

**SUGGESTED  
LEGAL DOCUMENTS  
FOR  
PLANNED-UNIT  
DEVELOPMENTS**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION  
AND  
VETERANS ADMINISTRATION**

**FHA Form 1400  
VA Form 26-8200  
Rev. October, 1973**



## FOR PLANNED-UNIT DEVELOPMENTS

These legal documents for planned-unit developments were prepared by the Federal Housing Administration and the Veterans Administration for nationwide use. They should be carefully examined for conformance with local laws and changed where necessary. Their use is not mandatory but recommended because they will facilitate and expedite review by FHA and VA. They reflect the basic requirements of both agencies. Where deviations from the Suggested Documents are made, review will be expedited if in the transmittal letter they are identified and the reasons for their use set forth.

The documents were prepared for use in planned-unit developments with a homes association, such as those described in FHA Land Planning Bulletin No. 6. Such developments are, in essence, subdivisions of land into lots for use predominantly for owner-occupied homes which contain common land comprising an essential or major element of the development, such common land being owned by a homes association (usually incorporated) to which all homeowners must belong and to which they must pay lien-supported maintenance assessments. The forms were prepared for use in townhouse, row house, or cluster-type developments. They may also be used in developments of single-family, detached houses which otherwise conform with the requirements of Land Planning Bulletin No. 6. The forms may also be used, with appropriate modifications, in a development consisting of a combination of the foregoing housing types.

The following comments are made to assist in adapting these forms for use. Recommended provisions for special features such as exterior maintenance, etc., are contained in the Appendix of Forms.

### 1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Introductory Paragraph: The introductory paragraph must describe all property which will be subjected to the Declaration of Covenants, Conditions and Restrictions (Declaration), including the common area and the lots. Reference to an attached plan or plat is not sufficient. In staged developments, only the first stage should be described (see paragraph 7 of these instructions).

Article I, Section 4: The common area should be adequately identified by description. The developer must convey the completed common area to the association free and clear of encumbrances before the first lot is conveyed to a homeowner. In staged developments, only the common area in the first stage should be described (see paragraph 7).

Article II: If on-site vehicular parking is not provided on each lot, provisions for parking space should be included in this article (see paragraph 6).

Article III: The Class B membership and its weighted vote are intended to assure the developer that he will have control of the homeowners' association until seventy-five percent (75%) of the dwellings are sold. The specified date on which the Class B membership will convert to Class A membership should be not later than the estimated time required to complete and market seventy-five percent (75%) of the dwellings in the development. In those jurisdictions which limit each member to one vote, the provision for Class B membership should be deleted.

Article IV: The maximum annual assessment entered in Section 3 should be adequate to enable the homes association to carry out its responsibilities but should not be excessive. Lots owned by the developer should not be exempt from assessment.

No person other than the owner of a lot, or the mortgagee where permitted by the mortgage, shall have the right to place hazard or liability insurance for that lot. There may not be a requirement imposed to insure through a particular company or agent or to require the policies to be approved by the HOA or declarant. Proceeds of insurance claims shall not be required to be paid to anyone other than the owner of the lot and/or the mortgagee.

Absolute liability should not be imposed upon individual owners for damage to the common area or to the lots, including improvements, of others where maintained by the HOA, whether caused by themselves, their families, guests or invitees. Their liability should only be that for which they would be legally responsible under State law.

Where the documents require consent of 2/3rds of each class of members the requirement is not met by requiring consent of 2/3rds of the members. The rights of the homeowners should be preserved by following the clauses as written in this guide.

The method of enforcing the assessment lien provided in Section 8 should be changed to conform with local law where necessary.

If it is contemplated that some nonresidential property in the development will be owned by public authorities or charitable organizations, it may be advisable to exempt such properties from the assessments. This may be accomplished by adding a new section to Article IV (see form #1 in the Appendix of Forms).

## 2. ARTICLES OF INCORPORATION

The Articles of Incorporation may be changed to conform with local law, but they should not contain any provisions which are inconsistent with the Declaration. Wherever legally possible, the provisions of the Declaration of Covenants should be incorporated by reference but should not be repeated at length in the Articles of Incorporation, except for the Articles on membership and voting rights or as may be required by local law.

Article IV: The property description in this article should be identical to that contained in the introductory paragraph of the Declaration. In staged developments, the description may include the entire development.

Article VI: The specified date on which the Class B membership will convert to Class A membership should be the same as the date inserted in Article III of the Declaration.

## 3. BY-LAWS

The recommended By-Laws contain only provisions relating to the functioning of the association and the Board of Directors. Provisions of the Declaration relating to the rights and obligations of owners (such as Articles II, III and IV) may be repeated in the By-Laws (exactly as stated in the Declaration).

## 4. USE RESTRICTIONS

Customary use restrictions and easements for public utilities may be included in the Declaration. A new article should be employed for this purpose.

## 5. EXTERIOR MAINTENANCE

It may be advisable, particularly in townhouse developments, for the association to provide exterior maintenance of residences. The proper maintenance of residences will thereby be assured. To accomplish this, a new article should be inserted in the Declaration (see form #2a in the Appendix of Forms). If there are exterior features which the association would not maintain, such as patios or carports, such features may be itemized under this article.

If the association will maintain the exterior of individual residences, the annual assessment should include an amount sufficient for this purpose. If some of the residences will require far more maintenance than others because of greater exterior exposure, the covenants may provide for a different basis upon which the assessments will be calculated.

In developments where exterior maintenance is not contemplated as a normal function of the association, a provision whereby the association could perform exterior maintenance if a homeowner fails to maintain his residence in a satisfactory manner may be inserted (see form #2b in the Appendix of Forms). This action would generally be taken by the association only in extraordinary circumstances in which the failure to act would jeopardize the value of the properties in the development.

In no event should the association provide interior maintenance of structures not owned by the association.

The By-Laws should contain, in any development where the association is given the authority to provide exterior maintenance, a provision imposing a duty on the Board of Directors to maintain the exterior of residences. The provision may be inserted in Article VII, Section 2 (see form #2c in the Appendix of Forms).

## 6. TOWNHOUSES

If it is contemplated that the development will include townhouses, it is advisable to provide for the following:

Exterior Maintenance: See paragraph 5.

Parking: The typical lot in many townhouse developments does not have appropriate space for on-site parking nor sufficient frontage on the abutting street to meet all parking needs. The homeowner should be assured that he has sufficient permanent exclusive parking space in the common area and that other owners may not claim a right to its use by virtue of their general easement.

The general easement provision in Article II, Section 1 of the Declaration should contain an appropriate limitation (see form #3a in the Appendix of Forms), and a new section should be added to Article II establishing the homeowner's right to sufficient parking space in the common area as a property right (see form #3b in the Appendix of Forms).

Party Walls: In townhouse developments, a new article may be added to the Declaration to define the obligation of owners in relation to common walls (see form #4 in the Appendix of Forms).

## 7. STAGED DEVELOPMENTS

If the developer proposes to start with a relatively small development and to progress by stages, as explained in Sections 4.36 and 4.37 of FHA Land Planning Bulletin No. 6, an additional provision, such as form #5 in the Appendix of Forms, may be incorporated in Article VIII, Section 4 of the Declaration to permit annexation by the developer without the consent of the homeowners.

The developer should submit to FHA and VA a general plan of the entire development at the time of submission for the first stage. The general plan should contain:

- (1) a general indication of size and location of additional developments to be added in subsequent stages and proposed land uses in each;
- (2) the approximate size and location of common properties proposed for each stage;
- (3) the general nature of proposed common facilities and improvements; and
- (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of association expenses.

Unless otherwise stated therein, such general plan shall not bind the developer to make the proposed additions or to adhere to the plan in any subsequent development. The general plan shall contain a statement to this effect. However, if the developer does proceed with development, as provided in this section, he must then submit detailed plans for the land to be developed.

As stated above, the property described in the introductory clause and Article I, Section 4 of the Declaration should include only the first stage. This will subject only that part of the subdivision in the initial stage to the Declaration. Other stages may be added by annexation as the development progresses.

## 8. DEDICATION OF COMMON AREAS

The plat should contain dedication language which will prevent an implication of dedication for public use (see form #6 in the Appendix of Forms).

## 9. DEED CLAUSE

It is recommended in most jurisdictions that the deeds to individual lots contain provisions to preclude an implication that the grantee takes title to the middle of abutting streets, streams, etc (see form #7 in the Appendix of Forms).

## 10. INFORMATION BROCHURE

A written statement in simple terms must be prepared for use in the sales program to inform all home buyers about the homes association and the rights and obligations of lot owners. Specific information which must be included in the brochure is:

1. Organizational structure of the association.
2. Membership and voting rights of homeowners and the developer.
3. Requirements for annexation, merger and dissolution, and an explanation that the total membership of the homes association may be increased.
4. The maximum amount and the initial amount of assessments, the assessment lien, and the method of enforcement.
5. Method of changing the maximum assessment.
6. User fees, if any.
7. Complete description of all elements of the common property, including improvements.
8. Services provided by the association.
9. Exterior maintenance of dwellings, if any.
10. Architectural control.

## APPENDIX OF FORMS

### Exempt Property

Form #1

Section 10, Exempt Property: All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of \_\_\_\_\_ shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

### Exterior Maintenance

Form #2a

#### ARTICLE \_\_\_\_\_

##### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

(NOTE: If this Article is used, Article IV, Section 2 should be amended by adding the words "and of the homes situated upon the properties".)

Form #2b

#### ARTICLE \_\_\_\_\_

##### EXTERIOR MAINTENANCE

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

(NOTE: If this Article is used, Article IV, Section 2 should be amended by adding the words "and of the homes situated upon the properties".)

Form #2c

(h) cause the exterior of the dwellings to be maintained.

### Parking

Form #3a

(d) The right of individual owners to the exclusive use of parking spaces as provided in this article.

Form #3b

Section 3, Parking Rights: Ownership of each lot shall entitle the owner or owners thereof to the use of not more than \_\_\_\_\_ automobile parking spaces, 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 shall permanently assign \_\_\_\_\_ vehicle parking spaces for each dwelling.

Party Walls

Form #4

ARTICLE \_\_\_\_\_

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 to such use.

Section 3. Destruction by Fire or 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.

Staged Developments

Form #5

(b) Additional land within the area described in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the land records of \_\_\_\_\_ may be annexed by the Declarant without the consent of members within \_\_\_\_\_ years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Dedication of Common Areas

Form #6

\_\_\_\_\_ (Declarant)  
in recording this plat of \_\_\_\_\_  
(name of subdivision)  
has designated certain areas of land as \_\_\_\_\_  
(park(s), playground(s), etc.)  
\_\_\_\_\_ intended for use by the homeowners in \_\_\_\_\_  
(name of subdivision)  
for recreation and other related activities.

The designated areas are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the homeowners in \_\_\_\_\_ as more fully provided in the

(name of subdivision)

Declaration of Covenants, Conditions and Restrictions applicable to \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_\_\_.

(name of subdivision)

Said Declaration of Covenants, Conditions and Restrictions is hereby incorporated and made a part of this plat.

#### Deed Clause

#### Form #7

The fee title to any lot described as bounded by any street, lane, walkway, park, playground, lake, pond, pool or any other common property which has not been dedicated or accepted by the public and the fee title to any lot shown on the recorded plat of \_\_\_\_\_ as abutting upon any such common

(name of subdivision)

property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the \_\_\_\_\_ Association for the common enjoyment of all of the residents in \_\_\_\_\_.

(name of subdivision)

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as  
"Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in \_\_\_\_\_  
\_\_\_\_\_, County of \_\_\_\_\_,  
State of \_\_\_\_\_, which is more particularly described as:  
(Insert legal description)

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 1

DEFINITIONS

Section 1. "Association" shall mean and refer to \_\_\_\_\_  
\_\_\_\_\_, 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 described as follows:

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

Section 6. "Declarant" shall mean and refer to \_\_\_\_\_, 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

### PROPERTY RIGHTS

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 2/3rds of each class of members has been recorded.

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.

### 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 Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on \_\_\_\_\_, 19\_\_.

### 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. 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.

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 \_\_\_\_\_ dollars (\$ ) per Lot.

(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 30 days nor more than 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 the 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 ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 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 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the 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

### 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. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Declarant

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

(Add appropriate acknowledgment)

ARTICLES OF INCORPORATION

OF

ASSOCIATION

In compliance with the requirements of \_\_\_\_\_  
(reference to statute under

\_\_\_\_\_, the undersigned, all of whom are  
which incorporation is sought)  
residents of \_\_\_\_\_ and all of whom  
are of full age, have this day voluntarily associated themselves together for the  
purpose of forming a corporation not for profit and do hereby certify:

ARTICLE I

The name of the corporation is \_\_\_\_\_  
\_\_\_\_\_, hereafter called the "Association".

ARTICLE II

The principal office of the Association is located at \_\_\_\_\_  
\_\_\_\_\_.

ARTICLE III

\_\_\_\_\_, whose address is  
\_\_\_\_\_, is hereby appointed  
the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members  
thereof, and the specific purposes for which it is formed are to provide for  
maintenance, preservation and architectural control of the residence Lots and Common  
Area within that certain tract of property described as:

and to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the Office of \_\_\_\_\_

and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, and with the assent of two-thirds (2/3) of each class of members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell 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 has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(f) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members;

(g) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of \_\_\_\_\_ by law may now or hereafter have or exercise.



## ARTICLE V

### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

## ARTICLE VI

### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on \_\_\_\_\_, 19\_\_\_\_.

## ARTICLE VII

### BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of nine (9) Directors, who need not be members of the Association. The number of directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>

At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years and three directors for a term of three years; and at each annual meeting thereafter the members shall elect three directors for a term of three years.

ARTICLE VIII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX

DURATION

The corporation shall exist perpetually.

ARTICLE X

AMENDMENTS

Amendment of these Articles shall require the assent of 75 percent (75%) of the entire membership.

ARTICLE XI

FHA/VA APPROVAL

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of these Articles.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of \_\_\_\_\_, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add appropriate acknowledgment)

BY-LAWS

OF

ASSOCIATION

ARTICLE I

NAME AND LOCATION. The name of the corporation is \_\_\_\_\_, hereinafter referred to as the "Association". The principal office of the corporation shall be located at \_\_\_\_\_ but meetings of members and directors may be held at such places within the State of \_\_\_\_\_, County of \_\_\_\_\_, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to \_\_\_\_\_, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the 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 6. "Declarant" shall mean and refer to \_\_\_\_\_, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of \_\_\_\_\_.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of \_\_\_\_\_ o'clock, P. M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth ( $\frac{1}{4}$ ) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth ( $\frac{1}{10}$ ) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of nine (9) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years and three directors for a term of three years; and at each annual meeting thereafter the members shall elect three directors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V

##### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth ( $\frac{1}{4}$ ) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same,

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained.



## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 6 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waiver or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: \_\_\_\_\_

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ARTICLE XIII

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of the \_\_\_\_\_ Association, have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add appropriate acknowledgment)

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the \_\_\_\_\_ Association, a \_\_\_\_\_ (State)

corporation, and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Secretary