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GPIN: 8716-50-1578

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESERVE AT BELL CREEK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESERVE AT BELL CREEK HOMEOWNERS ASSOCIATION, INC., is made as of the 11<sup>th</sup> day of march, 2009, by Babcock, LLC, a Virginia limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, The Hanover Group, L.L.C., is the declarant of the Bell Creek Protective Covenants, dated July 1, 2002 and recorded July 10, 2002 in the Clerk's Office, Circuit Court, Hanover County, Virginia (the "Clerk's Office") in Deed Book 1866 at page 789, as amended and supplemented (the "Protective Covenants"); and

WHEREAS, The Hanover Group, L.L.C., is also the declarant of the Bell Creek Single Family Protective Covenants, dated July 1, 2002 and recorded July 10, 2002 in the Clerk's Office, Circuit Court, Hanover County, Virginia (the "Clerk's Office") in Deed Book 1866 at page 867, as amended and supplemented (the "Single Family Protective Covenants"); and,

WHEREAS, pursuant to Sections 9.2 the Protective Covenants and the Single Family Protective Covenants the declarant under said documents may add additional real property to the Property (as defined in said documents); and,

WHEREAS, pursuant to Sections 10.3 the Protective Covenants and the Single Family Protective Covenants the declarant under said documents may transfer all or any of the declarants rights under the Protective Covenants and the Single Family Protective Covenants, respectively; and,

WHEREAS, pursuant to that certain Transfer of Certain Declarant Rights, dated June 18, 2008, and recorded June 19, 2008 in the Clerk's Office, Circuit Court, Hanover County, Virginia (the "Clerk's Office") in Deed Book 2919 at page 1958, The Hanover Group, L.L.C., transferred certain rights of the declarant under the aforementioned documents to Babcock, LLC, with respect to the Property (defined herein); and,

WHEREAS, Babcock, LLC (the "Declarant"), pursuant to the terms of the Transfer of Declarant Rights described above, has subjected the Property to the terms and conditions of both the Protective Covenants, pursuant to the terms of the Fifth Supplement to the Bell Creek Protective Covenants, recorded prior hereto, and has also subjected the



Property to the terms and conditions of the Single Family Protective Covenants, pursuant to the Second Supplement to the Bell Creek Single Family Protective Covenants and as such The Reserve at Bell Creek Homeowners Association is subject to the Bell Creek Protective Covenants and the Bell Creek Single Family Protective Covenants, both referenced above; and,

WHEREAS, the Declarant now desires to set forth the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for The Reserve at Bell Creek, which are recorded in the Hanover County Circuit Court Clerk's Office as The Bluffs at Bell Creek, Sections 5, 6 and 7.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest therein or in any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to The Reserve at Bell Creek Homeowners Association, Inc., a Virginia nonstock corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean and refer to the board of directors for The Reserve at Bell Creek Homeowners Association, Inc.

Section 3. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. The platted Common Area adjacent to Lots shall be conveyed by the Declarant to the Association at any time after the conveyance of the first Lot to an Owner other than the Declarant, or promptly thereafter upon the request of the Association. The Association shall not be responsible to maintain any Common Area until the same is conveyed to the Association. The initial Common Area is described on Exhibit "B" hereto.

Section 4. "Declarant" shall mean and refer to Babcock, LLC, a Virginia limited liability company, and its successors and assigns, provided that (a) such successors or assigns acquire more than one Unimproved Lot from the Declarant for the purpose of constructing improvements thereon, and (b) the Declarant assigns to such successors or assigns the Declarant's rights hereunder as to the Lots.

Section 5. "Declarant's Utility Rights" shall mean and refer to the exclusive and alienable rights, powers, easements and privileges hereby reserved by the Declarant to go on, over, under and upon every portion of the Common Area to erect, lay, construct, install, maintain, repair and use electric, gas, telephone and television wires, cables and conduits, drainage ways, sewers, water lines and water mains and such other utilities and utility systems as the Declarant finds necessary or advisable in connection with the development of the Property or any portion. These rights include, but are not limited to,



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the right to cut bushes and trees, grade soil and such other actions reasonably necessary to economically and safely install, repair and use such utility systems. The Declarant's Utility Rights shall also include the exclusive and alienable right to sell, grant, convey and/or dedicate any utility system (and adjoining area) within the Common Area to the County of Hanover or one or more public utility companies. The Declarant's Utility Rights shall continue in effect until such time as the Declarant, including any successor Declarant, has conveyed or relinquished all of the Declarant's right, title and interest in and to any portion of the Property.

Section 6. The "Governing Documents" shall mean and refer to, collectively, this Declaration of Covenants, Conditions and Restrictions, the By-Laws, and the Articles of Incorporation of The Reserve at Bell Creek Homeowners Association, Inc., the Rules and Regulations of the Association as adopted by the Board and as amended from time to time, and the Standards, if applicable (as defined in Article V, Section 1).

Section 7. An "Improved Lot" is defined as a Lot on which a residence has been substantially completed and then sold and conveyed to a purchaser, and a Lot on which a residence has been substantially completed for more than twelve months although not so sold and conveyed. All other Lots are defined as "Unimproved Lots".

Section 8. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision plat of the Property with the exception of the Common Area.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Property" shall mean and refer to that certain real property, described on Exhibit "A" hereto, and such additions thereto as may hereafter be bought within the jurisdiction of the Association.

Section 11. "Builder" shall mean and refer to such person or corporate entity who is in the business of constructing residential dwellings for resale.

Section 12. "SF Residential Association" shall mean and refer to the Bell Creek Single Family Residential Owners Association, as defined in Section 1.1(kk) of the Single Family Protective Covenants.

**ARTICLE II**  
**PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

The right of the Association to charge reasonable admission and other fees for the use of any



recreational facility from time to time situated upon the Common Area;

(a) The right of the Association to suspend the voting rights and right to use of the Common area by any Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of the Association's published rules and regulations, provided that access to the Owner's Lot over Common Area is not disturbed or interfered with;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area, subject to the Declarant's Utility Rights, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective and no mortgaging of the Common Area to secure a debt shall be effective, unless an instrument signed by two-thirds (2/3) of the members of each class of membership agreeing to such dedication, transfer or mortgaging has been recorded. If ingress or egress to any Lot is through the Common Area, any mortgage or conveyance of that portion of the Common Area shall be made subject to the Owner's easement.

(c) The rights reserved to the Declarant in Article VII, Section 1 (Reservation by Declarant) of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Association's By-Laws, his right of enjoyment to the Common Area and facilities thereon to the members of his family, his tenants, or contract purchasers who reside on the Lot. If an Owner leases a Lot to a person, the Owner's right of enjoyment of the Common Area and facilities thereon shall automatically transfer to the person leasing the lot, unless the Owner provides written notice to the Association stating that the Owner will retain the sole right of enjoyment of the Common Area and facilities thereon. Either the Owner or the person to whom the Owner is leasing the Lot, but not both, may enjoy the right of enjoyment of the Common Area and facilities thereon, provided, however, the transfer of the right of enjoyment to the tenant shall not disturb or interfere with the Owner's access to the Lot over the Common Area.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant so long as Declarant is a Class B member. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but no more than one vote shall be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant, which shall be entitled to four (4) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership on the earlier to occur of the following: (a) when seventy-five percent (75%) of the total anticipated number of Lots that may be developed on the Property, as described in Exhibit A, have certificates of occupancy issued thereon and have been conveyed to persons other than Builders; (b) on March 11, 2014; or (c) when the Class B member, in his discretion, determines and voluntarily relinquishes such right in a written instrument executed by Declarant and recorded in the Clerk's Office at the Circuit Court of Hanover County, Virginia.

Section 4. The affairs of the Association shall be managed by its Board of Directors (the Board), which shall elect the officers of the Association.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation for Assessments.

(a) The Declarant for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, unless such Owner is a Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and otherwise, such assessments to be established and collected as hereinafter provided. Builders shall not be responsible for the payment of annual assessments or charges or special assessments of any kind, until the earlier of six (6) months from the time a Certificate of Occupancy is issued for the dwelling on a Lot or two (2) years from the date said Builder took record title to a Lot. Notwithstanding the foregoing to the contrary, the inclusion of Lots on a recorded subdivision plat shall not subject a Lot to assessment under this Article IV until such time as that Lot is conveyed to a person other than the Declarant. The annual and special assessments, together with interest, cost of collection, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

(b) As stated in the Recitals hereof, the Association and its members are subject to the terms and conditions of both the Protective Covenants and the Single Family Protective Covenants, and thereby are also subject to the SF Residential Association. As such, each Unit Owner shall be considered a Single Family Residential Lot as defined in the Single Family Protective Covenants. Therefore, for the convenience of the members of the Association, the Board may designate and collect as Common Expenses some of all of the assessments and charges payable by the Owners to the SF Residential Association pursuant to the Single Family Protective Covenants.



Section 2. Purpose of Assessments and Exterior Maintenance.

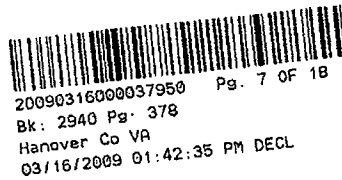
(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property, for the improvement and maintenance of the Common Area and of the improvements situated thereon, and such other service, including trash removal and areas of Association responsibility as defined by the Governing Documents.

(b) In addition to maintenance upon the Common Area the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: (a) irrigation systems for front and side yards; (b) gutter cleaning for leaves and debris; (c) front and rear yard mowing; (d) front yard tree, shrub and mulch bed maintenance; (e) power washing of units and painting of trim, shutters, and doors; and (f) the repair, maintenance, and replacement of other exterior improvements, as determined by the Board of Directors in their discretion. If the Board of Directors reasonably determines that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or permittees, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. Other than those areas of Association responsibility described in this Article IV, Section 2, each Owner is responsible for the prompt repair, maintenance, and replacement of anything relating to that Owner's lot and improvements thereon. In no event shall the Association be responsible for repairing or replacing any portion of a Lot or the improvements thereon if the insurance the Owner is required to maintain pursuant to Article VIII, Section 5 covers such repair or replacement.

(c) The Association shall pay any real and personal property taxes and other charges assessed against the Common Area.

(d) The Association shall maintain a policy or policies of liability insurance, insuring the Association and its agents, guests, permittees, and invitees and the Owners of the Lots against liability to the public or to the Owners, their guests, permittees or invitees incident to the ownership or use of the Common Area, in an amount not less than a combined single limit per occurrence (bodily injury and/or property damage) of Five Hundred Thousand Dollar (\$500,000) and a One Million Dollars (\$1,000,000) aggregate limit (maximum limit for the policy period) unless the costs of the premiums for such coverage are unreasonably high for the Association to bear, as determined by the Board of Directors in their discretion. The foregoing limits shall be reviewed at intervals of not more than three (3) years and adjusted if necessary to provide such coverage and protection, as the Association may deem prudent.

(e) For the sole purpose of performing the exterior maintenance required by this Article, the Association through its duly authorized agents or employees, shall have the right, to enter upon any Lot or upon the exterior of any residence upon a Lot at reasonable hours of any day except Sunday; provided, however, that it is not an emergency. If the situation is reasonably deemed an emergency, in the sole and absolute discretion of the Association or its duly authorized agents or employees, then the Association's duly authorized agents or employees, shall have the right to enter upon any Lot or upon the exterior of any residence upon a Lot at such hours of the day as are



necessary to address said emergency.

(f) Common Expenses due and payable to the Master Association, or that the Board anticipates will be due and payable to the Master Association, except to the extend paid directly by a Unit Owner.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Improved Lot to an Owner other than Declarant or a Builder, the maximum annual assessment shall not exceed \$1,500.00 per Lot for Improved Lots.

(a) From and after January 1 of the year immediately following the conveyance of the first Improved Lot to an Owner other than Declarant or a Builder, the maximum annual assessment may be increased each year above the maximum assessment for the previous year, without a vote of the membership, by not more than twenty percent (20%).

(b) From and after January 1 of the year immediately following the conveyance of the first Improved Lot to any Owner other than Declarant or a Builder, any budget and resulting annual assessment approved by the Board of Directors which is more than twenty percent (20%) greater than the previous year's annual assessment must be presented to the members at the annual meeting of the Association preceding the fiscal year in which such assessment shall go into effect. The annual assessment described above shall go into effect automatically on the first day of the succeeding fiscal year unless disapproved by a vote of two-thirds (2/3), or more, of each class of members present, in person or by proxy, at a meeting duly called for this purpose and at which a quorum is present.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above and in addition to, and not in limitation of, such other special assessments as may be authorized by applicable law (the Virginia Property Owners Association Act, Code of Virginia 55-508 et seq, for example), the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of any capital improvement upon the Common Area, including fixtures and personal property related thereto or the cost of maintaining the BMPs, or any other area of Association responsibility, as defined in the Governing Documents, provided that any such special assessment shall be approved by a vote of two-thirds (2/3), or more, of each class of members present, in person or by proxy, at a meeting duly called for this purpose and at which a quorum is present.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than twenty-one (21) days, nor more than forty-five (45) days in advance of the meeting. At the first such

meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and reconvened subject to the same notice requirement, and the required quorum at the reconvened meeting shall be one-third (1/3) of the votes of each class of membership in person or by proxy. No such reconvened meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for Improved Lots and may be collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Improved Lots on the sooner to occur of (a) the first day of the month following the date upon which services are first provided to the Owners by the Association, or (b) the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted pro rata according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a lot is binding upon the Association as of the date of its issuance. In addition, a one time working capital contribution shall be collected at settlement of the sale of each Improved Lot to a purchaser other than a Builder in an amount equal to two (2) monthly installments of the annual assessments for the year in which the closing occurs.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, or the maximum amount allowed by law, whichever is less, together with a late charge in the amount of the greater of ten dollars (\$10.00) or ten percent (10%) of the assessment amount that is due and unpaid. The Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the delinquent Owner's Lot, or exercise the rights reserved in Section 1 (b) of Article II of this Declaration. If assessments are payable in installments and if any installment of assessments is not paid within thirty (30) days after the date when due, then the entire balance of all unpaid installments of such assessment may be declared immediately due and payable in full. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages and Other Liens. The lien for the assessments provided for herein shall be subordinate and inferior to the lien for real estate taxes and bona fide duly recorded first deeds of trust on each Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot





pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V ARCHITECTURAL CONTROL

Section 1. Approval Required. No building, fence, wall, walkway, driveway or other structure or landscaping shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration therein be made, including exterior painting, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an "Architectural Committee" composed of two (2) or more representatives appointed by the Board. The Architectural Committee may, at its election, prepare for the Board's approval architectural standards consistent with and supplementing the minimum standards set forth in this Declaration (the "Standards"). Approval or disapproval of plans, locations or specifications may be based by the Architectural Committee or the Board upon any ground incorporated within the Standards or upon any other reasonable ground including purely aesthetic considerations, which, in the sole and uncontrolled discretion of the Architectural Committee or the Board, shall be sufficient. If the Board or the Architectural Committee has not approved or rejected such plans and specifications within forty-five (45) days following receipt of written request for approval, the party making the submission for approval shall deliver by first class mail and certified mail to the Architectural Committee or the Board written notice of its failure to act, and, if approval is not granted or denied within fifteen (15) days thereafter, the plans and specifications shall be deemed to be approved.

Section 2. Failure to Obtain Approval. By accepting a conveyance of a Lot, each Owner, for himself, his heirs, successors and assigns, covenants that if he alters or redecorates the exterior of the premises before submission of plans thereof to the Board of Directors, the Board of Directors shall have the right, through agents and employees of the Association, and in addition to any other rights or remedies that it may have at law or in equity, to enter upon the Lot and to repair, redecorate, maintain, rehabilitate and restore the premises and the exterior of any improvement thereon, and that costs thereof shall be a special assessment to and become a lien upon the Lot so redecorated, repaired, maintained, rehabilitated, or restored and that the Owner will pay, to the Association, the amount of the assessment in the time and manner set forth above with respect to special assessments.

#### ARTICLE VI PARTY WALLS

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



Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Any disputes over the reasonableness of the cost of such repair and maintenance shall be resolved in accordance with Section 6 of this Article.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

Section 6. Arbitration. Upon any dispute arising concerning a party wall, or under the provisions of this Article, the parties may choose to resolve such dispute through binding arbitration. In such case, the Board of Directors shall act as the arbitrator. However, if the parties object to the Board of Directors acting as the arbitrator, then each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. If the parties fail to use the Board of Directors as the arbitrator, the fees of the arbitrators used shall be borne by the parties, and the arbitrators may elect to award the prevailing party the right to contribution for such fees from the non-prevailing party.

## ARTICLE VII EASEMENTS

Section 1. Reservation by Declarant. Declarant reserves unto itself, its successors and assigns, a perpetual easement and right of way on, over, along and under the streets and roads of the Property and over the easement areas designated in this Declaration to install, maintain and use underground electric, cable television and telephone wires, cables, conduits, drainage ways, sewers, water mains and other equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities as may be necessary or desirable to serve the Property. These easements and rights expressly include the right to cut any trees, bushes or shrubbery or to take any other action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

Section 2. Adjoining Areas. Each Lot and its Owner are hereby declared to have an easement and the same is hereby granted by the Declarant over all adjoining Lots and Common Areas, as the case may be, for the purpose of accommodating any encroachment



due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause, provided such encroachments do not exceed one foot or touch any other building or interfere with the use of any improvements on the servient property. There shall be valid easements for the maintenance of such encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the negligence willful misconduct of the Owner or Owners.

Section 3. Overhanging Roofs and Eaves. Each Lot and its Owner is hereby declared to have an easement and the same is hereby granted by the Declarant, over each adjoining Lot and the Common Area, as the case may be, for over-hanging roofs and eaves attached to improvements on the Lot, provided, however, that such encroachments may not exceed one foot.

Section 4. Duties of the Association. There is hereby reserved to the Association such easements over, through and across the Property as are necessary to perform the duties and obligations of the Association as are set forth in Article IV above.

Section 5. Hedges and Fences. Each Lot and its Owner is hereby declared to have an easement and the same is hereby granted by the Declarant, for encroachments on adjoining Lots or Common Area, as the case may be, due to hedges or wooden fences belonging to such Lot, to the extent such hedge or wooden fence encroaches on adjoining Lots or Common Area. Notwithstanding the foregoing, no fence shall be erected without the permission of the Board of Directors or the Architectural Committee acting on behalf of the Board of Directors.

Section 6. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to have been established upon the recordation of this Declaration and shall henceforth be deemed to be covenants, running with the land for the use and benefit of the Lots, and the Common Area, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

## ARTICLE VIII PARTICULAR RESTRICTIONS AND INSURANCE REQUIREMENTS

Section 1. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance, public or private, to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of any insurance required to be carried by the Association.

Section 2. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that up to two of either dogs, cats or other household pets may be kept on a Lot provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in any annoyance or that are obnoxious to residents in the



vicinity, and each Owner shall be absolutely liable to each and all other Owners, their families, guests, permittees and invitees, and to the Association, for any and all damage to person or property caused by any pets brought upon or kept upon the Lots or the Common Area by any Owner or by members of his family, guests, permittees or invitees. If any such animal is kept in the rear yard of the lot, maintenance services may be withheld without credit or rebate to the owner. No Owner shall permit any animal to be let out of that Owner's townhome unless the animal is kept within a fence or on a leash. Any Owner keeping an animal on a Lot will comply with all requirements of law applicable to such animal.

Section 3. Prohibited Vehicles. No Owner and no guest shall be permitted to park upon any Lot or the Common Area any of the following oversized vehicles: buses, trucks, tractors, trailers, mobile homes, campers or other vehicles used primarily for recreational purposes. Trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, commercial vehicles and boat trailers shall not be parked on any street, parking area or yard. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Property. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or the Rules and Regulations promulgated by the Board of Directors may be towed at the Lot Owner's expense.

Section 4. Residential Use. All Improved Lots shall be used for single family residential purposes exclusively. The use of a portion of any Improved Lot for business purposes by the Owner or occupant thereof shall be considered a residential use only if the Improved Lot is used primarily for residential purposes, and if such business use (i) is not detectable by sight, sound, smell from the exterior of the residence (ii) is consistent with zoning requirements and does not violate applicable law; (iii) does not increase the liability or casualty insurance premium or obligation of the Association or of other residents of the Property; and (iv) does not create any customer or client traffic to and from the Improved Lot. The use of an Improved Lot shall not be deemed to be a single family purpose if the Improved Lot is used (whether by common owners or tenants) by more than three (3) unrelated persons as a residence.

Section 5. Fire Insurance and Extended Coverage. Each Owner shall be responsible for securing insurance policies for fire and extended coverage for the structure on each Lot of the Owner, in an amount equal to 100% of the then current replacement cost of the property improvements (excluding land, foundations, excavations and other items that are usually excluded from such coverage) without deduction for depreciation. The Association shall be named as an "additional insured" under the policy.


Section 6. Rentals. Improved Lots shall not be leased unless the lease is subject in all respects to the terms and provisions of the Governing Documents. The Board may adopt regulations requiring the use of a lease form or addendum, approved by the Board for this purpose and establish minimum requirements for leases including, without limitation, minimum lease terms and rules requiring that an entire Improved Lot be leased instead of a portion thereof.

Section 7. Board as Agent. The Board is hereby irrevocably appointed as the agent for each Owner of a Lot and for each mortgage of a Lot to adjust all claims arising under any insurance policy or policies purchased by the Board, provided, however, that no adjustment shall be deemed binding until concurred in by any mortgagee affected thereby.

Section 8. Insurance Trustee. The Board may from time to time designate as an insurance trustee, a bank, trust company, savings and loan association, insurance company, or any financial institution to discharge the duties and responsibilities of the Board and the Association relating to insurance proceeds. The Board shall pay the fees and disbursements of any insurance trustee and such fees and disbursements shall constitute a common expense of the Owners to be included as part of the annual assessment provided in Article IV hereof.

#### ARTICLE IX ENFORCEMENT

Section 1. Enforcement. Declarant, the Association and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If, in any litigation for the enforcement of these covenants, conditions and restrictions, the Declarant, the Association or any Owner bringing suit prevails, the prevailing party shall be entitled to be reimbursed for reasonable attorney's fees incurred in

  
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seeking such enforcement. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Invalidation. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

## ARTICLE X TERM AND AMENDMENT

Section 1. Term. The covenants of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date the Declaration is duly recorded, after which time the covenants shall automatically be extended for additional ten (10) year periods, unless an instrument signed by at least two-thirds (2/3) of the then Owners of the Lots agreeing to change the covenants in whole or in part is likewise recorded.

Section 2. Amendment. This Declaration may be amended by an instrument approved by at least two-thirds (2/3) of the Owners; provided, however, that no approval of the Owners shall be required to make any technical amendment to this Declaration as requested by any government agency, mortgagee or insurer which does not materially or adversely affect the rights of the Owners. Any amendment must be recorded in the Clerk's Office of the Circuit Court of Hanover County, Virginia and must either be signed by at least two-thirds of the Owners or have appended to it an acknowledged certificate of the secretary of the Association that the Amendment has been approved as required hereby.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

Section 2. Liability and Indemnification of Declarant, Officers and Directors. The Association shall indemnify its directors, officers, employees and agents against all liabilities, damages, fines, penalties and claims imposed upon or asserted against such director, officer, employee or agent on account of or by reason of such person having been a director, officer, employee or agent of the Association, shall advance expenses for and pay all reasonable costs and expenses incurred by such officer, director, employee or agent, including without limitation reasonable attorney's fees and costs, incurred by such person in connection therewith, except in relation to matters as to which such person shall have been finally adjudged to be liable by reason of (1) his willful misconduct or (2) a knowing violation of the criminal law. Such indemnity and advance and payment of expenses shall continue as to any such director, officer, employee or agent who has ceased to have such capacity and shall inure to the benefit of the heirs, executors and administrators of such person. The determination of the right of any director, officer, employee or agent to indemnification and advance and payment of expenses is provided hereby shall be made:



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(1). By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(2). If a quorum cannot be obtained under paragraph (1) above, by a majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; or

(3). By special legal counsel (a) selected by the board of directors or its committee in the manner prescribed in paragraph (1) and (2) above; or (b) if a quorum of the board of directors cannot be obtained under paragraph (1) above and a committee cannot be designated under paragraph (2) above, selected by a majority vote of the full board of directors, in which selection directors who are parties may participate; or

(4). By the members of the Association, but directors who are at the time parties to the proceeding may not vote on the determination.

(5). Any director, officer, employee or agent of the association desiring to be indemnified and reimbursed and advanced for expenses who is either unable to obtain the determination of entitlement as set forth above or who is dissatisfied with the results of the determination may apply to the court conducting the proceeding or to the Circuit Court of the County of Hanover for an order directing the Association to make advances and reimbursement for expenses and to provide indemnification and neither the failure of the Association to make a determination concerning indemnification and expenses nor the determination by the Association that the applying director, officer, employee or agent is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to such application for advances of expenses, reimbursement or indemnification. The provisions of this section shall not be exclusive and shall be in addition to and not by means of limitation of any rights which any director, officer, employee or agent may have under the Virginia Nonstock Corporation Act or any other provisions of applicable law. Nothing set forth herein shall be deemed to prevent the Association from providing for advances of expenses, reimbursement or indemnification permitted by the Virginia Nonstock Corporation Act.

Section 3. Conflicts. If there are conflicts between the provisions of Virginia law, the Protective Covenants, the Single Family Protective Covenants and this Declaration, the provisions of Virginia law, the Protective Covenants, the Single Family Protective Covenants and this Declaration (in that order) shall prevail.

IN WITNESS WHEREOF, The undersigned Declarant has caused this Declaration to be executed as of this 13 day of March, 2009.

Babcock, LLC  
a Virginia limited liability company

By: [Signature]  
Name: Robert J. Babcock  
Its: President

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Doochland

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2009, by Robert J. Babcock, as Manager of Babcock, LLC, a Virginia limited liability company, on behalf of the company.

[Signature]  
Notary Public

My commission expires: January 31, 2011  
Registration Number: 7135136

CATHERINE S. NERHEIM NOTARY PUBLIC Commonwealth of Virginia Reg. #7135136 My Commission Expires <u>Jan 31, 2011</u>
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EXHIBIT A

Property

ALL that certain tract, piece or parcel of land, lying and being in the Henry District, Hanover County, Virginia, containing 27.0299 acres, more or less, as shown on that certain plat of survey by Bay Design Group, Engineering Surveying & Land Planning, dated May 13, 2008, which survey is recorded in the Clerk's Office, Circuit Court for the County of Hanover, Virginia, in Plat Book 38, page 487, and to which plat reference is made for a more particular description. The conveyance includes all of the grantors rights in and to the 20 foot easement extending from the southeast corner of this parcel to State Route 710 as shown on the aforesaid plat.



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EXHIBIT B

Common Area

ALL those certain lots, pieces or parcels of land, together with all appurtenances thereto belonging, as shown on the Plat referred to in Exhibit A preceding this Exhibit B, LESS AND EXCEPT the numbered subdivision lots designated on the Plat.



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\$.00 SEC 5B.1-802 GRANTOR'S TAX PD  
FRANK D. HARGROVE, JR. CLERK  
BY: SWEBB