

THIS SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS, made this 1<sup>st</sup> day of ~~January~~<sup>February</sup>, 1990, by POTOMAC VALLEY PROPERTIES, INC., a corporation, hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, by a Deed of Declaration of Conditions, Covenants, Restrictions, and Easements, dated April 9, 1976, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 297, at page 1, (hereinafter called "Deed of Declaration"), the Declarant subjected certain real property known as "Stage I, Section 2 of 'The Wood Subdivision' and 'The Woods Road'" to all of the rights, reservations, restrictions, covenants, conditions, easements, rights-of-ways, liens, charges and assessments more fully set forth in said Deed of Declaration; and

WHEREAS, said Deed of Declaration provided in Article II(a) thereof that additional lands could be annexed by the Declarant to such Subdivision with the consent of the majority of each class of members; and

WHEREAS, said Deed of Declaration provided in Article II(c) that authorized additions shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions which such Supplementary Declaration may contain such complimentary additions and modifications of the Covenants and Restrictions contained in the Deed of Declaration as may be necessary to reflect the different character, if any, of the added properties, and as are not inconsistent with the scheme of the Deed of Declaration; and

WHEREAS, the Declarant desires at this time to annex additional land and to extend the scheme of the Covenants and Restrictions of said Deed of Declaration, AS HEREINAFTER AMENDED; to said additional property as hereinafter described; and

WHEREAS, the Declarant submitted to The Association and its members a general outline plan of a possible Lot development plan for sale of additional lands adjacent to The Woods Subdivision (more fully hereinafter described) in a staged manner for vacation, retirement, and primary residential purposes in conjunction with the development of a golf course and other recreational amenities with all recreational facilities to be retained and privately owned by the Declarant; and

WHEREAS, The Members of The Association, at a meeting of The Association held on November 29, 1986 for that purpose and after due and proper notice, considered the general outline plan and the proposed staged annexation of the real estate hereinafter described; and

WHEREAS, The Members of The Association at said meeting of November 29, 1986, upon proper ballot, did by a vote of three hundred forty-two (342) in favor of and twenty-two (22) against, overwhelmingly consent to the staged annexation of the real estate hereinafter described and did further grant unto The Board of Directors of The Association the authority to take whatever actions, including but not limited to, approval of final plans, details and Supplementary Declarations of Covenants as are required to give effect to such resolution and to such annexation; and

WHEREAS, the Declarant by a Special May, 1987 Supplementary Declaration dated May 30, 1987 and recorded in the aforesaid Clerk's office in Deed Book No. 402, at page 509, established the terms, conditions, covenants and restrictions for the lands hereinafter described and The Association by its signature thereto appended did establish a public record of its consent to the annexation to the lands hereinafter described and to the terms, covenants, and conditions of the Special May, 1987 Supplementary Declaration; and

WHEREAS, said Special May, 1987 Supplementary Declaration, amended the Deed of Declaration by adding to Article II, a new paragraph "f" entitled Properties Added by consent of a vote of the Homeowners Association of November 26, 1986; and

WHEREAS, said paragraph "f" of Article II of the amended Deed of Declaration provided that additional land could be annexed by the Declarant to such subdivision without the additional consent of The Association or its members by the recordation of a Supplementary Declaration; and

WHEREAS, the Declarant desires at this time to annex a portion of the lands described in Sub-paragraph "f"(1) of Article II of the Deed of Declaration as amended by the Special May, 1987 Supplementary Declaration and to extend the scheme of covenants and restrictions of the Deed of Declaration as amended by the Special May, 1987 Supplementary Declaration, including but not being limited to extending the jurisdiction of The Association to cover the real estate hereinafter described; and

WHEREAS, Article XXVIII of the Special May, 1987 Supplementary Declaration authorizes and permits the Owners of any group of Lots to submit such Lots to a Cluster Declaration; and

WHEREAS, the Declarant desires in submitting the real estate herein described to further submit and subject said real estate to a Cluster Declaration.

NOW, THEREFORE, the Declarant declares that all of the real property, including, but not being limited to, all of the lots and roads known as Section 13 of 'The Woods Subdivision', as more fully shown upon a plat thereof prepared by P. C. DiMagno, Engineers and Surveyors, dated the 9th day of November, 1989, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, immediately preceding this Supplementary Declaration of Conditions, Covenants, Restrictions

and Easements in Plat Cabinet No. 3, at Slides 1984199, which plat is hereby incorporated herein by reference, is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Restrictions, Easements, Charges, Assessments and Liens (sometimes referred to as "Covenants and Restrictions") set forth in that certain Declaration of Conditions, Covenants, Restrictions and Easements heretofore executed by Potomac Valley Properties, Inc., a corporation, the Declarant, dated April 9, 1976, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 297, at page 1, AS AMENDED BY THAT CERTAIN SPECIAL MAY, 1987 SUPPLEMENTARY DECLARATION, dated May 30, 1987, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia in Deed Book No. 402, at page 509, all of said easements, reservations, rights-of-way, restrictions, covenants, conditions, rights, obligations, liens and assessments set forth in said Deed of Declaration as amended by the Special May, 1987 Supplementary Declaration, being hereby incorporated herein by reference as if the same were set forth verbatim, and as further supplemented by that certain Cluster Declaration for Fishhook Lane Cluster, more fully hereinafter set forth.

The above described Easements, Rights-of-way, Covenants, Conditions, Rights, Obligations, Reservations, Liens and Assessments are for the purpose of protecting the values and amenities of Section 13 of 'The Woods Subdivision' and for the purpose of preserving certain rights-of-way and easements and shall run with the real property and be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

AND FURTHER THEREFORE, the Declarant declares that the real estate hereinbefore described as Section 13, of 'The Wood

Subdivision' is and shall be held, transferred, sold, conveyed, occupied and used subject to the provisions hereinafter set forth in this Cluster Declaration for Fishhook Lane Cluster, which provisions shall be in addition to and not in elimination of the provisions contained in the Declaration.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Cluster Declaration, the Plat and any grant deed to a Cluster Lot shall have the meanings specified in this Article.

1 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of The Woods Homeowners Association, Inc., as amended, which are filed in the Office of the Secretary of State of West Virginia.

1.2 ASSOCIATION: The term "Association" shall mean THE WOODS HOMEOWNERS ASSOCIATION, INC., its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of West Virginia.

1.3 BOARD: The term "Board" shall mean the Board of Directors of the Association.

1.4 BY-LAWS: The term "By-Laws" shall mean the By-Laws of the Association and any amendments thereto.

1.5 COMMON AREA: The term "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners as reflected on the Plat or Plats of The Properties subject to the Declaration, as amended, including the roads, parking areas, wells, pumping stations and central water system distribution system and sewer treatment plant, and collection system and the area surrounding the same as delineated on the Plat or Plats of The Properties.

1.6 CLUSTER: The term "Cluster" shall mean the Cluster of Fishhook Lane located in The Woods Subdivision, being all of the real property subject to the Cluster Declaration of which the initial Cluster is a part.

1.7 CLUSTER ARCHITECTURAL REVIEW COMMITTEE: The term "Cluster Architectural Review Committee" shall mean the Cluster Architectural Review Committee established pursuant to Article X of this Cluster Declaration.

1.8 CLUSTER ARTICLES: The term "Cluster Articles" shall mean the Article of Incorporation of the Fishhook Lane Cluster Association, Inc.

1.9 CLUSTER ASSESSMENTS: The term "Cluster Assessments" shall mean the assessments levied by the Cluster Association pursuant to Article IX of this Cluster Declaration.

1.10 CLUSTER ASSOCIATION: The term "Cluster Association" shall mean Fishhook Lane Cluster Association, Inc. as defined in this Cluster Declaration.

1.11 CLUSTER BOARD: The term "Cluster Board" shall mean the Board of Directors of the Cluster Association established under Article III of the Cluster Declaration and elected and acting pursuant to the Cluster Documents.

1.12 CLUSTER BY-LAWS: The term "Cluster By-Laws" shall mean the By-Laws for the Cluster Association duly adopted by the Cluster Board.

1.13 CLUSTER COMMON AREA: The term "Cluster Common Area" shall mean all real property in which the Cluster Association owns an interest for the common use and benefit of the Cluster Members, their lessees, guests, invitees or patrons, including the tennis court. The Cluster Common Area may include interests held by lease or easement as well as estates in fee.

1.14 CLUSTER DOCUMENTS: The term "Cluster Documents" shall mean the Cluster Declaration, the Cluster By-Laws, the

Cluster Articles, the Cluster Rules and the Rules promulgated by the Cluster Architectural Committee.

1.15 CLUSTER DECLARATION: The term "Cluster Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the Cluster of Fishhook Lane to be recorded in the Official Records of the Berkeley County, State of West Virginia, as amended.

1.16 CLUSTER IMPROVEMENTS: The term "Cluster Improvements" shall mean buildings, facilities, streets, driveways, fences, walls, tennis courts, and other structures and all landscaping constructed or to be constructed upon property subject to this Cluster Declaration.

1.17 CLUSTER LIVING UNIT: The term "Cluster Living Unit" shall mean and refer to any portion of a building situated upon the Cluster Properties designed and intended for use and occupancy as a residence by a single family.

1.18 CLUSTER LOT: The term "Cluster Lot" shall mean Lots 101 through 108, 201 through 206, 301 through 308, 401 through 406, 501 through 506, 601 through 604, 701 through 706, 801 through 806, 901 through 906 and 1001 through 1006, inclusive, as shown on the Plat or Plats and all Improvements thereon. The term "Cluster Lot" shall also mean those portions of the Additional Property described as Lots in a Supplementary Cluster Declaration of Annexation for a particular Phase.

1.19 CLUSTER MEMBER: The term "Cluster Member" shall mean a Cluster Owner.

1.20 CLUSTER OWNER: The term "Cluster Owner" shall mean the holder of record fee title to a Cluster Lot, including Declarant as to each Cluster Lot owned by Declarant. If more than one person owns a single Lot, the term "Cluster Owner" shall mean all Owners of that Lot. The term "Cluster Owner" shall also mean a contract purchaser (vendee) under an installment land

contract but shall exclude any person having an interest in a Lot merely as security for performance of an obligation.

1.21 CLUSTER PROPERTIES: The term "Cluster Properties" shall mean and refer to that certain real property hereinbefore described as Section 13 of "The Woods Subdivision" and such additions thereto as made hereafter be brought within the jurisdiction of the Cluster Association.

1.22 CLUSTER RULES: The term "Cluster Rules" shall mean the Rules adopted by the Cluster Board pursuant to Section 3.4h of the Cluster Declaration.

1.23 COUNTY: The term "County" shall mean the County of Berkeley, State of West Virginia.

1.24 DECLARANT: The term "Declarant" shall mean Potomac Valley Properties, Inc., a corporation. The term "Declarant" shall also mean successors in interest of Declarant if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in The Properties and/or the Additional Property for the purpose of development and/or sale and (ii) a certificate has been recorded in the County in which the successor(s) in interest assume the rights and duties of Declarant to the portion of The Properties and/or the Additional Property so acquired. There may be more than one Declarant.

1.25 DECLARATION: The term "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of The Woods Subdivision, dated April 9, 1975, and recorded in the office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book No. 297, at page 1, and any amendments thereto, including particularly but not limited to The Special May, 1987 Supplementary Declaration, dated May 30, 1987, and recorded in the aforesaid Clerk's office in Deed Book No. 402, at page 509.



1.26 INVITEE: The term "Invitee" shall mean any person whose presence within the Cluster is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Cluster Owners, tenants or lessees.

1.27 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Cluster Lot.

1.28 MORTGAGEE: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as beneficiary under a deed of trust.

1.29 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives a Cluster Owner notice of an alleged violation of the Cluster Documents and the opportunity for a hearing before the Cluster Board.

1.30 PROPERTIES: The term "Properties" sometimes inadvertently referred to as "The Properties" shall mean and refer to all such real property and such additions thereto as may have heretofore or may hereafter be brought within the jurisdiction of the Association.

1.31 PROPERTIES DOCUMENTS. The term "Properties Documents" shall mean the Declaration, the Association Articles, the Association By-Laws and the Association Rules.

## ARTICLE II

### RELATIONS OF THE ASSOCIATION AND THE CLUSTER ASSOCIATION

2.1 ASSOCIATION RESPONSIBILITIES FOR COMMON AREA. The Association shall have the affirmative and perpetual duty and obligation to provide for the maintenance, management, preservation, administration and operation of all Common Area within any Cluster Properties, in accordance with the terms of the Declaration and the Articles of Incorporation, By-Laws and Rules of the Association, including but without limitation, maintenance, and snow removal of and on all streets, curbs

(exclusive of curbs which are the side of and apart of sidewalks), gutters and parking areas, and water and sewer lines and the provision of security and trash removal.

2.2 CLUSTER ASSOCIATION RESPONSIBILITY FOR CLUSTER COMMON AREA. The Cluster Association shall have the affirmative and perpetual duty and obligation to provide for the maintenance, management, preservation, administration and operation of all Cluster Common Area within any Cluster Properties, in accordance with the terms of this Cluster Declaration and the Articles of Incorporation, By-Laws and Rules of the Cluster Association, including but without limitation, the maintenance and operation of all tennis courts, sidewalks, street lights, grass and green strips and all open areas within the Cluster Properties. In addition, the Cluster Association will be responsible for and provide for the Architectural Review function within the Cluster Properties and shall provide for all exterior maintenance and landscaping of the Cluster Lots and Cluster Living Units.

2.3 Wherever in this Cluster Declaration, the permission of the Board or Cluster Board or their respective agencies is required, the Board shall give permission only with reference to those matters and items under its management, administration and control and the Cluster Board shall give its permission only on those matters under its management, administration and control.

2.4 In the event the Cluster Association fails to fulfill its duties and responsibility to assess, levy and collect assessments as hereinafter provided, and/or to expend reasonable sums therefrom to properly maintain, repair or restore Common Areas or Cluster Common Areas or to fulfill reasonable and necessary exterior maintenance and landscaping of the Cluster Properties, the Association may assume the duty, obligation, responsibility and authority to perform all such functions and acts.

ARTICLE III

THE CLUSTER ASSOCIATION

3.1 ORGANIZATION:

(a) The Cluster Association (Fishhook Lane Cluster Association, Inc.) is a non-profit West Virginia Corporation charged with the duties and vested with the powers described by law and set forth in the Cluster Articles, Cluster By-Laws and this Cluster Declaration. Neither the Cluster Articles nor the Cluster By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Cluster Declaration. In the event of any such inconsistency the provisions of this Cluster Declaration shall prevail. The officers and directors of the Cluster Association shall be required to be either (i) members of the Cluster Association, or (ii) officers, directors, agents, representatives or employees of the Declarant or a successor to the Declarant.

(b) A Board of Directors of the Cluster Association and such officers as the Cluster Board may elect or appoint, shall conduct the affairs of the Cluster Association in accordance with the Cluster Documents.

3.2 MEMBERSHIP: Every person or entity who is a record owner of a fee or undivided fee interest in any Cluster Lot which is subject to this Cluster Declaration or which is in an addition authorized by this Cluster Declaration and subject to a properly recorded Supplementary Cluster Declaration of Covenants and Restrictions shall be a member of the Cluster Association; provided that any such person or entity who holds such an interest merely as a security for the performance and obligation shall not be a member and further provided that all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and all Common Areas and Cluster Common Areas and all

properties exempted from taxation by the laws of the State of West Virginia shall not be a member.

(b) Member's Rights and Duties. Each member shall have the rights, duties and obligations set forth in the applicable Cluster Documents.

(c) Transfer of Membership. Cluster Association Membership of each Cluster Owner shall be appurtenant to the Cluster Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Cluster Lot and then only to the transferee of title to such Cluster Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Cluster Lot shall operate automatically to transfer the membership in the Association appurtenant thereto be in the Cluster Association to the new Cluster Owner thereof.

3.3 Voting Rights of Members - Class of Members.

(a) Classes of Members. The Cluster Association shall have one class of voting membership.

(b) Each Cluster Member, including the Declarant, shall be entitled to one (1) vote for each Cluster Lot in which they hold the interest required for membership. When more than one (1) person holds such interest or interests in any Cluster Lot, all such persons shall be members, and the vote for such Cluster Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Cluster Lot.

3.4 Duties of the Cluster Association. The Cluster Association shall in addition to such obligations, duties and functions as are assigned to it by other provisions of this Cluster Declaration have the obligations, duties and functions (subject to the provisions of this Cluster Declaration), to do

and perform each and every of the following for the benefit of the Cluster Owners and for the maintenance, administration and improvement of the Cluster Properties.

(a) Annexed Lands. Accept as part of the Cluster Properties all real estate annexed pursuant to Article VI of this Cluster Declaration and accept all Cluster Owners thereof as Members of the Cluster Association subject to the membership requirements set forth herein and in the Cluster By-Laws.

(b) Enforcement. Take such action, whether or not expressly authorized herein or in any other governing instrument as may reasonably necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Cluster Declaration and the other Cluster Documents.

(c) Operation and Maintenance of Cluster Common Area. To operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Cluster Common Area, together with all easements for operation and maintenance purposes and for the benefit of the Cluster Association or its Members over and within the Cluster Common Area; to keep all improvements of whatever kind and for whatever purpose for time to time located thereon in good order, condition and repair and to maintain any tennis courts, sidewalks and green, wooded or open area free and clear of obstruction and in a safe condition at all times.

(d) Exterior Maintenance of Cluster Lots and Cluster Living Units. To operate, maintain and otherwise provide the exterior maintenance upon each Cluster Lot and each Cluster Living Unit which is located within the Cluster Properties and is subject to assessment under the terms of this Cluster Declaration as follows: paint, repair, replace and care for roofs, gutters,

down spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

(e) Water and Other Utilities. To acquire, provide and/or pay for water, sewer, garbage disposal, electrical, telephone and gas and other necessary utility services for the Cluster Common Area and any exterior maintenance upon each Cluster Lot and each Cluster Living Unit.

(f) Taxes and Assessments. To pay all real and personal property taxes and assessments (if any) separately levied upon or assessed against any of the Cluster Association Property.

(g) Insurance. To obtain and maintain insurance as provided for by either the Cluster By-Laws or any Cluster Declaration.

(h) Rule Making. To make, establish, promulgate, amend and repeal the Cluster Association Rules.

(i) Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Cluster Declaration as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Cluster Declaration and the Cluster Association Rules.

Section 3.5 Powers and Authorities of the Cluster Association. The Cluster Association shall have all of the powers of a non-profit corporation organized under the Non-profit Corporation Law of the State of West Virginia subject only to such limitations upon the exercise of such powers as are expressly set forth in the Cluster Articles, the Cluster By-Laws or this Cluster Declaration. The Cluster Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Cluster Association under this Cluster Declaration, the Cluster Articles and the Cluster By-Laws, and to do and perform any and all acts

which may be necessary and proper for or incidental to the exercise of any of the express powers of the Cluster Association, including the following which are listed without intent to limit the foregoing articulation:

(a) Assessments. To levy assessments on the Cluster Owners of Cluster Lots and Cluster Living Units and to enforce payment of such assessments, all in accordance with the provisions of this Cluster Declaration.

(b) Right of Enforcement. In its own name, on its own behalf or on behalf of any Cluster Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach with written or threatened breach of the Properties Document or Cluster Documents and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

(c) Easements and Rights of Way. To grant and convey to any third party easements and rights of way in, on, over or under the Cluster Common Area for the purposes of constructing, erecting, operating or maintaining thereon, therein or thereunder (1) underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio antenna facilities and for other appropriate purposes, (2) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and (3) any similar public or quasi-public improvements or facilities.

(d) Employment of Manager and Employees. To employ the services of any person or corporation as Manager, together with employees, to manage, conduct, and perform the business, obligations and duties of the Cluster Association as may be directed by the Cluster Board and to enter into contract for such purposes. Such Cluster Manager and employees shall have the

right to ingress and egress over such portion of the Cluster Properties is as reasonably necessary for the purpose of performing such business, duties and obligations.

(e) Right of Entry. Without liability to any Cluster Owner of any Cluster Lot or Cluster Living Unit, to cause its agents, independent contractors or employees after reasonable notice to enter upon any Cluster Lot or Cluster Living Unit for the purpose of enforcing any and all the provisions of the duties, obligations, powers and authorities of the Cluster Association as reasonably required to promote and protect the general health, safety and welfare of the residents and users of the Cluster Properties.

(f) Operation and Maintenance of Cluster Common Area and Fulfillment of Exterior Maintenance. To do all things and take all actions reasonable and necessary to operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Cluster Common Areas green, wooded or open areas, and to provide exterior maintenance and landscaping upon each Cluster Lot and Cluster Living Unit.

#### ARTICLE IV

##### OWNERSHIP AND EASEMENTS

###### 4.1 NON-SEVERABILITY:

4.1.1 No Separate Conveyance: The interest of each Cluster Owner in the use and benefit of the Common Area and Cluster Common Area shall be appurtenant to the Cluster Lot owned by the Owner. No Cluster Lot shall be conveyed by the Owner separately from the interest in the Common Area and Cluster Common Area. Any conveyance of any Cluster Lot shall automatically transfer the right to use the Common Area and Cluster Common Area without the necessity of express reference in the instrument of conveyance.



4.1.2 No Judicial Partition: There shall be no judicial partition of the Common Area or Cluster Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and Cluster Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment.

4.2 OWNERSHIP OF LOTS: Title to each Cluster Lot improved by a townhouse or similar style Living Unit, together with any Cluster Living Unit thereon shall be conveyed together as one in fee to a Cluster Owner.

4.3 OWNERSHIP OF COMMON AREA: Title to the Cluster Common Area, in each Phase of the Project shall be conveyed to the Cluster Association within two years of the date of conveyance of the first Cluster Lot in that particular Phase to an Cluster Owner.

4.4 OWNERSHIP OF PARTY FENCES: Any fence or boundary wall (other than the wall of a Living Unit) originally constructed and placed upon a common lot boundary line, shall be a "party fence". The Cluster Owner of a Cluster Lot upon which a party fence is situated shall own to the center of the party fence.

4.5 EASEMENTS: The ownership interests in the Cluster Common Area and Cluster Lots and Cluster Living Units described in this Article are subject to the easements granted and reserved in the Declaration and in this Cluster Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Cluster Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Cluster Owners and their Cluster Lots and Cluster Living Units superior to all other encumbrances

applied against or in favor of any portion of the Project. Individual grant deeds to Cluster Lots and Cluster Living Units may, but shall not be required to, set forth the easements specified in this Article.

4.5.1 Easements on Map: The Cluster Common Area and Cluster Lots and Cluster Living Units are subject to the easements and rights of way shown on the Plat or Plats of the Cluster Properties.

4.5.2 Easements for Common Area: Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Cluster Common Area which shall be appurtenant to and shall pass with the title to every Cluster Lot and Cluster Living Unit, subject to the following provisions:

(a) The right of the Cluster Board, after Notice and Hearing, to suspend a Cluster Owner's right to use any recreational facilities.

(b) The right of the Cluster Association to dedicate and/or grant easements over all or any portion of the Cluster Common Area.

4.5.3 Utilities: There are reserved and granted for the benefit of each Cluster Lot and Cluster Living Unit, as dominant tenement, over, under, across and through the Cluster Properties (including the Cluster Common Area and each other Cluster Lot and Cluster Living Unit), as the servient tenement, non-exclusive easement for utility services.

4.5.4 Encroachment: There are reserved and granted for the benefit of each Cluster Lot and Cluster Living Unit, as dominant tenement, over, under and across each other Cluster Lot, Cluster Living Unit and Cluster Common Area, as servient tenements, and for the benefit of the Common Area and Cluster Common Area, as dominant tenements, over, under and across each Cluster Lot and Cluster Living Unit, as servient tenement, non-

exclusive easements for encroachment, support, occupancy and use of such portions of Cluster Lots, Cluster Living Units and/or Common Area and/or Cluster Common Area as are encroached upon, used and occupied by the dominant tenements as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Properties and/or Cluster Properties is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching Improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association, the Cluster Association or any Cluster Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

4.5.5 Support, Maintenance and Repair: There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and Cluster Common Area and to all other Cluster Lots and Cluster Living Units, as dominant tenements, through each Cluster Lot, Cluster Living Unit and the Common Area and Cluster Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and Cluster Common Area and all Cluster Lots and Cluster Living Units.

4.5.6 Easement to Declarant For Adjoining Property: Declarant shall have, and hereby expressly reserves, an easement over and across the Common Area and Cluster Common Area, as servient tenement, for the purposes of reasonable ingress to and egress from, over and across the Properties and Cluster Properties, including private roads and pathways, to the

Additional Property until all of the Additional Property is annexed to the Project, and as otherwise set forth in the Declaration.

4.5.7 Annexation Of Additional Property: Upon the recordation of a Supplementary Cluster Declaration of Annexation, the Cluster Lots and Cluster Living Units and the Owners of Cluster Lots and Cluster Living Units in the annexed Phase shall have all of the easements specified in this Article and the Cluster Lots, Cluster Living Units and the Cluster Owners of Cluster Lots and Cluster Living Units in the Cluster Properties prior to the annexation shall have all of the easements specified in this Article as through the annexed Phase were initially a part of the Cluster Properties.

4.5.8 Additional Easements: Notwithstanding anything expressly or impliedly to the contrary, this Cluster Declaration shall be subject to all easements granted and/or reserved by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of The Properties and the Cluster Properties.

4.5.9 Association's Easements: There are hereby reserved to the Association and the Cluster Association and their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association and the Cluster Association set forth in The Properties Documents and the Cluster Documents, including without limitation and subject to Section 4.5.11 the right to enter upon Lots.

4.5.10 Party Fences: Each Cluster Owner of a Cluster Lot containing a party fence and the Cluster Lot upon which such party fences is located shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Cluster Lot as is necessary to maintain such fence.

4.5.11 Easements to the Declarant, Association and Cluster Association: There are hereby granted to the Declarant, Association and the Cluster Association, and their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association and the Cluster Association as set forth in the Properties Documents and/or the Cluster Documents and the rights of the Declarant. Specifically, but without limiting the generality of the foregoing, there are hereby reserved and granted to Declarant, to the Cluster Association and to the Association easements over the Cluster Lots and Cluster Living Units, Common Area and Cluster Common Area within the Properties and Cluster Properties for the Cluster communication system, the Cluster pedestrian circulation system, utility line facilities, ingress and egress rights for the benefit of the Association and the Cluster Association in order for it to carry out its functions and duties and rights as set forth in the Declaration and the Cluster Declaration, and access rights in favor of all applicable municipal agencies for the maintenance, repair and enforcement of their applicable duties or obligations with respect to the Properties and the Cluster Properties. In order to effectuate its duties and responsibilities, inclusive, the Board may enter any Cluster Lot or Cluster Living Unit whenever entry is necessary in connection with the performance of any maintenance or construction which the Cluster Board is authorized to undertake. Entry shall be made with as little inconvenience to a Cluster Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

4.5.12 Maintenance of Living Units: There is reserved and granted to the Cluster Owner of each Cluster Lot and Cluster Living Unit and the Cluster Association, as tenement,

over and across each adjacent Cluster Lot and Cluster Living Unit, as servient tenement, a non-exclusive easement to enter the servient tenement upon reasonable notice to the Cluster Owner of the servient tenement and at reasonable times for the purpose of maintaining portions of the Living Unit located on the dominant tenement, including walls, eaves, overhangs and appurtenances thereto adjacent to the servient tenement. Entry on the servient tenement shall be at times reasonably convenient to the Cluster Owner of the servient tenement and shall be limited solely for purposes of the maintenance or repair of the Living Unit on the dominant tenement. Such entry and maintenance shall be undertaken in such a manner as to protect the security of the servient tenement and all Improvements thereon. The Cluster Owner of the dominant tenement and Cluster Association shall be responsible for seeing that no damage is caused to the Cluster Owner of the servient tenement of his property by reason of the entry, and that the servient tenement is cleaned and left in the same condition following the entry as prior thereto.

#### ARTICLE V

##### USES AND RESTRICTIONS

5.1 USE AND OCCUPANCY OF LOTS AND LIVING UNITS: Each Cluster Lot and Cluster Living Unit shall be used solely for residential and related recreational purposes. No other use shall be allowed.

5.2 RENTAL OF CLUSTER LOTS AND CLUSTER LIVING UNITS: An Owner shall be entitled to rent or lease his Cluster Lot and Cluster Living Unit if:

5.2.1 There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Properties Documents and Cluster Documents and (ii) a failure to comply with any provision of the aforesaid Documents shall constitute a default under the agreement; and

5.2.2 The Cluster Owner keeps in their Living Unit a copy of the Properties Documents and the Cluster Documents.

5.3 ANIMALS: The Cluster Board shall specifically have the right to prohibit the maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Cluster Owners.

5.4 USE OF COMMON AREA: All use of the Common Area and Cluster Common Area is subject to the Rules and Cluster Rules. There shall be no use of the Common Area and Cluster Common Area except by Cluster Owners and their Invitees. All persons residing within the Properties may enjoy the use of all facilities in the Common Area and Cluster Common Area as long as they abide by the terms of the Properties and Cluster Documents. There shall be no obstruction of any part of the Common Area and Cluster Common Area. Nothing shall be stored or kept in the Common Area or Cluster Common Area without the prior consent of the Board or Cluster Board. No alteration or additions to Common Area or Cluster Common Area shall be permitted without the approval of the Board or Cluster Board. Nothing shall be done or kept in the Common Area or Cluster Common Area which will increase the rate of insurance on the Common Area or Cluster Common Area without the prior written consent of the Board or Cluster Board. No Owner shall permit anything to be done or kept in the Common Area or Cluster Common Area which might result in the cancellation of the insurance on any part of the Common Area or Cluster Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area or Cluster Common Area.

5.5 PARKING: Vehicles shall not be parked anywhere in the Cluster Properties except wholly within designated Parking Areas. All Parking Areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat, trailer, camper, golf cart, commercial vehicle, mobile home, other recreational vehicle or dilapidated vehicle shall be parked or stored in any Parking Area. No part of the Common Area or Cluster Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Cluster Board or the Board may cause the removal of any vehicle which is in violation of this Cluster Declaration. The Cluster Board shall assign one parking space to each Cluster Lot with Living Unit.

5.6 SIGNS: All signs displayed in the Cluster Properties shall be attractive and compatible with the design of the Cluster Properties and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Cluster Lot, Cluster Living Unit, Cluster Common Area or the Common Area in the Properties and Cluster Properties shall be as follows:

5.6.1 One (1) sign of reasonable dimensions may be placed on a Cluster Lot or Cluster Living Unit advertising the Cluster Lot or Cluster Living Unit for sale or rent;

5.6.2 Signs may be displayed by Declarant on Common Area, Common Cluster Area, unsold Cluster Lots or unsold Cluster Living Units, as Declarant deems appropriate, advertising Cluster Lots or Cluster Living Units owned by Declarant for sale or rent;

5.6.3 Appropriate signs may be displayed by the Association or Cluster Association to identify the Properties or Cluster Properties; and



5.6.4 Signs required by legal proceedings may be displayed.

5.7 STORAGE OF WASTE MATERIALS AND OTHER MATTER: All garbage, trash and accumulated waste materials shall be placed in interior individual trash containers or receptacles. If trash pickup is ever provided, the containers may be placed where visible only on the days of the week that trash pick-up is to occur. Exterior storage of fire wood and other matter shall be in compliance with the Cluster Rules established by the Cluster Board.

5.8 ANTENNAS: Except for those erected or constructed by Declarant or installed by a licensed public or quasi-public utility or cable franchise or whose erection or construction is approved by the Board, no outside television antenna, aerial or radio tower shall be erected, constructed or placed on any Cluster Lot or Cluster Living Unit.

5.9 INVITEES: Each Cluster Owner shall be responsible for compliance with the provisions of the Properties Documents and Cluster Documents by his Invitees. A Cluster Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against such Cluster Owner for violations committed by his Invitee.

5.10 WINDOW COVERINGS: All drapes, window shades or other window coverings installed in the windows of Living Units which are visible from the exterior of the Unit shall comply with the Cluster Rules, if applicable. Any drapes or other window covering installed in compliance with the Cluster Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after close of escrow for the Cluster Living Unit.

5.11 MINERAL EXPLORATION: No Cluster Lot shall be used to explore for or to remove any water, oil, hydrocarbons or minerals

of any kind without the approval of the Cluster Board and only if permitted by local ordinances.

5.12 MACHINERY AND EQUIPMENT: No machinery or equipment of any kind shall be maintained or operated upon any Cluster Lot or Cluster Living Unit except as is customary and necessary in connection with approved construction without the approval of the Cluster Board.

5.13 DRAINAGE: Each Cluster Owner hereby covenants and agrees for himself, his heirs, assigns, vendees and successors in interest that he will refrain from interference with the established drainage pattern over his Cluster Lot or Cluster Living Unit from adjoining or other Cluster Lots or Cluster Living Units, and make adequate provision for proper drainage from any such other Cluster Lot or Cluster Living Unit in the event the established drainage over his Cluster Lot or Cluster Living Unit is changed or altered. Declarant shall have the irrevocable right to enter into, upon, over or under the Cluster Property, Cluster Lots, or Cluster Living Units for the purposes of altering the grade of the Cluster Property, modifying contours, and/or correcting surface water drainage in order to maintain reasonable standards of health, safety, and appearance. For the purpose hereof, "established drainage" is defined as the drainage which will occur at the time the overall grading of Fishhook Lane Cluster, including the landscaping of each Cluster Lot is completed.

5.14 CLOTH DRYING: No clothes lines or other exterior clothes drying apparatus shall be permitted on any Cluster Lot or Cluster Living Unit except as approved in writing by the Cluster Architectural Review Committee.

5.15 EXTERIOR MAINTENANCE OF CLUSTER LIVING UNITS AND CLUSTER LOTS: The Cluster Association shall provide exterior

maintenance and landscaping for each Cluster Lot and Living Unit, and shall levy, collect and expend assessments for such purposes.

5.16 ALTERATION TO CLUSTER LOTS AND CLUSTER LIVING UNITS:

Cluster Owners may alter or remodel the interiors of their Living Units if the Cluster Owner complies with all laws and ordinances and this Cluster Declaration regarding alterations and remodeling. Any proposals for alterations, additions or other Improvements to exteriors of Cluster Living Units and/or Cluster Lots shall be made only with the permission of the Cluster Architectural Review Committee. The costs of any alteration or addition shall be paid by the Cluster Owner who has obtained the approval. Special architectural design standards may be established in the Cluster Rules for any types of change in the external appearance of Cluster Lots and Cluster Living Units, and may expressly prohibit clothes lines, basketball nets, window air conditioners, window boxes or any other alterations or additions that change in any respect the external appearance of any Cluster Lot or Cluster Living Unit.

5.17 LANDSCAPING: All landscaping in the Cluster Properties shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other first class residential subdivisions in the County. Specific restrictions on landscaping may be established in the Cluster Rules. Landscaping shall be maintained by the Cluster Association in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Cluster Owners, with the approval of the Cluster Architectural Review Committee and at their expense, may make reasonable landscaping changes consistent

with the Cluster Rules and the initial tenor of the Cluster Properties.

5.18 DECLARANT'S EXCEPTION. Notwithstanding anything to the contrary contained in this Cluster Declaration, Declarant shall have the fullest latitude to develop The Properties and the Cluster Properties and to sell or lease Cluster Living Units, Cluster Lots, and without reservation or restoration, except as imposed by applicable zoning, subdivision, and other land use laws. Declarant may construct, operate and maintain sales and rental offices on the Cluster Property and may make such use of the unsold or unleased Cluster Living Units, Cluster Lots and The Properties and permitted additions thereto as may facilitate the construction, improvement, subdivision, sale and leasing of The Woods Subdivision including, but not limited to the maintenance of sales and rental offices, the showing of portions of The Woods Subdivision, and the display of signs. Declarant shall have an easement over the Cluster Property for ingress, egress and parking for itself, its agents, employees and prospective buyers of Cluster Lots or The Properties and permitted additions thereto, and prospective buyers or tenants of Living Units.

5.19 LIMITATIONS ON APPLICATION OF RESTRICTIONS. The restrictions set forth in this Article V shall not apply to Declarant or Declarant's designated successors and assigns during Declarant's development of the Properties or Cluster Properties.

5.20 CONFLICT WITH THE DECLARATION: If any use restriction in this Article IV is in conflict with or more permissive than any use restriction contained in the Declaration, the restrictions established by the Declaration shall prevail. Article XXII of the Special May 1987 Supplementary Declaration, "Building Set Backs", is amended for the Lots subjected to this Supplementary Declaration to read as follows:

"No building or any part thereof shall be erected on any Lot closer than twenty (20) feet to any outside Lot boundary line that abuts on any street, road, or right-of-way nor closer than ten (10) feet to any other Lot line, except upon those Lots for which no set-back is required as set forth upon the recorded plats of The Properties."

ARTICLE VI

ANNEXATION

Section 6.1. ANNEXATION OF ADDITIONAL REAL ESTATE TO CLUSTER I. All or any portion of the Properties, as defined in Article II of the Declaration, as amended, may, from time to time and at any time hereafter, be annexed to the scheme of this Cluster Declaration by Declarant, without the consent of the Cluster Association or its Members or of any mortgagees or other lien holders (other than those holding mortgages or liens on the real property being annexed), by the recordation of a Cluster Supplementary Declaration as provided for by Section 6.2.

Section 6.2. Method of Annexation.

(a) The additions authorized by Section 6.1 shall be effectuated by the recordation of a Cluster Supplementary Declaration. Such Cluster Supplementary Declaration shall be executed by the Declarant, or other designated successor to Declarant.

(b) A Cluster Supplementary Declaration shall describe the real property to be annexed to the scheme of this Cluster Declaration and shall state that it is being made pursuant to the terms of this Cluster Declaration for the purpose of annexing the property described in the Cluster Supplementary Declaration to the scheme of this Cluster Declaration.

(c) A Cluster Supplementary Declaration may contain such complementary additions and modifications to this Cluster Declaration as may be necessary to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches to which the annexed land or parts thereof may be subjected, all of which may be significantly at variance with that of the Cluster Property.

(d) A Cluster Supplementary Declaration may designate a portion or all of the lands so annexed as a part of the Cluster Common Area.

#### ARTICLE VII

##### PARTY WALLS AND PARTY FENCES

Section 7.1. GENERAL RULES OF LAW TO APPLY. Each wall or fence which is built as a part of the original construction of any dwelling or other improvement constructed upon the Cluster Property and placed on the dividing line between any Cluster Lots or Cluster Living Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article VII, the general rules of law regarding party walls and of liability for property damage due to the negligence or willful acts or omissions shall apply thereto. The Cluster Owners of contiguous Cluster Lots or Cluster Living Units who have a party wall or party fence shall both have the right to use such walls or fence, provided that such use by one Cluster Owner does not interfere with the use and enjoyment of the same by the other Cluster Owner.

Section 7.2. COST OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall or party fence shall be shared by the Cluster Owners who make use of the wall in proportion to such use.

Section 7.3. DAMAGE OR DESTRUCTION. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Cluster Owner who has used the wall or fence may, subject to the approval of the Cluster Architectural Review Committee, restore it, and, if the other Cluster Owners thereafter make use of the wall or fence, they shall contribute to the cost or restoration thereof in proportion to such use, without prejudice, however, to the right of any such Cluster Owners to call for a larger contribution from the Cluster Owners under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, a Cluster Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7.4. STRUCTURAL INTEGRITY. There shall be no impairment of the structural integrity of any party wall or party fence without the prior written consent of all Cluster Owners having any interest therein, the first mortgagees of each such Cluster Owner, and the Cluster Architectural Review Committee.

#### ARTICLE VIII

##### INSURANCE OBLIGATIONS OF CLUSTER OWNERS

Section 8.1. Hazard and Flood Insurance. Each Cluster Owner shall obtain, and maintain in effect fire and appropriate extended insurance coverage and other appropriate damage and physical loss insurance, all in an amount equal to the then current full replacement value of each Cluster Living Unit owned by such Cluster Owner, which insurance shall be subject to such additional requirements as may be established from time to time by the Cluster Board or the Cluster Association by resolution. Such additional insurance requirements may be set forth in agreements or other undertakings which the Cluster Board or Cluster Association may enter into with or for the benefit of

holders or insurers of mortgages secured upon portions of the Cluster Properties.

Section 8.2. OBLIGATION TO REPAIR AND RESTORE.

(a) Subject only to the rights of an institutional holder of a first mortgage lien on a damaged Cluster Living Unit, the insurance proceeds from any insurance policy covering a Cluster Living Unit shall be first applied to the repair, restoration, or replacement of such Cluster Living Unit. Each Cluster Owner shall be responsible for the repair, restoration, or replacement of each Cluster Living Unit owned by such Cluster Owner pursuant to the terms hereof. Any such repair, restoration or replacement shall (subject to advances and changes in construction techniques and materials generally used in such construction and then current generally accepted design criteria) be generally harmonious with the other Cluster Property Living Units, and reconstruction must be consistent with plans approved by the Cluster Architectural Review Committee.

(b) If the proceeds of the insurance are insufficient to pay for the cost of repair, restoration, or replacement of a Cluster Living Unit, the Cluster Owner of such Cluster Living Unit shall be responsible for the payment of any such deficiency necessary to complete the repair, restoration, or replacement.

(c) If the insurance proceeds are in excess of the amount necessary for the repair, restoration, or replacement of a Cluster Living Unit, the Cluster Owner of such Cluster Living Unit shall be entitled to such excess in accordance with the provisions of the applicable insurance policies and subject to the terms of any mortgage covering such Cluster Living Unit.

Section 8.3. CLUSTER ASSOCIATION RIGHTS. If any Cluster Owner fails to obtain the insurance required in this Article, or fails to pay the premiums therefor when and as required or fails to otherwise perform the obligations of a Cluster Owner under



this Article, the Cluster Association may (but shall not be obligated to) obtain such insurance, make such payments for any such Cluster Owner and/or perform such obligations, and add the cost of such payments or performance, as a special assessment, to the general assessment of such Cluster Owner.

Section 8.4. ADDITIONAL INSURANCE. Each Cluster Owner may obtain additional insurance at his own expense, provided, however, that (i) such policy or policies shall be governed and written in accordance with such reasonable rules and regulations as may from time to time be established by the Cluster Board or Cluster Association and (ii) no Cluster Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Cluster Association may realize under any insurance policy which the Cluster Association may have in force on any part of the Cluster Properties at any time.

#### ARTICLE IX

##### ASSESSMENTS

9.1 CLUSTER ASSOCIATION ASSESSMENTS: Declarant, for each Cluster Lot owned within the Project, hereby covenants, and each Cluster Owner of a Cluster Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, does and is deemed to covenant and agree to pay to the Association the assessments provided for in the Declaration and to pay to the Cluster Association and/or the Association, the Cluster Assessments provided for in this Cluster Declaration. Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties as more fully set forth in the Declaration. The Cluster Assessments levied by either the Cluster Association or the Association upon the Lots in the Cluster Properties shall be used exclusively to promote the

recreation, health, safety and welfare of the Owners of such Cluster, the improvement, operation and maintenance of the Common Area and Cluster Common Area under the supervision and control of the Cluster Association, the payment of proper expenses of the Cluster Association insofar as related to such Cluster, the establishment of reasonable reserve for the maintenance, repair and replacement of other improvements upon the Cluster Common Area of such Cluster and for such other purposes as shall be authorized by this Cluster Declaration, including but not being limited to the payment of taxes, insurance premiums, insurance preserves and insurance reserves.

9.2 INITIAL CLUSTER ASSESSMENT AMOUNT AND PERIOD:

(a) Until January 1 of the calendar immediately following the recordation of this Cluster Declaration, the maximum Cluster Assessment per Lot within the Cluster Properties shall not exceed THREE HUNDRED FIFTY DOLLARS (\$350.00).

9.3 UNIFORM RATE OF ASSESSMENT: Cluster Assessments must be fixed at a uniform rate per Cluster Lot.

9.4 CLUSTER ASSESSMENTS AND THE WOODS SUBDIVISION DECLARATION: To the extent modified by this Article 9 the provisions of Article VI of the Declaration, including, but without limitation the provisions governing the increase of annual assessments, special assessments, liens and remedies for non-payment of assessments, quorums and the manner of increasing and levying various types of assessments shall be applicable to Cluster Assessments, and the Cluster Board and Cluster Association shall have and be subject to the same powers and procedures with respect to Cluster Assessments as the Association has and operates subject to for Association Assessments.

ARTICLE X

ARCHITECTURAL REVIEW

10.1 PURPOSE: The Cluster Board shall establish a Cluster Architectural Review Committee consisting of three members appointed by the Cluster Board in order to assure that the Cluster Properties shall always be maintained in a manner: (1) providing for visual harmony and soundness of repair, (2) avoiding activities deleterious to the aesthetic or property values of the Cluster Properties; and (3) promoting the general welfare and safety of the Cluster Owners, such Cluster Owners, tenants and such Cluster Owners (or tenants) household guests, employees, agents and invitees.

10.2 JURISDICTION: The Cluster Architectural Review Committee shall have exclusive jurisdiction over additions or alterations (which terms are used collectively herein to include any and all matters which are subject to architectural review pursuant to the terms of this Cluster Declaration) made on or to Cluster Lots or Cluster Living Units and the Common Areas and/or Cluster Common Areas subject to the supervision and control of the Cluster Association.

10.3 STANDARDS AND PROCEDURES: The Cluster Architectural Review Committee shall promulgate standards and procedures governing its areas of responsibility and practice consistent with the Properties Documents and the Cluster Documents. All applications shall be in writing and in the event that the Cluster Architectural Review Committee fails to approve or to disapprove such application or to request additional information reasonably required within forty-five (45) days after the date of submission of the application, the application shall be deemed approved.

10.4 NO WAIVER OF FUTURE APPROVALS: The approval of the Cluster Architectural Review Committee of any proposals, plans,

specifications, drawings or applications for any alterations or additions done or proposed, or in connection with any other matter requiring the approval and consent of such Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approvable consent.

10.5 LIABILITY: If Architectural Review Committee members have acted in good faith on the basis of such information possessed by them, neither the Committee nor any member thereof shall be liable to the Association, the Cluster Association or to any Owner or Cluster Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or (c) the development of any property within the Properties or Cluster Properties.

10.6 NON-APPLICABILITY TO DECLARANT: The provisions of this Article shall not apply to any Cluster Lot or Cluster Living Unit owned by Declarant prior to its first conveyance of a Cluster Lot to a Cluster Owner.

#### ARTICLE XI

##### GENERAL PROVISIONS

Section 11.1. TERM. The easements, covenants, rights, conditions, affirmative obligations and restrictions of this Cluster Property, and shall inure to the benefit of and be enforceable by the Cluster Association, the Association, the Declarant, or any Cluster Owner, their respective legal representations, heirs, successors and assigns, subject, however, to this Cluster Declaration (including the rights to amend and terminate herein provided), for a period to run until January 1,

1997 and thereafter until May 30, 2004 after which time said Cluster Declaration shall be automatically extended for successive periods of ten (10) years, unless within three (3) year prior to the expiration date of any renewal period thereafter, there shall be recorded an instrument directing the termination of this Cluster Declaration signed by not less than two-thirds (2/3) of all Members of the Cluster Association.

Section 11.2. AMENDMENTS AND TERMINATION.

(a) This Cluster Declaration may be amended pursuant to the written consent of all of the following: (i) Cluster Owners representing not less than seventy-five percent (75%) of the total Cluster Association voting power of all Cluster Owners (ii) Noticed Mortgagees holding first mortgage liens on Cluster Lots and Cluster Living Units within the Cluster Property representing not less than seventy percent (70%) of the total Noticed Mortgagees holding such first liens; provided no amendments shall be made without Declarant's written consent on or before May 30, 2002 (The date of termination of the Declarant's Development Period.

(b) Any such amendment shall become effective immediately upon proper recordation in the office of the Recorder of Deeds for Berkeley County of a document complying with the requirements of this Section XI, and any other attempt to amend the provisions of this Cluster Declaration shall be null and void and of no effect.

Section 11.3. REMEDIES. The Association, Cluster Association, Declarant, or any Cluster Owner, shall have the right to enforce, by any proceeding at law or in equity, the restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Cluster Declaration. The expense of enforcement by the Association or Cluster Association shall be chargeable to the Cluster Owner of the

Cluster Lot or Cluster Living Unit violating the provisions hereof and shall constitute a lien on the Cluster Lot or Cluster Living Unit collectible in the same manner as General Assessments under the Declaration.

Section 11.4. VIOLATION AND NUISANCE. Every act or omission whereby any provision of this Cluster Declaration is violated in whole or in part is hereby declared to be a nuisance and a violation of the Cluster Declaration and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association, the Cluster Association or any Cluster Owner and shall be subject to any and all of the enforcement procedures set forth herein and in the Declaration.

Section 11.5. VIOLATION OF LAW. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any of the Cluster Property, other than by Declarant, is hereby declared to be a violation of this Cluster Declaration and the Declaration, and subject to any and all of the enforcement procedures set forth herein and in the Declaration.

Section 11.6. REMEDIES CUMULATIVE. Each remedy set forth in this Cluster Declaration shall be in addition to all other remedies, whether available at law or in equity or otherwise, and all such remedies, whether or not set forth in this Cluster Declaration shall be cumulative and not exclusive.

Section 11.7. Delivery of Notices and Documents.

(a) Unless otherwise permitted by the Cluster By-Laws, any written notice or other documents addressed to the Cluster Board, Cluster Architectural Review Committee or either subcommittee thereof, Declarant, Cluster Association, or any other committee relating to or required or permitted by the

Cluster Declaration or any other Cluster Document shall be given as specified in the Cluster Declaration.

(b) Any written notice or other documents addressed to any Cluster Owner relating to or required or permitted by this Cluster Declaration or any other Cluster Property may be delivered to a Cluster Owner either personally or by mail in the manner provided for by the Cluster By-Laws. Each Cluster Owner shall file his correct mailing address with the Cluster Association, and shall promptly notify the Cluster Association in writing of any subsequent change of address.

Section 11.8. CLUSTER DECLARATION.

(a) By acceptance of a deed or by acquiring any ownership interest in any portion of the Cluster Property, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Declaration and this Cluster Declaration and any amendments or supplements thereof. In addition, each such person by so doing thereby acknowledges that the Declaration and this Cluster Declaration set forth a scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Cluster Owners, grantees, purchasers, assignees, and on all subsequent and future Cluster Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Cluster Declaration shall be mutually beneficial to and enforceable by the various subsequent and future Cluster Owners.

(b) The provisions of this Cluster Declaration shall be restricted to the Cluster Property and shall not by implication or otherwise be applicable to other portions of real estate as described and defined in the Declaration. Other portions of real estate may be subjected to Cluster Declarations which may or may not contain provisions similar to or different from the provisions of this Cluster Declaration.

Section 11.9. NON-WAIVER. The failure of the Declarant, the Association, the Cluster Association or any Cluster Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any covenant, easement, condition, charge or restriction contained in this Cluster Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 11.10. SEVERABILITY. All of the covenants, conditions, restrictions, and reservations contained in this Cluster Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, or clause or phrase thereof.

Section 11.11. HEADINGS AND INTERPRETATION.

(a) The headings introducing the text of the several sections of this Cluster Declaration are solely for convenience of reference and shall not constitute part of this Cluster Declaration or affect its meaning in any way.

(b) In the event of any conflict between the provisions of this Cluster Declaration and the provisions of the Cluster By-Laws or Cluster Articles of the Association, the provisions of this Cluster Declaration shall prevail.



Section 11.12. REFERENCE OF PRONOUNS. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular and plural as the identity of the person or persons or entities may require.

Section 11.13. SPECIAL AMENDMENTS. Notwithstanding anything contained herein to the contrary, the Declarant, by its own action, shall have the right to amend this Cluster Declaration during a one year period commencing on the date of recordation of this Cluster Declaration solely in order to comply with the rules or requirements of any governmental or quasi-governmental body or any institution holding or insuring a security interest in any portion of the Cluster Property.

WITNESS, the corporate name and seal of said corporation and the signature of its president hereto affixed this 1<sup>st</sup> day of ~~January~~<sup>February</sup>, 1990.

POTOMAC VALLEY PROPERTIES, INC.  
a corporation

(CORPORATE SEAL)

BY   
Its Vice President

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

I, Michelle L. Cain, a Notary Public in and for said County and State, do hereby certify that ROBERT BERNSTEIN, Vice President, who signed the writing above for POTOMAC VALLEY PROPERTIES, INC., a corporation, bearing date the 1<sup>st</sup> day of ~~January~~<sup>February</sup>, 1990, has this day acknowledged the same before me in my said County to be the act and deed of said corporation.

Given under my hand this 1<sup>st</sup> day of ~~January~~<sup>February</sup>, 1990.

Michelle L. Cain  
Notary Public

My commission expires:

November 29, 1999

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