
- (b) **Rental/Occupancy.** All residential lots, whether occupied by the owner or leased to third parties, must be occupied in accordance with rules and regulations established by the Association. In addition, occupants of Single- Family lots must be a "Single-Family" comprised of any of the following persons or groups of persons:
- (i) One or more persons related by blood, marriage and/or adoption, and/or under approved foster care, or
 - (ii) One or more persons related by blood, marriage and/or adoption and/or under approved foster care plus one adult not related in any of the foregoing respects, or
 - (iii) Two adult persons living together as a single housekeeping unit, and at the option of such adult person(s), any children, natural or by adoption or approved foster care, of such adult person(s).

All tenants shall be subject to these covenants and restrictions.

- (c) **Common Area Use.** The Board reserves the right to limit the use of the Common Areas.
- (i) There shall be no outdoor parties or social gatherings on or in any of the Common Areas without the permission of the Association.
 - (ii) There shall be no obstruction of the Common Areas. Nothing shall be stored in the Common areas without the prior consent of the Association. Nothing shall be altered or constructed in or removed from the Common Areas, except upon the written consent of the Association. No waste shall be permitted in the Common Areas. Notwithstanding the above, Declarant and its contractors and subcontractors may use, obstruct or store personal property, materials or vehicles on the Common Areas during such time as they may be engaged in construction of the Property.
- (d) **Nuisance.** No noxious, boisterous or offensive activity shall be carried on upon any Lot or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner or a fire hazard or safety hazard to any other Owner or to any improvement. The Association shall have the authority to determine in writing whether any activity conducted upon any Lot constitutes a nuisance upon the submission to it of a complaint in writing by any Owner regarding such activity. The Association is given full authority and power to abate any nuisance found to exist by giving the Owner written notice specifying the nature of the nuisance provided that the Owner has failed to abate said nuisance within a reasonable time after notice.

- (e) **Unsightly Conditions, Other.** It shall be the responsibility of each Owner to maintain the Improved Lots and to prevent the development of any unclean, unsightly, or unkempt conditions of building or grounds on his Lot. Such maintenance shall include, but not necessarily be limited to:
- (i) **Lawn Care.** All lawn grass must be maintained at no longer than 6" in height. Any lawn not maintained properly shall be cut at the direction of the Association without notice and cost of which shall be billed to the resident. No outside burning of wood, leaves, trash, garbage, or other refuse shall be permitted on any Lot or other portion of the Property, once a Certificate of Occupancy is issued.
 - (ii) **Personal Property Items.** Swing sets, permanent basketball goals, sandboxes, and play equipment shall not be located forward of the rear corner of the house on the Lot; and the owner of the property shall take measures to stow away and not allow such personal property to become unsightly.
 - (iii) **Holiday Decorations.** Seasonal lights and decorations are permitted to be placed on the exteriors of houses but may be displayed according to the following schedule:
 - i. Halloween lights and decorations may be displayed during the month of October and must be removed by the first Sunday in November.
 - ii. Christmas lights and decorations may be displayed between the first Friday of November and the first Sunday in January of the following year.
 - iii. Other holiday decorations (for example Hanukkah, Easter) are permitted as well and may be displayed up to one month before the holiday, and must be removed by the first Sunday after the holiday.
 - (iv) **Storage Buildings.** The Association shall not be responsible for the upkeep, maintenance, or insurance associated with storage buildings. All storage buildings must be approved by the ACB prior to construction and a copy of the building permit must be delivered to the association prior to starting.
 - (v) **Solicitation and Garage Sales.** Solicitation by commercial enterprises is not authorized within the community. In a like manner and due to restricted parking availability, garage sales are specifically prohibited, unless approved by the Association. The Association may, from time to time, publish rules and regulations regarding such sales as the Association may deem appropriate in its sole and absolute discretion.
 - (vi) **Street Address Numbers and Mail Boxes.** All mailboxes shall be uniform as to type, color and design, as defined by the Association. All street address numbers and mailboxes are to be installed prior to the completion and occupancy of each residence.
 - (vii) **Cleaning and Laundry.** While permanent outdoor clotheslines are not permitted, retractable clotheslines are permitted, even encouraged, to promote the environmental objectives of the development. Clotheslines shall not be located forward of the rear corner of the house on the Lot.
 - (viii) **Mobile and Modular Homes.** There shall be no mobile or temporary homes or buildings permitted. Modular construction shall be permitted only with the approval of the ACB.

- (ix) **Exterior Construction.** Building/Home Lots shall have no exposed cinderblock, wooden foundations, or stuccoed foundation. Brick or an equivalent material to grade shall be required. All exteriors shall be subject to the approval of the Association or the Architectural Review Board (ACB).
- (x) **Driveways.** Building/Home lots shall have a surfaced or grass and concrete hybrid driveway. Houses finished between April 1 and September 30 will be required to have the driveway completed within sixty (60) days after a Certificate of Occupancy has been issued. Any house that is completed after September 30 will be required to have the driveway completed by June 1 of the following year. The Association or Declarant may grant exceptions to this restriction.
- (xi) **Flag Displays.** The maximum size of any flag shall be 4 feet by 8 feet, and the height of any such flag shall not rise higher than 20 feet. No flag shall be offensive in nature.
- (xii) **Garages, Etc.** All dwellings of Homes/Building lots and their associated garages shall have 6/12 pitch or greater. Porches and dormers will be exempt from this requirement.
- (xiii) **Green Building Features.** Nothing in these covenants precludes the installation and use of green building features, techniques, and equipment, to include but not necessarily be limited to photo voltaic panels, subject to reasonable ACB approval below.
- (xiv) **ACB Approval for All Improvements.** Any and all construction, whether for primary residences, additions, outbuildings, swimming pools, gazebos, fences, and other improvements on any lot must be approved by the ACB in accordance with Article VII below.
- (f) **Liability Insurance.** Nothing shall be done or kept in any Lot or the Common Area which shall increase the rate of insurance on the Common Area, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which shall result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law.
- (g) **Signs.** No sign of any kind (including "For Sale" or "Political" signs) shall be displayed to the public view on or from any lot, the Common Area, or on or from within any structure on any Lot, except those signs used by the Association or Declarant as "For Sale" signs, "Sold" signs, Lot designation and directions signs, site signs, subdivision entrance signs, street signs and traffic control signs and Realtor signs not to exceed 24 inches x 24 inches. Signs required by legal proceedings, job identification signs used during the time of construction, and signs approved by the ACB will be allowed. Any officer of the Board may, without notice, remove any signs in violation of this section.
- (h) **Pets.** No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Lot or in the Common Area, except that that a reasonable number (not to exceed a total of four (4)) dogs, cats and/or other domesticated household pets (collectively "Household Pets") may be kept on Lots, subject to rules and regulations that may be adopted by the Association from time to time.

- (i) No Household Pet shall be permitted off the Lot occupied by such Household Pet's Owner except on a leash. Owners of Household Pets shall promptly clean up and properly dispose of said pet's feces wherever deposited on the Property. No vicious or attack-trained animals shall be permitted upon any Lot or Common Area. All pets shall be maintained in a quiet and orderly fashion as not to disturb other owners. A pet may be deemed a nuisance in the sole judgment of the Declarant or the Board of the HOA. Commercial breeding of any animal is prohibited. Dogs may not be tied or tethered, or confined or caged on any lot without the physical presence of an owner.
- (j) Fences. No fence may be erected upon any Lot unless approved by the ACB. Generally, fencing will only be allowed in the back portion of a lot. No "chain-link" or "wire" fencing shall be allowed. Fences must comply with the Fence Guidelines and Policy established by the Association.
- (k) Trash. There shall be no outdoor trash accumulation except in or at those facilities established by the Declarant for that purpose. Trash cans, barrels and containers shall be maintained within ACB approved, screened bins concealed from view from the Public Roads, adjacent Lots and private roads, if any. Trash pick-up shall be at Owner's expense and shall take place only at such locations as are approved or designated by the Association. If the Association approves street-side pick-up, no Owner shall place the receptacles at the street earlier than 18 hours before pick-up and each Owner shall remove the receptacles within 18 hours after pick-up. Owner is solely responsible for all cleanup of trash if receptacle is knocked over.
- (l) Antennas. No exterior or roof antennas of any kind or description may be erected or maintained on any Lot or Common Area. No satellite dishes exceeding approximately eighteen (18) inches in diameter may be erected or maintained on any Lot or Common Area; all antennas or satellite dishes must have the approval of the ACB. No transmitting or receiving equipment which interferes with television, radio or other communications reception of other Owners shall be used or permitted upon any Lot. Exceptions to the foregoing may be granted by the ACB on an individual basis.
- (m) Parking and Traffic. Each Lot shall have at least two off-street parking spaces, which may include spaces located within or adjacent to a garage. No Owner shall be permitted to park permanently on the public roads within the Development. Repair work on vehicles is not allowed except for short-term emergency work (flat tire, battery charge, etc.). No car shall be on blocks or ramps for service for more than a 12-hour period for such emergency services. There shall be no parking, beyond three (3) consecutive days during any calendar year, of vehicles, tractors, boats, recreational vehicles and the like within the subdivision. On-street parking of unlicensed vehicles is prohibited at all times. The Association may promulgate and enforce parking and traffic restrictions in the Development. The provisions of this section shall in no way limit or proscribe the rights of Declarant and its agents, contractors and subcontractors to park vehicles related to construction activities upon the Property.

Section 2. Declarant's Marketing Rights. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant and Declarant hereby reserves an easement to maintain and carry on upon portions of the Common Area Recreational Facilities and Lots which it owns or develops marketing activities (including maintaining sales and business offices, model homes and units and sales and marketing pavilions) and activities as. in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots and Property.

Section 3. Liability. Neither the Declarant nor the Association shall be held liable to any Owner or to any other party on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other party arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Declarant, the Association, and/or any governmental entity, whether given, granted, or withheld. Such reviews and inspections shall not be unreasonably conducted, and such acceptances, permissions, consents and approvals shall not be unreasonably given, or withheld, as the case may be.

Section 4. Declarant's First Right of Refusal on Primary Residential Construction. Each and every lot owner hereby grants to the Declarant and/or its assigns, the first right of refusal on all "primary residential" construction in the subdivision.

Section 5. Declarant's Assignment of Rights. The Declarant reserves the right to assign in whole or in part to a subsequent Declarant of the Property or the Association its rights reserved in all parts of this Declarant, which include, but are not limited to, its right to grant approvals (or disapprovals) and to establish rules or regulations. Following the assignment of such rights, the assignee shall assume all of the Declarant's obligations which are incident thereto (if any), and the Declarant shall have no further obligation or liability with respect thereto.

Section 6. Notification of Noncompliance or Violation. Owners will be notified by letter (postal mail) and by email in the case of noncompliance with any part of this Declaration. The notification letter will include, where applicable, the following items:

- (a) details of the violation, citing the specific Article, Section, and Subsection;
- (b) date(s) of the violation;
- (c) deadline for remediation;
- (d) any assessment that may apply if not remediated by the deadline established in the notification.

Section 7. Assessments for Correction and/or Noncompliance. The purpose of assessments for correction and/or noncompliance is not to punish violators nor to generate revenue for the association. Rather, the purpose of such assessments is to discourage violations of this Declaration, to encourage compliance, and to recover any costs associated with enforcement. In addition to a Correction Assessment, Owners may be assessed a Noncompliance Assessment for violations are not cured within 15 days of this notice. Additional assessments can be levied on a per occurrence basis, or periodically if the violation is sporadic, ongoing or continuous. Owners can also be liable for any legal costs incurred by the Association to file an assessment lien on the property if assessment(s) remain unpaid. Owners may request a hearing before the Board to contest any Correction Assessment or Noncompliance Assessment that is to be or has been levied against the Owner by writing to the Board of Directors at the official postal address on file.

ARTICLE VII
ARCHITECTURAL CONTROL

The Declarant, during the Declarant's Control Period, and thereafter the Board of Directors shall have the authority and standing, on behalf of the Association, to appoint an Architectural Control Board (ACB), three in number (whose decisions shall be by majority vote), to enforce the architectural and development standards described below and to bring actions and suits in courts of competent jurisdiction, if necessary, to carry out its obligations hereunder.

Section 1. Architectural Control. The ACB shall regulate the external design, appearance, use, location and maintenance of improvements and landscaping done by Declarant on all Property. The ACB shall be responsible for ensuring compliance with the restrictions and guidelines relating to development and construction contained in this Declaration, as well as restrictions and guidelines related to the location of structures upon property, size of structures, driveway and parking requirements, requirements relating to materials to be used in the construction of improvements and requirements, architectural design and character, landscape and fencing requirements, and foundations and types of structures. Until one hundred percent (100%) of all Property has been developed, improved and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the ACB, which shall consist of three persons, whose decisions shall be by majority vote. There shall be no surrender of this right prior to that time except pursuant to written instrument in recordable form executed by Declarant. Upon the expiration of such term, the Board of Directors shall appoint the members of the ACB.

Section 2. Modifications. No permission or approval shall be required to repaint in accordance with an original approved color scheme, or to rebuild in accordance with original approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired. Otherwise, an Owner must apply to the ACB for approval of any plans to modify any Lot or improvement thereon. Items to be submitted include, but shall not be limited to, a site plan showing landscaping plans, a house plan showing all elevations and square footage of living area as measured from outside wall faces, and being exclusive of basement, porch, patio, and garage, and a description of construction details to include color of existing siding, material, and foundation face material, roof covering material, and exterior wall construction description. If the ACB fails to approve or to disapprove plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved.

Section 3. Future Approval. The ACB approval of any proposals on one occasion shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

Section 4. Variance. The ACB may authorize variances from compliance with any of the restrictions and guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless approved in writing by the Town of Blacksburg, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) prevent the ACB from denying a variance in other circumstances (d) must remain in substantial conformance with all zoning requirements of the Town of Blacksburg. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5. Application and Fee. All applications to the ACB shall be complete with appropriate supporting documentation, including relevant Application Forms established by the Association.

ARTICLE VIII

INSURANCE

Section 1. Insurance of Common Areas and Recreational Facilities. The Association shall be required to obtain and maintain insurance on the Common Areas, Recreational Facilities and an Improvement constructed thereon, as provided for in the Bylaws of the Association.

Section 2. Insurance of Improvements. Each Owner shall obtain and maintain insurance against fire and the perils customarily covered by an extended coverage endorsement in an amount equal to not less than full insurable value of all improvements (in such amounts as the Declarant or the Association establish from time to time).

Section 3. Liability Insurance. Each Owner shall obtain and at all times maintain a policy or policies providing comprehensive general liability insurance coverage, including contractually assumed liability, in amounts as the Declarant or the Association shall establish from time to time.

ARTICLE IX
REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. Restoration. In the event of damage to, or destruction of, all or any of the improvement on the Common Areas or Recreational Facilities as a result of fire or other casualty, the Board of Directors of the Association shall arrange for and supervise the prompt repair and restoration of such improvements. The Board of Directors shall proceed toward reconstruction of such improvements as quickly as practicable under the circumstances and shall obtain funds for such reconstruction from the insurance proceeds and any special assessments that may be necessary after exhaustion of reserves for the repair and replacement of such improvements.

Any Owner whose property is destroyed or damaged by fire or other casualty shall immediately proceed to rebuild and restore his improvement to the condition existing immediately prior to such damage or destruction. All such rebuilding and restoration shall be undertaken in accordance with the provisions of Article VII hereof.

Section 2. Termination. Anything in the above to the contrary notwithstanding, in the event that (a) more than two thirds (2/3; i.e., 34 votes) of the Lots on the Property, measured in value, are destroyed by fire or other casualty or (b) eighty percent (80%) of the Owners (either by vote at a regular or special meeting or by executing a written document, within ninety (90) days after the date of such damage or destruction) and the mortgagees holding Mortgages constituting first liens on seventy-five percent (75%) of the Lots encumbered by Mortgages agree in writing, then neither the Lots nor the Common Areas (including any Recreational Facilities) need to be rebuilt and all insurance proceeds shall be distributed to the named insureds.

ARTICLE X

MORTGAGES

Section 1. Notice to Board of Directors. An Owner who mortgages his Lot shall immediately notify the Board of Directors of the Association of the name and address of his/her mortgagee.

Section 2. Notice of Unpaid Assessments for Common Expenses. The Association, wherever so requested in writing by a mortgagee of a Lot, shall promptly report any then-unpaid assessments or other sums due from, or any other default by, the Owner of the mortgaged Lot or improvement thereon.

Section 3. Notice of Default. The Association, when giving notice to an Owner of a default in paying an assessment for common expenses or any other default, shall send a copy of such notice to each holder of a Mortgage covering such Owner's Lot whose name and address has theretofore been furnished to the Association. Further, the Association shall send such mortgagees written notice of any default by such Owner, which has not been cured within thirty (30) days after the delivery to such Owner of the first notice relating to such default.

Section 4. Declarant's Rights. The Declarant hereby reserves the right to release, waive, or amend any of the restrictions and covenants during its Period of Control as to any Lot by instrument duly recorded. The Declarant hereby reserves the right to assign all or any part of its rights or obligations hereunder at any time. Notwithstanding said rights to amend, neither the Declarant, its successors or assigns, nor the Association shall be permitted to modify any covenant or restriction in this Declaration that would have the effect of rendering title to any lot unmarketable, or that would be inequitable to those with vested property rights in the subdivision.

ARTICLE XI
COMPLIANCE AND DEFAULT

Section 1. Relief. Each Owner shall be governed by, and shall comply with, all of the terms of this Declaration and the rules and regulations promulgated by the Declarant or the Association and any amendments of the same. A default by any Owner shall entitle the Declarant or the Association, acting through its Board of Directors or through its agent, to the following relief:

- (a) **Legal Proceedings:** Failure to comply with any of the terms of this Declaration or the rules and regulations promulgated by the Declarant or the Association shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, other sums, any other relief provided for herein, or any combination thereof, 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, its agent, or, if appropriate, by an aggrieved Owner.
- (b) **Additional Liability:** Each Owner shall be liable for the expenses of all maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or the act, neglect, or carelessness of any family member of his family or his employees, agents, guests, invitees, or licensees. Such liability shall include any increases in insurance rates occasioned by use, misuse, occupancy, or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.
- (c) **Costs and Attorney's Fees:** In any proceeding arising out of any alleged default by any Owner, the Declarant or the Association, if it prevails, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court.

Section 2. No Waiver of Rights. The failure of the Declarant, the Association, the Board of Directors, or any Owner to enforce any Restriction, right provision, covenant, or condition which may be granted by this Declaration or any rules or any regulations shall not constitute a waiver of the right of the Declarant, the Association, the Board of Directors, or any Owner to enforce such Restriction, right, provision, covenant, condition, rule or regulation in the future. All rights, remedies, and privileges granted to the Declarant, the Association, the Board of Directors, or any Owner pursuant to any term, provision, covenant, or condition, of this Declaration or any rule or any regulation 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 privileges as may be granted to such party by this Declaration or the rules or the regulations or at law or in equity.

Section 3. Abatement and Enjoinment of Violations by Owners. The violation of any rule or regulation adopted by the Association or the breach of any provision of this Declaration shall give the Association the right, in addition to any other rights set forth here, (i) to enter the Lot in which, or as to which, such violation or breach exists and to summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provision hereof or (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. The Association shall not thereby be deemed guilty in any manner of trespassing.

ARTICLE XII
MISCELLANEOUS PROVISIONS

Section 1. Declarant's Intentions. At the time of recordation of this Declaration, the Declarant intends only to construct single family houses on this site.

Section 2. Amendments. During the Declarant Control Period, Declarant or its successors and/or assigns shall have the absolute and unilateral right, subject to the provisions of this paragraph, to amend this Declaration. After the Declarant Control Period has ended, this Declaration may be amended by affirmative vote of sixty percent (60%; i.e., 30 votes) of the Class A Members of the Association, except that provisions requiring a greater percentage vote to take action shall be amended only upon the affirmative vote of a number sufficient to take action under the provision proposed to be amended. Notwithstanding said rights to amend, neither the Declarant, its successors or assigns, nor the Association shall be permitted to modify any covenant or restriction in this Declaration that would have the effect of rendering title to any lot unmarketable, or that would be inequitable to those with vested property rights in the subdivision.

Section 3. Bylaws. The Association shall have the right to establish Bylaws and they shall complement but not supersede this Declaration.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provision of this instrument shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Electronic delivery (via e-mail or facsimile) with appropriate delivery receipt shall also be acceptable.

Section 5. Assignability. The Declarant, its successors and/or assigns shall at all times have the right to fully transfer and assign any or all of its rights and powers under this Declaration, subject only to the Declarant's obligations hereunder.

Section 6. Construction and Interpretation. The Declarant, to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation, and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations and in making any finding, determination, ruling, or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules, or regulations, the Declarant shall take into consideration the best interests of the Owners to the end that the Property and the Property shall be preserved and maintained as a high quality residential development.

Section 7. Captions. The captions herein are inserted only as matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration or the intent of any provision thereof.

Section 8. Gender. The use of the masculine gender in this Declaration 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 so required.

Section 9. Severability. Should any covenant, restriction, provision contained herein, article, section, subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall not affect any other provision hereof, each of which is hereby declared to be severable and each of which shall remain in full force and effect.

EXHIBIT A
**TO DECLARATION OF RIGHTS, COVENANTS, RESTRICTIONS, CONDITIONS, AND
OBLIGATIONS FOR THE MT. TABOR MEADOWS HOMEOWNERS ASSOCIATION**

Legal Description

All that real property, with improvements thereon and appurtenances thereto located in the Mt. Tabor Magisterial District of Montgomery County, and more particularly described as follows:

Being all that 20.99 acres shown on that certain map entitled "PLAT OF BOUNDARY LINE ADJUSTMENT, PROPERTY OWNED BY GLEN H. & BARBARA A. PRICE, TOWN OF BLACKSBURG, MT. TABOR MAGISTERIAL DISTRICT, MONTGOMERY COUNTY, VIRGINIA", which map was prepared by Altizer, Hodges, & Varney, is dated September 29, 2006, revised October 24, 2006, is designated as AHV Project Number 2005108, and which map is recorded in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Plat Book 26 Page 286, contemporaneously with the deed from Glen H. and Barbara A. Price to 3B Development, L.L.C.

Further being a portion of the same property conveyed to Glen H. Price and Barbara A. Price, husband and wife, by the following two deeds: (i) deed dated December 8, 1992 from Lee R. Price, widower, to Glen H. Price and Barbara A. Price, husband and wife, which deed is of record in the Clerk's Office of the Circuit Court of Montgomery County, Virginia, in Deed Book 773, Page 381, and (ii) deed dated April 23, 1973 from Guy L. Price (who died on the date November 16, 1974) and Anna Mae Price, (who died on September 4, 2001) husband and wife, to Glen H. Price and Barbara A. Price, husband and wife, which deed is or record in the aforesaid Clerk's Office in Deed Book 336, Page 535.

Further being all the same real property conveyed by Glen H. Price and Barbara A. Price by deed dated November 13, 2006 to 3B Development, LLC, in Instrument number 06013254



Mount Tabor Meadows Homeowners Association
Architectural Control Board
Policy and Guidelines for the installation of fences

UPDATED November 2019

EFFECTIVE DATE: January 1, 2020

AUTHORITY: The Architectural Control Board (“ACB”) derives its authority to regulate the external design, appearance, and maintenance requirements of fencing from the Declaration of Rights, Covenants, Restrictions, Conditions, and Obligations for the Mt. Tabor Meadows (hereafter, “Declaration”). In a quarterly homeowners’ association meeting held on March 14, 2012, the Declarant appointed three homeowners to the ACB and granted limited authority to the ACB to develop standards for fencing within the Mt. Tabor Meadows community (hereafter, “Development”).

In February 2014, all three appointed members notified the Declarant that they no longer wished to serve as members of the ACB. Therefore, the authority to manage the ACB reverted to the Declarant, as described in the Declaration.

Subsequent requests by homeowners to expand the available choices for fencing resulted in the additional of powder coated metal fence, metal framing for wood fence, composite fencing, and the option to submit a request for a new fence type for consideration by the ACB. Further review by the Declarant in November 2019 led to a decision to remove the application fee for fence installation and to update these regulations.

In December 2019, the Declarant announced at the annual HOA meeting that all ACB Application Fees would be waived, including those for fence installations. This change to required fees was subsequently incorporated into a new general ACB Application Form and also into these Fence Guidelines and the associated fence installation application.

INTENT: Provide clear, concise, and reasonable guidance to homeowners who wish to install a fence on their property while protecting the style, character, and uniformity of the Development. This policy and guidelines are supplemental to the restrictions and

conditions in the Declaration. Supplemental information about the creation of these guidelines is provided in Attachment 3.

STANDARDS:

1. Height:

- **4-Foot Height Fences** are permitted in the Development along rear and side property lines and set back from the front elevation line.
- **6-Foot Height Fences** (“Privacy Fences”) are only permitted along property lines adjoining properties which are not part of the Mt Tabor Meadows Development. Any proposed privacy fence for a Lot, not exceeding 6 feet in height, shall be consistent with already existing privacy fences that are contiguous to the Lot (Example: Lots located with rear property lines to Happy Hollow Road may have 6-foot tall ‘shadow-box’ fencing).
- Property lines which separate private space from private space (homeowner to homeowner) or private space from adjoining property outside the Mount Tabors Meadows Development or private space from community space (HOA common space) shall be 4 feet in height.
- Where a 6-foot tall privacy fence is allowed along the rear property line, the fence must taper down to a maximum 4-foot height within sixteen linear feet from the corner along the side fence line. Any step down can be no greater than six inches at any point.
- It is at the Declarant’s sole discretion to allow exceptions to these guidelines on any corner lot that adjoins an entry road into the Development.
- Lots 38 and 39 may have 6-foot-tall privacy fencing along the property lines shared with 1903 Happy Hollow Road, Blacksburg, VA if they so desire, as well as privacy fencing along the rear property lines consistent with the existing privacy fences on adjoining lots.

2. Materials: Only the following materials are approved for use as fencing in the Development. Examples of fence materials and style are provided at the end of this document.

- **Wood:** Wood fences may be constructed of treated pine, cedar, redwood, or oak.

Posts and rails for wood fences can be wood or metal (aluminum). If a metal post-and-rail system is used, the metal must be clad with a sleeve to cover the metal.

- **Decorative Metal:** Fences may be constructed of decorative powder-coated aluminum or steel, sometimes called “wrought iron.” Decorative metal fences must adhere to the height, style and color restrictions defined by the ACB.
- **Wood-Textured Composites:** Fences may be constructed of composite materials (Fiberon, Trex, Veranda, etc.). Composite fences must adhere to the same height, style, and color restrictions of wood fences.

3. **Style:**

- Wood Fences and Composite Fences along the property lines of adjacent properties shall be of the open picket, or shadow box design only. Photos of approved picket styles are provided in Attachment 1.
- Powder-coated metal fences shall be of the open picket design. The pickets can be open top or closed top. Examples of approved picket styles are provided at the end of this document. Others may be approved at the discretion of the ACB.
- Any fence section running from the side fence line back towards the house (the “front” fence line) shall be open picket design only. Such fences are already installed in the Development and homeowners wishing to install one may contact those homeowners to obtain the applicable style information (picket height, shape, spacing, materials, etc.).
- Homeowners are encouraged to match and blend their fence with the fences of Lots contiguous to their Lot where applicable and permissible under this guidance.

4. **Color:** Fence color choices must be approved by the ACB in advance, whether for a new fence or when changing the color of an existing fence.

- Powder-Coated Aluminum Fences shall be black in color.
- Homeowners must include the proposed fence color to the ACB a request to install fencing. The color details should include the brand name and color name/number as appropriate. Clear finishes are permitted.

- Colors should complement and blend with the color schemes and themes established for each Lot/home by Green Valley Builders.
- Wood Fences must be stained or painted within 4 months of installation and reapplied at intervals of no greater than 4 years to maintain proper appearance.
- Any damages, including warped boards or dented aluminum pickets, must be replaced within a timely fashion or within 30 days from HOA/ACB notification.

5. Gates:

- Fence gates must be either similar in style and material as the fence or of a complementary design/material.
- All gates require approval by the ACB. Details of gate design, material, and locations should be included with the Fence application paperwork.
- Pergolas or other ornamentation around the fence or gate must be included as part of the application and require approval by the ACB.

6. Exceptions:

- All fences existing in the Development at the time that this policy and guidance becomes effective are 'grandfathered' and exempt from this guidance and policy. At the time that a 'grandfathered' fence requires replacement, this guidance and policy shall apply.
- Picket replacement or repairs to existing fences do not require ACB approval provided that the repairs or replacement are in the same style, material, and colors of the existing fence.

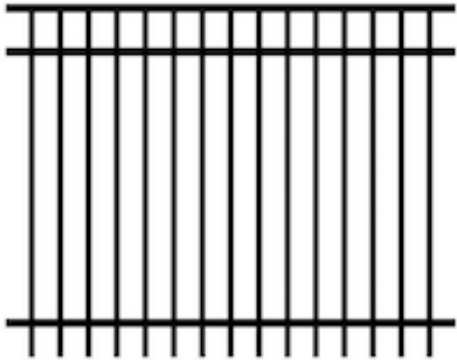
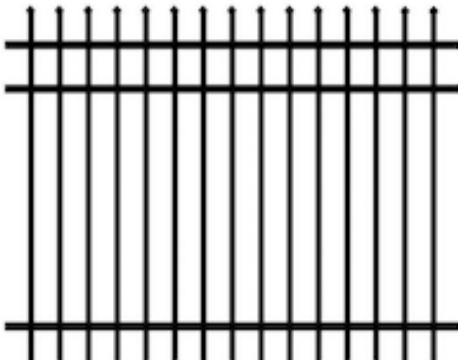


PROCEDURE: The following steps should be taken when submitting a request to install, replace, or modify an existing fence:

- 1) Complete the Application for Fence Installation/Modification (included here as Attachment 2). All relevant information must be filled out, including height, color, style, and brand of aluminum/composite fencing or type of wood for wood fencing.
- 2) Attach a plan of the homeowner's lot, indicating the location of the fence to be installed.

- 3) Submit these documents to the ACB by email:
 - a. to the Board of Directors at hoaboard@mtmblacksburg.org
 - b. or to the ACB at acb@mtmblacksburg.org
 - c. or to the personal email of the ACB Director as listed on the HOA's website in the table of Officers:
<http://mtmblacksburg.org/post/hoadocs/>
- 4) The ACB will review the application and notify the homeowner within 30 days of receipt if the application has been approved or if modifications to the application are required.

ATTACHMENT 1: EXAMPLES OF ACCEPTABLE FENCE STYLES:

Note that fence styles other than those shown here may be approved by the ACB. All fences, whether new installations or replacement of existing fences, must be approved by the ACB in advance.

 <p>A schematic diagram of a fence style. It features three horizontal rails. The top and bottom rails are thicker than the middle one. Between these rails are 12 vertical pickets. The top rail is a solid bar, and the bottom rail is also a solid bar, creating a 'closed-top' appearance.</p>	 <p>A schematic diagram of a fence style. It features three horizontal rails. The top and bottom rails are thicker than the middle one. Between these rails are 12 vertical pickets. The top rail is a solid bar, but the bottom rail is not shown as a solid bar, suggesting an 'open-top' style where the pickets are not capped at the bottom.</p>
<p>Powder-Coated Metal, Closed-Top</p>	<p>Powder-Coated Metal, Open-Top</p>
 <p>A photograph of a wooden picket fence. The pickets are light-colored wood, spaced evenly, and have a rounded, 'dog-eared' top. The fence is set against a dark background of trees.</p>	 <p>A photograph of a wooden picket fence. The pickets are light-colored wood, spaced evenly, and have a flat, rectangular top. The fence is set in a grassy area with a house in the background.</p>
<p>Dog-Eared Picket (Wood or Composite)</p>	<p>Boxed Picket (Wood)</p>

ATTACHMENT 1 (Continue):



Shadow-Box Privacy
(Wood or Composite)
May only be used in certain cases



Lattice-Top Privacy
(Wood or Composite)
May only be used in certain cases

ATTACHMENT 2: APPLICATION FOR FENCE INSTALLATION OR MODIFICATION**Homeowner Information (Required)**

Home-Owner Name:
Lot Number:
Street Address:
Phone:
Email:

Contractor Information (Optional)

Contractor (Business) Name:
Contact Name:
Phone Number:
Email:

Fence Information (Required)

Material: <input type="checkbox"/> powder-coated metal <input type="checkbox"/> wood <input type="checkbox"/> composite	
Metal/Composite Brand or Type of Wood:	
Color (specify paint brand & color#/name):	
Fence Height:	
Number of Gates:	
Standard or Designer Gate:	
Attaches to Existing Fence: (yes or no)	

Additional Required Information (Attach to Application)

	Property diagram showing house, fence & gate locations
	Drawing/Image of Designer Gates
	Drawing/Image of Fence Panels

Signature: _____ **Date:** _____

Approved by ACB on (date): _____ **Initials:** _____

ATTACHMENT 3: SUPPORTING INFORMATION

The following is provided to help explain the discussion and issues reviewed by the ACB while developing the guidance.

1. The use of fencing may be to create a barrier between the area inside the fence and the area outside the fence. The most common use would be to restrain and control a dog.
2. The ACB also recognizes that fencing may be used to create privacy, however to balance the need to screen areas outside of the Development against the aesthetics of the Development, the ACB has chosen to limit the use of 6ft privacy fencing to specific areas within the Development.
3. When considering the options, the ACB considered the appearance of the community from outside the community looking inward and appearances from the community looking outward.
4. The ACB considered the tension between the needs and desires of the homeowner (the individual) and the needs and desires of the Association (the community) to protect and enhance the Development's look, feel, and property value.
5. The ACB has attempted to institute some uniformity and consistency, moving forward.
6. Green Valley Builders ("GVB"), when imagining, creating, and building this Development has spent considerable time creating the color schemes available to homeowners for their house (house and trim color, brick color, shingle color, and landscaping). Further GVB has attempted to limit the colors used throughout the community so as to have a unique, attractive Development. The ACB recognized the need to institute a similar process in fence style and design to ensure that the Development maintains its high-quality appearance, both to the homeowners and the public.