

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, as amended from time to time in accordance with the terms hereof (hereinafter sometimes referred to as this "Declaration" or the "Amended and Restated Declaration"), is made this \_\_\_\_\_ day of March 2010, by Fallsmead Homes Corporation, a Maryland nonprofit corporation (together with its successors and assigns, the "Corporation").

**RECITALS:**

A. The members of the Corporation approved, and the Corporation caused to be recorded among the Land Records of Montgomery County, Maryland ("Land Records") on March 21, 1968 in Liber 3721 at Folio 636, a certain Declaration of Covenants, Conditions and Restrictions dated January 25, 1968 (the "Original Declaration"), which Declaration of Covenants, Conditions and Restrictions was amended by a certain Supplementary Declaration approved by the Members of the Corporation, and recorded by the Corporation among the Land Records on June 29, 1982 ("Supplementary Declaration").

B. The purpose of the Original Declaration and Supplementary Declaration was to subject the Property, including the Private Dwelling Units, Lots and Community Properties (as such terms are hereinafter defined), to the terms, covenants, conditions, restrictions, easements, charges and liens therein contained, each and all of which is and are for the benefit of the Property and each Member (hereinafter defined), so as to, among other things, (i) insure the attractiveness of the Property; (ii) prevent nuisances to and future impairment of, the Property; (iii) preserve, protect and enhance the values and amenities of the Property, and (iv) provide for the maintenance of parks, play areas, open spaces, walkways, and other Community Properties.

C. The Corporation desires to amend and restate in their entirety the terms and conditions of the Original Declaration and Supplementary Declaration and in so doing, ratify, republish and reaffirm the basic purpose and intent of the Original Declaration and Supplementary Declaration, and make such changes, additions and deletions to those documents as shall appear hereinafter in this Amended and Restated Declaration.

WHEREAS, Fallsmead Homes Corporation is a Maryland non-stock corporation in good standing, created pursuant to its Articles of Incorporation filed with the State Department of Assessments and Taxation in accordance with the provisions of the Corporations and Associations Article of the Maryland Annotated Code; and

WHEREAS, Article VIII, Section 1 of the Corporation's Original Declaration provides that, after twenty-five (25) years, the Declaration may be amended by the affirmative vote of not less than two-thirds (2/3) of the total votes of the Members; and

WHEREAS, Members representing more than two thirds (2/3) of the total votes of the Members have approved the Amended and Restated Declaration as evidenced by the Certificate of Secretary attached hereto;

NOW THEREFORE, in accordance with the Original Declaration both the Original Declaration and the Supplementary Declaration of Fallsmead Homes Corporation are hereby amended and restated by striking them in their entirety and substituting the following therefore:

**ARTICLE I**  
Definitions

Section 1. Definitions. The following words when used in this Declaration shall have the following meanings:

- (a) "Annual Assessments" shall have the meaning set forth in Section 1 of Article V of this Declaration.
- (b) "Assessments" shall have the meaning set forth in Section 1 of Article V of this Declaration.
- (c) "ACC" shall mean the Architectural Control Committee established pursuant to the By-laws, as the same may be constituted from time to time in accordance with the provisions of Article VI of this Declaration.
- (d) "Board" shall mean the Board of Directors of the Corporation.
- (e) "By-Laws" shall mean the First Amended and Restated By-Laws of the Corporation adopted by the Corporation on February 2, 2010, as the same may be amended or modified from time to time thereafter in accordance with the provisions thereof.
- (f) "Common Area" shall mean the land described in Exhibit 1 to this Declaration, which is attached hereto and incorporated herein by reference. In addition, the "Common Area" shall include any other real property owned, leased or maintained by the Corporation (including the improvements thereto) for the common use and enjoyment of the members. Notwithstanding the foregoing, in the event the Corporation maintains or owns all or any portion of any Lot(s) such property shall not be considered Common Area.
- (g) "Community Properties" shall mean those areas of land shown on any recorded subdivision plat of the Property, including improvements heretofore or hereafter made thereon, designated on the face of said plat or plats as intended to be or in fact owned and maintained by the Corporation.
- (h) "Corporation" shall have the meaning set forth in the Preamble of this Agreement.
- (i) "Declaration" shall have the meaning set forth in the Preamble of this Agreement.
- (j) "Director" shall mean a then current member of the Board.
- (k) "Land Records" shall have the meaning set forth in Recital A of this Declaration.

(l) "Lot" shall mean and refer to any plot or parcel of land included within the Property and shown upon any recorded subdivision map or plat with the exception of the Community Properties or Common Area.

(m) "Member" shall mean every record owner, whether one or more persons or entities, of a fee simple interest in a Lot who has provided his or her name and address to the Corporation as hereinafter provided; the term "Member" shall not for any purpose mean or include any person or entity owning or holding a mortgage or other security instrument encumbering an interest in a Private Dwelling Unit or Lot as security for the performance of an obligation or payment of a debt, unless and until the owner or holder of any such mortgage or security instrument has acquired record title to the Lot.

(n) "Original Declaration" shall have the meaning set forth in Recital A of this Declaration.

(o) "Private Dwelling Unit" shall mean the residential living unit and other improvements constructed and installed on individual Lots on the Property that are (i) owned by Members; and (ii) not Community Properties.

(p) "Property" shall mean the real property constituting the residential community commonly known as "Fallsmead" located in the City of Rockville, County of Montgomery and State of Maryland, which is more particularly described in Exhibit A attached hereto and made a part hereof by this reference.

(q) "Replacement Reserve Fund" shall have the meaning set forth in Section 9 of Article V of this Declaration.

(r) "Reserve Plan" shall have the meaning set forth in Section 9 of Article V of this Declaration.

(s) "Review Request" shall have the meaning set forth in Section 2(a) of Article VI of this Declaration.

(t) "Special Assessments" shall have the meaning set forth in Section 1 of Article V of this Declaration.

## **ARTICLE II**

### **Property Subject To Declaration**

The Corporation hereby declares that the Property and all improvements now and hereafter located thereon, including, without limitation, all Community Properties and all Private Dwelling Units, are, and shall at all times be, held, transferred, sold, conveyed, and occupied subject to this Declaration.

**ARTICLE III**  
Membership and Voting Rights in the Corporation

Members shall be entitled to one (1) vote for each Private Dwelling Unit in which he/she/they hold(s) a fee simple interest. When more than one (1) person holds such interest, all such persons shall be Members, and the vote for such Private Dwelling Unit shall be exercised as they among themselves determine, but no vote may be split and in no event shall more than one (1) vote be cast with respect to any such Private Dwelling Unit. The vote of the Members for the election and removal of directors shall be made by secret ballot and the votes of the Members for other matters may be made by secret ballot if determined in advance by the Board.

**ARTICLE IV**  
Property Rights in Community Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Community Properties and such easement shall be appurtenant to and shall pass with the title to every Private Dwelling Unit.

Section 2. Title to Community Properties, Restrictions on Transfer. The Corporation shall retain legal and beneficial ownership to the Community Properties. The Corporation shall not sell, lease, transfer or otherwise dispose of any interest it may now thereafter have in the Community Properties, except for the limited purposes set forth in Section 3(d) of this Article IV.

Section 3. Extent of Members' Easement. The rights and easements of enjoyment of each Member created hereby shall be subject and subordinate to the right of the Corporation to:

(a) suspend the enjoyment rights of any Member for any period during which any Assessment remains unpaid, and for such period as it considers appropriate for any infraction of any provision of this Declaration, the Bylaws and any published rules and regulations of the Corporation;

(b) use all Community Properties to provide services performed in furtherance of its corporate purpose and the execution of its duties and obligations under this Declaration, the Bylaws and applicable law.

(c) permit in its discretion the use of the Community Properties by non-members and to charge Members or non-members reasonable admission and other fees for the use of the Community Properties.

(d) grant within the Community Properties such easements and rights of way to such utility companies, communications systems providers and public agencies or authorities as the Board of Directors, acting for the Corporation, shall deem necessary.

Section 4. Extension of Rights and Benefits. Every Member shall have the right to extend the rights and easements of enjoyment vested in him, her or them under this Article to any tenant who then occupies the Private Dwelling Unit of such Member and to each member of his or her family who resides in the Private Dwelling Unit, and to such other persons as may be permitted in writing by the Corporation.

**ARTICLE V**  
Assessments, Special Assessments and other Financial Matters

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Member by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree to pay to the Corporation annually on a calendar year basis assessments or charges ("Annual Assessments"), and special assessments or charges ("Special Assessments"), such Assessments to be fixed, established and collected from time to time as provided in this Article V. The Annual Assessments, Special Assessments and fines or other charges levied by the Board pursuant to this Declaration or the Bylaws (collectively, "Assessments"), together with interest thereon and costs of collection incurred in connection therewith as hereinafter provided, shall be (i) a charge on the land and a continuing lien upon the Private Dwelling Unit against which each such Assessment is made; and (ii) the personal obligation of the Member who was the owner of the Private Dwelling Unit at the time the Assessment was payable.

Section 2. Purpose of Assessments. Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof and for such other needs as may arise.

Section 3. Annual Assessments. The Annual Assessment payable by each Member for calendar year 2009 shall be One Thousand Dollars (\$1,000). For calendar year 2010 and each calendar year thereafter, the Board shall fix the Annual Assessment subject to the following limitations: (i) commencing with calendar year 2010, in no calendar year shall the Annual Assessment increase by an amount equal to more than seven and one-half percent (7.5%) of the Annual Assessment levied in the prior calendar year; and (ii) in no calendar year shall the Annual Assessment exceed One Thousand Five Hundred Dollars (\$1,500.00). The Board may, after consideration of then current maintenance costs and future needs of the Corporation, fix the Annual Assessments in any calendar year at a lesser amount than the maximum amount permitted by this Section 3.

Section 4. Special Assessments. In addition to the Annual Assessment authorized by Section 3 of this Article, the Corporation may levy in any calendar year a Special Assessment. Special Assessments shall be applicable only to the calendar year in which the same are levied. The proceeds of Special Assessments shall be used only for the purposes of defraying, in whole or in part (i) the cost of any construction or reconstruction, repair or replacement of a described

capital improvement upon the Community Properties, including the necessary fixtures and personal property related thereto; or (ii) any extraordinary cost, expense or liability of the Corporation. Any Special Assessment shall require the assent of two-thirds (2/3) of the total votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. Nothing in this Section 4 shall prohibit the Board from authorizing the payment of a Special Assessment over a period of time that extends past the end of the calendar year in which the Special Assessment was levied.

Section 5. Notice of Annual Assessments: Due Date. The Board shall fix the Annual Assessment for each forthcoming calendar year after 2010 on or before December 31<sup>st</sup> of the immediately preceding calendar year. Written notice of the amount of the Annual Assessment and the due date(s) for payment of such Annual Assessment (or installments thereof, if so elected by the Board) shall be furnished to each Member. Such written notice shall be furnished on or before January 31 of the calendar year in which the Annual Assessment is being assessed, and the due date for payment shall in no event be earlier than the thirtieth (30<sup>th</sup>) day following delivery of such notice. The Corporation shall upon demand at any time furnish to any Member a certificate in writing signed by an officer of the Corporation setting forth whether an Assessment has been paid, and any reasonable charge imposed by the Board in connection with the issuance of any such certificate shall be payable by the Member.

Section 6. Effect of Non-Payment of Assessments: the Personal Obligation of the Member; the Lien; Remedies of the Corporation. If an Assessment is not paid by the due date, then such Assessment shall be delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, thereupon become the personal obligation of the then Member, and a continuing lien on the private Dwelling Unit which shall bind such Private Dwelling Unit whether in the hands of the then Member, his heirs, devisees, personal representatives, successors and assigns. If an Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum (or such higher rate as may be allowed by law), the Corporation shall be entitled to exercise any and all rights and remedies available to it under this Declaration and applicable law, and the Member shall pay all of the costs and expenses incurred by the Corporation in connection with collecting or attempting to collect any sums due and enforcing any provision of this Declaration, including, but not limited to all attorneys' fees and disbursements and costs actually incurred, whether incurred out of court or in litigation.

Section 7. Subordination of the Lien to Mortgages. The lien of Assessments shall be subordinate to the lien of any first mortgage or such other mortgages hereafter placed upon a Lot or Private Dwelling Unit and recorded among the land records of Montgomery County prior to any lien for assessments placed on said Lot or Private Dwelling Unit by the Corporation; provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to the date of sale of such Lot or Private Dwelling Unit pursuant to a decree of foreclosure or any other proceeding or device in lieu of foreclosure. Any such sale or transfer shall not relieve such Lot or Private Dwelling Unit from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment. The term "mortgage" or "mortgages" shall include "deed of trust" or "deeds of trust".

Section 8. Debt of the Corporation and Encumbrance of Corporation Assets to Secure Debt. Subject to the limitations set forth in this Section 8, the Board has the authority to incur secured and unsecured indebtedness in the name of the Corporation. The total amount of all indebtedness of the Corporation outstanding at any time shall not exceed twice the amount of the then current fiscal year's Annual Assessments. The Corporation shall not have the right or authority to pledge, mortgage, assign, transfer or otherwise encumber the Community Properties or any other real property owned by the Corporation as collateral security for indebtedness of the Corporation. The Corporation shall have the right and authority to pledge, mortgage, assign, transfer or otherwise encumber personal property owned by the Corporation as collateral security for indebtedness of the Corporation, including, without limitation, the proceeds of all Annual Assessments and Special Assessments.

Section 9. Replacement Reserve Fund. The Board shall establish and maintain a replacement reserve fund ("Replacement Reserve Fund"). Funds on deposit in the Replacement Reserve Fund shall be released upon adoption of a resolution of not less than a majority of the Board, and be used to finance the repair or replacement of existing, Community Properties and their several components, and replacement and construction of necessary capital items that promote and enhance the recreation, health, safety and welfare of the residents of the Members. The Board shall on an annual basis and simultaneously with the preparation and approval of the Corporation's budget for the next succeeding fiscal year, determine the required level of funding and use of amounts on deposit in the Replacement Reserve Fund. Said determinations shall be informed and guided by a replacement reserve plan ("Reserve Plan") that shall be updated based upon the reserve study or reserve study update commissioned by the Board from time to time. The Reserve Plan shall be prepared at the direction and under the supervision of the Board. It shall include a funding plan for future repair or replacement of all Community Properties and facilities and their components and determine the required level of funding to the Replacement Reserve Fund. The Board may seek appropriate input from the various Committees and Sub-Committees of the Board, as the Board, in its sole discretion, may determine to be needed, and shall be informed and guided by a reserve study or engineering report from a qualified independent third party professional with demonstrated experience in such matters selected by the Board for such purpose; such study or report to be updated no less than every five (5) years. Funds on deposit in the Replacement Reserve shall at all times be invested by or at the direction of the Board in a manner that provides maximum security for the principal while providing a reasonable investment return. Savings certificates and U.S. Government bonds are examples of acceptable investments.

## ARTICLE VI

### Architectural Control Committee (ACC)

Section 1. Composition of Committee. The ACC shall consist of a Chairperson and two or more additional Members who reside in a Private Dwelling Unit, who shall be appointed by the Board for one (1) year terms and who shall serve at the pleasure of the Board. The Board shall on an annual basis provide notice to all Members of the names and addresses of ACC members. In the event that the ACC is not fully constituted and work of the ACC must continue, the Board shall appoint members from its numbers to serve on an interim basis.

Section 2. Application Requirement and Eligibility. Except as otherwise provided in this Declaration or the Bylaws, no building, fence, wall, slab, driveway or other structure shall be installed, commenced, erected or maintained within Fallsmead, nor shall any exterior addition to or any other change or alteration to any Private Dwelling Unit or Lot, including a change in color, be made until the complete plans and specifications showing the nature, kind, shape, height, materials, color, location, and any other information reasonably specified or required by the Board of Directors of the ACC, of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Fallsmead Homes Corporation or by the ACC. Regardless of the architectural merits of any request for modification or alteration to a Private Dwelling Unit or Lot, no consent will be granted to any Member(s) for such modification or alteration so long as there remains any amount or past due balance owed to the Corporation by the Member (even if no lien has been placed upon the Lot) for the payment of assessments, interest, costs, attorney's fees, fines or other duly levied charges of any type whatsoever. This provision may be waived in the sole discretion of the Board for 1) those Member(s) who have previously negotiated a plan with the Board to bring any past due balance current and are complying in all respects with the terms of said plan or 2) circumstances in which the Board determines it is in the best interest of the Corporation to allow a modification or alteration on a Lot or Private Dwelling Unit.

Section 3. Procedure for Architectural Review.

(a) Members shall request ACC review of a proposed architectural/exterior change on a form furnished by the ACC ("Review Request") and submitted to a member of the ACC not less than thirty (30) days from the date the Member intends to begin work on the proposed architectural/exterior change. Each Review Request shall identify with specificity the nature and scope of the architectural/exterior change requested (including, without limitation, the type and color of materials to be used), and if appropriate, include architectural drawings. If a requested architectural/exterior change includes the modification of the color of the siding, paint, or roof shingles of a Private Dwelling Unit, a color sample must be submitted.

(b) The ACC shall have thirty (30) days from the date an ACC member receives a Review Request to approve or disapprove the requested architectural/exterior change. If the ACC fails to approve or disapprove such architectural/exterior change within such thirty (30) day period, the Review Request shall be deemed "approved."

(c) All decisions of the ACC shall be made by a majority vote of the members of the ACC and communicated to Members in writing. No oral statements made by any ACC member shall be binding on the ACC or the Board, and Members shall not be entitled to rely upon them.

(d) The ACC shall be entitled to ask for additional information or documentation from any Member submitting a Review Request. Members may be invited by the ACC to attend a meeting of the ACC to discuss the Review Request. The ACC may in the course of its deliberations propose modifications to the architectural/exterior change that is the subject of the

Review Request, but no such modification shall be approved by the ACC unless and until the same is submitted in writing by the Member to the ACC.

(e) If a Review Request is disapproved by the ACC, the Member shall, within thirty (30) days of the day the Member was notified of the disapproval, have the right to appeal the disapproval to the Board by delivery to the Secretary of the Board of a written request for a review of the ACC decision. If an appeal is noted during the pendency of a resubmission before the ACC, the then pending resubmission shall be suspended and the outcome of the appeal shall govern. The Board shall set the appeal from the ACC decision as an agenda item at its next regularly scheduled meeting. The Member shall have the right to appear and be heard before the board at the meeting when the appeal is considered. The Board shall have the right to hear from the ACC in considering any appeal from the ACC. A quorum of the Board (as set forth in the bylaws) is required at the meeting for the Board to render a decision with respect to the appeal. The Board shall decide on the appeal within fifteen (15) days of the meeting at which it was considered, and promptly notify the Member in writing of its decision. Any Director serving as a voting member of the ACC at the time the decision under review was made by the ACC shall recuse him/herself from the appeal vote, but shall for purposes of determining quorum be included in the count of the Directors. A vote of the Board that is evenly divided shall be deemed to uphold the decision of the ACC.

Section 4. Restrictions on ACC Members to Submit Review Requests. Members of the ACC shall submit any Review Request for their own benefit during such Member's term on the ACC directly to the Board. The members of the Board shall conduct a vote related to such a Review Request, except such members of the Board that may be related to the ACC member shall be disqualified from participating in the Board's consideration of the Review Request. The decision of the Board shall be final.

Section 5. Certain Architectural Standards. This Section 4 sets forth certain architectural standards to guide Members and the ACC when making and evaluating architectural/exterior changes to Private Dwelling Units, with the ultimate goal of maintaining and enhancing a harmonious design for all Private Dwelling Units and the Community Properties.

(a) The following architectural/exterior changes to and of a Private Dwelling Unit are permitted without submission of a Review Request and approval by the ACC:

(i) Fences: If post and split rail type, wooden and unpainted, not exceeding four feet in height, and located no closer to the street than the front of the Private Dwelling Unit.

(ii) Patios and Decks: If located behind the Private Dwelling Unit, adjacent to or adjoining the Private Dwelling Unit, 500 square feet or less in size, and having no railings or attachments that exceed four feet in height above the patio or deck surface.

(iii) Exterior Paint: If no color changes.

(iv) Mailboxes: If standard size, mounted on a metal or wooden post, and in keeping with the colonial nature of the Private Dwelling Units.

(b) The following architectural/exterior changes are prohibited:

(i) Satellite dish antennas that exceed one meter in diameter.

(ii) Driveway expansions used for or that accommodate additional off-street parking.

(iii) Fences other than wooden, unpainted post and split rail type; except that Members having property lines adjacent to Wootton Parkway, Falls Road or neighborhoods other than Fallsmead, may erect stockade fences not to exceed six-feet in height, subject to approval by the ACC.

(iv) Driveways made of any material other than black asphalt.

(v) Exterior radio, television or other telecommunications antennae or other transmission devices that exceed ten (10) feet in height, unless otherwise permitted by federal law. All such devices shall in any case be installed less than ten (10) feet above the roof peak of a Private Dwelling Unit.

Section 6. Effect of Violation of Article VI. Any architectural/exterior change or alteration made in contravention of the provisions of this Article VI shall be a violation of this Declaration and any Member who suffers or permits a violation of this Declaration may at its sole cost and expense be required to restore the Private Dwelling Unit to the condition existing immediately prior to the completion of the architectural/exterior change made in contravention of other provisions of this Article VI. Without limiting the foregoing, the Board shall also have the right to levy against the Private Dwelling Unit a reasonable fine proportionate to the nature of the offense of no more than \$50.00 per day for such violation (after following the dispute resolution procedures described below), and avail itself of all other legal and equitable rights and remedies. The aggregate amount of all such fines imposed, together with enforcement and collection costs incurred by the Board (including, without limitation, all attorney and other professional fees, costs and expenses actually incurred) shall become an assessment against the Member's Private Dwelling Unit and may be collected in a like manner, and shall, in accordance with the State of Maryland Contract law and all other applicable law, be deemed to be and constitute a lien against the Member's Private Dwelling Unit. In the event that a violation is noted, the following procedures shall be followed before the imposition of any fine or other sanction:

The Board may not impose a fine, suspend voting rights (unless the suspension or revocation is related to the Member's failure to provide a current address or unless a statement of lien has been filed against the Lot and the lien has not been satisfied), or infringe upon any other rights of a Member or other occupant for violation of the Bylaws, this Declaration, or the Rules and Regulations unless and until the following provisions are followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (1) the alleged violation; (2) the action required to abate the violation; and (3) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if the violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not a continuing one.

(b) Notice. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the alleged violator with written notice of a hearing to be held by the Board. The notice shall contain: (1) the nature of the alleged violation; (2) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (3) an invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and (4) the proposed sanction to be imposed.

(c) Hearing. At the hearing, the alleged violator has the right to present evidence and present and cross-examine witnesses. The hearing shall be held in executive session and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the hearing. This proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the person who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the results of the hearing and the sanction, if any, imposed. A decision pursuant to these procedures shall be appealable to the Courts of Maryland.

## **ARTICLE VII**

### **Exterior Maintenance**

Section 1. Introduction. It is the policy of the Corporation that all Private Dwelling Units and other structures be well maintained so as to foster a sense of community pride and maintain general property values.

Section 2. Authority of Architectural Control Committee. The ACC or the Board of Directors shall have the authority to require a Member to perform or cause to be performed exterior maintenance on and repairs to such Member's Private Dwelling Unit or other structure located on such Member's Lot.

Section 3. Procedure for Requiring Exterior Maintenance.

(a) Once each year the ACC shall inspect each Private Dwelling Unit and other structures on Members' Lot to insure that all such Private Dwelling Units and structures are being reasonably maintained. The ACC shall only inspect those portions of Private Dwelling Units and structures that may, in any way, be visible from a public right of way within or bordering the Property, including the walking paths on and about the Property or from another Private Dwelling Unit if the owner thereof allows access for that purpose.

(b) The ACC shall inspect each structure for lack of maintenance and repair, including, but not limited to: roofs, gutters, downspouts, exterior building surfaces, peeling paint, rotting wood, missing shutter slats, falling gutters, driveway maintenance, door, window and garage maintenance, fence maintenance, architectural/exterior changes that have not been approved by the ACC, violations of the Architectural Guidelines, and other repair, maintenance and replacement items.

(c) The ACC shall issue a letter to each Member whose Private Dwelling Unit or other structure the ACC believes needs exterior maintenance or repair. The letter will set forth with specificity the required maintenance and/or repair to be performed, and a reasonable period of time to perform the maintenance and repairs, which shall not be less than sixty (60) days.

(d) Any Member receiving a letter from the ACC requiring maintenance or repair may request an extension of time within which to complete the required maintenance or repair. The ACC may, for good cause shown, grant such extensions for up to six (6) months from the deadline originally established by the ACC for the maintenance or repair.

(e) In addition to and without limiting the means for enforcement provided elsewhere in this Declaration, if any Member, tenant, family member, or licensee shall violate any provision of this Article VII or any rules or regulations giving effect thereto, the Board has the right to impose on the Member a reasonable fine proportionate to the nature of the offense of no more than \$50.00 per day for each violation. Each day the violation continues shall be deemed a separate violation subject to an additional fine. All fines shall be considered an assessment to be collected in the same manner as the Annual Assessment as set forth in Article V hereof. Prior to the Board imposing any fines or other sanctions, the ACC shall report to the Board the underlying failure to complete the required maintenance or repair. The Board shall then follow the dispute resolution procedures set forth in Article VI, Section 6 hereof prior to imposing any fine or other sanction.

(f) If a Member shall fail in accordance with the requirements of this Declaration to maintain his or her Private Dwelling Unit in good repair and condition, the Board or its authorized designee, on behalf of the Corporation, shall have an irrevocable right and an easement to enter the Lots and Private Dwelling Units to inspect the same or make repairs when such inspection or repairs reasonably appear necessary for public safety or to prevent damage to other Lots, Private Dwelling Units or the Common Area, or to enforce the provisions of this Declaration, the Bylaws or Rules and Regulations. Except in cases involving manifest danger to public safety or property (in which case entry may be effected immediately), the Board shall give at least twenty-four (24) hours notice to the Member(s) who own any Lot and Dwelling Unit to be entered for the purpose of inspection or repairs. Should any Member, after being twice given notice, fail to allow access to his or her Private Dwelling Unit for inspection or the performance of repairs, the Board may effect such needed access at the Member's expense. An entry by the Board or its designee, on behalf of the Corporation, for the purposes specified in this Section shall not be considered a trespass. Any cost of effecting access and any maintenance, repair or replacement made by the Board to a Member's Lot or Dwelling Unit shall be assessed against the Member's Private Dwelling Unit and shall become a continuing lien against the Private

Dwelling Unit and the personal obligation of the Member pursuant to this Declaration, and shall be collected in the same manner as an assessment.

Section 4. Prohibited Activities. The following items and activities are specifically prohibited on the Property:

- (a) Overnight parking of commercial vehicles of any type, unless garaged;
- (b) Overnight parking of trucks, trailers or unlicensed motor vehicles of any type, unless garaged.
- (c) Parking or storage of boats of any type for more than fourteen (14) days, unless garaged or screened in a manner acceptable to the ACC.
- (d) Extensive work outdoors, such as dismantling and/or repairing of motor vehicles, boats or machinery of any type.
- (e) Keeping of animals, livestock or poultry of any kind except for dogs, cats and other household pets, provided no dogs, cats or other household pets may be kept for commercial purposes.
- (f) Outdoor storage of unused building materials.
- (g) Noxious or offensive activities that are an annoyance or a nuisance to Members.
- (h) Window air conditioning units.
- (i) Outdoor storage of trash, recycling or receptacles for trash or recycling, unless stored behind screening in a manner acceptable to the ACC.

#### **ARTICLE VIII** General Provisions

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Corporation, or the Member of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, in perpetuity. Amendments to this Declaration may be made with the consent of a two-thirds (2/3) of all Members. For the purposes of this requirement, a Member shall be counted once for each Private Dwelling Unit which he or she owns. Any such amendment of the covenants and restrictions of this Declaration must be in full compliance with all applicable laws, rules and regulations, and the same shall not become effective until the written instrument evidencing such amendment has been duly recorded among the Land Records and unless written notice of the proposed amendment is sent to every Member at least ninety (90) days in advance of the meeting of Members at which any action is to be taken.

Section 2. Notices. Any notice required to be furnished to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member on the records of the Corporation at the time of such mailing. It is the responsibility of each Member to ensure that his, her or their proper name(s) and address is provided to the Corporation through its Board of Directors. Any Member who is not listed on the official roster of Members maintained by the Corporation shall not be eligible to vote, to submit a Review Request for architectural modification or otherwise to avail himself or herself of any other privilege of Membership in the Corporation.

Section 3. Compliance with Law. No unlawful, improper or offensive use shall be made of any Private Dwelling Unit, or any portion of the Community Properties and all laws, zoning and other ordinances, regulations of government and other municipal bodies and the like shall be observed at all times.

Section 4. Enforcement. Enforcement of this Declaration and the terms, covenants, conditions and restrictions herein contained shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Corporation or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(a) Legal Proceedings. Failure to comply with the terms of the Bylaws, this Declaration and the duly enacted Rules and Regulations shall be grounds for relief, including, without limitation, an action to recover sums for money damages, injunctive relief, foreclosure of the lien for non-payment of assessments and any other relief afforded by a Court of competent jurisdiction, all of which relief may be sought by the Corporation, or by any other Member. Failure or forbearance by the Corporation or by a Member to enforce a provision of the Bylaws, this Declaration or the duly enacted Rules and Regulations shall in no event be deemed a waiver of the right to enforce any provision on any other occasion. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any covenant or provision of the Bylaws, this Declaration and the duly enacted Rules and Regulations cannot be adequately remedied by an action at law or exclusively by recovery of damages.

(b) Costs and Attorney's Fees. In any legal proceeding instituted by a Member or arising out of an alleged default by a Member, the substantially prevailing party shall be entitled to recover the costs of such proceeding and all attorney's fees and costs actually incurred. In the event that a legal proceeding was not filed against a Member, but attorney's fees and related costs were nonetheless incurred in enforcing the Bylaws, this Declaration or the duly enacted Rules and Regulations against a Member, the Board may assess all such attorney's fees and costs against the Member and thereafter said fees shall constitute a lien against that Member's Private Dwelling Unit and be collectible in the same manner as an assessment.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, all of which shall remain in full force and effect.

Section 6. Corrective Amendments. The Board of Directors may execute and record a corrective amendment to this Declaration, the Bylaws or the Plat to correct:

(a) A typographical error or other "scrivener's error" the correction of which is necessary to effectuate the intended purpose of the provision or thing corrected; and

(b) A reference to Federal, Maryland or local law, code or statute or a recitation of any provision thereof in the Declaration or Bylaws. With regard to this subsection (b), the Board may execute and record an amendment that corrects the recitation of a statute or code provision in the Declaration or Bylaws so long as the corrective amendment accurately reflects the language, intent and spirit of the statute or code provision, and may execute and record an amendment that adds to the Declaration or Bylaws statute or code provisions the Board deems in the best interests of all Members of the Corporation to recite therein.

(c) Corrective amendments made pursuant to this Section shall require a majority vote of the entire Board of Directors, but shall not require a vote of the Members.

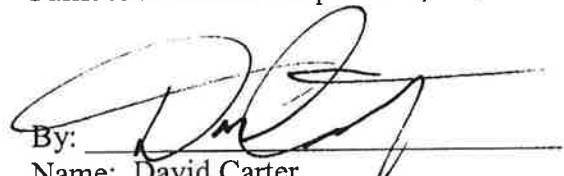
Section 7. Amendment and Restatement. This Declaration amends and restates in their entirety the terms and conditions of the Original Declaration and the Supplementary Declaration.

**IN WITNESS WHEREOF**, the Corporation has caused this Declaration to be executed by David Carter, its President, and does hereby appoint P. Michael Nagle, Esquire as its true and lawful attorney-in-fact to acknowledge and deliver this Declaration on the day and year first above written.

ATTEST:

Fallsmead Homes Corporation, Inc.

  
Name: Cheryl Levine  
Title: Secretary

By:   
Name: David Carter  
Title: President

**ATTORNEY CERTIFICATION**

This is to certify that this instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

P. Michael Nagle


\_\_\_\_\_, Attorney

**CERTIFICATIONS OF VOTES OF MEMBERS AND BOARD**

In accordance with Section 1 of Article VIII of the Amended and Restated Declaration of Covenants, Conditions and Restrictions to which this Certification is attached, the undersigned, duly elected and serving Secretary of Fallsmead Homes Corporation, as the person authorized to count votes of Members, hereby certifies that adoption and recordation of such Amended and Restated Declaration of Covenants, Conditions and Restrictions was approved by not less than two-thirds (2/3) of the Members of the Corporation, with corrective amendments, in accordance with Section 6 of Article VIII, approved by not less than a majority of the entire Board of Directors.

  
Print Name: Cheryl Levine  
Title: Secretary

ATTEST:

  
Print Name: David Carter  
Title: President

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