

000318

BOOK 565 PAGE 681

Examined, verified and
mailed to Harbourview Partners
JAN 19 98

DECLARATION OF
PROTECTIVE COVENANTS.

FOR

HARBOUR VIEW COMMERCE CENTER
CITY OF SUFFOLK, VIRGINIA

JANUARY 13, 1998

Prepared by:
Kaufman & Canoles

TABLE OF CONTENTS

RECITALS

ARTICLE I
DECLARATION; PURPOSE

1.1. <u>Declaration</u>	7
1.2. <u>Purpose</u>	7

ARTICLE II
DEFINITIONS

<u>Definitions</u>	8
--------------------------	---

ARTICLE III
CHANGES IN PROPERTY; SUPPLEMENTAL DECLARATIONS

3.1. <u>Right to Subject Additional Property to Declaration</u>	10
3.2. <u>Deletions of Property</u>	11
3.3. <u>Additional Restrictions</u>	11
3.4. <u>No Approval Needed</u>	11
3.5. <u>Master Plan</u>	11

ARTICLE IV
PERMITTED USES

4.1. <u>Permitted Uses</u>	12
4.2. <u>Water Bodies</u>	12

ARTICLE V
ARCHITECTURAL CONTROL

5.1. <u>Architectural Review Board</u>	13
5.2. <u>Plan Approval Required</u>	13
5.3. <u>Submission of Plans</u>	14
5.4. <u>Approval and Disapproval</u>	15
5.5. <u>Compliance with Plans</u>	16
5.6. <u>Liability for Violation</u>	16

5.7. Right of First Refusal 16

ARTICLE VI
PARKING

6.1. Automobile Parking 17

ARTICLE VII
COMMON AREAS

7.1. Obligations of Declarant 18
7.2. Owners' Rights of Enjoyment 18
7.3. Limitations on Owners' Rights 18
7.4. Delegation of Use 19
7.5. Damage or Destruction of Common Area by Owner 19
7.6. Rights in Common Areas Reserved by Declarant 19
7.7. Title to Common Area 19

ARTICLE VIII
ADDITIONAL COVENANTS

8.1. Maintenance 20
8.2. Landscape Maintenance 20
8.3. Compliance; Environmental Protection 20
8.4. Damage and Destruction 21
8.5. Rezoning 21
8.6. Nuisances 21
8.7. Historical Artifacts 21

ARTICLE IX
ADMINISTRATION

9.1. Authority 21
9.2. Property Owners Association 21
9.3. Owners as Members 22
9.4. Classes of Membership 22
9.5. Suspension of Voting Rights 22
9.6. Articles and Bylaws to Govern 22
9.7. Dissolution of the Association 23

ARTICLE X
ASSESSMENTS

10.1. <u>Covenant for Assessments</u>	23
10.2. <u>General Assessments</u>	23
10.3. <u>Special Assessments</u>	23
10.4. <u>Apportionment</u>	24
10.5. <u>Liability for Assessments</u>	24
10.6. <u>Date of Commencement of General Assessments</u>	24
10.7. <u>Remedies in Event of Default</u>	24
10.8. <u>Subordination of Lien to Mortgages</u>	25
10.9. <u>Exempt Property</u>	25

ARTICLE XI
EASEMENTS

11.1. <u>Utility Easements</u>	25
11.2. <u>Erosion Control</u>	25
11.3. <u>Maintenance of Lots</u>	26
11.4. <u>Construction Easements and Rights</u>	26
11.5. <u>Right of Entry for Governmental Personnel</u>	26
11.6. <u>Easement for Landscaping, Signs and Related Purposes</u>	26
11.7. <u>Easement for Use of Water Bodies and Irrigation</u>	26
11.8. <u>Easement for Encroachment</u>	27

ARTICLE XII
ENFORCEMENT

12.1. <u>Preventive Remedies</u>	27
12.2. <u>Enforcement Rights</u>	27
12.3. <u>Cumulative Remedies</u>	28
12.4. <u>Failure to Enforce Not a Waiver of Rights</u>	28
12.5. <u>Assignment of Rights and Duties</u>	28
12.6. <u>Constructive Notice and Acceptance</u>	28
12.7. <u>Waiver</u>	29

ARTICLE XIII
DURATION AND AMENDMENT

13.1. <u>Duration of Protective Covenants</u>	29
13.2. <u>Amendment</u>	29

ARTICLE XIV
MISCELLANEOUS

14.1. <u>Variance</u>	30
14.2. <u>Effect of Invalidation</u>	30
14.3. <u>Notice</u>	30
14.4. <u>Interpretation</u>	31
14.5. <u>Captions</u>	31
14.6. <u>Run with Land</u>	31
14.7. <u>Governing Law</u>	31
14.8. <u>Rights of the City of Suffolk, Virginia</u>	31

EXHIBITS

Exhibit A:	Description of the Property.....	34
Exhibit B:	Description of Additional Land.....	35
Exhibit C:	Permitted Uses.....	36

DECLARATION OF PROTECTIVE COVENANTS
FOR
HARBOUR VIEW COMMERCE CENTER

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS is made and entered into as of JANUARY 13, 1998, by **HARBOURVIEW PARTNERS**, an Illinois general partnership (the "Declarant"), and provides:

RECITALS

A. Declarant is the owner of certain real property located in the City of Suffolk, Virginia, more particularly described on Exhibit A attached hereto (which, together with any other property now or hereafter subjected to this Declaration, is referred to herein as the "Property").

B. Declarant desires to develop the Property as an integrated commercial project known as "Harbour View Commerce Center" (the "Project"), with a planned mix of office and commercial uses, and to that end, to subject the Property to the covenants, restrictions, easements and other terms of this Declaration.

ARTICLE I
DECLARATION; PURPOSE

1.1. Declaration. Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration. This Declaration shall run with the Property and every part thereof and shall be binding upon and inure to the benefit of all Owners, lessees, licensees, Occupants and their successors as set forth in this Declaration.

1.2. Purpose. It is the purpose of this Declaration to create a planned commercial development of high quality, to assure the orderly and attractive development of the Property in an efficient and harmonious manner, to preserve and enhance property values, amenities and opportunities within the Property, to promote the health and safety of the Occupants and to maintain a harmonious relationship among the structures and the natural vegetation and topography thereon. This Declaration is designed to complement the Zoning Ordinance and other Laws, and where conflicts occur, the more restrictive requirement shall prevail.

ARTICLE II
DEFINITIONS

Unless the context otherwise specifies or requires, each term defined in this Article shall, for the purposes of this Declaration, have the meaning indicated below.

"Affiliate of Declarant" means any entity directly or indirectly controlled by or under common control with Declarant, whether through the ownership of voting securities or by contract, partnership agreement, trust agreement or otherwise.

"Architectural Review Board" means the Architectural Review Board created pursuant to Article V.

"Assessable Land" means all land within the Property other than the Exempt Property.

"Assessments" means, collectively, the General Assessments and the Special Assessments.

"Association" means the property owners association now or hereafter established pursuant to Section 9.2.

"Association Board" means the Board of Directors of the Association.

"Building" shall have the meaning set forth in the definition of the respective building codes for the City of Suffolk, Virginia.

"Clerk's Office" means the Clerk's Office of the Circuit Court for the City of Suffolk, Virginia.

"Common Area" or "Common Areas" means and refers to (i) all real property (including the improvements thereto) specifically designated as Common Area on a plat of the Property recorded by Declarant, in any Supplemental Declaration or amendment to this Declaration or in any other instrument executed by Declarant and recorded in the applicable Clerk's Office, (ii) all real property now or hereafter owned by the Association and intended to be devoted to the common use and enjoyment of the members of the Association, and (iii) such areas of easements and rights-of-way granted or assigned to the Association for the common use and enjoyment of the members of the Association for which the Association has assumed the responsibility for maintenance.

"Declarant" means Harbourview Partners, an Illinois general partnership, and any successor or assign designated as the "Declarant" in a written instrument recorded in the Clerk's Office or, in the case of any Mortgagee succeeding to the Declarant's rights by foreclosure or conveyance in lieu of foreclosure, such Mortgagee.

"Declaration" means this Declaration of Protective Covenants, and any amendments or

supplements thereto including Supplemental Declarations.

"Development Guidelines" shall have the meaning set forth in Section 5.1(b).

"Exempt Property" shall have the meaning set forth in Section 10.9.

"General Assessments" means the annual assessments provided for in Section 10.2.

"Governmental Entity" means any federal, state or local legislature, official, judge, administrator, agency, authority, or any other governmental or quasi-governmental entity, agency or official.

"Improvements" means any Buildings, underground installations, slope alterations, lights, roads, driveways, utility facilities and lines, parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other Structures or landscaping improvements of every type and kind.

"Lakes" means those lakes within the Property which are owned and maintained by Declarant or the Association and which are more particularly shown on the Master Plan for the Project approved pursuant to the Zoning Ordinance, as the same may be amended from time to time.

"Laws" means all statutes, laws, orders, rules, regulations, advisories, decisions, ordinances and other directives now or hereafter passed, enacted, promulgated, issued or adopted by any Governmental Entity.

"Lot" means a portion of the Property now or hereafter designated as a Lot or parcel of land on a recorded plat of subdivision or resubdivision of the Property or on a governmentally approved site plan or, if no plat is recorded, each parcel conveyed as a separate parcel of real estate, and includes any Improvements now or hereafter appurtenant to the Lot.

"Member" means every Person who holds a membership in the Association.

"Mortgage" means a mortgage or deed of trust securing an indebtedness held by a Mortgagee.

"Mortgagee" means any financial institution, Declarant or an Affiliate of Declarant holding an indebtedness secured by a Mortgage on a Lot or a portion thereof.

"Occupant" means any Person who occupies and/or who is entitled to use a part of the Property as Owner, lessee or licensee, or in any other capacity.

"Owner" means the Person(s) who hold(s) the record title to a Lot, but excluding those having such interest merely as security for the performance of an obligation.

"Permitted Uses" means with respect to any portion of the Property the permitted uses applicable thereto as set forth on (i) Exhibit C to this Declaration with regard to that portion of the Property described on Exhibit A of this Declaration, and (ii) Exhibit C to any Supplemental Declaration with regard to any other portion of the Property hereafter subjected to this Declaration.

"Person" means any natural person, corporation, partnership, trust or other entity.

"Plans" means the plans and other information required to be submitted by an Owner pursuant to Section 5.3.

"Project" means the mixed-use development known as Harbour View Commerce Center which may include all or a portion of the Property.

"Property" means the real property described on Exhibit A attached hereto, and any other property now or hereafter subjected to this Declaration.

"Rules and Regulations" means any rules and regulations adopted from time to time by the Association to implement the objectives of this Declaration.

"Special Assessments" means the assessments provided for in Sections 6.1, 7.5, 10.3, 11.2, 11.3 and 12.2.

"Supplemental Declaration" means an instrument recorded by Declarant in the Clerk's Office which subjects additional property to this Declaration and /or which may contain such other provisions as are provided for in Articles III and IV of this Declaration.

"Structure" shall have the meaning set forth in the definition of the building code for the City of Suffolk, Virginia.

"Utility Easements" shall have the meaning set forth in Section 11.1 of this Declaration.

"Zoning Ordinance" means any ordinance, regulation or provision enacted by the applicable governing body of the City of Suffolk, Virginia, regulating, restricting, permitting or prohibiting the use of land and the construction of Improvements thereon and, for the purpose of this definition, shall include the conditions and provisions of any conditional use permit affecting the Property or any other government-controlled or directed process affecting the Property.

ARTICLE III
CHANGES IN PROPERTY; SUPPLEMENTAL DECLARATIONS

- 3.1. Right to Subject Additional Property to Declaration. Declarant reserves the right, at its

discretion, at such time or times as it shall determine to subject to the provisions of this Declaration additional property owned by Declarant or an Affiliate of Declarant and located contiguous to or in close proximity to the Property, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining (collectively, the "Additional Property"). Each of the additions authorized pursuant to this Section shall be made by Declarant recording in the Clerk's Office a Supplemental Declaration describing the additional property subjected to this Declaration. Each such instrument may also contain such additions, deletions and modifications to the provisions of this Declaration with respect to such additional property as may be desired by Declarant. Notwithstanding the foregoing, Declarant shall not be obligated to bring any such additional property within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any such additional property until such additional property is expressly subjected to the provisions of this Declaration in accordance with this Section. The failure of Declarant to extend the provisions of this Declaration to additional property shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such additional property to which this Declaration is not extended.

3.2. Deletions of Property. Declarant reserves the right, at its discretion, at such time or times as it shall determine, to remove from the provisions of this Declaration any portion of the Property then owned by Declarant or an Affiliate of Declarant. Any deletion made by Declarant pursuant to this Section shall be made by Declarant recording in the Clerk's Office a Supplemental Declaration describing the property removed from this Declaration. From and after the date any such Supplemental Declaration is so recorded, the property described in such Supplemental Declaration shall be free and clear of this Declaration and all of the terms, covenants and restrictions contained herein.

3.3. Additional Restrictions. Declarant may, in its discretion, from time to time execute and record one or more Supplemental Declarations for the purpose of establishing certain additional or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to a specific portion or portions of the Property then owned by Declarant or an Affiliate of Declarant and to be developed for a specific type of use. However, no negative reciprocal easement shall arise out of any such Supplemental Declaration so as to bind any portion of the Property not expressly subjected thereto.

3.4. No Approval Needed. The exercise of Declarant's rights under Sections 3.1, 3.2 and 3.3 is not conditioned upon or subject to the approval of other Owners and therefore the requirements set forth in Article XIII for amendments to this Declaration shall be inapplicable to Sections 3.1, 3.2 and 3.3 of this Declaration.

3.5. Master Plan. The existence of a master plan for the Property as part of the Zoning Ordinance or otherwise shall not be deemed to constitute a representation by Declarant that the real estate shown thereon shall be developed as depicted on the master plan, and the master plan may be

amended from time to time in the sole discretion of Declarant with the consent (to the extent required) of the City of Suffolk, Virginia.

ARTICLE IV
PERMITTED USES

4.1. Permitted Uses. No portion of the Property shall be used for any purpose other than a Permitted Use and uses accessory thereto.

4.2. Water Bodies.

(a) Aesthetic Amenities Only. Except as expressly provided in subparagraph (e) below or in paragraph 11.7, all lakes, ponds and streams within or adjoining the Property (collectively, "water bodies") shall be aesthetic amenities only, and no use thereof, including without limitation, swimming, boating, playing or use of personal floatation devices shall be permitted. This paragraph shall not apply to prohibit any use by Declarant specifically authorized under this Declaration. Neither Declarant nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the unauthorized use of the water bodies. Without limiting the generality of the foregoing, Owners shall not have the right to construct or maintain any pier, dock or other structure in or affecting the water body or to take any water from the water body for irrigation or otherwise.

(b) Use of Lakes by Lot Owners. The Owners of Lots which front on a Lake shall not have any riparian rights appurtenant to their Lots or any right to use the Lakes for any purposes whatsoever, and, except as expressly provided in this Declaration, such Owners' rights, if any, with respect to the Lakes shall be no greater than the rights of any other Owners.

(c) Use by Declarant. Without limiting Declarant's rights with respect to the water bodies, Declarant shall have those rights set forth in Section 11.8 of this Declaration.

(d) Trash and Debris. Each Owner of a Lot adjoining the water bodies shall keep his Lot free of trash, debris and any unsightly items. No bottles, cans, trash, garbage, chemicals, wastes or other potentially harmful substances or pollutants shall be deposited or discharged on or into the water bodies or on the property surrounding the water bodies.

(e) Drainage Into Water Bodies. Except as expressly permitted in Article XI of this Declaration, any Supplemental Declaration, or by Declarant or the Association (if the Period of Developer Control has expired), no Owner shall install or maintain any drainage ditches, pipes or other facilities to drain surface water into the water bodies without the prior approval of Declarant during the Period of Developer Control, and, thereafter, without the prior approval of the Association Board, and no Owner (other than Declarant) shall in any manner decrease or disturb the flow of water into or out of the water bodies.

ARTICLE V
ARCHITECTURAL CONTROL

5.1. Architectural Review Board.

(a) Appointment, Rights. Declarant shall appoint an Architectural Review Board to review and, as appropriate, approve or disapprove Plans submitted by Owners in accordance with this Article. The Architectural Review Board shall consist of three persons, at least one of whom shall have architectural or building design experience. The right to appoint and remove all members of the Architectural Review Board shall be and is hereby vested solely in Declarant, so long as it owns any portion of the Property and the Additional Property. After Declarant no longer owns any portion of the Property or the Additional Property or at such earlier date as Declarant may elect, the right to appoint the members of the Architectural Review Board shall vest in the Association Board. The members of the Architectural Review Board shall serve for such terms as Declarant or the Association Board, as the case may be, shall determine. If Declarant does not appoint an Architectural Review Board, the duties and rights in this Declaration which are to be performed or are exercisable by the Architectural Review Board shall be performed or exercised by Declarant.

(b) Development Guidelines. The Architectural Review Board shall have the authority to promulgate development guidelines ("Development Guidelines") designed to implement the purpose and objectives of this Declaration. The Development Guidelines shall be consistent with the provisions of this Declaration. The Development Guidelines may be amended from time to time by the Architectural Review Board in its sole discretion. Copies of the Development Guidelines and any amendments thereof shall be provided by the Architectural Review Board to each Owner upon request. Nothing contained in the Development Guidelines in effect from time to time shall be deemed to create or imply a negative reciprocal easement or covenant in favor of any Person or as to any portion of the Property.

(c) Other Responsibilities. In addition to the responsibilities provided in this Article, the Architectural Review Board shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration or in any Supplemental Declaration.

5.2. Plan Approval Required. No Improvement shall be constructed, erected, used, placed, altered, repainted a different color, added to, maintained or permitted to remain on the Property until the Plans therefor shall have been submitted to and approved in writing by the Architectural Review Board as provided in this Article; provided, however, that these approval requirements shall not apply to Declarant or an Affiliate of Declarant with respect to (i) development of Common Areas, (ii) the installation of streets, walkways, utilities and other public facilities to serve any Lot or (iii) any Improvements under construction by Declarant as of the date hereof or for which on the date hereof Declarant has submitted building plans to, or received a building permit from, the applicable Governmental Entity.

5.3. Submission of Plans.

(a) Required Submissions. The Owner or his designated representative shall prepare and submit to the Architectural Review Board preliminary and final Plans as set forth below.

(b) Preliminary Plans. For its preliminary submission, the Owner or his designated representative shall submit at least the following: (i) a site plan and schematic design of area proposed for immediate development which is consistent with the overall plan of development depicted on the Master Plan and which shows the location of all Improvements, easements, street rights-of-way, and set-back lines, walks, parking areas, off-street loading areas, driveways and outside storage areas; (ii) building elevation drawings of each building face; and (iii) a description of the proposed uses.

(c) Final Plans. After the Architectural Review Board has approved an Owner's preliminary submission, the Owner or his designated representative shall prepare and submit to the Architectural Review Board such Owner's final Plans including detailed information in writing regarding the proposed use of the Lot, copies of all applications for permits and any accompanying correspondence, site plans, erosion and sedimentation control plans and other plans to be submitted for governmental approval, three (3) full sets of final construction drawings and specifications showing or stating all aspects of the proposed development, and such other information as the Architectural Review Board, in its discretion, shall require. The final construction drawings and specifications shall include, without limitation, the following:

(i) location of all Structures, easements, street rights-of-way, set-back lines, walks, driveways and curblines;

(ii) layout and location of all parking areas, (including location and dimensions of all spaces, circulation aisles, curbs and bumpers), off-street loading areas, and all outside storage areas, including identification and size of the material to be stored and location and dimensions of all fencing and screening;

(iii) all landscaping, including location, height, spread, type and number of trees and shrubs, location and type of all ground cover and lawn material, existing trees and limits of clearing and grading and irrigation system together with plans for the preservation of trees and a detailed description of the methods the Owner will employ to ensure protection of trees during construction;

(iv) location, height, intensity and fixture type of all exterior lighting;

(v) location, size and type of all pipes, lines, conduits and appurtenant equipment and facilities for the transmission of sanitary sewage, storm water, water, and other utility services;

(vi) location, size and type of all fencing;

(vii) architectural floor plans, building elevation, wall sections and details of each building, exterior building material and color information, including samples;

(viii) temporary construction sign design and permanent sign design;

(ix) site coverage data and calculations, parking data and calculations, including base data for projected needs, site drainage data and calculations, including finished contour lines and spot elevations; and

(x) such other data as may be specified in the Development Guidelines.

5.4. Approval and Disapproval.

(a) Standards. The Architectural Review Board shall have the right to disapprove the Plans submitted to it if (i) they are not in accordance with this Declaration or the Development Guidelines, (ii) they are incomplete, or (iii) the Architectural Review Board determines, in its sole discretion, that the Plans and such specifications, or details, or any part thereof, are contrary to the best interests of the Property and the Owners. In this connection, the Architectural Review Board may base its approval or disapproval on, among other things, the architectural design concept, the adequacy of Lot dimensions, conformity and harmony of external design with neighboring Lots and types of operations and uses thereof, relation to topography, grade and finished ground elevation of the Lot being improved to that of neighboring Lots, proper facing of main elevation with respect to nearby streets, conformity to the overall plans for the development of the Project, conformity of the Plans to the purpose and general plan and intent of this Declaration and such other factors as the Architectural Review Board, in its sole discretion, deems relevant. The foregoing notwithstanding, nothing in this Declaration shall require the Architectural Review Board to approve the Plans for Improvements on a Lot on the grounds that the layout, design and/or other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved for another Lot.

(b) Statement of Reasons for Disapproval. In any case where the Architectural Review Board shall disapprove any Plans submitted hereunder or shall approve the same only as modified or upon specified conditions, notice of such disapproval or qualified approval shall be given to the Owner submitting such Plans within forty-five (45) days after their submission, and such notice shall be accompanied by a statement of the specific reasons therefor.

(c) Time for Approval. The Architectural Review Board shall not be required to review any Plans unless and until the submitted Plans contain all the items required by this Article V, and such 45-day review period shall not commence until the Architectural Review Board declares the submission complete by written notice to the Owner. If the Architectural Review Board fails to approve, disapprove or request any additions or supplemental information relating to, any preliminary or final Plans within forty-five (45) days after such Plans are fully submitted, then such Plans shall be

(d) Expiration of Approval. If work is not commenced within six months from the date the Architectural Review Board approves the Plans for such work, then such approval shall be deemed revoked by the Architectural Review Board, unless the Architectural Review Board, in its sole discretion, extends the time for commencing work. All work covered by such approval shall be complete within two years after the commencement thereof, except for such period of time as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical materials shortages, or other intervening forces beyond the control of the Owner, lessee, licensee or Occupant or his agent, unless the Architectural Review Board, in its sole discretion, extends the time for completion. For the purposes of this Declaration, work on an Improvement shall be deemed to have "commenced" when the Improvement site has been graded and, in the case of Buildings, footings or foundations have been poured or otherwise installed.

(e) Limitation of Liability. The approval by the Architectural Review Board of any Plans, and any requirement by the Architectural Review Board that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Board shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable Laws or to comply with sound engineering, architectural or construction practices. In addition, in no event shall Declarant or the Architectural Review Board or any agent of either of the foregoing have any liability whatsoever to an Owner, a contractor or any other Person for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Board's approval, disapproval or conditional approval of any Plans or the granting of any variance or for any defects in any work done according to any approved Plans.

(f) Costs. If the Architectural Review Board has the Plans reviewed by an architect or other design professional (including, without limitation, a member of the Architectural Review Board), then the Owner submitting such Plans for approval shall pay the reasonable costs incurred by the Architectural Review Board in obtaining such professional review.

5.5. Compliance with Plans. After approval by the Architectural Review Board of the Plans for an Improvement, such Improvement shall be constructed, erected, maintained, altered or enlarged strictly in accordance with the approved Plans. No construction or use that is inconsistent with, in addition to, or different from the approved Plans shall be commenced or permitted until Plans reflecting such change or addition have been submitted to and approved by the Architectural Review Board in accordance with this Article.

5.6. Liability for Violation. Any Person violating any provisions of this Article shall be liable for all costs incurred by the Architectural Review Board or any other Person who seeks to enjoin or otherwise remedy such violations, including, but not limited to, attorney's fees and court costs.

5.7. Right of First Refusal. If an Owner fails to commence construction of an Improvement

within two (2) years after the date the Lot was purchased from Declarant, then Declarant shall have a right of first refusal to be exercised as set forth herein. In the event the Owner shall receive a bona fide written offer to lease or purchase the Lot, which offer the Owner desires to accept, the Declarant shall have the prior right and option to purchase the Lot on the same terms and conditions offered by the prospective buyer or lessee. Prior to any closing of sale or lease of the Lot, the Owner shall notify the Declarant of the content of such offer, and the Declarant shall have sixty (60) days from the date of receipt of such notice to exercise its option. The Declarant shall have the continuing right of first refusal as to all succeeding Owners or lessees of the Lot. If Declarant exercises its right of first refusal, at the closing, the Owner shall convey the Lot to Declarant by general warranty deed free and clear of any liens, encumbrances, mortgages, leases, contractual obligations or other matters affecting title other than those which existed on the date Declarant conveyed the Lot to the Owner or its predecessor in title. The right of first refusal contained in this Section may be waived by Declarant in writing as to any portion of the Property.

ARTICLE VI
PARKING

6.1. Automobile Parking.

(a) On-Site Parking Required. The Owner of each Lot shall provide adequate automobile parking on such Owner's Lot or in Improvements on the Lot or in a structured garage on the Lot capable of accommodating the reasonable parking needs of its employees, visitors and company vehicles and at all times in compliance with the applicable Zoning Ordinance. No use or activity shall be permitted on any Lot unless adequate parking is provided on the Lot for such use or activity in accordance with Plans approved by the Architectural Review Board and the other terms and conditions set forth herein. If the parking requirements on any Lot increase as a result of (i) a change in use of the Lot, (ii) an increase in the number of employees working at the Lot, or (iii) a change in the applicable Zoning Ordinance, it shall be the Owner's responsibility to provide additional parking areas, as approved by the Architectural Review Board in order to accommodate such increased parking requirements. Such additional parking areas shall be provided prior to, or concurrently with, the institution of such changed use or the employment of such additional employees or the effective date of such change in the Zoning Ordinance.

(b) Off-Site Parking. Each Owner or Occupant of any Lot shall use its best efforts to prevent its employees, lessees, agents, contractors, customers and visitors from parking on any public street within the Property or Common Area. Notwithstanding the foregoing, the Architectural Review Board shall have the right, upon request of an Owner, to issue temporary off-site parking permits for construction vehicles specifying the period of time, the number of vehicles and the permitted areas on or for which such vehicles may be parked. Declarant and/or the Architectural Review Board shall also have the right to cause vehicles parked on any Common Area or public street within the Property to be removed by towing or otherwise to a licensed garage for storage until called for by the owner of the vehicle or his agent. In the event of such removal or storage, the owner of the vehicle involved shall be chargeable with, and such vehicle may be held for, the charge for its removal

and storage. Neither the Association nor Declarant shall be responsible for any damages to such vehicles caused by their removal.

ARTICLE VII
COMMON AREAS

7.1. Obligations of Declarant. Declarant, or the Association, after such time as Declarant has conveyed the Common Area to the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the maintenance, management, operation and control of the Common Areas (except for such portions thereof as are the responsibility of Owners as hereinafter set forth) and all Improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the same in good, clean and attractive condition, order and repair.

7.2. Owners' Rights of Enjoyment. Subject to the provisions of this Declaration, every Owner shall have a right of enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with the title to every Lot.

7.3. Limitations on Owners' Rights. The Owners' rights of enjoyment in the Common Areas shall be subject to the following:

(i) the right of Declarant or the Association to establish reasonable Rules and Regulations for the use of the Common Areas;

(ii) the right of Declarant or the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which such Owner has failed to pay when due any Assessment payable by such Owner under this Declaration;

(iii) the right of Declarant or the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which any other infraction by the Owner of this Declaration or the Rules and Regulations remains uncorrected after the last day of a period established for correction by Declarant (such period to be stated in a notice to the Owner together with a statement of the infraction complained of and the manner of its correction);

(iv) the right of Declarant or the Association to mortgage any or all of the Common Areas for any purpose;

(v) the right of Declarant or the Association to grant Utility Easements or other easements across the Common Areas as provided in Article XI hereof;

(vi) the right of Declarant or the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and

subject to such conditions as may be desired by Declarant or the Association; and

(vii) all of the other easements, covenants and restrictions provided for in this Declaration and applicable to the Common Areas.

7.4. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to any other Occupants of his Lot and to his invitees or guests, subject to the terms of this Declaration and any Rules and Regulations as may be established from time to time.

7.5. Damage or Destruction of Common Area by Owner. If any Common Area or Improvement thereon or any facility owned by the Association is damaged or destroyed by an Owner or an Occupant of a Lot, or by their tenants, guests, licensees or agents, and Owner of the Lot does not repair such damage within fifteen (15) days after its occurrence in a good and workmanlike manner and restore such Common Area, Improvement or facility to its existing state preceding such damage or destruction, then Declarant or the Association may repair such damage at the Owner's expense. The cost of such repairs shall become a Special Assessment upon the Lot of such Owner and shall constitute a lien upon such Owner's Lot and be collectible in the same manner as other Assessments set forth herein.

7.6. Rights in Common Areas Reserved by Declarant. Until such time as Declarant conveys a Common Area to the Association, Declarant shall have the right as to that Common Area, but not the obligation (i) to construct such Improvements thereon as it deems appropriate for the common use and enjoyment of Owners, and Declarant shall maintain such Common Area in neat and clean condition and repair; and (ii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration (including, without limitation, for a marketing or sales office, construction control center or hospitality center).

7.7. Title to Common Area. Declarant shall convey each Common Area to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record at such time as the Improvements thereto are completed and in a condition acceptable to the Association. Regardless of whether the Common Areas have actually been conveyed to the Association, but subject to the foregoing sentences of this Section, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, and the Articles of Incorporation and the Bylaws of the Association from and after the date such Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date a deed or deeds to such Common Area(s) is/are recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. Until the Common Areas are conveyed to the Association, Declarant shall be liable for payment of taxes, insurance and maintenance costs with respect thereto, and Declarant shall maintain such Common Areas in neat and clean condition and repair.

ARTICLE VIII
ADDITIONAL COVENANTS

8.1. Maintenance. No Improvement on the Property shall be permitted by its Owner or Occupant to fall into disrepair and each such Improvement shall at all times be kept in neat, clean and good condition and repair, properly maintained and adequately painted or otherwise finished, clean and safe and in accordance with all legal requirements. All asphalt or concrete paved surfaces shall be resurfaced or sealed as needed and all potholes shall be promptly repaired. Unimproved Lots shall be maintained in a reasonably neat condition, free of debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, except in approved waste containers in screened areas in locations at the rear or sides of Improvements and as shown on the Plans approved by the Architectural Review Board.

8.2. Landscape Maintenance. All landscaping on each Lot, including landscaping located within any easements reserved by Declarant for such purpose and adjoining rights-of-way, shall be properly maintained by the Owner of the Lot, which maintenance shall include all necessary cutting, watering, fertilizing, aerating, spraying, pruning and required replacements. Dead or damaged planting material shall be promptly replaced. Each Owner shall be responsible for proper drainage from its Lot.

8.3. Compliance; Environmental Protection.

(a) Compliance. Each Owner shall comply with all Laws applicable to such Owner's Lot and the Improvements thereon.

(b) Environmental Compliance. In addition to and without limiting the terms of the previous paragraph, Owners and Occupants shall comply with all Laws relating to the discharge, storage and disposal of all hazardous or toxic wastes and substances, petroleum, petroleum by products, and other environmental contaminants (as any of the foregoing may now or in the future be defined by any Governmental Entity) on, at or from such Owner or Occupant's Lot or otherwise relating to environmental protection.

(c) Inspections. Declarant on behalf of itself, its agents and the Association reserves the perpetual right, privilege and easement to enter any part of the Property for the purpose of gathering environmental information, during reasonable hours and subject to reasonable security requirements, to determine the quality of the soil, ground water, storm water and any emissions or discharges from the Property.

(d) Clean-up; Indemnification. By accepting a deed to a Lot, each Owner hereby agrees (i) to clean up and remove or contain (but only if permitted by Law) in accordance with all applicable Laws any hazardous or toxic substances or wastes or other environmental contaminants on or under such Owner's Lot, or stored, generated, disposed of or discharged by such Owner or any Occupant of such Owner's Lot or from such Owner's Lot, and (ii) to indemnify, defend and hold

harmless Declarant, any Affiliate of Declarant, the Association, their agents and each of the other Owners from and against any and all foreseeable and unforeseeable claim, loss, damage, cost or expense (including, without limitation fines, clean-up costs, costs of relocating tenants, employees and agents, restoration costs, loss of income and attorneys' fees) incurred or suffered by the indemnified party as a result of any hazardous or toxic waste or substance or other environmental contaminant discharged from, stored at or disposed of at or from the indemnifying party's Lot.

8.4. Damage and Destruction. If any Improvements shall be damaged or destroyed by fire or other hazards, then the Owner of such Improvements shall either (i) rebuild such Improvements as promptly as reasonably possible but in any event shall commence rebuilding within twelve (12) months of the date such damage or destruction occurred (with the Plans for such repair being subject to approval of the Architectural Review Board if such Plans differ from the initially approved Plans for the Improvements), or (ii) demolish and raze the damaged Improvements, remove the slab, if any, fill in all excavations, plant grass and perform such other work as may be necessary to leave the area on which such damaged Improvements were located in a clean, sightly and safe condition.

8.5. Rezoning. For a period of thirty (30) years from the date hereof, no Owner or contract purchaser of any Lot shall apply for rezoning, change of proffers, special use permit or special exception for any part of the Property without the prior written consent of Declarant or the Association (if Declarant's rights hereunder have been assigned to the Association), which consent may be granted or withheld in its sole discretion for any reason or for no reason.

8.6. Nuisances. Notwithstanding approval from any Governmental Entity or the fact that the use in question is a Permitted Use, no use or operation will be permitted which creates objectionable noise, smoke, odors or which in any other way, in the opinion of the Architectural Review Board, will constitute a nuisance or degrade the value of the Property.

8.7. Historical Artifacts. The Declarant hereby retains ownership rights to any historical artifacts discovered on or in any portion of the Property. In the event such artifacts are discovered, before such artifacts shall be disturbed or removed notice shall be given to the Declarant, and the Owner shall cooperate fully with the Declarant to allow such artifacts to be removed.

ARTICLE IX ADMINISTRATION

9.1. Authority. This Declaration shall be administered by the Association and by any managing agent for the Property.

9.2. Property Owners Association. On or before the conveyance of the first Lot within the Property, Declarant shall establish a property owners association which shall be a non-profit organization incorporated in the Commonwealth of Virginia for the purposes set forth herein (the "Association").

9.3. Owners as Members. From and after the date the Association is formed, every Owner shall be a Member of the Association. Membership shall not be separated from ownership of any Lot. Upon the recordation in the Clerk's Office of a deed to a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

9.4. Classes of Membership.

(a) Two Classes of Membership. The Association shall have two classes of voting membership: Class A and Class B.

(b) Class A. Class A Members shall be all Owners including Declarant. Each Class A Member shall be entitled to cast its "proportionate share" of votes. An Owner's proportionate share shall equal the product of (i) 100 multiplied by (ii) a fraction, the numerator of which is the total acreage of such Owner's Lot, and the denominator of which is the total acreage of the Property. When more than one Person holds an interest in any Lot, all such Persons shall be Members and the vote for such Lot shall be exercised as they among themselves shall determine. The Person who shall be entitled to cast the vote of the Owners of such Lot shall be the Person (who may be the agent of the Owners) named in a certificate executed by all of the Owners of the Lot and filed with the secretary of the Association; however, in the absence of such named Person at a meeting, another Owner of such Lot who is present at the meeting shall be entitled to cast the vote for such Lot, unless otherwise provided in the certificate.

(c) Class B. The Class B Member shall be Declarant, who shall be entitled to cast the Class B vote. The Class B membership shall terminate on the earliest of the following:

(i) the date on which Declarant ceases to own at least 25 percent (25%) of the Property and the Additional Property;

(ii) the date on which Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership (which amendment shall not require the consent of any other Owners as provided in Section 13.2); or

(iii) fifteen (15) years from the date the Association is formed.

9.5. Suspension of Voting Rights. The Association Board may suspend the voting rights of any Member (except the Class B Member) that is subject to any Assessment under this Declaration during any period in which any such Assessment shall be past due; provided, however, that upon payment of such Assessment the voting rights of such Member shall automatically be restored.

9.6. Articles and Bylaws to Govern. Except to the extent expressly provided in this Declaration, all of the rights, powers and duties of the Association and the Members, including the Member's voting rights, shall be governed by the Articles of Incorporation and the Bylaws of the

Association. The Articles shall provide, among other things, that the Class B Member shall appoint the Members of the Association Board until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of such Articles or Bylaws, this Declaration shall control.

9.7. Dissolution of the Association. The Association may be dissolved at a duly held meeting at which a quorum is present upon the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Class A Members and the vote of the Class B Member. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the locality in which they are situated. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

ARTICLE X ASSESSMENTS

10.1. Covenant for Assessments. Declarant covenants and each Owner by acceptance of a deed to any portion of the Property is deemed to covenant and agree to pay General Assessments and Special Assessments as provided in this Declaration and in the Bylaws.

10.2. General Assessments. General Assessments shall be assessed annually and shall be paid annually or in more frequent intervals as shall be specified by the Association. General Assessments shall be assessed to cover the anticipated annual cost of operating, maintaining and managing the Common Areas; carrying out the duties of the Association under this Declaration; payment of taxes and other levies against the Common Areas; procurement of insurance; establishment of reasonable reserves for the Association's duties under the Declaration; and for such other purposes as may be authorized by or pursuant to the Articles of Incorporation or Bylaws of the Association. General Assessments shall be established and increased or decreased from time to time by the Association Board pursuant to the Bylaws.

10.3. Special Assessments. In addition to the General Assessments, the Board of Directors of the Association may levy a periodic Special Assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. If any Special Assessment is in an amount greater than the General Assessment for the same year, then no such Special Assessment shall be levied without the approval of a majority of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose and the approval of the Class B Member (for so long as the Class B Member shall exist); otherwise, such Special Assessment may be established by the Board of Directors of the Association without a vote of the membership. The foregoing notwithstanding, any Special Assessment may be rescinded by a majority vote of the Class A Members attending a meeting of the Association, convened in accordance with the Bylaws within sixty (60) days after receipt of the notice of such assessment. In any vote taken by Owners or Members pursuant to this Section, each Owner shall be entitled to cast its

proportionate share of votes as calculated pursuant to Section 9.4. Written notice of Special Assessments and due dates shall be sent to each Owner. The amount of any Special Assessment, or the limit on Special Assessments, established by this Section shall not apply to any charge, fee, penalty, or other sum which may be levied on or due and payable by any Owner or Occupant under any other provision of this Declaration, even if such charge, fee, penalty or other sum is termed a Special Assessment.

10.4. Apportionment. Declarant shall apportion each Assessment among the Owners based upon the sum of the square footage of land in each Owner's Lot as a percentage of the total Assessable Land.

10.5. Liability for Assessments. The Assessments and other charges provided in this Declaration, together with interest thereon and costs of collections thereof, as hereinafter provided, shall be a charge on the Lots and Improvements thereon and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with late charges, interest, costs and attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. No Owner may waive or otherwise avoid liability for the payment of the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

10.6. Date of Commencement of General Assessments. Except as otherwise provided in Section 10.9 below, the General Assessments provided for herein shall commence as to each Lot on the recordation of the deed to such Lot to an Owner, who purchases the same. The first General Assessment on a Lot shall be adjusted according to the number of days remaining in the calendar year. General Assessments due and payable for years subsequent to the year in which an Owner acquires a Lot shall be paid in accordance with Section 10.2 above.

10.7. Remedies in Event of Default. If any Owner fails to pay an Assessment when due and payable, the Assessment shall be subject to a late charge in the amount of five percent (5%) of the delinquent Assessment and shall bear interest from the due date at the rate equal to the greater of eighteen percent (18%) per annum or the highest legal rate. If an Assessment is not paid by the due date, it shall become delinquent and Declarant may thereafter send a notice of such delinquency to the Owner, in conformity with the provisions of Section 14.3, stating that if the delinquent Assessment is not paid in full within thirty (30) days after the date of such notice the Association may thereafter file a written notice of such delinquency (the "Lien Notice") in the Clerk's Office to evidence the lien upon the Lot against which such Assessment was made. Such Lien Notice, setting forth the amount of such unpaid Assessment, the name of the Owner of the Lot and the legal description of the Lot shall be signed by an officer of the Association and shall be recorded in the Clerk's Office. Subject to the provisions of Section 10.8, the Association may foreclose the lien for the Assessments provided for in this Declaration by a bill in equity in the same manner as provided for the foreclosure of mortgages, vendor's liens and liens of similar nature. In addition, either in the first instance or for deficiency following foreclosure, the Association may bring an action at law to collect such indebtedness against the Owner personally obligated to pay the same. Interest, late charges, costs and attorneys' fees of any

such action, including the cost of filing the Lien Notice, shall be added to the amount of the Assessments due and shall be secured by the Assessment lien.

10.8. Subordination of Lien to Mortgages. The lien upon each of the Lots securing the payment of the Assessments shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on such Lots, (ii) liens and encumbrances recorded prior to this Declaration, and (iii) sums unpaid on and owing under any Mortgage recorded prior to the perfection of such lien, whether or not such sums are advanced before or after the filing of the Lien Notice as to such Assessments.

10.9. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments and liens created herein: (i) all property owned by Declarant except for any Lot owned by Declarant on which a Building has been constructed, in which case the Assessments shall commence on the first day of the month following the date on which the applicable Governmental Entity issues a certificate of occupancy (temporary or permanent) for the Building; (ii) all properties dedicated and accepted by a public authority; and (iii) all Common Areas. Collectively, the property referred to in items (i) - (iii) of the preceding sentence shall constitute the "Exempt Property."

ARTICLE XI
EASEMENTS

11.1. Utility Easements. Declarant hereby reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage, irrigation and other public or private conveniences or utilities, upon, in or over those portions of the Property (including Lots and Common Areas) as Declarant may consider to be reasonably necessary (the "Utility Easements"). However, except as herein provided, no Utility Easements shall be placed on the portion of a Lot on which is already located a Building which was approved by the Architectural Review Board or on which a Building is to be located pursuant to Plans approved by the Architectural Review Board. The Utility Easements shall include the right to cut and/or remove trees, bushes or shrubbery and such other rights as Declarant or the Governmental Entity or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements must be installed below ground level, except as otherwise provided in any Supplemental Declaration. Declarant shall have the right to convey or assign the benefit or use of Utility Easements to other Owners, to any Governmental Entity or utility companies, to the Association and to any other Person.

11.2. Erosion Control. Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or Common Area, either before or after any Improvement has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant deems necessary to prevent or correct soil erosion or siltation thereon or in connection with the water bodies, provided, however, that Declarant shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least five (5) days' prior notice

thereof (or such shorter notice as shall be appropriate in an emergency as determined by Declarant) and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by Declarant in undertaking such erosion control measures on any Lot, Common Area or water body shall become a Special Assessment upon the Lot owned by the Owner that Declarant deems responsible and shall constitute a lien against the Lot and shall be collectible in the manner provided herein for the payment of Assessments. This Section shall not apply to Lots owned by Declarant.

11.3. Maintenance of Lots. Declarant reserves the perpetual easement, right and privilege, to enter upon any Lot, after at least ten (10) days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and debris and taking such other action as Declarant may consider necessary to correct any condition which detracts from the overall beauty of the Property or which may constitute a hazard or nuisance. The cost incurred by Declarant in taking such action shall constitute a Special Assessment upon the Lot and shall be collectible in the manner provided herein for the payment of Assessments. This Section shall not apply to Lots owned by Declarant.

11.4. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplemental Declaration, until such time as the Class B membership terminates, Declarant shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs and (iii) conduct of sales and other promotional activities.

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

11.6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Declarant until such time as the Class B membership terminates, and thereafter to the Association, a non-exclusive easement over all Lots and Common Area for a distance of twenty (20) - thirty (30) feet as set forth and shown on the recorded plat(s) of subdivision of the Property behind any Lot line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

11.7. Easement for Use of Water Bodies and Irrigation. Declarant hereby reserves a perpetual easement and right to use the water bodies lying within the Common Areas for the purposes of irrigation of other Lots or parcels now, or in the future, owned by Declarant or third parties. Declarant may irrigate all or portions of such other Lots or parcels with water drawn from the water bodies lying within the Common Areas.

Declarant further retains: (i) the right to lay, install, construct and maintain an irrigation system, including underground irrigation lines, over all Common Areas or landscaping easement areas granted to Declarant or the Association for the purpose of providing irrigation to other Lots or parcels which may or may not be a part of the Property, and (ii) the right to enter onto Lots and the Common Areas to maintain the water bodies as may be necessary to ensure that all such water bodies continue to provide a sufficient source of water to satisfy the irrigation needs described in this section. Nothing described in this section shall impose any obligation on Declarant to maintain the water bodies located in the Common Areas after such obligation has been assumed by the Association or a third party.

Declarant shall have the right to transfer all or a portion of the rights retained by Declarant under this section to third parties.

11.8. Easement for Encroachment. Each Lot and the Common Area are hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a Building, or any other similar cause, and any encroachment due to Building overhang or projection. There shall be valid easements for the maintenance of such encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the willful act or acts with knowledge of such Owner or Owners. In the event a Structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor unintentional encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

ARTICLE XII ENFORCEMENT

12.1. Preventive Remedies. Declarant, the Association or any Owner may proceed at law or in equity to prevent the violation of this Declaration.

12.2. Enforcement Rights. Declarant, the Association or their duly authorized agents shall have the right, upon reasonable notice, at any time and from time to time following violation or breach of this Declaration (i) to enter upon any Lot to which such violation or breach exists and summarily to abate and remove, at the expense of the Owner thereof, any Structure, object or condition that may be or exist there contrary to the intent and meaning of this Declaration (including, without limitation, the care and maintenance of landscaping and lawns, care and maintenance of Improvements, removal of trash and debris, removal of dirt from streets resulting from construction activity and abatement of nuisances, removal or relocation of signs) and (ii) to institute a proceeding at law or in equity against the Persons who have violated or attempted to violate any of the provisions of this Declaration, to enjoin or prevent them from doing so, to cause the violation to be remedied and to recover damages for the violation. If, pursuant to this Section, the duly authorized agents of Declarant

or the Association enter upon any Lot for the purpose of abating or removing any violation or breach of this Declaration, neither the Person entering nor the Person directing the entry shall be deemed liable for any manner of trespass for such action, and the costs related to such abatement, including overhead, interest, late charges and costs of collection, shall become a Special Assessment upon such Lot and shall be secured by the Assessment lien provided for in this Declaration.

12.3. Cumulative Remedies. The remedies hereby specified are cumulative, and this specification shall not be deemed to preclude any aggrieved Person's resort to any other remedy provided hereunder or at law, in equity, or under any statute.

12.4. Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved Person to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by the Person of (or an estoppel of that Person to assert) any right available to him upon recurrence or continuance of such violation or the occurrence of a different violation, nor shall there be imposed upon Declarant or the Association a duty to take any action to enforce this Declaration.

12.5. Assignment of Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein contained (including, without limitation, the benefits of any reserved easements) may be specifically assigned by Declarant to any Person (including, without limitation, the Association), and upon any such Person consenting in writing to accept such assignment and assume such rights, powers and duties, such Person shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. No conveyance by Declarant of any part of the Property or any interest therein shall be deemed to be, or construed as, an assignment of any right or power reserved herein, unless such right, power or reservation is specifically transferred or assigned by Declarant. The term Declarant as used herein includes all such assignees, who are specifically assigned such rights, powers and reservations, and their successors and assigns. Any assignment or appointment made under this Section shall be recorded in the Clerk's Office. From and after the date Declarant assigns to another Person any of its obligations under this Declaration, Declarant shall be relieved of such obligations and released from all liability for the performance or non-performance thereof.

12.6. Constructive Notice and Acceptance. Each Owner, Occupant or other Person, by acceptance of a deed conveying title to a part of the Property, or the execution of a contract for the purchase thereof, or the acceptance of a lease or license therefor, or the taking possession thereof, whether from Declarant or other Owner or lessee, shall for himself, his successors and assigns, be deemed to (i) accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Declaration, and (ii) covenant, to and with Declarant, and the other Owners to keep, observe, comply with and perform the requirements of this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired said interest. Notwithstanding the foregoing, Owners, lessees, licensees, and Occupants agree to refer to this

Declaration in deeds, leases and licenses covering any portion of the Property and to make this Declaration binding upon all Owners, lessees, licensees and Occupants.

12.7. Waiver. Neither Declarant, the Architectural Review Board, the Association Board, the Association or any Member thereof, nor their successors or assigns shall be liable for damages to any Owner, lessee, licensee, or Occupant or a portion of the Property by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in the administration of the provisions of this Declaration or for the enforcement or failure to enforce this Declaration or any part thereof; and every Owner, lessee, licensee or Occupant, by acquiring an interest in the Property, agrees that he will not bring any action or suit against Declarant, or the Architectural Review Board, or Association Board, or any member thereof, from time to time, to recover any such damages or to seek equitable relief on account of their enforcement or nonenforcement of this Declaration.

ARTICLE XIII
DURATION AND AMENDMENT

13.1. Duration of Protective Covenants. This Declaration shall continue and remain in full force and effect at all times with respect to the Property and each part thereof (subject, however, to the right to amend as provided for herein) for a period of thirty (30) years from the date of recordation of this Declaration in the Clerk's Office and shall be automatically extended thereafter for successive periods of ten (10) years each, subject to termination by an amendment as provided below. Notwithstanding the foregoing, all easements reserved pursuant to Article XI shall be perpetual except to the extent that a shorter period is specified therein.

13.2. Amendment. This Declaration may be amended (i) by Declarant without the consent of any other Owners in order to correct typographical errors, inconsistent references, scrivener's errors, grammatical mistakes, or incorrect or ambiguous punctuation for so long as Declarant's Class B membership continues or (ii) by a vote of the sum of: (A) two-thirds (2/3) of the Class A votes (including Class A votes held by Declarant), plus (B) the Class B votes (if any). Notwithstanding the foregoing, the provisions of Articles III and XI and Sections 4.3, 7.6, 7.7, 9.4, 10.8, 12.2 and this Section 13.2 may not be amended without the written consent of Declarant for so long as Declarant owns any portion of the Property and regardless of whether the Class B membership has terminated and the provisions of Section 10.8 may not be amended without the written consent of all Mortgagees. In addition, Declarant, for so long as Declarant owns any portion of the Property and regardless of whether the Class B membership has terminated, shall have the right without the consent of any other Owners to amend this Declaration in order for this Declaration or the Property to comply with Laws now or hereafter enacted, to comply with any easements or agreements with third parties affecting the Property to satisfy the requirements, as the same may be amended from time to time, of any Federal Mortgage Agency (including, without limitation, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the U.S. Department of Housing and Urban Development) with respect to their purchase of mortgage loans

secured by property located within the adjacent residential planned communities known or to be known as "Burbage Grant" and "Harbour View."

ARTICLE XIV
MISCELLANEOUS

14.1. Variance. Declarant shall have the right to grant reasonable written variances from provisions of this Declaration or any portion hereof (including, without limitation, the provisions of Section 4.1), in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that such variances shall not, in the opinion of the Architectural Review Board, materially injure or adversely impact any of the real property or Improvements within the Property. No variance granted pursuant to the authority herein reserved shall constitute a waiver of any provisions of this Declaration as applied to any other Person or property.

14.2. Effect of Invalidation. If any provision of this Declaration is held to be invalid or unenforceable by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration, which shall continue unimpaired, in full force and effect and shall be construed to the fullest extent practicable as if such invalid or unenforceable provisions had not been included in this Declaration.

14.3. Notice.

(a) To Declarant. Any and all notices or other communication required or permitted by this Declaration or by law to be served on or given to Declarant shall be in writing and shall be deemed duly served and given when personally delivered, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, addressed to Declarant as follows:

with a copy to:

Harbourview Partners
5801 Harbour View Boulevard
Suffolk, Virginia 23435
Elizabeth L. White, Esq.
Kaufman & Canoles
11817 Canon Boulevard, Suite 408
Newport News, Virginia 23606

(b) To Owners. Notice to any Owner or Occupant holding under any Owner or to any Mortgagee shall be deemed duly served when personally delivered to the Person to whom it is directed, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first-class postage prepaid, certified or registered mail, return receipt requested, addressed to (i) the Owner at the address as shown in the applicable County or City tax records, or to

such other address as designated by the Owner, in writing to Declarant or the Association, as applicable; and (ii) to such Owner or Occupant's Mortgagee at the address as designated by the Mortgagee in writing to the Association and Declarant.

(c) Change of Address. For the purposes of this paragraph, Declarant may change its address by a notice of change of address to each Owner within the Property and to each Mortgagee requesting such notice of whose address Declarant has been notified in writing.

14.4. Interpretation. This Declaration shall be interpreted for the mutual benefit and protection of the Owners and Occupants of the Property and in furtherance of the basic goals of this Declaration. Any discrepancy, conflict or ambiguity which may be found herein shall be resolved and determined by Declarant or the Association Board (if Declarant's rights hereunder have been assigned to the Association) and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such resolution and determination shall be final.

14.5. Captions. The table of contents, paragraph headings and captions appearing in this Declaration are inserted only as a matter of convenience and for reference and in no way limit or otherwise affect the scope, meaning or effect of any provisions of this Declaration.

14.6. Run with Land. The covenants and restrictions of this Declaration shall run with and bind the Property and the Owners and Occupants thereof.

14.7. Governing Law. This Declaration and rights of the Owners of the land within the Property shall be governed by the laws of the Commonwealth of Virginia.

14.8 Rights of the City of Suffolk, Virginia.

(a) Failure of Association to Maintain Common Areas. In the event the Association, or any successor organization, shall at any time after establishment of the development fail to maintain the Common Areas or any improvements thereon in reasonable order and condition in accordance with the approved plans, the City of Suffolk, Virginia (the "City"), may serve notice in writing upon the Association and upon the Owners within the development setting forth the manner in which the Association has failed to maintain the Common Area, and/or improvements in reasonable condition, and such notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within fourteen (14) days after the notice.

(i) At such hearing the City may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.

(ii) If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within such thirty (30) days or any approved extension thereof, the City, in order to preserve the taxable values of the properties within the development and

to prevent the Common Areas and/or improvements from becoming a public nuisance, may, subject to budgetary limitations, enter upon such Common Areas and maintain, or contract for the maintenance of, the same for an initial period not to exceed one (1) year.

(iii) Such entry and maintenance shall not vest in the general public any rights to use the Common Areas except when the same is/are voluntarily dedicated to the public by the Owners.

(iv) Before the expiration of such one (1) year period, the City shall, upon its initiative or upon the request of the Association, call a public hearing upon two (2) weeks' notice in writing to the Association and to the Owners within such development, to be held by the City Council, at which hearing the abilities of the Association to resume maintenance responsibilities shall be assessed.

(v) If the City Council shall determine that the Association is ready and able to maintain the Common Areas in reasonable condition, the City shall cease to maintain the Common Areas.

(vi) If the City Council shall determine that the Association is not ready and able to maintain the Common Areas in a reasonable condition, the City may, in its discretion, continue to maintain or contract for the maintenance of, the Common Areas.

(vii) The cost of such maintenance by the City and all associated administrative costs by the City shall be assessed ratably against the properties within the development that have a right of enjoyment of the Common Areas and shall become a charge on such properties, and may be collected by the City as taxes and levies are collected.

(b) The City and its duly authorized representatives shall have the right, upon reasonable notice and during the Association's business hours, to review the Association's financial and related records at the offices of the Association for the purpose of ensuring the Association's solvency and capacity to maintain the Common Areas and any improvements located thereon.

IN WITNESS WHEREOF the undersigned have caused this Declaration to be executed on their behalf by their duly authorized representatives as of the date and year first above written.

HARBOURVIEW PARTNERS, an Illinois general partnership

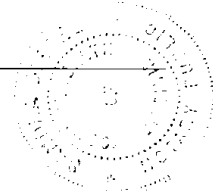
By: JORMAN, INC., an Illinois corporation, General Partner

By: [Signature]
Title: CHAIRMAN

STATE OF VIRGINIA
CITY/COUNTY OF SUFFOLK, to-wit:

The foregoing instrument was acknowledged before me in SUFFOLK, VIRGINIA, this 13th day of JANUARY, 1998, by JOHN E. GERMAN, CHAIRMAN of Jorman, Inc., an Illinois corporation, General Partner of Harbourview Partners, an Illinois general partnership, on its behalf.

[Signature]
Notary Public



My commission expires: 1-31-2001

[AFFIX SEAL]

INSTRUMENT #98000318
RECORDED IN THE CLERK'S OFFICE OF
SUFFOLK ON
JANUARY 13, 1998 AT 01:35PM
HENRY C. MURDEN, CLERK

BY: [Signature] (DC)

BOOK 565 PAGE 714

EXHIBIT A

**To Declaration of Protective Covenants
for Harbour View Commerce Center**

Description of the Property

All those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the Sleepy Hole Borough of the City of Suffolk, Virginia, and known, numbered and designated as Parcel 1, Harbour View Business Park as shown on that certain plat entitled "SUBDIVISION OF PARCEL 1 HARBOUR VIEW BUSINESS PARK, SLEEPY HOLE BOROUGH - SUFFOLK, VIRGINIA", dated August 8, 1997, made by Rouse ~ Sirine Associates, Ltd., and duly recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia (the "Clerk's Office") in Plat Cabinet 2, at Slides 57-A and 57-B.

BOOK 565 PAGE 715

EXHIBIT B

To Declaration of Protective Covenants
for Harbour View Commerce Center

Description of Additional Land



BOOK 565 PAGE 716
EXHIBIT C

**to Declaration of Protective Covenants
for Harbour View Commerce Center**

Permitted Uses

The following uses shall be the "Permitted Uses" for the purpose of the Declaration to which this Exhibit is attached:

The property may be used for any use which is unconditionally permitted under the current B-2 zoning classification of the Suffolk Zoning Ordinance without any requirement for a use permit, without the prior written approval of Declarant or its successors or assigns.

90006891.08