

DECLARATION *11000*

FOR COLECROFT

THIS DECLARATION is made on May 19, 1980, by A&A Partnership, a Virginia limited partnership ("Declarant").

WITNESSETH THAT:

WHEREAS, the Declarant owns in fee simple the real estate designated as Submitted Real Estate in the description attached as part of Exhibit A hereto and shown on the plat attached as Exhibit C hereto, and has decided to subject that real estate to certain covenants, restrictions, reservations, easements, servitudes, liens and charges, all of which are more particularly hereinafter set forth;

WHEREAS, the Declarant also owns in fee simple the real estate designated as Additional Real Estate in the description attached as part of Exhibit A hereto and shown on the plat attached as Exhibit C hereto, and may hereafter decide to subject all or any portion of that Additional Real Estate, pursuant to Section 5.1 hereof, to the provisions of this Declaration, all as the same may be amended from time to time; and

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, the Declarant has caused the Colecroft Owners Association, Inc. to be incorporated under the laws of the Commonwealth of Virginia.

NOW, THEREFORE, the Declarant hereby covenants and declares, on behalf of itself and its successors and assigns, that the real estate designated as Submitted Real Estate shall, from the date this Declaration is recorded, be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the land and bind and inure to the benefit of all Persons who may now or hereafter own or acquire any right, title, estate or interest in or to any of such real estate, or who may now or hereafter occupy or come on any portion thereof subject to the right of the Declarant or the Association to supplement this Declaration and to add all or any portion of the Additional Real Estate.

AND FURTHER, the Declarant hereby delegates and assigns to the Association the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges created pursuant to the Bylaws and promoting the recreation, health, safety and welfare of the Owners.

110.00

*(Signature)*

## ARTICLE 1

### INTERPRETIVE PROVISIONS

Section 1.1. Definitions. Terms used herein without definition shall have the meanings specified for such terms in the Virginia Nonstock Corporation Act. Capitalized terms used herein and throughout the Association Documents shall have the meanings specified for such terms below.

(1) "Act" means the Virginia Nonstock Corporation Act Chapter 10 of Title 13.1 of the Code of Virginia (1950), as the same may be amended, supplemented or replaced from time to time.

(2) "Additional Real Estate" means the real estate described in Exhibit A hereto which the Declarant may subject to the Declaration and to the jurisdiction of the Association pursuant to Section 5.1 hereof, or any real estate that the Association may subject to the Declaration and assume jurisdiction over pursuant to Section 5.2 hereof.

(3) "Association" means Colecroft Owners Association, Inc., its successors and assigns.

(4) "Association Documents" means collectively, the Articles of Incorporation, this Declaration, the Bylaws and the Rules and Regulations as the same may be amended from time to time in accordance with the provisions therein. Any exhibit, schedule, certification or amendment to an Association Document shall be an integral part of that document.

(5) "Board of Directors" or "Board" means the executive and administrative entity established by Article 5 of the Articles as the governing body of the Association.

(6) "Bylaws" means the Bylaws of the Association, as amended, attached as Exhibit B hereto and as recorded from time to time among the Land Records.

(7) "Common Area" means, at any given time, all of the Property, other than Lots, then owned or leased by the Association or otherwise available to the Association for the benefit, use and enjoyment of the Owners.

(8) "Common Expenses" means all expenditures lawfully made and incurred on behalf of the Association, together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the Association Documents. Except when the context clearly requires otherwise, any reference to Common Expenses includes Limited Common Expenses.

(9) "Covenants Committee" means the committee that may be established by the Board of Directors pursuant to Article 7 of the Bylaws to assure that the Property shall be maintained in a manner consistent with the purposes and intents of this Declaration.

(10) "Declarant" means A&A Partnership, a Virginia limited partnership. Following recordation of a document assigning to another Person all of the rights reserved to the Declarant under the Association Documents, the term "Declarant" shall mean that assignee.

(11) "Declarant Control Period" means the period ending on the earliest of: (1) the fifth anniversary of the date of the first conveyance of a Lot to an Owner other than the Declarant (provided, however, that if the Declarant is delayed in the improvement and development of the Property due to a sewer, water or building permit moratorium or any other cause or event beyond Declarant's control, then the aforesaid period shall be extended by a period of time equal to the length of the delay or three years, whichever is less); (2) the date the number of votes of the Class A members exceeds the number of votes of the Class B member; or (3) the date specified by the Declarant in a notice to the Association that the Declarant Control period is to terminate on that date.

(12) "Declaration" means this Declaration for Colecroft made by the Declarant and recorded among the Land Records. The term Declaration shall include all amendments to the Declaration, amending the covenants and restrictions herein pursuant to Article 7 hereof, and all supplements to the Declaration ("Supplementary Declarations"), subjecting Additional Real Estate to the terms of this Declaration and the jurisdiction of the Association and adding to the covenants and restriction herein in order to reflect the unique character of the real estate being added, pursuant to Article 5 hereof.

(13) "Land Records" means the land records of the City of Alexandria, Virginia, the jurisdiction in which the Property and the Additional Real Estate are located.

(14) "Limited Common Expenses" means expenses separately assessed against one or more but less than all of the Lots.

(15) "Lot" means a portion of the Property designated as a separate lot (but not including the real estate designated as Common Area) on a plat of subdivision of the Property recorded among the Land Records and includes any improvements now or hereafter appurtenant to that real estate. Lot shall also mean any condominium unit created in accordance with Chapter 4.2 of Title 55 of the Code of Virginia (1950), as amended.

(16) "Majority Vote" means a simple majority (more than fifty percent) of the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any vote of a specified percentage of Owners means that percentage with respect to the votes actually cast in person or by proxy at a duly held meeting at which a quorum is present. Any vote by a specified percentage of the Board of Directors means that percentage with respect to votes actually cast at a duly held meeting of the Board at which a quorum is present. Any vote of a specified percentage of the Mortgagees means a vote by the Mortgagees of Lots calculated according to the number of Lots on which each has a Mortgage.

(17) "Mortgagee" means an institutional lender (one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities) holding a first mortgage or first deed of trust ("Mortgage") encumbering a Lot which has notified the Association of its status and has requested all rights under the Association Documents. Only for purposes of Article 7 and 8 of the Declaration and Article 16 of the Bylaws, the term "Mortgagee" shall also include the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying Mortgages if the Board has notice of such participation.

(18) "Officer" means any Person holding office pursuant to Article 6 of the Bylaws.

(19) "Owner" means one or more Persons who own a Lot in fee simple, but does not mean any Person having an interest in a Lot solely by virtue of a contract or as security for an obligation.

(20) "Person" means one or more natural persons, corporations, partnerships, associations, trusts or other entities capable of holding title to real estate, or any combination thereof.

(21) "Phase" means a specific portion of real estate described in an Exhibit to the Declaration or any Supplementary Declaration. The Phases initially subject to this Declaration

(and currently constituting the Property) are designated as Submitted Real Estate and described in Exhibit A hereto. If the Declarant or the Association adds all or any portion of the Additional Real Estate, the Supplementary Declaration adding the same shall designate the real estate added as one or more additional Phases. This Declaration becomes effective as to each such subsequent Phase on the date the Supplementary Declaration adding such Phase is recorded among the Land Records.

(22) "Private Streets and Roadways" means all streets, roadways, sidewalks, curbs, gutters and parking areas which are part of the Common Area, but not including streets and roadways dedicated to public use by a plat or deed of dedication.

(23) "Property" means, at any given time, the real estate then subject to the Declaration (both Common Area and Lots) and includes all improvements and appurtenances thereto now or hereafter existing.

(24) "Reserved Common Area" means a portion of the Common Area for which the Board of Directors has granted a revocable license for exclusive use by less than all of the Owners.

(25) "Rules and Regulations" means the rules and regulations governing the use, occupancy, operation and physical appearance of the Property adopted from time to time by the Board of Directors.

(26) "Submitted Real Estate" means the real estate designated as such in Exhibit A hereto and all real estate which is from time to time submitted to the Declaration.

(27) "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodelling, restoration, improvement, renovation, alteration, replacement and reconstruction.

## Section 1.2. Construction of Association Documents.

(a) Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the document in which used or any provision thereof.

(b) Pronouns. The use of the masculine gender shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

(c) Severability. Each provision of an Association Document is severable from every other provision, and the invalidity of any one or more provisions shall not change the meaning

of or otherwise affect any other provision. To the extent that any provision of the Association Documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent practicable, the provision shall be enforced.

(d) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control, except as to matters of compliance with the Act, in which case the Articles of Incorporation shall control. Particular provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent therewith. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

(e) Complimentarity of Association Documents and Incorporation by Reference. The Association Documents shall be construed together and shall be deemed to incorporate one another. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. Any provision of any Association Document referenced in any other Association Document with the intent to incorporate the provisions of the Association Document into the other Association Document, shall be deemed incorporated therein, as if set forth in full.

ARTICLE 2

COMMON AREA

Section 2.1. Conveyance; Insurance. The Declarant, on behalf of itself and its successors and assigns, covenants that the Common Area within each Phase of the Property will be conveyed to the Association in fee simple, subject to all easements and other encumbrances then of record (including those created by this Declaration); provided, however, that prior to the conveyance of any Lot in that Phase, the Common Area shall be released from any encumbrance securing the repayment of monetary obligations of the Declarant. The Association shall accept title to any real estate or personal property proffered to the Association by the Declarant and the Association shall obtain title insurance for any real estate acquired in its own name.

Section 2.2. No Dedication. Nothing contained herein or in the other Association Documents shall be construed as a dedica-

tion to public use or as an assumption of responsibility for Upkeep of any Common Area by any public or municipal agency, authority, or utility.

### ARTICLE 3

#### EASEMENTS

##### Section 3.1. Easements Reserved to the Declarant.

(a) Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees a non-exclusive easement over and through the Property for all purposes reasonably related to the development and completion of improvements on the Property, including without limitation: (1) temporary (not more than twenty-four months after completion of construction) slope and construction easements, and temporary or permanent drainage, erosion control, and storm and sanitary sewer easements, (2) temporary easements for the storage (in a slightly manner) of reasonable supplies of building materials and equipment necessary to complete the improvement, and (3) temporary or permanent easements for the construction and Upkeep of improvements on the Property or reasonably necessary to serve the Property.

(b) Easement to Correct Drainage. The Declarant hereby reserves, for a period of five years after the recordation by the Declarant of any supplement to the Declaration adding Additional Real Estate, a blanket easement and right-of-way over and through the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such easement expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary, following which the Declarant shall restore the area affected as near as practicable to its original condition.

(c) Easement to Facilitate Sales. The Declarant hereby reserves the right to: (i) use any Lots owned or leased by the Declarant or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices or customer service offices; (ii) relocate the same from time to time within the Property; and (iii) place and maintain in any location on the Property such advertising signs as may comply with applicable governmental regulations and relocate or remove the same, at the Declarant's sole discretion. The Declarant reserves the right to restrict the use of certain parking spaces

located on the Common Area or Lots owned or leased by the Declarant for sales purposes and to use such spaces for sales purposes. Further, the Declarant reserves the right to erect temporary offices on certain parking spaces located on the Common Area or Lots owned or leased by the Declarant for models, sales, management, customer service and similar purposes. This easement shall continue until all Lots have been conveyed to Owners other than the Declarant.

(d) Further Assurances. Any and all conveyances made by the Declarant to the Association with respect to any of the Common Area shall be conclusively deemed to incorporate these rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these rights and easements as may be requested.

Section 3.2. Easement for Upkeep.

(a) Association Access. The Declarant hereby grants the right of access over and through any Lot to the Association, the managing agent and any other Person authorized by the Board of Directors, in the exercise and discharge of their respective powers and responsibilities, including without limitation to make inspections, correct any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area, correct drainage, perform installations or Upkeep of utilities or other improvements located on the Property, or correct any condition which violates the Association Documents or any Mortgage.

(b) Declarant Access. Until the expiration of the warranty period established by Section 55-70.1 of the Code of Virginia (1950), as amended, or such warranty (if any) as the Declarant may establish by contract, the Declarant hereby reserves a right of access over and through the Common Area and any Lot to perform warranty-related work within the Common Area or the Lots.

(c) Entry into Dwellings. If entry to a dwelling is required by any Person pursuant to this section, a request for entry shall be made in advance and such entry shall be made, to the extent practicable, at a time reasonably convenient to the Owner. In case of an emergency, however, such right of entry to any improvement shall be immediate.

Section 3.3. Easement for Utilities and Related Services.

(a) The Declarant hereby reserves an easement for provision to any portion of the Property of all utilities, including without limitation water, sewer, electricity, gas, telephone, and



cable television service. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where initially installed with the permission of the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board of Directors.

(b) The Declarant hereby reserves during the Declarant Control Period, the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area, regardless of the ownership thereof at the time such easements, rights-of-way or licenses are granted, for the installation and Upkeep of the equipment for providing water, sewer, drainage, gas, electricity, telephone, television reception and other utilities and related services and facilities, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property or for the benefit of adjoining real estate.

(c) The Association shall have the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the installation and Upkeep of equipment for providing water sewer, drainage, gas, electricity, telephone, television reception and other utilities and related services and facilities, whether public or private, or for any other purpose necessary or desirable for the orderly development of the Property or for the benefit of adjoining real estate; provided, however, that during the Declarant Control Period the grant of such easements, rights-of-way or licenses shall require the prior written consent of the Declarant. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, condition or delayed.

Section 3.4. Easements for Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (1) the original construction thereof, (2) deviations within normal construction tolerances in the Upkeep of any improvement, or (3) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists; provided, however, that such easement shall not exceed two feet in width over the adjoining Lots or four feet in width over the Common Area. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct. The Owner of the encroaching improvement shall also have an easement for the limited purpose of Upkeep of the encroaching improvement.

Section 3.5. Easement for Support. To the extent that any portion of the Property now or hereafter supports or contributes

to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

Section 3.6. Easement for Use of Common Area.

(a) Use and Enjoyment. Each Owner and each Person lawfully occupying on a Lot is granted a non-exclusive right and easement of use and enjoyment in common with others of the Common Area (other than any Reserved Common Area). Such right and easement of use and enjoyment shall be appurtenant to each Lot, whether or not mentioned in the deed thereto. Any purported conveyance or other transfer without the Lot to which such right and easement are appurtenant shall be void.

(b) Limitations. The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the other Association Documents) to all rights and powers of the Association, when exercised in accordance with the applicable provisions of the Association Documents.

(c) Delegation. Any Person having the right to use and enjoy the Common Area may delegate such rights to the members of such Person's family or such Person's guests, employees, tenants, agents and invitees and to such other Persons as may be permitted by the Association.

Section 3.7. Emergency Access. The Declarant hereby grants an easement (1) to all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions in the event of emergencies and (2) to the Association over and through all Lots in the event emergency measures are required in any Lot to reduce a hazard thereto or to any other Lot or to the Common Area. The Association is hereby authorized but not obligated to take any such measures.

Section 3.8. Easements Required by Governmental Authority.

(a) The Declarant hereby reserves during the Declarant Control Period, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area, regardless of the ownership thereof at the time such dedications are made or such easements, rights-of-way or licenses are granted.

(b) Subject to the provisions of Section 16.5 of the Bylaws, the Association shall have the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area; provided, however, that during the Declarant Control Period the making of any such dedication or the grant if any such easements, rights-of-way or licenses shall require the prior written consent of the Declarant. If the Declarant or any Owner requests the Association to exercise its powers under this section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

Section 3.9 Reserved Common Area. The Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in the Common Area to the Association or to any Owner by designating portions of the Common Area as Reserved Common Area. Such Reserved Common Area shall be subject to such restrictions, reasonable charges and conditions on the use thereof as the Board may deem appropriate and shall be maintained by the Association or, at the Board's option, by the Owner having the exclusive right to use the Reserved Common Area.

Section 3.10. Limitations on Exercise of Rights and Easements by Declarant or Association.

(a) The Declarant or the Association, as appropriate, when exercising the rights and easements granted by this Article, shall: (i) give reasonable prior notice to all affected owners, unless an emergency exists which precludes such notice; (ii) minimize any economic or aesthetic injury to the affected Lots or the Common Area; and (iii) not unreasonably interfere with the affected Owners' use, enjoyment and benefit from such Owners' Lots or the Common Area.

(b) If an easement is relocated, the cost of such relocation shall be paid by the party requesting and benefiting from the relocation.

(c) Any damage resulting from the exercise of the aforesaid rights and easements shall be promptly repaired and the site restored to the extent practicable by the Declarant or the Association, as appropriate, or at the option of the Declarant or the Association, the party causing such damage. The cost of such repair and restoration shall be paid for by the party causing the damage or benefiting by the easement.

#### ARTICLE 4

##### PARTY WALLS AND FENCES

Section 4.1. Laws of Virginia to Apply; Easement. All matters arising in connection with any wall which would constitute a

party wall at common law shall, to the extent consistent with the provisions of this Article, be subject to the common law of Virginia as modified by statute from time to time and as modified by this Article. If the centerline of a party wall now or hereafter fails to coincide with the boundary between the Lots it serves, an easement for any resulting encroachment is granted in accordance with Section 3.4 hereof. If a party wall serves three or more Lots, each segment of it serving two Lots shall be treated for the purposes of this Article as a separate party wall.

Section 4.2. Upkeep. The Owners of Lots served by a party wall shall provide for the Upkeep of such party walls and shall share equally the cost of its Upkeep except as otherwise provided in this Article. No Owner shall impair the structural integrity of any party wall nor diminish the fire protection afforded by any party wall.

Section 4.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the following procedures shall be followed in order to restore such party wall.

(1) Either Owner served by the party wall shall notify the other Owner served by the party wall of any proposal to repair the wall. If within ten days after such notice (or in an emergency, within twenty-four hours after such notice or a bona fide attempt to give such notice) the other Owner has not responded to the notice, then the Owner giving notice may proceed with the repairs. Such repairs must be substantially similar to the original construction and installation and of first class quality, but may be made with contemporary materials.

(2) If the other Owner served by the party wall responds to the notice, the Owners shall act together to repair the party wall. If the Owners are unable to agree to the action to be taken, they shall submit the issue to arbitration in accordance with Section 4.5 hereof.

(3) If any Owner restores a party wall in accordance with this section, then the other Owner shall contribute one-half of the cost thereof. An Owner may, however, demand a larger contribution from the other Owner or refuse to contribute one-half of such costs, under any rule of law or equity regarding liability for negligent or willful acts or omissions.

(4) To the extent that any failure to repair a party wall affects the use and enjoyment of the Common Area, the Association may participate in the repair of the party wall and, in an emergency situation threatening life or property, may make such repairs without notice to the Owners. The Association may

assess the cost of such repair against the Owners responsible for the damage or benefiting from the repair pursuant to Subsections 15.1(a) or 9.1(d) of the Bylaws.

Section 4.4. Liability. Any Owner who by a negligent or willful act or omission causes or permits a party wall to be damaged shall pay the cost of restoring such party wall to its condition prior to such damage.

Section 4.5. Arbitration. In the event of any dispute between Owners concerning a party wall, the Owners on each side shall select one arbitrator, the arbitrators thus selected shall select one additional arbitrator. Arbitrators shall be qualified by experience and education to serve as such. Once selected, the arbitrators shall promptly agree upon and notify the parties of the discovery procedures and rules of evidence to be used in the arbitration. The arbitrators shall be requested to reach a decision within twenty days after their appointment. The decision of a majority of the arbitrators shall bind the Owners and their successors in interest. The cost of arbitration shall be paid by the losing party unless the arbitrators determine that the cost should be otherwise allocated between the parties, in which case that allocation shall be binding.

Section 4.6 Fences and Other Barriers. The provisions of this Article pertaining to party walls shall also govern any fence or other barrier originally installed by the Declarant (except for fences or barriers installed in connection with construction activities) and intended to divide one Lot from another, and to any replacement thereof authorized by the Board of Directors or the Covenants Committee. Otherwise, the Upkeep of any fence or other barrier shall be the responsibility of the Owner installing such fence or barrier unless different arrangements are agreed to by the adjoining Owners.

Section 4.7. Right to Contribution Runs With Land. Rights and duties of contribution set forth in this Article and any such rights and duties arising under the laws of Virginia shall run with the land and bind successors in interest. This Article shall not prejudice any right of a successor in interest to recover any amount from a predecessor in title for which such predecessor was liable. Any rights of contribution set forth in this Article shall constitute a lien in favor of any Owner entitled to contribution against any Owner obligated to pay such contribution. Until fully paid and satisfied, the lien shall apply to and encumber all of the Lots that were owned, as of the date when payment was due, by the Owner from whom payment was due, and shall also apply to and encumber any and all Lots

thereafter acquired by that Owner from the time such Owner becomes the Owner thereof. The lien created by this section shall be prior to all liens and encumbrances, except Mortgages and the Association's lien established pursuant to Section 15.2 of the Bylaws.

## ARTICLE 5

### DEVELOPMENT OF THE PROPERTY

#### Section 5.1 Expansion by the Declarant.

(a) Reservation. The Declarant hereby reserves an option until the later of the seventh anniversary of recordation of this Declaration or the end of the Declarant Control Period to expand the Property from time to time without the consent of any Owner or Mortgagee by subjecting all or any portion of the Additional Real Estate to the provisions of this Declaration and the jurisdiction of the Association. The option to expand may be terminated prior to the end of the Declarant Control Period only upon the recordation by the Declarant of an instrument relinquishing such option. The Declarant shall add Additional Real Estate in accordance with the procedures set forth in Section 5.3 hereof. There are no limitations on the option to expand except as set forth in this Article.

Section 5.2. Expansion by the Association. With the written consent of the fee simple owner (if not the Association), a Sixty-seven Percent Vote of the Owners and the written consent of the Declarant during any period that the Declarant has the right to add Additional Real Estate under Section 5.1 hereof, the Association may subject any real estate located immediately adjacent to the Property to the provisions of this Declaration and the jurisdiction of the Association, in accordance with the procedures set forth in Section 5.3 hereof.

Section 5.3. The Declarant or the Association, as appropriate, may record one or more Supplementary Declarations subjecting the real estate described therein to this Declaration and the jurisdiction of the Association. Each Supplementary Declaration shall include a geographical description of the real estate added and shall designate such real estate with the term "Phase" followed by a unique identifier so as to differentiate between each geographical area of the Property. Any Supplementary Declaration may contain such additions to the covenants and restrictions in this Declaration as may be necessary to reflect the different character of the Additional Real Estate added

thereby and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any other real estate.

When recording such Supplementary Declarations, appropriate plats shall be recorded, if necessary, to show the Additional Real Estate being subjected to the Declaration and the jurisdiction of the Association, describing any real estate being conveyed to the Association as Common Area and showing any new Lots.

## ARTICLE 6

### CONDEMNATION

Section 6.1 Definition. For the purposes of this Article, "Taking" means an acquisition of all or any part of the Property or of any interest therein or right accruing thereto as a result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Property or any part thereof.

Section 6.2 Taking of Common Area. If there is a Taking of all or any part of the Common Area, then the Association shall notify the Owners, but the Board of Directors shall act on behalf of the Association in connection therewith and no other Owner shall have any right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows. If the Taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on another portion of the Common Area, to the extent land is available therefor, in accordance with plans approved by the Board of Directors, unless within sixty days after such Taking the Declarant (during the Declarant Control Period) or the Owners entitled to cast at least sixty-seven percent of the total number of votes (after the Declarant Control Period) shall otherwise agree. The provisions of Article 13 of the Bylaws regarding the disbursement of funds following damage or destruction shall apply.

Section 6.3 Taking of Lots. If there is a Taking of all or any part of two or more Lots (including any specific easement assigned to a Lot) or of all or any part of one Lot and the Common Area, then Board of Directors may, but need not, represent the Owners of such Lots in connection therewith, without limitation on the right of such Owners to represent their own interests. The Board shall communicate and cooperate with the

Owners during the proceedings incident to the Taking and shall not preclude such Owners from exercising any rights such Owners may have to pursue administrative or other review of any award or compensation.

If the Taking involves a portion of a Lot upon which an improvement shares a common wall with an improvement located on another Lot (including without limitation townhouses, but not including condominium units), then the Association shall restore or replace such improvements to the extent possible on the remaining portion of the Lot, unless the Board determines by a Seventy-five Percent Vote not to undertake such reconstruction and repair. If the Association undertakes reconstruction or repair of the improvements located on a Lot, then the award or compensation shall be paid to the Association and such reconstruction and repair shall be carried out in the manner prescribed in Article 13 of the Bylaws; provided, however, that any surplus funds remaining after such reconstruction and repair consisting of condemnation awards for the Taking of Lots, shall be paid to the Owners in the proportion in which such awards were originally made. If the Board decides not to undertake such reconstruction and repair, then the Board shall not preclude the Owner of the Lot taken from reconstructing and repairing improvements on such Lot and the proceeds with respect to such Lot shall be paid to the Owner of such Lot. If the award or compensation does not allocate the proceeds with respect to specific Lots, then the Board of Directors shall make such allocation to reflect the proportionate diminution in the value of the Lots taken.

The extent to which the Board of Directors participates in the condemnation proceedings for a Lot or in the reconstruction and repair of improvements on a Lot shall depend on the following factors: (1) the extent of the Taking; (2) the number of Lots affected; (3) the nature of the improvements on the Lots taken; (4) the effect of the Taking on the Common Area; and (5) the wishes of the Owners of the Lots taken.

## ARTICLE 7

### AMENDMENT TO DECLARATION; LIMITATIONS

Section 7.1. Amendment by the Declarant. During the Declarant Control Period, the Declarant may unilaterally amend any provision of this Declaration to: (1) make nonmaterial changes; (2) relocate boundary lines between the Common Area and any Lots or among any Lots; provided, however, that such relocation does not materially and adversely affect any Owner other



than the Declarant and that such relocation is reflected in an approved resubdivision of all or any part of the Property; (3) satisfy the requirements of any government, governmental agency or Mortgagee; and (4) add all or any portion of the Additional Real Estate in accordance with Section 5.1 hereof.

Section 7.2. Amendment by the Association.

(a) Subject to Section 16.5 of the Bylaws, the Association may amend this Declaration by a Seventy-five Percent Vote of the Owners as certified by the President or with the written approval of Owners entitled to cast at least seventy-five percent of the total number of votes. This amendment shall not be effective until the amendment is certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded a ong the Land Records.

(b) Any procedural challenge to an amendment must be made within one year of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 7.3. Limitations on Amendments. No amendment shall be made to the Declaration during the Declarant Control Period without the prior written consent of the Declarant. No amendment to the Declaration shall materially diminish or impair the rights of the Mortgagees under the Declaration without the prior written consent of all Mortgagees nor diminish or impair the rights of the Declarant under the Declaration without the prior written consent of the Declarant. No amendment may modify this Article or the rights of any Person hereunder. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

ARTICLE 8

TERMINATION

Section 8.1. Termination by the Declarant. The Declarant may dissolve the Association and abrogate this Declaration within two years after the recordation hereof if the Association's maintenance and regulatory responsibilities have been assumed by any other entities.

Section 8.2. Termination by the Association. Subject to Section 16.5 of the Bylaws, the Association may terminate this

Declaration by recording among the Land Records a termination agreement, together with a certification signed by the President that the Owners entitled to cast at least eighty percent of the total number of votes approved the termination agreement. The termination shall not be effective until the termination agreement is certified by the President as to compliance with the procedures set forth herein, executed and acknowledged by the President and Secretary of the Association and recorded among the Land Records.

Section 8.3. Prerequisites. Written notice of the proposed termination shall be sent to every Owner and Mortgagee at least ninety days before any action is taken. No such termination shall be effective until recorded among the Land Records. Such termination shall not affect any permanent easements or other permanent rights or interests relating to the Common Area herein created. To the extent necessary, the termination agreement shall provide for the transfer or assignment of the easements, rights or interests granted to the Association herein to a successor entity which is assuming the Association's maintenance and regulatory responsibilities.

## ARTICLE 9

### NO OBLIGATIONS

Nothing contained in the Association Documents shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, renovate or provide any improvements.

## ARTICLE 10

### SPECIAL DECLARANT RIGHTS; TRANSFER

Section 10.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Association Documents, and shall include without limitation the following rights: (1) to complete improvements on the Property; (2) to maintain models, management offices, construction offices, sales offices, customer service offices, and signs advertising the Property; (3) to use easements over and through the Property for the purpose of making improvements within the Property; (4) to appoint or remove any director

during the Declarant Control Period; (5) to exercise the rights and votes of the Class B members of the Association; (6) to add Additional Real Estate; and (7) to exercise any other rights given to the Declarant.

Section 10.2. Transfer of Special Declarant Rights.

(a) The Declarant may transfer special declarant rights created or reserved under the Association Documents by an instrument evidencing the transfer recorded in the Land Records. The instrument is not effective unless executed by the transferor and transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations the transferor has undertaken or imposed upon the transferor by Section 55-70.1 of the Code of Virginia (1950) as amended.

(2) If the successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Property.

(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is also liable for any obligations and liabilities relating to the retained special declarant rights imposed on a declarant by the Association Documents arising after the transfer.

(4) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in the Mortgage, in case of foreclosure of the Mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any Lots or Additional Real Estate owned by a declarant, a Person acquiring title to all the Lots or Additional Real Estate being foreclosed or sold, but only upon such Person's request, succeeds to all special declarant rights related to such Lots or Additional Real Estate or only to any rights reserved in the Association Documents to maintain models, management offices,

construction offices, sales offices, customer service offices and signs advertising the Property. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of all Lots and Additional Real Estate owned by a Declarant (1) the Declarant ceases to have any special declarant rights, and (2) the Declarant Control Period terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of Persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by the Association Documents.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an affiliate of the Declarant, is subject to all obligations and liabilities imposed by the Association Documents: (A) on a declarant which relate to such declarant's exercise or non-exercise of special declarant rights; or (B) on the transferor, other than: (i) misrepresentations by any previous declarant; (ii) warranty obligations on improvements made by any previous declarant, or made before the Association was created; (iii) breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the Board of Directors; or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the Association Documents to maintain models, sales offices, customer service offices and signs, if such successor is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant.

(4) A successor to all special declarant rights held by the transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Lots under subsection (c), may declare the intention in a recorded

instrument to hold those rights solely for transfer to another Person. Thereafter, until transferring all special declarant rights to any Person acquiring title to any Lots owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Directors in accordance with the provisions of the Association Documents for the duration of any Declarant Control Period, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, such successor is not subject to any liability or obligation as a declarant.

(f) Nothing in this Article subjects any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than claims and obligations arising under the Association Documents.

## ARTICLE 11

### BYLAW COVENANTS

Inasmuch as the Bylaws are an integral part of this Declaration, the covenants and restrictions contained therein shall be covenants running with the land and shall be enforced as if set forth in full as part of this Declaration and shall include without limitation the covenants listed in this Article. Each Owner by acquisition of title to a Lot, whether or not it shall be so expressed in the deed thereto, is deemed to covenant the following.

Section 11.1. Covenant for Assessments. Each Owner shall pay to the Association such annual, additional and special assessments and charges as are established pursuant to the Bylaws. All such assessments and charges, together with interest thereon and costs of collection, shall be a charge on the Lot and a continuing lien thereon as provided in Section 15.2 of the Bylaws, subordinate only to Mortgages as provided in Section 15.4 of the Bylaws. In addition, such assessments and charges, together with interest and costs of collection, shall also be the personal obligation of the Owner of the Lot subject to the lien. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or abandonment of such Owner's Lot.

Section 11.2. Protective Covenants. No Owner shall make any addition, alteration or improvement in or to any Lot (other than

for Upkeep or natural landscaping) which is visible from the exterior of the Lot unless made in compliance with the guidelines and procedures set forth in any Supplementary Declaration with respect to the Phases added thereby and Section 10.5 of the Bylaws.

Section 11.3. Restrictions on Use. Each Owner shall abide by the restrictions set forth in Article 11 of the Bylaws and the Rules and Regulations promulgated by the Board of Directors pursuant to Section 11.3 of the Bylaws.

Section 11.4. Insurance, Repair and Reconstruction. Each Owner shall obtain insurance as required by Article 12 of the Bylaws and shall repair and reconstruct the improvements located on such Owner's Lot as required by Article 13 of the Bylaws.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed pursuant to due and proper authority as of the date first set forth above.

A&A PARTNERSHIP  
a Virginia limited partnership

By: / The Berkley Corp. of Virginia  
General Partner

By: David D. [Signature]  
Authorized Officer

STATE OF VIRGINIA )  
 ) SS:  
CITY OF ALEXANDRIA )

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that DANIEL R. ABRAMSON, of The Berkley Corp. of Virginia, which is a general partner of A&A PARTNERSHIP, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction as an officer of the corporation on behalf of the partnership.

GIVEN under my hand and seal on Nov 17, 1986.

*J. H. McCall* [SEAL]  
Notary Public

My commission expires: August 12 1988

The undersigned Mortgagee hereby consents to the Declaration for Colecroft, to the execution and recordation of the Declaration and to the subordination of the Mortgage to the Declaration as set forth herein, and for such purposes hereby directs the trustee under the Mortgage to join in the execution and delivery of the Declaration.

IN WITNESS WHEREOF, the undersigned Continental Federal Savings Bank, a corporation formed under the laws of the United States, has caused this Consent of Mortgagee to be executed by William Loms, its Assistant Vice President, as its act and deed.

CONTINENTAL FEDERAL SAVINGS BANK

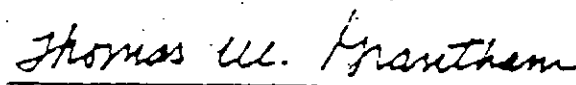
By:

  
\_\_\_\_\_  
William Loms  
Assistant Vice President

The undersigned trustee, at the request of the beneficiary of the Mortgage as evidenced above, joins in, without liability or obligation, for the sole purpose of subordinating the lien of the Mortgage to the Declaration.

FIRST ARLINGTON SERVICE CORPORATION,  
Trustee for Continental Federal  
Savings Bank

By:

  
\_\_\_\_\_  
Thomas W. Grantham  
Vice President



COMMONWEALTH OF VIRGINIA )  
 )  
COUNTY/CITY OF Fairfax )

SS:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that William Lns, Assistant Vice President, of CONTINENTAL FEDERAL SAVINGS BANK, a corporation formed under the laws of the United States, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction on behalf of the corporation.

GIVEN under my hand and seal on May 29, 1986.

Mary Jane Hard (SEAL)  
Notary Public

My commission expires: March 24, 1989

COMMONWEALTH OF VIRGINIA )  
 )  
COUNTY/CITY OF Fairfax )

SS:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Thomas W. Grantham, Vice President of FIRST ARLINGTON SERVICE CORPORATION, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction on behalf of the corporation as trustee.

GIVEN under my hand and seal on May 29, 1986.

Mary Jane Hard (SEAL)  
Notary Public

My commission expires: March 24, 1989

The undersigned Mortgagee hereby consents to the Declaration for Colecroft, to the execution and recordation of the Declaration and to the subordination of the Mortgage to the Declaration as set forth herein, and for such purposes hereby directs the trustees under the Mortgage to join in the execution and delivery of the Declaration. The City of Alexandria is executing this consent solely as a Mortgagee and by doing so in no way abdicates its rights as a municipal corporation under the laws of the Commonwealth of Virginia or its rights as a contract seller of the property.

IN WITNESS WHEREOF, the undersigned, The City of Alexandria, Virginia, a municipal corporation, has caused this Consent of Mortgage to be executed by Vola Lawson, its City Manager and, as its act and deed.

*Witnessed by Helen Holloman, City Clerk,*

MORTGAGEE:

ATTEST:

THE CITY OF ALEXANDRIA, VIRGINIA

By Helen Holloman  
City Clerk

By: Vola Lawson  
Vola Lawson, City Manager

The undersigned trustees, at the request of the beneficiary of the Mortgage as evidenced above, join in, without liability or obligation, for the sole purpose of subordinating the lien of the Mortgage to the Declaration.

CYRIL D. CALLEY, Trustee for  
the City of Alexandria

Cyril D. Calley [SEAL]

STEPHEN W. REDECUT, Trustee for  
the City of Alexandria

Stephen W. Redcut [SEAL]

COMMONWEALTH OF VIRGINIA )

~~COUNTY~~/CITY OF Alexandria )

SS:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Vela Lawrence  
City Manager, of THE CITY OF ALEXANDRIA, a municipal corporation, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction on behalf of the City.

GIVEN under my hand and seal on May 28, 1986.

Susan K. Seagraves [SEAL]  
Notary Public

My commission expires: June 27, 1987

COMMONWEALTH OF VIRGINIA )

~~COUNTY~~/CITY OF Alexandria )

SS:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Cyril D. Calley, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction as trustee.

GIVEN under my hand and seal on May 28, 1986.

Susan K. Seagraves [SEAL]  
Notary Public

My commission expires: June 27, 1987

COMMONWEALTH OF VIRGINIA )

COUNTY/CITY OF Alexandria )

SS:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Stephen W. Rideout, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction as trustee.

GIVEN under my hand and seal on May 28, 1986.

Mary E. Gilliam (SEAL)  
Notary Public

My commission expires: 5/2/89