

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 14th day of June, 1983, by ROCKY GORGE BUILDERS, INC., a Maryland Corporation, hereinafter referred to as "Declarant."

\*\*\* WITNESSETH \*\*\*

WHEREAS, Declarant is the sole owner of certain property located in the Providence Magisterial District, County of Fairfax, Virginia, known as Lots One (1) through Twenty (20), and Parcels A, B, C, D & E, SECTION ONE, MARSHALL HEIGHTS, which is more particularly described by reference to "Schedule A" attached hereto as a part hereof, said land together with such additional lands as shall be subjected to this Declaration being hereinafter referred to as the "Property" or "Properties;" and,

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community contributing to the personal and general health, safety and welfare of residents and for the maintenance of the land and improvements thereon, and to this end desires to subject the real Property described above and in "Schedule A" together with such additions as may hereafter be made thereto to the covenants, conditions, restrictions, easements charges, and liens hereinafter set forth, it being intended that the covenants, conditions, restrictions, and easements, shall run with the land and shall be binding on all persons or entities having or acquiring any right, title or interest in the real Property or any part thereof and shall inure to the benefit of each owner thereof; and,

WHEREAS, to provide a means for meeting the purposes and intents herein set forth and the intents and requirements of the County of Fairfax, Virginia, the Declarant has caused to be incorporated under the laws of the Commonwealth of Virginia, the MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC.,

NOW THEREFORE, Declarant for and inconsideration of the premises and covenants contained herein, hereby declares that all of the Properties described in Schedule "A," and such additions thereto as may hereafter be made is and shall be held, transferred; sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of protecting the value and desirability, and which shall run with, the real Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

.AND FURTHER, Declarant hereby delegates and assigns to the MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC. the powers of owning, maintaining, and administering the community Properties, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges herein created, and promoting the recreation, health, safety and welfare of the residents:

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to MARSHALL HEIGHTS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real Property and improvements thereon owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is known as Parcel A, MARSHALL HEIGHTS, as shown on the plat attached hereto as Exhibit "A" to the Deed of Dedication of which this Declaration is a part.

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

Section 6. "Declarant" shall mean and refer to ROCKY GORGE BUILDERS, INC., a Maryland Corporation, their successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Assessable Unit" shall mean and refer to any real Property within the Properties which is subject to assessments, as provided for in Article IV.

Section 8. "Declaration" shall mean and refer to the covenants; conditions, and restrictions and all other provisions herein set forth in this entire document, as same may from time to time be amended.

Section 9. "Member" shall mean and refer to a person or entity who is a record owner of a fee or undivided fee interest in a Lot subject to the Declaration, including contract sellers, but excluding those persons or entities who hold an interest merely as a security for the performance of an obligation.

Section 10. "Notice" shall mean and refer to (a) written notice delivered personally or mailed to the last known address of the intended recipient, or (b) notice published at least once a week for two consecutive weeks in a newspaper having general circulation in the County of Fairfax, Virginia.

Section 11. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights or a letter of "no objection."

Section 12. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies of the Association as same may be from time to time amended.

Section 13. "Federal Mortgage Agencies" shall mean and refer to those Federal Agencies who have or may cause to have an interest in the Properties such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation or successors to their interests

Section 14. "First Mortgagee" shall mean and refer to an institutional lender who holds the first deed of trust on a Lot or living unit and who has notified the Association of its holdings.

Section 15. 'Founding Documents' shall mean and refer to the Articles of Incorporation of the Association, this Declaration, and the Association Bylaws, all as initially drawn by the Declarant and filed and recorded as the case may be and all as may be duly amended from time to time.

## ARTICLE II

### PROPERTY RIGHTS

#### Section I. Owners' Easements of Enjoyment

Common Areas. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the common Area which shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Easements. The Owners' easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable admission and other fees for the use of the Common Areas or any recreational facility situated upon the Common Area.

(b) The rights of the Association to suspend the voting rights and the right of an owner to use the recreational facilities for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Association to suspend the right of an Owner to use the recreational facilities for a period not to exceed sixty (60) days from any other infraction of the Founding Documents.

(c) The right of the Association to limit the number of guests of Members.

(d) The right of the Association to mortgage any or all of the Common Area with the assent of more than two thirds (2/3) of the Class A votes and the consent of the Class B Member so long as the Class B Member shall exist. In the event of a default upon any mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such Properties, to charge reasonable admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such Properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such Properties shall be returned to the Association and all rights to the Owners shall be fully restored.

(e) The right of the Association to dedicate, convey, or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members subject to the prior approval of Fairfax County, Virginia, and assent of more than two-thirds (2/3) of the Class A Members as evidenced by an instrument recorded among the land records of Fairfax County, Virginia.

(f) The right of the Association to regulate the Common Area for the benefit of Members and grant easements for use of the Common Area.

(g). The right of individual Owners to use of parking spaces as provided in this Article.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to use automobile parking spaces which shall be a part of the Common Area, together with the right of ingress and egress in and upon said parking area.

Section 4. Delegation of Use. Any Owner may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on the Lot. No Member shall make exclusive or private use of any Common Area.

Section 5. Declarant's Reservation. So long as there are Class B Members, or Declarant owns any Lot, Declarant reserves a non-exclusive easement over all the Common Areas which are subject to this Declaration or any Supplement thereto for any purpose whatsoever.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership shall be the sole qualification for membership.

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

CLASS A. Class A Members shall be all owner's with the exception of the Declarant and shall be entitled to one vote for each Lot owned.

When more than one person holds an interest in any one Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

(a) when the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership;

or,

(b) on December 31, 1990; or,

(c) upon the surrender of said Class B Membership by the then holder thereof for cancellation on the books of the Association. Nonetheless, upon annexation by the Declarant of additional Properties, Class B Membership shall be revived and/or extended for a period of four (4) years from the date of recordation the Deed of Dedication and Subdivision for such annexed Property.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed thereof, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest costs and reasonable attorney 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. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. Now owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of the Lot owned.

Section 2. Perfection of the Lien for Assessments. The Association, in order to perfect the lien for assessments, shall file among the miscellaneous lien books or the Deed Books in the Office of the Clerk of the County of Fairfax, Virginia, a memorandum of lien. The memorandum of lien must be filed according to the following requirements:

a ) The memorandum of lien must be filed not less than thirty (30) days and not more than one hundred eighty (180) days from the time such assessment or installment thereof became due and payable.

b ) The memorandum of lien must be signed and verified by the oath of the president or treasurer of the Association.

c ) The memorandum of lien must contain the following information:

(1) a description of the property, including the Lot number, the property address, the name of the Association, the county wherein the Association is located, and the Deed Book and page number where the first page of the Declaration is recorded.

(2) The name or names of the persons constituting the Lot owners of that Assessable Lot.

(3) The amount of unpaid assessment currently due, including accelerated installments as provided in Section 7 of this Article or past due together the date when each fell due.

(4) The amount of all late charges, interest, and costs of collection being claimed.

(5) The date of issuance of the memorandum.

(d) The cost of recording such memorandum shall be charged against the Owner of the Lot.

Section 3. Method of Assessment. All assessments shall be levied by the Association against Lots and collected and disbursed by the Association. By a vote of two-thirds (2/3) of the directors, the Board shall fix the Annual Assessment at an amount not in excess of the current maximum for such assessment, provided, however, that the Annual Assessment shall be sufficient to meet the obligations imposed by the Declaration. In the event the Board

fails to fix an assessment for any fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the Board acts.

Section 4. Annual Assessments. The Annual Assessment shall be used exclusively to promote the recreation, health, safety and welfare of the Members and in particular to improve, maintain, and incorporate the Common Area facilities, and the homes situated upon the Properties, including funding of appropriate reserves for future repair and replacement.

(a) Maximum. Until the first day of the fiscal year following commencement of assessments, the maximum Annual Assessment rate for each Lot shall be \$360.00.

( b ) Change in Maximum. (1) From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may without a vote of the membership increase the maximum each year by the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the U. S. Department of Labor for the Metropolitan Washington Area; such increase shall become effective the first day of the next fiscal year. (2) From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board under paragraph (1) above, by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Date of Commencement of Annual Assessments: Due Dates:

(a) Date of Commencement. The Annual Assessment provided for herein for all Lots shall commence on the date of conveyance of the Common Area to the Association. The first monthly installment of each such Annual Assessment shall be made for the balance of the month during which the Deed for the Common Area to the Association is recorded and shall become due and payable and a lien on the date a deed for the conveyance of the Common Area is recorded. The monthly installments of each such Annual Assessment for any Lot for any month after the first month shall become due and payable and a lien on the first day of each successive month. Full Assessments shall be paid on all occupied Lots, whether they are held by a Class A or Class B Member.

(b) Class B. Any unoccupied Lot held by the Declarant or the maker of any Supplementary Declaration made pursuant to Article VII of this Declaration for the purpose of annexing additional Property shall have the right to pay an assessment in an amount equal to twenty-five percent (25%) of the assessment levied against Class A Lots or occupied Class B Lots (this shall apply to both regular and special assessments), however, if the Declarant or the maker of any Supplementary Declaration made pursuant to Article VII of this Declaration for the purpose of annexing additional Property shall elect to pay a partial assessment of twenty-five percent (25%) on unoccupied Lots, then the Declarant or the maker of any Supplementary Declaration must maintain the Common Area at no cost to the Association and/or fund any budget deficit in the Association as long as the Declarant or the maker of any Supplementary Declaration holds Class B Membership.

(c) Annual Assessment. The Board of Directors shall fix the amount of the Annual Assessments against each Lot at least thirty (30) days in advance of each Annual Assessment. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

(d) Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6. Special Assessments for Capital Improvements. (a) Capital Improvement Assessment. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property, related thereto, provided that any such assessment shall have the assent of the Class B Member, if any, and of two-thirds (2/3) of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose.

(b) Restoration Assessment. The Association may levy a restoration assessment upon any Lot whose owner fails to maintain such Lot as provided for in these Articles. Such assessments shall be limited to the amount necessary to meeting the cost of restoration.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice purpose of taking any action of any meeting called for the purpose of taking any action authorized in Article IV shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Uniform Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Sections 5 and 6 of this Article, and may be collected on a monthly basis.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide notice of such delinquency and may (a) charge interest from the due date at a percentage rate no greater than the statutory maximum; such rate to be set by the Board for each assessment period, (b) give registered Notice to the Owner that in the event payment with accrued interest is not paid within thirty (3) days from the date of such Notice, then the expressed contractual lien provided for herein shall be foreclosed;

(c) upon registered Notice to the Owner, suspend the right of such Owner to vote or to use the recreational facilities until the assessment and accrued interest are paid in full.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a mortgage or first deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following Property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (2) all Common Areas; (3) all Properties exempted from taxation by the state or county government upon the terms and to the extent of such legal exemption. However, no land or improvements devoted to dwelling units shall be exempt from said assessment.

Section 12. County Maintenance Assessments. If, as provided by and in accordance with the Fairfax county zoning ordinance, the County assumes maintenance responsibilities of the Common Area upon the failure of the responsible organization to maintain this in the manner required by the zoning ordinance, such Lots as have a right of enjoyment of the Common Area, be that right primary or otherwise, shall be obligated to pay a ratable proportion of the maintenance costs within thirty (30) days after receipt of a statement of charges from the County.

## ARTICLE V

### REVIEW

Section 1. Architectural Review Committee. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall, or other improvements or structures shall be commenced, erected, placed, moved, altered, or maintained upon the Property, or any Lot nor shall any exterior addition to, or change (including any change of color), or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction, and any other proposed form of change (including, without limitation any other information specified by the Architectural Review Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color, and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural Review Committee designated by the Board of Directors.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove, or construct any lighting, shades, screens, awnings, patio covers, fences, wall, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, or

to make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any improvements constructed upon any Lot or upon any of the Common Areas, or to combine or otherwise join two or more dwellings, or to partition the same after combination, or to make or alter any windows or exterior doors of any dwelling, until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction, and any other proposed form of change (including, without limitation, any other information specified by the Architectural Review Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color, and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural Review Committee designated by the Board of Directors.

Section 2. Architectural Control Committee - Operation. The Board of Directors shall appoint an Architectural Control Committee composed of five (5) or more natural persons designated from time to time by the Board of Directors. The affirmative vote of a majority of the members of the Architectural Control Committee



shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling, or order, or to issue and permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

Section 3. Approvals, et cetera. Upon approval by the Architectural Review Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Architectural Control Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with. An applicant may appeal an adverse decision of the Architectural Control Committee to the Board of Directors which may uphold, reverse, or modify such decisions by a two-thirds (2/3) vote of the Directors.

Section 4. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural Review Committee in accordance with the provisions of this Article, the Architectural Review Committee shall, at the request of the owners thereof, issue a Certificate of Compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such Certificate have been approved by the Architectural Review Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Declaration as may be applicable.

Section 5. Appeal. The decisions of the Architectural Review Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Committee may appeal the decision of the Architectural Review Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors of the Association. An applicant may appeal an adverse decision of the Architectural Control Committee to the Board of Directors which may uphold, reverse, or modify such decisions by a two-thirds (2/3) vote of the Directors.

## ARTICLE VI

### PROTECTIVE COVENANTS AND RESTRICTIONS

Section 1. Protective Covenants. In order to conserve the natural beauty of the subdivided Property, to insure its best use and most appropriate development and to prevent the erection of poorly designed or constructed improvements, the entire area subject to this Declaration shall be subject to those protective covenants and restrictions as more specifically set forth as follows:

(a) Land Use. No Lot shall be used except for residential purposes. No building shall be erected, altered, laced, or permitted to remain on any Lot other than one attached single-family townhouse dwelling unit, and except for such non-residential uses as may be authorized by the Code of Fairfax County, Virginia, and applicable zoning ordinances and approved by the Board of Directors.

(b) Fences and Plantings. No fence, tree, hedge, or shrub planting shall be erected or maintained in such a manner as to obstruct sight lines for vehicular traffic. All fences or enclosures must be approved by the Architectural Control Committee as to location, material, and design.

(c) No clothing, laundry, or wash shall be aired or dried on any portion of the Lot on any area -other than in the rear yards of the Lot.

(d) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time at a residence either temporarily or permanently, nor shall any tree houses be erected or maintained in trees on any Lot. Storage sheds shall be permitted in rear yards enclosed by fencing, subject to guidelines as may be established by the Board of Directors.

(e) Boats or Trailers. Use and storage upon the Common Area and Lots of all vehicles and recreational equipment shall be subject to rules promulgated by the Board of Directors. (1) All motor vehicles shall be currently licensed and maintained in proper operating condition so as to not be a hazard or nuisance by noise, exhaust emission, or appearance. (2). All motor vehicles including but not limited to trail bikes, motorcycles, dune buggies and snowmobiles shall be driven only upon paved streets and parking lots. No motor vehicle shall be driven on pathways or unpaved Common Areas except those specifically authorized by the Association

(f) Trade or Business. No trade or business of any kind shall be advertised from or transacted on any Lot, other than those authorized by the Code of Fairfax County, Virginia, and applicable zoning ordinances, and approved by the Board of Directors.

(g) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(h) Pets. Subject to limitations and regulations as may from time to time be set by the Association, generally recognized house or yard pets in reasonable number may be kept and maintained on a Lot or in a living unit , provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the leash control of their owner when they are outside the Lot and must not become a nuisance to other residents.

(i) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted on any Lot after original construction is finished.

(j) Antennae. Exterior television or other antennae are prohibited, except as approved in writing by the Architectural Control Committee.

(k) Signs. No signs of any type shall be displayed to public view on any lot or Common Area without the prior written consent of the Association, except temporary real estate signs not more than four square feet in area advertising the property for sale or rent and except for temporary signs erected by Declarant in connection with the construction, lease, or sale of buildings and Lots.

(l) Common Area. The parcels conveyed to the homeowners association as Common Area shall not be denuded, defaced, nor otherwise disturbed in any manner at any time without the approval of the appropriate County Departments of Fairfax County, Virginia.

(m) Exceptions. The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this Article provided the Board can show good cause and acts in accordance with adopted guidelines and procedures.

(n) Leasing. No living unit shall be rented for transient or hotel purposes or in any event for an initial implied by this period of less than six months. No portion less than all of any living unit shall be leased for any period. No Owner shall lease a living unit other than on a written form of lease requiring the lessee to comply with the Governing Documents and providing that failure to comply constitutes a default under the lease. The Board of Directors may provide a suggested standard lease form for use by Owners. Each owner of a living unit shall, promptly following the execution of any lease of a living unit, forward a conformed copy thereof to the Board of Directors. The foregoing provisions of this subparagraph except the restriction against use for a hotel or transient purposes, shall not apply to the Declarant, or to a Mortgagee in possession of a Unit as a result of a foreclosure or other judicial sale or as a result of any proceeding in lieu of foreclosure.

(o) Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persona, violating or attempting to violate any covenant, either to restrain violation or to recover damages.

Section 2. Rules and Regulations. In addition to those covenants and restrictions enumerated above, the Board of Directors may from time to time formulate, publish, and enforce reasonable rules, guidelines, and regulations, concerning the use and enjoyment of Common Areas.

### Section 3. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for by the homeowners association, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, free of debris all in a manner and with such frequency as is consistent with good property management.

(b) Failure to Maintain. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association, after Notice to the Owner and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a restoration assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided for herein for non-payment.

### Section 4. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration as well as any applicable Supplementary Declaration.

(b) Notification. Further, the contract seller of a Lot shall notify the Board of Directors of the contract purchaser and the scheduled date and place conveyance will be accomplished.

(c) Estoppel Certificate. The Board thereupon shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such Lot at time of conveyance and certify as to whether or not there are violations of the Founding Documents remaining on the Lot as of the date of preparation of such certificate. This certificate shall be delivered to the place of closing, and outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the seller's account at the closing and transmitted directly to the Association by the closing attorney.

Section 5. Exclusions. Nothing contained in the preceding paragraphs shall be construed to prevent Declarant, during the course of construction, from permitting commercial vehicles and construction equipment owned by it or its agents to remain or be parked on any Lot or on the streets in the subdivision, or from storing building materials and supplies on any lot, placing any advertising signs on any Lot relating to the sale or financing of the improvements thereon, or from using homes constructed on any Lot, as a model home or as a sales office.

## ARTICLE VII.

### STAGED DEVELOPMENT

So long as there are Class B Members of the Association, additional real property that is contiguous to the Property described herein may be annexed to the above-described Property by the Declarant without the consent of the Class A Members of the Association within five (5) years from the date hereof. Declarant retains the exclusive right to bring that property within the scope of this Declaration by executing and recording a Supplementary Declaration of Covenants and Restrictions among the Land Records for the County of Fairfax, Virginia, which Supplementary Declaration shall extend the scheme of the within Declaration of Covenants and Restrictions to such annexed property.

## ARTICLE VIII

### PARTY WALLS

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

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Nothing shall be done by any owner which impairs the structural integrity of any party wall or which diminishes the fire protection afforded by any party wall. No owner shall use any party wall for any purpose which creates a hazard or nuisance for any other owner who makes use of the party wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such

owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

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

Section 7. Easement. The owner of each Lot is hereby granted an easement on and over each and every Lot and Common Area, which is adjacent to such first Lot for all building and roof overhangs, projections, gutters, and downspouts and other portions of the first Owner's buildings which extend or project into, onto, or over such adjacent Lots.

When any building or appurtenance extends to or over the lot line of an adjoining Lot, the owner of said building shall have the right to enter upon a reasonable portion of such adjoining Lot at reasonable times for the purpose of performing repairs or maintenance to his building. Such right of entry shall place no obligation on the entering party to maintain the land entered upon, except to promptly restore any disturbed areas to their condition prior to the time of entry.

Section 8. Encroachments. If any portion of a party wall shall encroach upon any adjoining Lot, or upon the Common Areas of community facilities, by reason of reconstruction, settlement, or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the building stands, shall exist.

## ARTICLE IX

### EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across, over, through, and under the Properties for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the roofs end exterior wall of living units providing such company restores, disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (1) no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Declarant prior to the conveyance of the first Lot in a section to an Owner or by the Association thereafter; and (2) it shall not be construed to apply to the relocation, installation or removal of utility lines within e

living unit which serve only that unit. This easement shall in no way affect any other recorded easements on the Properties.

Section 2. Declarant's Easement to Correct Drainage. For a period of two years from the date of conveyance of each Lot, the Declarant reserves an easement and right on, over, and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Property to its original condition as near as practicable. The Declarant

shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provisions of this Declaration, so long as the Declarant is engaged in developing or improving any portion of the Properties, such persons shall have an easement of ingress, egress, and use over any lands not conveyed to an Owner for occupancy as required for construction and development of the Properties. Such easement shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness and general appearance of the Properties.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress on a Lot: (a) to inspect such Property for alleged violations of the Founding Documents, based on formal, written complaints and/or compliance with architectural standards and/or approved plans for alterations and improvements; and (b) performing such maintenance as is required on such Lots, provided the owner of such Lot is given notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

Section 5. Easement for Governmental Personnel. A right of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire, and rescue personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 6. Easement for Landscaping and Related Purposes. There shall be and is hereby reserved to the Declarant for so long as it retains its rights as Declarant, a non-exclusive easement over all Lots and Common Areas for a distance of fifteen (15) feet behind any Lot line which parallels 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. Exercise of this easement will be with the consent of the Owner of an affected Lot or the Architectural Control Committee, if the said owner does not consent.

## ARTICLE X

### INSURANCE

In order to protect adjoining owners and to insure there are sufficient funds available to an owner to restore his living unit in case of damage or destruction, each Owner of a Lot upon which a single attached living unit is constructed shall maintain a fire and extended coverage insurance policy in an amount equal to the full

replacement value (exclusive of land, excavation and other items normally excluded from coverage) of all improvements constructed on such Lot. Any policy obtained shall provide that it may not be cancelled except upon ten (10) days' written notice to the Association.

Each such Owner shall pay for such fire end extended coverage insurance when required by the policy therefor, and if the Owner fails to obtain such fire and extended coverage insurance, or fails to pay such insurance premiums as required, the Association may (but shall not be obligated to) obtain such insurance and/or make payments for such Owner, and the cost of such payments shall thereupon become a special assessment on the Owner's Assessable Unit.

From time to time the Association may require Owners to provide evidence of compliance with this Article.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years, unless at the expiration of any such periods the covenants and restrictions are expressly terminated by an instrument signed by Owners of more than two-thirds (2/3) of the Lots. A termination must be approved by the County of Fairfax, Virginia, and be recorded among the land records of said County in order to become effective.

Section 2. Amendment. For a period of one (1) year after the recording of this Declaration, the developer may make any amendment required by the Federal Mortgage Agencies or the County of Fairfax, Virginia, as a condition of approval of the documents by the execution and recordation of such amendment following registered Notice to all Owners. After such one (1) year period, or to make any amendment which is not one required by such agencies, any amendment shall be accompanied by a document signed by not less than eighty percent (80%) of the Owners of the Lots as evidence of the approvals required by this Article. Any amendment must be recorded in order to become effective.

Section 3. Enforcement The Association, any Member of Fire Mortgagee, as their interest may appear, Shall have the right to enforce, by any proceeding as law or in equity, all restrictions, conditions, covenants, reservations, liens, and now hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Annexation. The remainder of the 8.76± acres acquired by Declarant by deeds dated April 22, 1983 from ANTON YERGAT and WOODS MANOR PARTNERSHIP may be annexed without consent of Class A Members. However, additional land, other than the remainder of said 8.76± acre parcel, may be annexed by the Declarant with the consent of two-thirds (2/3) of each class of membership within twenty-one (21) years of the date of this instrument provided that the FHA and VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. Limitations. As long as the Declarant has an interest in developing the Properties as defined in Article I, hereof, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intents of the development plan of said 8.76 ± acre parcel referred to above. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Conflict. In the event of conflict among the Founding Documents, this Declaration shall control, then the Articles of Incorporation of the Association, then the Bylaws, except that in all cases where, the Founding Documents may be found to be in conflict with statute, the statute shall control.

Section 8. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 9. FHA/VA Approval. As long as there is a Class B Member, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional Properties (other than those excepted in Article XII, Section 4), dedication of Common Area, amendment of this Declaration of Covenants, Conditions and Restrictions, and mergers.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal this \_\_\_\_ day of \_\_\_\_\_ 1983.

ROCKY GORGE BUILDERS, INC.

Maryland Corporation

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit

I, the undersigned notary Public in and for said State County, do hereby certify that CHRISTOPHER S. DORMENT, whose name is signed as President of ROCKY GORGE BUILDERS, INC., acknowledged the within document on the \_\_ day of \_\_\_\_\_, 1983, in my presence.

Given under my hand and seal this \_\_\_\_\_ day of

My Commission Expires:



Notary Public

SCHEDULE "C" TERMS AND CONDITIONS

1. All sewers, manholes and appurtenant facilities which are installed in the easement and right-of-way shall be and remain the property of the County, its successors and assigns.

2. The County and its agents shall have full and free use of the said easement and right-of-way for the purposes stated in the foregoing deed, and shall have all rights and privileges reasonably necessary to the exercise of the easement and right-of-way including the right of reasonable access to and from the right-of-way and the right to use land abutting the easement subject to the following limitations: (a) the right to use abutting land shall be exercised only during periods of actual surveying, construction or maintenance, and then only to the minimum extent reasonably necessary for these purposes; (b) this right shall not be construed to allow the County to erect any building or structure of a permanent nature on such abutting land.

3. The County shall have the right to trim, cut and remove trees, shrubbery, fences or other natural obstructions or facilities in or near the easement being conveyed, deemed by it to interfere with the proper and efficient construction, operation and maintenance of said sewers; provided, however, that the County at its own expense shall restore, as nearly as possible, the premises to their original condition, such restoration including the backfilling of trenches, the replacement of fences and the resodding of lawns, and the reseeding of pasture and woodland areas, and the replacement of shrubbery. In addition, restoration shall include the restoration or compensation at the option of the County of all man-made structures on land adjoining the easement.

4. The Owners reserve the right to construct and maintain roadways over said easement and to make any use of the easement herein granted which may not be inconsistent with the rights herein conveyed or interfere with the use of said easement by the, herein for the purposes named; provided, however, that the Owners shall not erect any building or other structure, excepting a fence, on the easement without obtaining the prior written approval of the County.

ROCKY GORGE BUILDERS, INC. ,

a Maryland Corporation

By :

Christopher S. Dorment, President

SCHEDULE "D"

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1983 by and between:

ROCKY GORGE BUILDERS, INC., a Maryland Corporation, party of the first part, also called Owner, and the CITY OF FALLS CHURCH VIRGINIA, a municipal corporation, party of the second part, also called City.

\* \* W I T N E S S E T H \* \*

That for and in consideration of the sum of One Dollar and no/100 (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, the owner does hereby grant and convey unto the City, its successors and assigns, an easement and right-of-way for the purpose of constructing, operating, maintaining, adding to or altering present or future water mains or water services, plus necessary structures through and across the property of the Owner, said property and easement being more particularly bounded and described on the plat or drawing attached hereto as Exhibit "A" and made a part hereof.

The easement is subject to the following conditions:

1. All water mains and appurtenant facilities which are installed in the easement and right-of-way shall be and remain in the property of the City, its successors and assigns.

2. The City and its agents shall have full and free use of the said easement and right-of-way for the purposes named, and shall have all rights and privileges reasonably necessary to the exercise of the easement and right-of-way including the right of access to and from the right-of-way and the right to use adjoining land of the Owner where necessary; provided, however, that this right to use adjoining land shall be exercised only during periods of actual construction or maintenance, and then only to the minimum extent necessary for such construction and maintenance, and further, this right shall not be construed to allow the City to erect any building or structure of a permanent nature on such adjoining land.

3. The City shall have the right to trim, cut and remove trees, shrubbery, fences, structures or other obstructions or facilities in or near the easement being conveyed, deemed by it to interfere with the proper and efficient construction, operation and maintenance of said mains; provided however, that the City its own expense shall restore, as nearly as possible, the premises to their original conditions, such restoration including the backfilling of trenches, the replacement of fences, and the reseeding or resodding of lawns or pasture areas, but not the replacement of structures, trees, shrubbery, or other obstructions.

4. The Owner reserves the right to construct and maintain roadways over said easement and to make any use of the easement herein granted which may not be inconsistent with the rights herein conveyed, or interfere with the use of said easement by the City for the purposes named; provided however, that the Owner not erect any building or other structure, excepting a fence, on the easement without obtaining the prior written approval the City.

WITNESS the following signature and seals

ROCKY GORGE BUILDERS, . INC.

a Maryland Corporation

Christopher S. Dorment,

President

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-Wit:

I, the undersigned, a Notary public in and for the County Fairfax, State of Virginia, whose commission as such will expire on the \_\_\_\_\_ day of \_\_\_\_\_ do hereby certify that CHRISTOPHER S. DORMENT, as President, of ROCKY GORGE BUILDERS, INC., has this day personally appeared before me, in my County, and State aforesaid, and acknowledged the same before me to be act and deed of the said corporation.