

FALMOUTH WOODS AT BALLYMEADE

AMENDED AND RESTATED DECLARATION OF COVENANTS,
EASEMENTS AND RESTRICTIONS

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APPENDIX A

AMENDMENTS CONTAINED IN AMENDED AND RESTATED DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

The following is a list of changes that are contained in the Amended and Restated Declaration of Covenants, Easements and Restrictions of Falmouth Woods at Ballymeade (the “Amended Declaration”). The changes were made to the previous Declaration, which was recorded with the Barnstable Registry of Deeds at Book 5719, Page 267 (the “Original Declaration”).

Title: The title of the document was changed from “Falmouth Woods Declaration of Covenants, Easements and Restrictions” to “Falmouth Woods at Ballymeade Amended and Restated Declaration of Covenants, Easements and Restrictions”.

Introductory Paragraph: The name of the declarant was changed to Ballymeade Development Corporation and the date was changed. The paragraph was amended to add a reference to the date of the current amendment.

First “Whereas” Clause: A reference to “modified cluster plans recorded in Barnstable County Registry of Deeds Plan Book 445, Pages 52-57” was added.

Fifth “Whereas” Clause: The reference was changed to the “Falmouth Woods at Ballymeade Community Association, Inc.”

Article I: Definition of “Ballymeade Estates” was added.

Definition of “Bayhill” was added.

Definition of “Community Association Expenses” was amended by adding to the end of such definition the text beginning with “a portion of the cost for the maintenance of Falmouth Woods Road . . .”

Definition of “Community Association Property” was amended by replacing the entire text following “Portion of the Land described . . .”

Definition of “Declarant” was changed to refer to Ballymeade Development Corporation.

Definition of “Falmouth Woods” was amended in its entirety.

Definition of “Single Family Lot” was amended to change the number of lots from 245 to 259.

Definition of “Subdivision Plan” was amended by adding references to a cluster subdivision plan and plan of additional wildlife areas following the words “Book 414, Pages 75-85”.

Definition of “Timberline” was added.

Definition of Vegetation and Wildlife Conservancy was rewritten in its entirety.

Section 2.1: The title of the Section was changed from “Subdivision Plan” to “Area Included in Covenants, Easements and Restrictions”. The words “Declarant is the owner of the Land” were changed to “Declarant is the owner of the open-space development known as Falmouth Woods, Timberline and Bayhill Phases which are set forth in Plan Book 414, Pages 75 to 85, and Plan Book 445, Pages 52 to 57. This land is the area that is covered by the Declaration of Covenants, Easements and Restrictions.” The words “Declarant intends to develop thereon a planned residential community to be known as Falmouth Woods in accordance with this Declaration and applicable zoning regulations” were changed to “Declarant intends to develop the open-space development consistent with the Declaration of Covenants, Easements and Restrictions also included to the extent that the Declaration is already binding on Falmouth Woods Road.”

Section 3.1(b) (i): In the second paragraph, the words “said Roadways to the Community Association” were changed to “to the Community Association any portions of said Roadways not previously conveyed” and “Falmouth Woods” was changed to “Ballymeade Estates”.

Section 3.1(b) (ii): The words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 3.1(b) (viii): (“Leasing of Portions of Common Elements”) was deleted and the remaining paragraphs of Section 3.1(b) renumbered.

Section 3.1(d): The sentence “The well site area shall be restricted so that no further residential subdivision of the well site area will occur and no single family or other housing structures shall be erected therein.” was added to the end of the paragraph.

Section 3.2(b): In the first paragraph, the words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 3.2(b)(ii): The sentence “The Declarant, Ballymeade Development Corporation, further retains the right to grant easements for access to the remaining 125 acre parcel as yet unsubdivided abutting the existing subdivision owned by Ballymeade Development Corporation, known as Falmouth Woods, Timberline and Bayhill Phases.” was added to the end of the paragraph.

Section 4.1(a): In the first paragraph, the lines beginning with “Notwithstanding the foregoing” to the end of paragraph were added. In the second paragraph, the words “(where applicable)” were added.

Section 4.1(d): The sentence “The Architectural Review Committee retains the power to waive any of the above-referenced requirements on a Lot specific basis where the Committee deems necessary and appropriate because of terrain, soil conditions or other requirements.” was added prior to the last sentence of the paragraph.

Section 4.1(e): The sentence “For the specific location of the Vegetation and Wildlife Conservancy Areas, see the Wildlife Conservancy Plan prepared by Holmes and McGrath, dated September 23, 1993, recorded at Plan Brook 500, Pages 40-46.” was added to the end of the paragraph.

Section 4.2(a): In the second sentence, the words “forty thousand (40,000)” were changed to twenty thousand (20,000)”.

Section 4.2(c): The former Section was deleted and rewritten in its entirety.

Section 4.2(d)(iii): The second instance of the words “thirty feet (30’)” were changed to ten feet (10’”).

Section 4.3(b): In the parenthetical, the words “Falmouth Woods Club” were changed to “Ballymeade Country Club”.

Section 4.3(f): Both occurrences of the words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 4.3(h): The words “Falmouth Woods Club” were changed to “Ballymeade Country Club”.

Section 4.3(i): In the fifth sentence, after the words “bona fide construction activities are taking place”, the following was deleted: “nor shall it prohibit routine deliveries by tradesmen or the use of trucks in making service calls, nor shall it apply to a situation where a truck becomes disabled and, as a result of emergency, is required to be parked on the Land for a reasonable period of time”.

Section 4.3(v): In paragraph (ii), the word “unimproved” was deleted prior to the words “Single Family Lot” and the parenthetical “(i.e., without a dwelling)” was deleted after the words “Single Family Lot”.

Section 5.15(m): The words “the Falmouth Woods Subdivision” were changed to “Falmouth Woods”.

Section 6.6: The words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 6.8: In the first paragraph, the words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 7.1: The words “security communication antenna, communications antenna” were deleted after the words “and other such equipment”.

Section 7.2: The words “Falmouth Woods” were changed to “Ballymeade Estates”.

Section 8.3: (“Falmouth Woods Club”) was deleted and the remaining paragraphs of Article VIII renumbered.

Section 8.4 (former Section 8.5): The addresses of the Community Association in clause (ii) and of the Declarant in clause (iii) were both changed to “Bell Tower Mall, 1600 Falmouth Road, Unit 40, Centerville, Massachusetts 02632”.

Section 8.12: The second paragraph was deleted in its entirety.

FALMOUTH WOODS AT BALLYMEADE

AMENDED AND RESTATED DECLARATION OF COVENANTS,
EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS (“Declaration”) made the 1st day of May, 1987, amended October 25, 1993, as is further amended this 31st day of March, 1995 by CLSV ASSOCIATES LIMITED PARTNERSHIP, by its General Partner, BALLYMEADE DEVELOPMENT CORPORATION, a Massachusetts corporation (together with its successors and assigns, the “Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of the real property shown on a certain plan of land entitled “Modified Subdivision Plan of Land Formerly of North Landers Corporation Now of Longshank Nominee Trust in Falmouth” dated October 3, 1985, Revised February 21, 1986 and March 19, 1986, by Holmes and McGrath, Inc., (11 sheets), recorded with Barnstable County Registry of Deeds in Plan Book 414, Pages 75-85, also modified cluster plans recorded in Barnstable County Registry of Deeds Plan Book 445 Pages 52057(the “Subdivision Plans”), and Declarant desires to create on the Land (as herein-after defined) a residential community with certain common elements and facilities (the “Common Elements”) for the benefit of the community; and

WHEREAS, Declarant desires to provide for the preservation of the value and amenities of said community and for the maintenance of the Common Elements; and

WHEREAS, Declarant intends to construct residential units on portions of the Land referred to as “Single Family Lots” (as hereinafter defined), subject to and with the benefit of the covenants, easements, restrictions, charges and liens hereinafter set forth, each and all of which is and are for the benefit of each owner of a residential unit therein and any other residential unit and the owners thereof and the benefit of the Single Family Lots and each owner of a residential unit located thereon; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities of said community, to create an entity to which will be delegated and assigned the powers of maintaining and administering the Common Elements and administering the enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated the Falmouth Woods at Ballymeade Community Association, Inc.; and

WHEREAS, the Community Association has joined in this Declaration and thereby assumes such obligation for the duration of the Declaration and shall perform such obligation in accordance with the “Documents” (as hereinafter defined);

NOW, THEREFORE, Declarant hereby declares that the Land (as such term is defined in Article I) shall be held, transferred, sold, conveyed and occupied subject to and with the benefit of the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

“Architecture Committee” shall mean the Architectural Control Committee more particularly described in Article IV hereof.

“Annual Assessment” shall mean a share of the funds, required for the payment of Community Association Expenses, which is assessed by the Community Association Board annually against each Member.

“Assessments” shall mean Annual Assessments, Special Assessments and Individual Expenses which are assessed by the Community Association. The Declarant shall be exempt from any obligation to pay Assessments for Lots owned by the Declarant.

“Ballymeade Estates” shall mean the entire 900 acres consisting of an 18-hole championship golf course known as Ballymeade Country Club, also including a 259-lot single-family lot subdivision known as Falmouth Woods, Bayhill and Timberline Phases, including additional future phases known as Devon Court, The Point, The Ridge and Wyldwood, all shown on a plan showing Phases at Ballymeade Estates in Falmouth dated October 5, 1993 recorded in the Barnstable County Registry of Deeds in Plan Book 498, Page 27, with Bayhill, Devon Court, Falmouth Woods, The Point, The Ridge, Timberline Phases and Wyldwood, together with Falmouth Woods Road being identified as “Private - Variable Width on the North Subdivision Plan”, plus any additional land which may in the future be made subject to this Declaration by further amendment hereto.

“Bayhill” is the second of the two phases located within the perimeter of Falmouth Woods portion of Ballymeade Estates, as shown on plan recorded at Barnstable County Registry of Deeds in Plan Book 498, Page 27.

“Boundary Fence” shall mean any fence which the Declarant or the Community Association is authorized to construct and maintain under Section 3.2(a).

“Builder” shall mean the owner of a Single Family Lot whom Declarant has identified as a “Builder” and to whom Declarant may specifically assign a portion of its rights reserved herein, all as shall be set forth in an instrument executed by Declarant and recorded with said Registry of Deeds.

“Common Elements” shall mean the Community Association Property, together with any Service Easements and Trails not located on Community Association Property, as they shall exist from time to time.

“Community Association” shall mean Falmouth Woods at Ballymeade Community Association, Inc.

“Community Association Articles” shall mean the Articles of Organization of the Community Association, as the same may be amended from time to time. A copy of the initial Community Association Articles are attached hereto as Exhibit A.

“Community Association Board” shall mean the Board of Directors of the Community Association.

“Community Association By-Laws” shall mean the By-Laws of the Community Association, as the same may be amended from time to time. A copy of the initial Community Association By-Laws being attached hereto as Exhibit B.

“Community Association Expenses” shall mean the expenses for which Members are liable to the Community Association as described in this Declaration and in any other Documents, and include, but are not limited to, the costs and expenses incurred by the Community Association in administering, operating, reconstructing, maintaining, repairing, restoring, replacing or improving the Common Elements or portions thereof and improvements thereon and the costs of carrying out the powers and duties of the Community Association and expenses specifically hereafter referred to in this Declaration as “Community Association Expenses” or designated as “Community Association Expenses” by the Community Association Board, and a portion of the cost for the maintenance of Falmouth Woods Road as set forth on North Subdivision Plan of Longshank Nominee Trust in Falmouth recorded in Barnstable County Registry of Deeds Plan Book 414, Pages 72 to 74.

“Community Association Property” shall mean the portion of the Land described as the Falmouth Woods Subdivision for Longshank Nominee Trust drawn by Holmes and McGrath recorded in Barnstable County Registry of Deeds Plan Book 414,

Pages 75 to 85, and also shown on Modification Cluster Plan recorded in Barnstable County Registry of Deeds Plan Book 445, Pages 52-57. Also shown on a plan of Timberline and Bayhill Phases shown on a Plan of Ballymeade Estates to be recorded.

“Declarant” shall mean Ballymeade Development Corporation, a Massachusetts corporation, its successors and assigns. An Owner shall not, solely by a purchase of a Single Family Lot, be a successor or assign of Declarant’s rights or obligations under the Documents unless such Owner is specifically so designated as a successor or assign of Declarant’s rights or obligations in the deed of such lot or other instrument executed by Declarant.

“Declaration” shall mean this instrument and any and all amendments hereto.

“Documents” shall mean, in the aggregate, this Declaration, the Community Association Articles, the Community Association By-Laws and the Rules and Regulations of the Community Association and all amendments and supplements thereto and all instruments and documents referred to therein or referred to herein as the same may be amended from time to time.

“Falmouth Woods” is the original open-space subdivision. A plan showing 259 single-family lots being Bayhill and Timberline Phases as recorded in Plan Book 414, Pages 75-85; a portion of the land area being resubdivided as a cluster development, said plans being recorded in Plan Book 445, Pages 52 to 57.

“Final Plans” shall have the meaning set forth in Section 6.4 subject to the approval described in Section 6.5

“Improvement” shall mean any structure or improvement of any kind, including without limitation, any building, swimming pool, patio, tennis court, screen enclosures or screening of any type, tower, disposal system, driveway, decorative structure, landscape device or object and any and all other types of physical structure upon a Lot, whether the purpose is temporary or permanent, functional or decorative or otherwise.

“Individual Expenses” shall mean the various fees, fines and costs chargeable to Members in connection with the use of Community Association services and Community Association Property as determined from time to time by the Community Association Board.

“Institutional Mortgagee” shall mean any lending institution owning a first mortgage covering a Living Unit, including where the context admits any of the following institutions:

(i) Any federal or state chartered savings and loan association or building and loan association, commercial bank or other bank, real estate investment trust, or mortgage banking company of any subsidiary thereof; or

(ii) Any “secondary mortgage market institution” including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institution as the Community Association Board shall hereafter approve in writing which holds a first mortgage upon a Single Family Lot and/or Living Unit; or

(iii) Any and all lenders or the successors and assigns of lenders which have loaned money to Declarant and which hold a mortgage upon any portion of the Land securing such loans (herein referred to as the “Lenders”); or

(iv) Declarant, if Declarant holds a mortgage on any portion of the Land and the transferee of any mortgage encumbering the Land which was originally held by Declarant; or

(v) Any life insurance company doing business in the Commonwealth of Massachusetts; or

(vi) Any other lender which the Community Association Board shall hereafter approve in writing which holds a mortgage on a Living Unit.

“Land” shall mean the land shown and described on the Subdivision Plan, excluding Parcels E and F and Lot 259.

“Living Unit” shall mean a detached dwelling house, designed as a residence for one family, situated on a Lot.

“Lot” means any Single Family Lot and any other building lot which is subject to the restrictions of this Declaration and the Documents.

“Lot Plan” shall mean the plan to be recorded with Declarant’s deed of each Single Family Lot as more particularly described in Section 4.1(a).

“Member” shall mean each and every Owner who is a Member in good standing of the Community Association in accordance with the Community Association Articles and By-Laws.

“North Subdivision Plan” shall mean a certain plan of land entitled “Subdivision Plan of Land of Longshank Nominee Trust in Falmouth” dated July 25, 1985, Revised

December 2, 1985, January 22, 1986 and February 24, 1986, by Holmes and McGrath, Inc. (3 sheets), recorded with said Registry of Deeds in Plan Book 414, Pages 72-74.

“Open Space” shall mean the portions of the Community Association Property more particularly described in Section 3.1(b)(ii) restricted by this Declaration as non-buildable, including portions thereof designated as Vegetation and Wildlife Conservation Areas.

“Owner” shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Living Unit or to any vacant Single Family Lot but shall not mean the mortgagee thereof unless and until such mortgagee has acquired title pursuant to foreclosure or any conveyance or possession in lieu of foreclosure.

“Registry of Deeds” shall mean the Barnstable County Registry of Deeds or its successor as the official registry of land records for the Town of Falmouth, Barnstable County, Massachusetts.

“Residential Property” shall mean any or all of the Single Family Lots and Living Units.

“Service Easements” shall mean easements to provide for installation, service, repair and maintenance of the equipment required to provide utility services, including (but not limited to) power, electric transmission, television cable, light, telephone, gas, water, sewer, drainage, water retention and governmental services including police and fire protection, including reasonable rights to access for persons and equipment necessary for such purposes for the benefit of Declarant and the Community Association and appropriate utility companies, agencies, franchises or governmental agencies.

“Single Family Lot(s)” or “Lots” shall mean the 259 lots denoted as “Building Lots” on the Subdivision Plan and any other building lots shown on a new or amended subdivision plan and made subject to this Declaration by amendment hereto, the development of which is restricted to Single Living Units; however, if two (2) or more Single Family Lots must always be conveyed together pursuant to an instrument executed by the record owner(s) of such Lots which is recorded with the Registry of Deeds, then each two Single Family Lots shall be deemed to be only one (1) Single Family Lot for purposes of the Covenants, Restrictions and Easements set forth in this Declaration.

“Special Assessment” shall mean a share of the funds required for the payment of Community Association Expenses which from time to time is assessed against a Member by the Community Association Board in accordance with the requirements of Section 5.9, in addition to the Annual Assessment, for the purpose of making up budget deficits occurring after the Turnover Date and defraying in whole or in part the cost of any

construction or reconstruction, unexpected repair or replacement of any improvement upon the Common Elements, including necessary fixtures and personal property related thereto.

“Subdivision Plan” shall mean a certain plan of land entitled “Modified Subdivision Plan of Land Formerly of North Landers Corporation Now Longshank Nominee Trust in Falmouth” dated October 3, 1985, revised February 21, 1986 and March 19, 1986, by Holmes and McGrath, Inc., (11 sheets), recorded with said Registry of Deeds in Plan Book 414, Pages 75-85, as amended by a cluster subdivision plan drawn by Holmes and McGrath recorded with said Registry of Deeds in Plan Book 445, Pages 52-57, as well as a plan of additional wildlife areas to increase effective open space which is a part of the variance granted by the Town of Falmouth Board of Appeals, which plan is recorded at the Registry of Deeds in Plan Book 500, Pages 40-46, as said plan may be further modified at the time of reference thereto by Amendments recorded in the Registry of Deeds.

“Timberline” is one of the two phases located within the perimeter of Falmouth Woods portion of Ballymeade Estates, as shown on plan recorded at the Registry of Deeds in Plan Book 498, Page 27.

“Turnover Date” shall mean the first day of the month next following the date when the Declarant shall have conveyed two hundred thirty (23) Single Family lots.

“Vegetation and Wildlife Conservancy Area” means any portion of the Community Association Property and of any Lot which is specifically restricted by the Documents for the preservation of vegetation in its natural state for the purpose of vegetation of soil, natural terrain, natural wildlife and/or such vegetation, irrespective of whether such area is shown on the Subdivision Plan as “Open Space”; including without limitation the areas shown on plan entitled “Plan of Proposed Vegetation and Wildlife Conservancy Areas prepared for Ballymeade Development Corp. in Falmouth, Scale: 1” - 80’ Date: Sept. 23, 1993, holmes and mcgrath, inc. civil engineers and land surveyors 200 main street, falmouth, ma 01540”, which plan is recorded in the Registry of Deeds in Plan Book 500, Pages 40-46 (being the additional area as set forth on said plan to increase the subdivision’s area of open space for the purpose of compliance with the Town of Falmouth Board of Appeals Variance Number 118-93, recorded in said Registry of Deeds in Book 9023, Page 344, and Book 9024, Page 12).

“Wildlife Corridor” shall mean the parcel bordering Route 28 at the westerly edge of the Land which is more particularly described in Section 3.1(b)(v) which shall be subject to public use rights and the restrictions set forth herein.

“Wildlife Ecologist” shall mean the person holding the position more particularly described in Section 5.2 and having the authority, duties and responsibilities set forth in this Declaration.

ARTICLE II

INTRODUCTION

2.1 Area Included in Covenants, Easements and Restrictions.

Declarant is the owner of the open-space development known as Falmouth Woods, Timberline and Bayhill Phases which are set forth in Plan Book 414, Pages 75 to 85, and Plan Book 445, Pages 52 to 57. This land is the area that is covered by the Declaration of Covenants, Easements and Restrictions. The Declarant intends to develop the open-space development consistent with the Declaration of Covenants, Easements and Restrictions also included to the extent that the Declaration is already binding on Falmouth Woods Road, Roadways and Trails, Single Family Lots, Open Space areas, which are included as part of the Common Elements, and drainage easements. The Declarant reserves the right at any time to file with said Registry of Deeds one or more new and/or amended subdivision plan(s) which resubdivide portions of Falmouth Woods which are owned in their entirety by Declarant without the requirement of the consent of the Community Association or any Owners.

2.2 Uses of the Land

All portions of the Land shall be subject to the use limitations, restrictions and other provisions, if any, imposed thereon as may be set forth in this Declaration and the Documents. In addition to any other provisions thereof, the provisions of the Documents may restrict specified portions of the Land to specified uses, including, but not limited, to use as Residential Property or as Common Elements, including, but not limited to, streets, Open Space and Vegetation and Wildlife Conservancy Areas.

ARTICLE III

TITLE ISSUE

In consideration of the benefits hereinafter contained, Declarant does hereby declare that the following provisions shall be applicable to the Land:

3.1 Use Classifications.

3.1(a) Residential Use. The development and use of all Single Family Lots shall be restricted and limited to Single Family "Residential Use" only, except for facilities related to construction, development, sales and rental activities permitted by Article VI.

(i) "Residential Use" means the construction only of Living Units and Improvements associated with residential purposes such as (but not limited to) drives, driveways, parking spaces, lawn areas, patios, swimming pools, tennis courts, Service Easements, the easements described in this Article III, and other amenities commonly associated with Living Units which receive the approval of the Community Association. No commercial or business occupations may be conducted in any Living Unit except as set forth in Article VII. No structures or moveable trailer or shelter, other than a completed or substantially completed dwelling house conforming in all respects with the requirements of these restrictions, shall be used even temporarily as a place of habitation on any Lot.

(iii) In order to protect the property rights and interests of each Owner and Declarant, the right of any Owner to construct, develop and use any Single Family Lot and/or Living Unit, even for a permitted Residential Use, shall at all times be subject to the terms, restrictions, covenants, provisions and requirements to obtain prior approvals set forth in this Declaration and the Documents.

3.1(b) Community Association Property and Common Elements. The Community Association Property shall consist of the "Roadways" and "Open Space", (as such terms are hereinafter defined). Common Elements shall include Community Association Property, Trail Easements and Service Easements to the extent not located on Community Association Property. The use of Common Elements shall be restricted as set forth below. The administration, management, operation and maintenance of the Common Elements and of any Boundary Fence shall be the responsibility of the Community Association as provided in the Documents.

(i) Roadways. The Roadways mean the roadways subject to this Declaration and the Documents shown on the Subdivision Plan identified as follows:

1. Falmouth Woods Road
2. Hill and Plain Road
3. Cairn Ridge Road
4. Saddleback Lane
5. Equestrian Lane
6. Summit Lane
7. Highwood Lane
8. Moraine Ridge Lane
9. Wellwood Circle
10. Green Tree Circle
11. Paddock Circle
12. Sorrel Circle
13. Martingale Circle
14. Fetlock Circle
15. Longshank Circle

Declarant shall convey to the Community Association any portions of said Roadways not previously conveyed. The Community Association shall keep and maintain the Roadways and all improvements thereon (including without limitation any guardhouse or other structures thereon as private roadways to provide a means of ingress and egress (i) to and from publicly dedicated streets located outside of Ballymeade Estates and (ii) between and among all portions of th Land for all governmental purposes and for the use and enjoyment of Builders and the other parties set forth in Section 3.1(b)(v) and (vi). Governmental purposes include, without limitation, providing police and fire protection, garbage collection, mail delivery and building inspection. The Roadways shall be subject to the easements more particularly set forth in Section 3.2 Street lights and utility lines and improvements in connection with other Service Easements shall be installed within the Roadways or in areas adjacent thereto from time to time as Declarant or the Community Association shall determine and/or in accordance with the requirements of the applicable governmental agencies.

The conveyance of Lots shall include the fee and soil to the center line of said Roadways insofar as the same adjoin said Lots.

(ii) Open Space. Parcels I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII on the Subdivision Plan are hereby designated as nonbuildable lots (“Open Space”) and shall be either preserved as Vegetation and Wildlife Conservancy Areas or otherwise maintained in their natural state or landscaped and cultivated as Declarant considers consistent with Declarant’s plan for beautification of Ballymeade Estates. Declarant may lay out and construct trails in the Open Space and shall have the absolute right in Declarant’s sole discretion to modify Declarant’s landscaping plan for Ballymeade Estates and specifically to modify the appearance of the Open Space for so long as Declarant shall own any portion of the Land. Thereafter, the Community Association shall have the right to modify Declarant’s plan for beautification of Ballymeade Estates and specifically to modify the appearance of the Open Space in accordance with the provision of the Documents; provided, however, that any such modification which has the effect of removing land from or altering the use of any vegetation and Wildlife Conservancy Area shall require the prior approval of the Falmouth Planning Board. Notwithstanding anything to the contrary hereinafter contained, the Open Space is expressly restricted to private use and more particularly described in Section 3.1(b)(v) and (vii) below.

(iii) Trails. Trails means the system of trails on the Land designed for passage by foot, bicycle, golf cart, horse and other non-vehicular modes of conveyance. Trails shall be Community Association Property when located within Roadways and Open Space. Whenever Trails are not located within Roadways, Open Space or other Community Association property, they shall be deemed Trail Easements which shall be deemed part of the Common Elements maintained by the Community Association.

Notwithstanding the provisions of Section 3.1(b)(v) and (vi) below, the use of the trail along Falmouth Woods Road between Route 151 and the intersection with Hill and Plain Road and along Hill and Plain Road between Falmouth Woods Road and Sam Turner Road shall not be limited to Primary Users and Secondary Users.

(iv) Wildlife Corridor. The Parcel at the westerly edge of the Land which is approximately 300 feet wide and shown on an amendment to the Subdivision Plan shall be deemed the Wildlife Corridor and shall be preserved as a Vegetation and Wildlife Conservancy Area. Declarant hereby dedicates to the public the right to pass on foot along the Wildlife Corridor, provided, however, that such right shall be limited to passage within the premises of the Wildlife Corridor and shall not include by implication the right to cross or use any other portion of the Land, or to use any mode of conveyance within said premises other than by foot or horseback. Declarant reserves the right to grant a Conservation restriction pursuant to General Laws Chapter 184, Sections 31-33 which will impose restrictions on the Wildlife Corridor consistent with this Declaration. Declarant, for itself and its successors in title to the Wildlife Corridor, agrees not to erect or maintain fences or other obstructions across the Wildlife Corridor, in order that North-South passage through Wildlife Corridor by wildlife and the public shall be unobstructed, but Declarant reserves the right and easement for itself and the Community Association to construct and maintain a boundary fence pursuant to Section 3.2(f) along the easterly boundary of the Wildlife Corridor, provided, however, that any such boundary fence shall include an opening or openings which will permit wildlife direct access across Cairn Ridge Road between the Vegetation and Wildlife Conservancy Area east of Cairn Ridge Road and the Wildlife Corridor.

(v) Private Use. The Common Elements are not for the use and enjoyment of the public. Except as herein otherwise set forth, the Common Elements are expressly reserved for the sole and exclusive use and enjoyment of Declarant, the Community Association and the agents, employees, guests and invitees of Declarant and the Community Association, Owners and their family members, guests, invitees and lessees, and , in the case of the portion of Falmouth Woods Road shown on the North Subdivision Plan, the owners of Lots shown on the North Subdivision Plan and the agents, employees, guests and invitees of such owners and their successors in title to such Lots, and also for governmental purposes set forth in Section 3.1(b)(i) (collectively, the “Primary Users”).

(vi) Secondary Users. Persons other than Primary Users (“Secondary Users”) may use the Common Elements if the Community Association, from time to time, permits and then only upon payment by the Secondary Users of such fees as the Community Association shall from time to time determine and subject to such terms and conditions as the Community Association shall from time to time establish; provided that such use of the Common Elements by the Secondary Users will not

substantially interfere with the use thereof for their primary purpose of affording recreational facilities and amenities for the benefit of the Primary Users.

(vii) Conveyance of Community Association Property to Community Association. Declarant shall construct Falmouth Woods Road, as shown on the North Subdivision Plan, so as to provide ingress and egress to the Land from Route 151. Such Roadway shall be subject to perpetual non-exclusive easements for ingress and egress, as provided in Section 3.2

Declarant shall convey to the Community Association by Quitclaim Deed any portion of the Community Association Property not previously conveyed to the Community Association on or before one hundred eight (180) days after the earlier to occur of the following: (x) Declarant completes construction of such portion of the Common Elements; or (y) Declarant relinquishes control of the Community Association as more particularly set forth in Paragraph VII.2 of the Community Association By-Laws. Declarant may convey all or portions of the Community Association Property to the Community Association at any earlier time or times as is determined by Declarant in its sole discretion.

At the time of conveyance of the Community Association Property or any portion thereof, the Community Association agrees to accept “AS IS” the Community Association Property or any portion thereof and the personal property and improvements located thereon, without any representation or warranty, expressed or implied in fact or by law, as to the condition or fitness of the Community Association Property or portion thereof and the personal property and improvements located hereon, and to assume responsibility for the administration, management, operation and maintenance thereof as provided herein. Declarant shall convey each portion of the Community Association Property to the Community Association free and clear of all encumbrances (unless the holder of the encumbrance consents to this Declaration and subordinates its encumbrance to, or agree to recognize the rights of Members pursuant to, the provisions of this Declaration, including the possessory and use rights established hereby) except real estate taxes which are the obligation of the Community Association to pay pursuant to Section 5.15(a).

(viii) Miscellaneous. Except as hereinafter provided, once the Community Association Property is conveyed to the Community Association, the Community Association shall not mortgage or otherwise encumber the Community Association Property without first obtaining the written approval of Institutional Mortgagees holding mortgages encumbering not less than two-thirds (2/3) of the Living Units encumbered by mortgages held by Institutional Mortgagees as shown by the records of said Registry of Deeds. The foregoing consent requirement shall not be applicable to, or prohibit the Community Association from granting, such easements as are necessary or appropriate for the development of Falmouth Woods and the land shown on the North Subdivision Plan and the use of the Land in a manner consistent with the

provisions of the Documents, nor shall the foregoing prohibit or restrict the Community Association from mortgaging or otherwise encumbering specific portions of the Community Association Property, provided such mortgage or encumbrance is solely to secure loans obtained for improving such portion of the Community Association Property.

3.1 (c) Drainage Easements. The “Drainage Easements” shown on the Subdivision Plan and the North Subdivision Plan shall be reserved and used for the construction and maintenance of drainage facilities and areas including, but not limited to, swales, other water retention areas, pumps, pipes, inlets and outfall structures and all necessary appurtenances thereto.

3.1 (d) Well Site. Declarant reserves Lot 259 from the restrictions of this Declaration with the intention that Lot 259 be set aside for the development of water supply well which will draw water from the aquifer underneath the Land. The rights of Owners of Lots shall be subject to such use of Lot 259 and Owners shall not undertake or allow any activity on their Lots which will adversely affect the quality of the water in the aquifer. Notwithstanding the foregoing, this Section 3.1(d) shall not be construed to prohibit the installation of a septic system on a Single Family Lot. The well site area shall be restricted so that no further residential subdivision of the well site area will occur and no single family or other housing structures shall be erected therein.

3.1(e) Reserved Parcels and Lot. Declarant reserves to itself, its successors and assigns the following parcels which shall be free from the restrictions imposed by this Declaration on the remainder to the Land, except those specifically agreed to as conditions to the variance granted by the Town of Falmouth Board of Appeals:

Parcels A, C, D, E, F, G, H, and I;
Lot 259.

Declarant reserves the right to grant easements appurtenant to said parcels and Lot 259 pursuant to Section 3.2.

3.2 Reservation and Grant of Easements

Declarant hereby reserves to itself and further reserves the right on behalf of itself and the Community Association to grant the following easements on, upon, over, across, through and under the Land for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

3.2(a) Service Easements: Service Easements for utilities and for government purposes as more particularly set forth in the definition of Service Easements in Article I hereof, together with the right to enforce the same; provided, however, that

no Service Easements will be granted with respect to any part of the Land lying beneath a Living Unit, provided that the foregoing shall not preclude the grantee of a Service Easement from making minor alterations to then existing Improvements other than buildings such as, but not limited to, alteration or temporary removal of a fence or a portion thereof provided that same is repaired and/or restored as the case may be by such grantee at his expense within a reasonable time thereafter, and provided Service Easements (not including easements shown on the Subdivision Plan) over any Single Family Lot so far as practicable shall be located parallel to and within fifteen (15') feet of the Lot lines.

3.2(b) Roadway Easements - Declarant. A nonexclusive perpetual easement or perpetual easement over and upon the Roadways and also over and upon Falmouth Woods Road being marked "Private Variable Width" on the North Subdivision Plan, as a right appurtenant to all of the remaining land of the Declarant in Ballymeade Estates in common with others from time to time entitled to use the same, for all purposes for which streets may now or hereafter customarily be used in the Town of Falmouth. The Declarant further reserves for itself and its successor and assigns:

(i) The right from time to time to grant any other person or persons the right to use said Roadways, in common with others from time to time entitled to use the same, for all purposes for which streets in Falmouth may now or hereafter customarily be used, and

(ii) Without limiting such other rights as the Declarant and its successors and assigns may have with respect to said Roadways, (i) the right from time to time to grade, change the grade of, surface, landscape and otherwise improve said ways and remove, dispose of soil therefrom, and cut trees and brush thereon in connection therewith, and (ii) the right to use said Roadways, and from time to time to grant to others the right to use said Roadways, for the purpose of installing, maintaining, replacing, removing and using sewers, drains, water mains and related equipment, gas pipes, electric lights, power, cable television and security communication and telephone wires and other public services, with the necessary conduits (all of which sewers, drains, water mains and related equipment, gas pipes, electric lights, power and telephone wires and other public services and conduits shall remain the property of the entity installing the same), provided, however, that the rights reserved under this paragraph shall be exercisable only by the Declarant and its successors and others to whom said rights may be specifically assigned. The Declarant, Ballymeade Development Corporation, further retains the right to grant easements for access to the remaining 125 acre parcel as yet unsubdivided abutting the existing subdivision owned by Ballymeade Development Corporation, known as Falmouth Woods, Timberline and Bayhill Phases.

3.2 (c) Roadway Easements - Owners. The conveyance of Lots shall include the appurtenant non-exclusive right to use, in common with the Declarant and other Owners and others from time to time entitled to use the same, for all purposes for which streets may nor or hereafter customarily be used in the Town of Falmouth, the Roadways and also the section of Falmouth Woods Road shown on the North Subdivision Plan as “Private Variable Width” to the extent the same provide and afford access from such Lot(s) to and from Route 151 and Sam Turner Road. The Declarant shall have the right to relocate ways, provided, however, that with respect to any portions thereof in which fee interests have been previously conveyed to Owners, Declarant shall obtain the prior written consent of such Owners prior to any such relocation. Further, each Owner, by acceptance and recording of a deed to his/her Lot, agrees for himself and his successors in title to such Lot:

(i) that if in connection with the installation of utilities to his/her Lot or otherwise he/she shall make any excavations in any Roadway, he/she will forthwith restore said way and the surface thereof to its prior condition;

(ii) that he/she will not cut any trees or remove any soil from any Roadway without the prior written consent of the Architecture Committee elsewhere in this Declaration provided for; and

(iii) that, upon request by the Community Association, such Lot Owner or his successor in title will join in petitioning the Town of Falmouth to take, lay-out and accept said Roadway, or any part thereof, as public ways, and/or will execute and deliver to the Community Association or the Town of Falmouth appropriate instruments to release said Town from any claims for damages on account of any taking and/or laying out of such Roadways and any other papers necessary or proper to establish such public ways.

3.2(d) Trails and Trail Easements - Declarant. The Declarant reserves for itself and its successors and assigns the right to construct and maintain on the Land a system of trails (a “Trail” or the “Trails”) for passage by foot, bicycle, golf cart, horses and other non-vehicular modes of conveyance. Such trails shall be constructed within the boundaries of Roadways and Open Space when practical but shall not be laid out or constructed within the perimeter of any Vegetation and Wildlife Conservancy Area. Declarant also reserves the right and easement to locate sections of any Trail on portions of Lots if Declarant determines that engineering and planning conditions involving topography, sit, safety, vegetation and conservation require the layout of a section of a Trail across portions of one or more Lots (a “Trail Easement”).

3.2(e) Trails and Trail Easements - Owners. The conveyance of Lots shall include the appurtenant non-exclusive right to use, in common with Declarant and other Owners and others from time to time entitled to use the same, the Trails, including Trail Easements, for passage by foot, horse, bicycle, and by mechanized vehicle

registered with and permitted by the Community Association, including golf carts, provided, however, that the right and easement of Owners and others to use Trails shall at all times be subject to such rules and regulations as the Community Association may promulgate from time to time for the benefit of Members.

3.2(f) Boundary Fence. An easement or easements in favor of Declarant and the Community Association (i) around all or a portion of the perimeter of the Land and (ii) along the perimeter of any Vegetation and Wildlife Conservancy Area, at any time, and from time to time, for the purposes of erecting, maintaining, repairing and replacing a boundary wall, fence or landscaping or combination thereof, which may or may not include gates or doors (a “Boundary Fence”) and for the purposes of providing access by vehicles required in connection with installation and maintenance of such Boundary Fence. Such easement shall be fifteen (15’) feet in width running around or along all or any portion of the perimeter of the Land and any Vegetation and Wildlife Conservancy Area. The Community Association shall be responsible for maintaining, repairing or replacing any such Boundary Fence but the easement area shall be maintained by the Owners of such portions of the Land. Declarant and the Community Association are under no obligation to install any Boundary Fence in any or all portions of Sections of the Land but are only reserving the right to do so. Any Boundary Fence constructed along the Wildlife Corridor shall permit wildlife to pass directly from the Wildlife Corridor to the Vegetation and Wildlife Conservancy Area east of Cairn Ridge Road. No improvements shall be constructed within the easements provided for in this Paragraph which would interfere with the use of such easements for the purposes intended unless such improvement is approved in writing by the Community Association Board.

3.2(g) Easement for Encroachments. An easement for encroachment in favor of Declarant, the Community Association and persons entitled to use the Common Elements in the event any portion of any improvements located on the Common Elements now or hereafter encroaches upon any Lot or Open Space as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. Any easement for encroachment shall include an easement for the maintenance of the encroaching improvements in favor of the parties who have the obligation or right to maintain such encroaching improvements in favor of the persons entitled to use such improvements. The encroaching improvements shall remain undisturbed for so long as the encroachment exists.

3.2(h) Enforcement Easement of the Community Association and Declarant. As easement or easements for ingress and egress in favor of the Community Association and Declarant or the designees of the Community Association Board and Declarant to enter upon any Lot for the purpose of the Community Association Board’s fulfilling its duties and responsibilities of ownership, administration, maintenance and repair and Declarant exercising its rights, all in accordance with the Documents. Such

easement shall include an easement in favor of the Community Association for the duration of the Declaration in the Common Elements now or hereafter created to use, repair, maintain and replace the same for the purposes to which the Community Association hereafter determine them to be reasonably suited.

3.2(i) Creation of Easements. Any easement described in Sections 3.2(a) through (h) shall be created either (I) upon the recording of the Declarant with respect to the persons specifically described above, or (ii) with respect to any Single Family Lot, upon the recording of Declarant's deed to the first Owner of such Lot, or (iii) with respect to any other such easement, upon recording of an instrument of grant thereof by Declarant, in all cases without requiring the consent of any Owner or any Owner's mortgagee. Service Easements shall be created upon recording of an instrument expressly granting or reserving the same.

3.2(j) Assignments. The rights and easement reserved hereunder unto the Declarant may be assigned in whole or in part by Declarant to the Community Association, or by either of them to any town, county or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant.

3.2(k) Other Easements, Permits and Licenses. Declarant further reserves the right on behalf of itself, its nominee and the Community Association, to grant easements (subject to the provisions contained in Section 3.2(a) through (h), permits and licenses over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Falmouth Woods or which Declarant deems in the best interest of Falmouth Woods and the other land shown on the North Subdivision Plan.

ARTICLE IV

USE ISSUES

4.1 Construction Requirements

4.1(a) Lot Plan and Site Plan Restrictions. Declarant shall provide an initial plan of a Single Family Lot (the "Lot Plan") to the first Owner of such Lot which shows the location of easements and restrictions encumbering such Lot and location of the designated building site within which Improvements may be constructed and also the approximate driveway location. Such first Owner shall record the Lot Plan with Declarant's deed of such Lot. Notwithstanding the foregoing, no such Lot Plans shall be required with respect to all Lots shown on that certain "modification of a Subdivision Plan to Create a Cluster Development at the Portion of Falmouth Woods prepared for Falmouth Woods Development Corp. in Falmouth, Scale 1" = 200' Date: Oct. 7, 1987

holmes and mcgrath, inc. civil engineers and land surveyors 200 main street, falmouth, ma 01540”, which plan is recorded with the Registry of Deeds in Plan Book 445, Pages 52-57.

Owner seeking to construct Improvements shall first submit to the Architecture Committee a plan which shall be based on the Lot Plan (where applicable) for such Lot, updated to show all existing Improvements and changes as of the time of submission and which shall also clearly show the location and dimensions of the proposed Improvements, and any other information affecting development of the Lot which the Architecture Committee may require (a “Site Plan”).

No improvements shall be constructed on any Single Family Lot except as shown as a Site Plan which has been approved and endorsed by the Architecture Committee.

4.1(b) Commencement of Construction. An Owner shall begin construction of an approved Living Unit within five (5) years of acquiring title to his/her Lot. In the event construction has not begun within five (5) years of acquiring title, and failing written extension of said deadline by the Architecture Committee, then the Declarant shall have the right, in its sole discretion for a period of six (6) months after Declarant’s written notice to such Owner of breach of this covenant, to repurchase the Lot or Lots so breaching this covenant for Declarant’s first sale price received for said Lots.

Construction of any Improvements on the Single Family Lots shall commence no later than five (5) months (unless the Architecture Committee approves, in writing, a period longer than five (5) months) following the written approval by the Architecture Committee of the “Final Plans” and, upon commencement, without stopping, completion to occur within a reasonable length of time not to exceed eighteen (18) months; provided, however, the Architecture Committee shall have the power to extend the period permitted for construction, provided the Owner makes written application therefor and the Architecture Committee determines the request to be reasonable.

4.1(c) Architecture Committee Approval. No Improvement shall be erected, placed or maintained on any Lot, and no addition, alteration, modification to or change in any such Improvement shall be made without the prior written approval of the Architecture Committee, except as set forth in Article VI, subject to the rights reserved to Declarant under Article VII.

Anything to the contrary contained herein notwithstanding, an Owner or the Community Association shall not be denied Architecture Committee approval to repair, rebuild or reconstruct Improvements after casualty or other damage (“Reconstruction”), if such Reconstruction is in accordance with the Final Plans of the damaged Improvements previously approved by the Architecture Committee in writing,

provided such Final Plans conform to the then applicable building codes and regulations of state and local government authorities. Any Final Plans for Reconstruction that vary from the previously approved Plans must be re-approved in writing by the Architecture Committee and any Final Plans for Reconstruction that vary materially or contain substantive changes from the previously approved Plans must also be approved in writing by any Institutional Mortgagee holding a mortgage encumbering a damaged Living Unit which is to be reconstructed pursuant to such Final Plans. An Owner or the Community Association shall not be denied Architecture Committee approval for Reconstruction of Improvements if approval of the Architecture Committee for the original construction of such Improvements was not required under this Declaration, provided such Reconstruction restores such Improvement to its original condition.

4.1(d) Landscape Plan. A landscaping plan (the "Landscape Plan") for each Single Family Lot must be submitted to and approved in writing by the Architecture Committee showing the type, size and variety of all proposed landscaping, including trees, shrubbery and grass. Each Landscape Plan shall include a tree survey which shows all trees of more than four (4") inches diameter which are located in areas of the Lot to be altered by construction of the proposed Improvements. Each Landscape Plan shall be prepared and sealed by the landscape architect registered to practice in the Commonwealth of Massachusetts and approved in writing by the Architecture Committee. Each Landscape Plan shall include the area within the Roadways, between the paved road and the Single Family Lot. Landscaping must be completed in accordance with the approved Landscape Plan within thirty (30) days of the issuance of a certificate of occupancy for the Living Unit. No significant alteration to completed landscaping may be made without the prior written approval of the Architecture Committee.

Prior to the removal of any trees or shrubbery from any portion of any Lot by anyone other than the Declarant or the Community Association, the Owner shall submit Final Plans for such portion of the Lot to the Architecture Committee for the approval pursuant to Article VI. In reviewing Final Plans, including the Landscape Plan and Tree Survey, the Architecture Committee shall take into account the natural landscaping such as trees and shrubs and encourage incorporation thereof in the Landscape Plan, and it shall be the goal of the Architecture Committee to preserve all existing trees, where possible. Each Tree Survey must be current and accurate and indicate the size, the type and variety of each tree and shrub, and which trees and shrubs will be removed and which trees and shrubs are shown on the Landscape Plan and will remain. Except for Declarant or the Community Association, no Owner shall cut or remove any trees of more than three (3") inches diameter at two (2') feet above the natural grade without the prior written approval of the Architecture Committee, which approval shall be given if necessary for the construction of a Living Unit or other Improvement pursuant to approved Final Plans. The Architectural Review Committee retains the power to waive any of the above-referenced requirements on a Lot specific basis where the Committee deems necessary and appropriate because of terrain, soil

conditions or other requirements. No artificial grass, plant or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot unless approved by the Architecture Committee or Community Association Board in writing.

4.1(d) Vegetation and Wildlife Conservancy Areas. Portions of Lots designated on the Lot Plan recorded with the original deed to such Lot as Vegetation and Wildlife Conservancy Area and portions of Open Space parcels so designated shall be preserved in a natural state for the purposes of stabilizing the soil, to minimize erosion and maximize moisture retention properties of the soil and to preserve natural habitat for wildlife. No Owner shall clear or grub any vegetation in any designated as a Vegetation and Wildlife Conservancy Area without the prior written approval of the Architecture Committee, which shall consider any such request on the basis of recommended vegetation and wildlife husbandry practices. The Architecture Committee may approve the topping off of trees in order to maintain or enhance scenic views and to stimulate lower growth. For the specific location of the Vegetation and Wildlife Conservancy Areas, see the Wildlife Conservancy Plan prepared by Homes and McGrath, dated September 23, 1993, recorded with the Registry of Deeds in Plan Book 500, Pages 40-46.

4.1(f) Approval of Contractors. All construction on any Single Family Lots must be performed by contractors and subcontractors approved by the Architecture Committee in writing prior to entering Falmouth Woods and performing such construction. In the event a contractor or subcontractor performing work on a Single Family Lot fails to comply with any of the terms and provisions of the Documents, the Architecture Committee shall have the right, after seven (7) days notice to said contractor or subcontractor of noncompliance, to revoke such written approval and to prohibit such contractor or subcontractor, as the case may be, from entering upon the Land. The Architecture Committee shall have the right and authority to condition its approval of any contractor or subcontractor upon such contractors furnishing a performance bond, in an amount not to exceed \$1,000.00, to ensure compliance with the terms and provisions of the Documents.

4.1(g) Construction Standards: Improvements on any Lot. All construction and landscaping shall be performed in accordance with the Final Plans approved by the Architecture Committee unless the Architecture Committee approves in writing a deviation from the approved Final Plans. In the event an Owner constructs any Improvements or performs landscape construction without the required approval of the Architecture Committee and if, by the sixtieth (60th) day after the Architecture Committee received written notice that such construction or landscaping has been commenced or performed without the approvals required hereunder, the Architecture Committee has not given written notice to the delinquent Owner demanding compliance with the approval procedures of this Declaration, then such construction or landscaping shall be deemed to have been approved by the Architecture Committee.

4.1(h) Construction Standards - Utilities and Tanks. All utilities of any description serving any Improvement on any Lot shall be underground. Any repairs shall be made as expeditiously as possible and the ground restored as soon as possible to its natural state. Any tanks for the storage of fuel or inflammable materials, whether cooking or heating, shall either be underground, within a separate enclosure, or within the structure it is designed to serve, so that none shall be visible from the street or from any Living Unit on any other Lot.

The Declarant may charge reasonable fees for connection to underground water, sewer, cable or other utilities when and if such utilities are installed or provided by the Declarant or an Affiliate of Declarant.

4.1(i) Special Site Engineering. Lots located within the watershed of the well site on a portion of Lot 259 on the Subdivision Plan shall be subject to special engineering requirements for septic disposal systems. Specifically, any such system must include two leaching pits or other leaching structures that comply with the requirements of Title 5 of the State Environmental Code, each of which shall accommodate the design flow demand of the dwelling it serves as determined by applicable Board of Health regulations and the provisions of the State Environmental Code.

The Architecture Committee may establish certain additional engineering requirements, including without limitation requirements with respect to water and septic systems, to take into account known elevation problems or other problems relating to any Lot.

4.1(j) Soil Removal, Erosion Measures. No loam, sand, or gravel, except that resulting from landscaping or from construction permitted hereunder, shall be removed from any Lot. During the construction period, an Owner and his/her contractors shall take all reasonable precautions to insure that erosion does not take place and shall correct any erosion or siltation problems which take place during a rainstorm without three (3) working days after the storm passes. The Declarant reserves the right to enter upon any Lot to correct any such erosion or siltation problem not corrected by the Owner, as aforesaid, and to charge the Owner for such work and clearing any clogged drains.

4.1(k) Common Driveways. Declarant may construct or authorize construction of common driveways to serve more than one Lot when Declarant determines that topographic conditions affecting such Lots make a common driveway appropriate or desirable. In such event, Declarant shall allocate the cost of constructing the common driveway between or among the lots served by such driveway within 30 days of completion of construction or conveyance, whichever occurs later, and the Owners of such Lots (other than Declarant) shall pay such amounts as a Special Assessment. Repairs to any such common driveways shall be borne equally by all Owners served by such common driveway, in accordance with the deed to such Owners or agreement between or among such Owners.

4.2 Planning Restrictions.

4.2(a) Subdivision and Partition. Subject to Section 2.2, no Single Family Lots shall be resubdivided unless the number of Single Family Lots resulting in less than the number of Single Family Lots originally existing. Furthermore, no Single Family Lots created by resubdividing the Single Family Lots shall be smaller than twenty thousand (20,000) square feet.

4.2(b) Multiple Lots. No more than two Single Family Lots may be combined for unitary sale. An Owner must construct at least one approved Living Unit for each two Single Family Lots in accordance with the requirements of this Declaration; provided, however, that in the case of an odd number of Single Family Lots, the number of Living Units which shall be required shall be the number that would be required for the next highest number of Single Family Lots.

4.2(c) Minimum Size. Minimum size will be determined by the location of the Single Family Lot. The existing subdivision shall have two distinct phases; one phase is to be designated as Timberline, the second phase is to be designated as Bay Hill. The area covered by these phases has been set forth on the Ballymeade Estates plan recorded in Plan Book 498, Page 27. In the Timberline section of the subdivision, no one story dwelling shall be erected that contains less than one thousand four hundred (1,400) square feet of permanently enclosed ground coverage area, exclusive of porches, breezeways, basements or garages. All one story dwellings must have a one-car above ground garage. No one and one-half story dwelling shall contain less than nine hundred (900) square feet of permanently enclosed ground coverage area exclusive or porches, breezeways, basements or garages, but in no event shall the total livable area of the dwelling be less than one thousand six hundred (1,600) square feet of finished livable area. All one and one-half story dwellings must have a one-car above ground garage. No two story dwelling shall contain less than one thousand (1,000) square feet of permanently enclosed ground coverage area, exclusive of porches, breezeways, basements or garages, but in no event shall the total livable area of the dwelling be less than one thousand six hundred (1,600) square feet of finished livable areas. All two story dwellings must have at least a one-car above ground garage. In the Bayhill section of the subdivision, no one story dwelling shall contain less than one thousand seven hundred (1,700) square feet of permanently enclosed ground coverage area, exclusive of porches, breezeways, basements or garages. All one story dwellings must have a two-car above ground garage not required to be attached. No one and one-half story dwelling or two story dwelling shall contain less than one thousand three hundred (1,300) square feet of permanently enclosed ground coverage area, exclusive of porches, breezeways, basements or garages, but in no event shall the total livable area of the dwelling be less than two thousand (2,000) square feet of finished livable area. All one and one half and two story dwellings must have at least a two-car above ground garage not required to be attached.

4.2(d) Setback Lines. Any Improvements to be constructed on a Single Family Lot (“Lot”) shall be located within the following setbacks:

(i) At the Front. A minimum of thirty (30’) feet from the front Lot line;

(ii) At the Sides. A minimum of fifteen (15’) feet from each side Lot line (excluding lines separating two or more Lots which have been combined pursuant to a recorded instrument creating unity of title; provided that the sum of both setbacks is a minimum of thirty-five (35’) feet; and

(iii) At the Rear. A minimum of thirty (30’) feet from the rear Lot line, unless such Lot includes a Vegetation and Wildlife Conservancy Area, in which case the improvements shall be located at least ten (10’) feet from the Vegetation and Wildlife Conservancy Area.

4.2(e) Recreational Facilities. The location of all backboards, play structures, pools, cabanas, bars and other recreational facilities to be constructed upon a Single Family Lot shall be approved in writing by the Architecture Committee prior to construction. No swimming pool which is temporary in nature shall be permitted. Any lighting of a pool, tennis court or other recreation areas shall be designed to buffer the surrounding Living Units from the lighting and must be approved in writing by the Architecture Committee. The Architecture Committee shall pay due regard to the appearance of any such structure from Roadways and any other lot when considering any application under this paragraph.

4.2(f) No Access to Route 28. Lots bounded on the west by Layout of State Highway Route 28 have no legal access to Route 28.

4.3 Other Use Restrictions

4.3(a) Mining or Drilling. There shall be no mining, quarrying or drilling for minerals, oil, gas, water or otherwise (“Mining Activity”) undertaken within any portion of the Land. Activities of Declarant or the Community Association in creating, excavating or maintaining Drainage Facilities or other facilities or easements shall not be deemed Mining Activities nor will the installation of wells or pumps, in compliance with applicable governmental requirements, be deemed a Mining Activity.

4.3(b) Nuisances. No Owner and no other person shall cause or permit any unreasonable or obnoxious noises or odor and no nuisances or illegal activities shall be permitted or maintained on any portion of the Land. It is intended, however, that noises or odors which are the reasonably expected result of such uses of the Land as are specifically permitted or contemplated by the Documents (e.g. the Ballymeade Country Club, the equestrian facility and the corporate campus) shall not be deemed unreasonable, obnoxious or a nuisance.

4.3(c) Clothes Drying Areas. No portion of any Lot which is visible from any Road or Trail on the Land shall be used as a drying area for laundry of any kind and any such laundry drying areas shall only be used for such purpose by the Owner of such Lot.

4.3(d) Removal of Sod: Alteration of Drainage, Etc. Except for the acts and activities of Declarant and its nominees in the development of Falmouth Woods, no sod, topsoil or fill shall be removed from the Land and no change in the condition of the soil or the level of any portion of the Land shall be made which results in any permanent change in the flow or drainage of surface water of or within Falmouth Woods without the prior written consent of the Community Association Board.

4.3(e) Antennas and Aerials. Except as may be permitted in writing by the Architecture Committee, no antennas or aerial shall be placed upon any Single Family Lot unless completely inside a Living Unit.

4.3(f) Radio Equipment. No ham radios, radio transmission equipment (including walkie talkies and CB radios) or microwave transmission equipment shall be operated or permitted to be operated in Ballymeade Estates without the prior written consent of the Community Association Board and such consent may be revoked by the Community Association Board in the event the operation of any such equipment interferes with television reception or equipment required for the operation of the Golf Course located on the Common Elements. The foregoing prohibition shall not be applicable to equipment required for operation of the Golf Course located on the Common Elements or the equipment used in connection with security services provided by or contracted for by the Community Association. A contractor or subcontractor which is approved for entry into Ballymeade Estates by Declarant shall be deemed to have the written consent required pursuant to this Paragraph which consent may be revoked as heretofore set forth.

4.3(g) Casualty Destruction to Improvements. In the event a Living Unit or other Improvement upon the Land is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner thereof responsible for operating and maintaining such Improvements shall either commence to rebuild or repair the damaged Living Unit or other Improvement upon compliance with the determinations of the Architecture Committee and diligently continue such rebuilding or repairing activities to completion or (upon a determination by the Owner thereof that the Improvement will not be repaired or replaced) promptly clear damaged improvements and grass over and landscape the affected portion of the Land in a slightly manner. Any repair, restoration, rebuilding or reconstruction of damaged Improvements shall be in accordance with the provisions of Article IV of this Declaration.

4.3(h) Vehicles in Open Areas. Except for such golf carts approved as to color by the Architecture Committee and licensed by the Board of Governors of the Ballymeade Country Club, no motorized vehicles of any kind, whether two, three or four wheel, partly wheeled and partly tracked or all tracked, shall be used at any time in any of the open spaces. The foregoing shall not prevent the use of mechanical equipment by the Declarant, or its agent, for use in preparation and maintenance of the Common Elements.

4.3(I) Parking and Storage Limitations. There shall be no pickup trucks, panel trucks or other trucks, snowmobiles, trailers, boats, boat trailers, campers, motor homes or commercial vehicles parked or stored within the Land except if wholly contained in an enclosed garage or in areas designed for such vehicles from time to time by the Community Association Board. However, the Community Association and Declarant shall not be responsible for any damage or theft of such vehicles while parked in such designated areas. None of the foregoing shall be used in any way for overnight accommodations. Furthermore, no yard or open areas on any Lot shall be used for the storage of machinery, supplies, materials or equipment relating to any business conducted by any Owner. The foregoing prohibition, however, shall not apply to portions of the Land on which bona fide construction activities are taking place nor shall it prohibit the storage by the Community Association of its maintenance vehicles and golf carts on the Common Elements. No Owner shall engage in or permit his/her guests to park on the Roadways, except during social gatherings or other similar circumstances. No parking shall be allowed in any Open Space areas.

4.3(j) Repairs. No maintenance or repairs shall be performed on any boat or motor vehicles (including golf carts) upon any portion of the Land except within a garage or other area totally concealed to view from Roadway or other Lots. However, the foregoing prohibitions shall not apply to portions of the Land on which bona fide construction activities are taking place nor shall it prohibit the maintenance by the Community Association of its vehicles and golf carts in the County Club area.

4.3(k) Exterior Changes. The architectural integrity of the Improvements, including but not limited to Living Units and other permitted structures, shall be preserved without modification, and to that end, without limiting the generality of the foregoing, no exterior change, addition, structure, projection, decoration, solar collection panels, external air conditioning units, awning, canopy, shutters, or other features shall be erected or placed upon or attached to any Improvements; no addition or change and replacement of any exterior light, door knocker or other exterior hardware shall be made; no painting or attaching of any decorations shall be done on any exterior part or surface of any Improvement not on the interior surface of any window, and no reflective or tinted glass shall be used for window or doors of any structure constructed on the Land, without the prior written approval of the Architecture Committee, which approval may be based upon the aesthetic appearance of the Improvements.

Aluminum foil or similar substance shall not be placed on the windows or doors of any structure constructed on the Land.

4.3(l) Prohibited Structures. Except for recreational structures permitted on the Single Family Lots as provided for in Section 4.2(e) and subject to Article VI, no structure of a temporary character, trailer, tent, shack, shed, barn or outbuilding shall be parked or erected on the Land at any time. Notwithstanding the foregoing, during the active construction of authorized Improvements upon any Lot, construction sheds and trailers used to facilitate the construction of Living Units or other structural Improvements may be located upon the Land with the prior written permission of the Architecture Committee or Community Association Board at locations designated by the Architecture Committee of Community Association Board.

4.3(m) Signs. No signs of any kind shall be displayed to public view on any portion of the Land except:

(i) One sign, which is approved in writing by the Community Association Board or by the Architecture Committee, for each of the Single Family Lots indicating the name and/or address of the Owner;

(ii) Directional, informational and street signs, and other signs approved in writing by the Architecture Committee, as may be appropriate to identify Falmouth Woods and the recreational facilities or other amenities or facilities located thereon;

(iii) Such signs deemed necessary by Declarant to assist visitors in connection with Declarant's construction, development and sales operations at Falmouth Woods; and

(iv) During the construction of a Living Unit thereon, one sign for each Single Family Lot identifying the Builder, which sign shall be approved in writing by Declarant.

There shall be no signs placed on the Land indicating the names of landscapers, architects, pool installation companies, roofers, painters or any other contractors, subcontractors or brokers except as permitted by the Community Association Board.

4.3(n) Animals. No animals, birds, or fowl shall be kept or maintained on any portion of the Land except normal household pets such as dogs, cats, aquarium fish and caged birds. The number of cats in any Living Unit shall not exceed two (2) and the number of dogs in any Living Unit shall not exceed two (2). In order to protect wildlife, all dogs must be leashed or kept in fenced yards at all times, and no pets shall be allowed at any time on any portion of Falmouth Woods designed as a Vegetation and

Wildlife Conservancy Area, even on a leash. Authorized pets may be kept only as normal household pets for the pleasure and use of the occupants and not for any commercial use or purpose and may only be kept in accordance with such rules and regulations as the Community Association Board may from time to time adopt and promulgate. No pets shall be permitted to remain if a nuisance, including the pet's repeated entry into Vegetation and Wildlife Conservancy Areas. If a dog or other animal becomes obnoxious to Owners by barking or otherwise, the Owner or his family members, guests or lessees keeping such animal on his Lot must cause such problem to be corrected and, if it is not corrected, the person having such pet, upon written notice by the Community Association, will be required to remove such animal from his Lot permanently within three (3) days from receipt of such written notice. The determination of whether animals are obnoxious or a nuisance to Owners shall be in the sole judgment of the Community Association. Each Owner or lessee keeping a pet in Falmouth Woods shall be required to pay for each pet such license fee as may be determined by the Community Association Board from time to time. An Owner, by his purchase of a Lot, or a lessee by leasing any Lot or Living Unit, agrees to indemnify the Declarant and the Community Association and hold them harmless against and from any loss or liability of any kind or character whatsoever arising from or growing out of his having any animal on the Land.

4.3(o) No Implied Waiver. The failure of the Community Association to object to an Owner's or other party's failure to comply with the covenants or restrictions contained in the Documents (including the rules and regulations now or hereafter promulgated) shall in no event be deemed a waiver by the Community Association Board of its right to object to same and to seek compliance therewith in accordance with the provisions of the Documents.

The Community Association shall not be act or omission waive or abandon the scheme of architectural regulations set forth in this Declaration without the prior written consent of the Institutional Mortgagees holding mortgages encumbering at last two (2/3) of the Single Family units encumbered by mortgages held by Institutional Mortgagees.

4.3(p) Use of Living Units. A Living Unit may be used only as a residence for a single family except as may be specifically authorized hereunder.

4.3(q) Restrictions on Occupancy. Whenever any Living Unit is to be purchased or leased by a corporation, partnership, trust or any entity other than a natural person, the corporation or other legal entity shall deliver to the Community Association a written statement designating the name of an "Approved Person" (as hereafter defined) entitled to use such Living Unit (the Designation"). The Designation cannot be changed more than once during a calendar year except in the case of the death of the Approved Person. An "Approved Person" shall be one of the following persons: the principal

officer, director, partner, trustee, beneficiary, guest or lessee of the corporation, partnership, trust or other legal entity.

No person other than an Approved Person and his family members and guests who reside with him in such Living Unit are permitted to use such Living Unit and Common Elements without the written approval of the Community Association.

4.3(r) Restriction on Leasing. No Living Unit may be leased for periods of less than four (4) weeks each and no Living Unit may be leased more than two (2) times any twelve (12) month period.

No Living Unit shall be leased unless (i) the terms and provisions of such lease are in writing; (ii) a copy of the lease is supplied to the Community Association prior to occupancy by the lessee and the form of said lease shall be reasonably acceptable to the Community Association; and (iii) the lease provides that the lessee and his family members and guests shall comply with and abide by all of the restrictions pertaining to the use of the Living Unit and other portions of Falmouth Woods contained in the Documents and further that, should any lessee not comply with such covenants, the Community Association shall have the right to cancel and terminate such lease, all without obligation to the Owner and, in said respect, the Community Association shall be regarded as the Owner's agent, fully authorized to take such steps as may be necessary to cancel and terminate such lease, including the right to dispossess the lessee with or without legal notice and with or without the institution of any legal proceedings whatsoever.

4.3(s) No Time Sharing. No "Time Sharing Plan" (as hereinafter defined) shall be permitted for any Living Unit. A "Time Sharing Plan" means any arrangements, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use the Living Unit for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three (3) years.

4.3(t) Trash Receptacles. Receptacles for the storage of household rubbish, garbage or refuse shall be enclosed. All rubbish shall be stored in suitable containers with tops which can be securely affixed to prevent opening by animals.

4.3(u) Drainage. The Declarant may construct and maintain drainage areas in open spaces wherever necessary or proper.

4.3(v) Resales. So long as the Declarant or its designee maintains a Sales Office for Declarant's unsold Lots:

(i) no Owner shall erect or permit to be erected on his Lot(s) any sign advertising any Lot or dwelling for sale;

(ii) no Lot Owner may sell or resell any Single Family Lot unless he/she shall first offer to sell such Lot(s) to the Declarant or its designee at the same price and on the same terms and conditions at which said Lot Owner is willing to sell; and

(iii) such Owner shall offer to grant the Declarant or a licensed broker designated by Declarant a six (6) month exclusive brokerage listing for such Lot.

This Paragraph shall not apply to a bank or lending institution mortgage or to a foreclosure sale resulting therefrom, but shall apply after said foreclosure sale to any sale by the purchaser thereof other than the foreclosing bank or lending institution which may hold free and clear of said restriction.

4.3(w) Rules and Regulations. In order to provide for congenial occupancy of Falmouth Woods and for the protection of the values of the Living Units and Single Family Lots, the use of Improvements, Single Family Lots, and Common Elements shall be restricted to and shall be in accordance with such rules and regulations as the Community Association Board may from time to time adopt and promulgate. Such Rules and Regulations may be applicable in relation to all Living Units and Single Family Lots in Falmouth Woods, or the Community Association Board may specify that certain Rules and Regulations are applicable only in relation to the Single Family Lots.

4.4 Disputes as to Use.

In the event there is any dispute as to whether the use of the Land or any portion thereof complies with the covenants and restrictions contained in the Documents, such disputes shall be referred to the Community Association Board, and a determination rendered by the Community Association Board with respect to such dispute shall be final and binding on all parties concerned therewith; provided, however, that any use by Declarant of the Land or any parts thereof in accordance with Article VII shall be deemed a use which complies with the Documents and shall not be subject to any contrary determination by the Community Association Board.

4.5 Maintenance of Residential Property

4.5(a) Owner's Maintenance Obligation. The Owner of each Lot shall be responsible for the maintenance of his Lot and all Improvements thereon. In order to enhance and preserve the appearance of Falmouth Woods for the mutual benefit of all Owners, each Owner covenants that he/she shall maintain, repair and replace the exterior portions of all Improvements at any time located on his/her Lot, including but not limited to lawns, shrubbery and other landscaping, driveways, parking areas, pools and septic

systems on such Lot, in a neat, aesthetically pleasing and proper condition. All exterior portions of such Improvements shall be kept and maintained in a manner substantially similar to the original architectural design thereof as constructed (unless differences are approved by the Architecture Committee in writing), including but not limited to substantially similar color schemes and exterior materials.

4.5(b) Bordering Roadways. Notwithstanding the provisions of Section 4.6, (i) the Owners of Single Family Lots shall landscape and maintain, to the edge of the pavement, that portion of the Roadways between the curb or edge of any sidewalk and the boundaries of their Single Family Lots, and (ii) the Owners of Single Family Lots shall maintain, repair and replace as necessary the portion of their driveways located within the Roadways.

4.6 Maintenance of Common Elements.

The Community Association shall maintain, repair, replace and improve Community Association Property as necessary, including but not limited to the Roadways, sidewalks, street lights, signs, entranceway and other Improvements located within the Roadways. Such maintenance shall include but not be limited to Roadway maintenance, snow removal and sanding; grass and landscape maintenance; drainage and utility maintenance; and maintenance of all improvements situated on Community Association Property except as provided in Section 4.5(b). The Community Association shall not waive or abandon the foregoing maintenance obligations without the prior written consent of all Institutional Mortgagees.

Notwithstanding the provisions of Section 4.5, the Community Association shall maintain all pipes, catch basins and other facilities located in Drainage Easements (as defined in Section 3.1(c)) notwithstanding that certain facilities may not be located on Community Association Property.

ARTICLE V

GOVERNANCE ISSUES

5.1 Community Association.

5.1(a) Membership. Each Owner shall be a Member of the Community Association in accordance with and subject to the provisions and requirements of the Community Association Articles.

5.1(b) Voting Rights. The voting rights of the Members of the Community Association shall be as set forth in the Community Association Articles and Community By-laws.

5.2 Wildlife Ecologist.

The Wildlife Ecologist shall be the official responsible for enforcing the covenants and restrictions set forth in this Declaration. The Wildlife Ecologist shall be appointed by the Community Association and shall receive such compensation and have such duties and responsibilities in addition to those set forth in this Declaration as the Community Association may delegate.

The Wildlife Ecologist shall have primary responsibility for managing and supervising the Open Space and the Wildlife Corridor and shall have specific responsibility and authority to enforce conservation restrictions in Vegetation and Wildlife Conservancy Areas. The Wildlife Ecologist shall maintain records of species of flora and fauna found or known to exist in the Open Space, including changes in the same over time, and shall give annual reports of the same to the Community Association.

The Wildlife Ecologist shall be a member of the Architecture Committee, shall investigate suggestions of non-compliance with restrictions set forth in this Declaration, and shall be empowered and authorized to represent the Community Association in any legal proceeding to enforce restrictions set forth in this Declaration affecting the Land, any Lot or Parcel, to access Individual Expense charges against Owners according to schedules established from time to time for violations of the restrictions set forth herein and rules and regulations governing the Subdivision, when and if applicable.

5.3 Lessees.

In the event an Owner shall lease his Living Unit in accordance with the provisions of Section 4.3(r), then the lessee shall be entitled to exercise all rights and privileges of a Member (except voting rights) and, provided that a user fee in the amount determined by the Community Association Board is paid, the Owner shall be permitted during the term of the lease to exercise all the rights and privileges of a Member concurrently with his lessee. The Owner shall remain responsible for all Annual Assessments, Special Assessments and the Owner's Individual Expenses and shall also be obligated to pay to the Community Association the Individual Expenses of his lessee in the event they are not paid by his lessee. The provisions of this Section 5.3 shall also be applicable to a lessee and his sublessee.

5.4 Compliance with Documents

Each and every Member, his family members and their guests, and any lessees or sublessees and other persons residing in any Living Unit and their family members and their guests shall be bound by and abide by the Documents. The conduct of the foregoing parties shall be and will be considered to be the conduct of the Member for the purpose of determining whether to suspend the Member's right to use the recreational

facilities located on the Common Elements as hereinafter set forth. A Member shall be liable to the Community Association for the expense of any maintenance, repair or replacement of any real or personal property located on the Common Elements rendered necessary by his act, neglect or carelessness, or by that of any other of the foregoing parties (but only to the extent that such expense is not met by the proceeds of insurance carried by the Community Association).

Each Member, by becoming a Member, agrees to indemnify the Community Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon the Community Association in connection with any proceeding or settlement thereof to which the Community Association may be a party, or in which the Community Association may become involved, by reason of personal injuries caused by the negligent or intentional act or omission of such Member or his family and their guests and any lessees or sublessees residing in his Living Unit, if any, and their family members and guests (but only to the extent that such expense is not met by the proceeds of insurance carried by the Community Association). Nothing herein contained, however, shall be construed so as to modify any waiver of rights of subrogation by insurance companies covering such risks.

Any Member whose conduct or failure to comply with the provisions of the Documents, including but not limited to the failure to pay Assessments of Individual Expenses or any other amounts due to the Community Association from the Member under the Documents, shall in the opinion of the Community Association Board be considered detrimental to the welfare of the Community Association, may be suspended by a majority vote of the Community Association Board after the Community Association has given to such Member written notice including a statement of the reasons for consideration of such suspension and after such Member had had an opportunity to be heard. In the event of a suspension the Community Association Board shall provide a written statement to the Member advising the Member of the suspension and what conditions must be complied with before the Member can be reinstated and upon compliance with such conditions the rights and privileges of the Member shall be automatically restored. During a suspension, a suspended Member shall still be obligated to pay all applicable Assessments and individual Expenses notwithstanding that such suspended Member and his family members and their guests shall not be entitled to use any of recreational facilities located on the Common Elements except the Roadways providing access to his Living Unit, if any. In the event a Member is suspended for failure to pay amounts due to the Community Association, his rights and privileges shall automatically be restored upon payment of all amounts due to the Community Association.

If a Living Unit is sold while the prior Owner is suspended pursuant to the provisions of this Section 5.4, the new Owner, after obtaining a certificate from the Community Association that all amounts due to the Community Association from the

prior Owner have been paid, and having complied with all other requirements of the Documents, shall be entitled to exercise all the rights and privileges of a Member. Furthermore, in the event of a foreclosure of a mortgage on a Living Unit or Single Family Lot held by an Institutional Mortgagee or any other proceeding or transfer in lieu of foreclosure involving such Institutional Mortgagee, the new Owner shall be entitled to all the rights and privileges of a Member notwithstanding that the prior Owner had been suspended and notwithstanding that assessments which are subordinated to such mortgage as provided in Section 5.11 have not been paid to the Community Association. A lessee is also subject to suspension to the same extent as a Member in the event lessee's conduct or failure to comply with the provisions of the Documents shall in the opinion of the Community Association Board be considered detrimental to the welfare of the Community Association; and furthermore, the Community Association may evict such lessee in accordance with the provisions of Section 4.3(r).

5.5 Creation of the Lien and Personal Obligation of Assessments.

The Declarant for each Living Unit or Single Family Lot owned by it within Falmouth Woods after the Turnover Date, and each Owner of any Single Family Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Community Association (i) Annual Assessments, (ii) Special Assessments (such Annual Assessments and Special Assessments to be fixed, established and collect from time to time as hereinafter provided), and (iii) Individual Expenses. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on and a continuing lien upon the Living Unit or Single Family Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Living Unit or Single Family Lot at the time the Assessment fell due. A Member who does not use the Common Elements shall be obligated to pay all Assessments notwithstanding that he does not use the Common Elements.

5.6 Purpose of Assessments.

The Assessment levied by the Community Association shall be used exclusively for the purpose of promoting the recreation, health, safety, property interests and welfare of the residents in Ballymeade Estates and in particular for the improvement, operation and maintenance of the Common Elements related to the use and enjoyment of the Common Elements, including but not limited to the payment of premiums for insurance thereon and the cost of repair, replacement and addition thereof, and for the cost of labor, equipment, materials, management and supervision thereof as described herein, and in performing the other duties and obligations of the Community Association as described herein.

5.7 Basis and Allocation of Annual Assessments.

After consideration of current Community Association Expenses and further needs of the Community Association, including provision for working capital, a general operating reserve and a reserve fund for repairs or replacement, and after consideration of any anticipated income other than Annual Assessments (“Community Association Income”), the Community Association Board shall adopt a budget (“Community Association Budget”) projecting the Community Association Expenses and Community Association Income for each calendar year. The Community Association Budget shall also include a capital budget for the Community Association (“Capital Budget”) which will take into account the number and nature of assets which the Community Association is required to repair, replace and maintain, the expected remaining useful life of each such asset and the expected repair or replacement cost. The Community Association Board shall establish amounts to be included annually in the Community Association Expenses which will be set aside each year in a reserve fund, which fund shall be sufficient to meet the projected capital needs of the Community Association as shown on the Capital Budget with respect to both amounts and timing. Each Community Association Budget shall be adopted, if at all possible, not later than December 1st of the preceding calendar year, except in the case of the Community Association Budget for the partial calendar year following the date of this Declaration, which Community Association Budget is to be adopted at the initial meeting of the Community Association Board and may be revised by the Community Association Board when it shall deem it necessary or appropriate.

5.7(a) Annual Assessments after Turnover Date. After the Turnover Date, the Annual Assessment for each Living Unit or vacant Single Family Lot shall be computed by dividing the excess of the total estimated Community Association Expense over anticipated Community Association Income by the total number of Living Units and vacant Single Family Lots (but not including Living Units subject to a contract for purchase between Declarant and a potential purchaser) then, or thereafter from time to time, existing. For purposes of the foregoing, total estimated Community Association Expenses and Community Association Income shall include only that portion of said expenses and Income which, based on a reasonable estimate by the Community Association, are attributable to the actual usage of the Common Elements by the Owners.

5.7(b) Annual Assessments prior to Turnover Date. Prior to the Turnover Date, the Annual Assessment for a calendar year or each Living Unit and each vacant Single Family Lot not owned by Declarant shall be computed by dividing the excess of the total estimated Community Association Expenses over anticipated Community Association Income for such calendar year as determined by the Community Association Board by December 1st of the preceding year. For purposes of the foregoing, total estimated Community Association Expenses and Community Association Income shall include only that portion of said Expenses and Income which, based on a reasonable estimate by the Community Association, are attributable to the actual usage of the Common Elements by the Owners.

Declarant covenants and agrees with the Community Association and Owners other than Declarant that the Declarant will pay the excess, if any, of the Community Association Expenses (other than Community Association Expenses which are properly the subject of a Special Assessment) incurred by the Community Association prior to the Turnover Date over the sum computed by adding Community Association Income, amounts assessed as Annual Assessments against Owners other than Declarant and amounts expended by the Community Association from the “Capital Contribution” (as defined in Section 5.14) in accordance with the requirements of said Section 5.14. In consideration of the aforesaid covenants of Declarant, prior to the Turnover Date, such payments by Declarant shall be in lieu of payments of Annual Assessments for any Living Units or vacant Single Family Lots owned by Declarant, and no such Living Units or vacant Single Family Lots owned by Declarant shall be subject to any Annual Assessments.

The Community Association Board shall advise all Members promptly in writing of the amount of the Annual Assessment for a calendar year payable by each of them as determined by the Community Association Board and shall furnish copies of the Community Association Budget on which such Annual Assessment is based to all Members and, if requested, to their mortgagees. The Community Association Board shall determine the Annual Assessment, notify all Members thereof and furnish copies of the Community Association Budget to each Member, if at all possible, prior to December 15th of the preceding calendar year; and the Community Association Board shall redetermine the Annual Assessments and notify each Member thereof and furnish them with a revised copy of the Community Association Budget as of the end of any calendar quarter in which the Community Association Budget is revised. After the Turnover Date, the Community Association Board shall also redetermine the Annual Assessment and notify each member thereof as of the end of any calendar quarter in which the number of Living Units or vacant Single Family Lots shall change significantly.

5.8 Due Dates of Assessments.

All Annual Assessments shall be due and payable in installments equal to one-quarter (1/4) of the Annual Assessments on January 1, April 1, July 1 and October 1, or at such other time or times as the Community Association Board shall determine.

5.9 Special Assessments.

In addition to the Annual Assessments levied pursuant to Section 5.7, the Community Association Board may levy in any calendar year a Special Assessment applicable to that year only. Special Assessments must be approved by the affirmative vote two thirds (2/3) of Members voting, at any properly called and held meeting of the Members of the Community Association at which a quorum is present and voting in person or by proxy, except that no such approval need be obtain for a Special Assessment

for the replacement or repair of a previously existing improvement on the Common Elements which was destroyed or damaged. If approval is required from the Members, written notice of a meeting duly called for such purpose shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

All Special Assessments shall be allocated in the same manner as Annual Assessments levied after the Turnover Date, provided that no Living Units or vacant Single Family Lots owned by Declarant shall be subject to any Special Assessments without the prior written consent of Declarant. Any Living Units or vacant Single Family Lots owned by Declarant which are not subject to a Special Assessment shall not be included in determining the respective amounts of Special Assessments.

Notwithstanding the foregoing, the Community Association shall not levy a Special Assessment for purposes of constructing new improvements on the Common Elements, as opposed to repair or replacement of damaged improvements previously existing, if the Owners of more than twenty-five (25%) percent of the Living Units or vacant Single Family Lots subject to such Special Assessment notify the Community Association Board, in writing, of their objection thereto within thirty (30) days of notice to such Owners in writing of the Community Association Board's determination to levy such Special Assessment.

The Community Association Board may determine in its sole discretion whether or not to use a Special Assessment or "Capital Contributions" (as defined in Section 5.14) to pay for all or a portion of the cost of items which can be paid for with either Special Assessments or Capital Contributions.

5.10 Lien for Nonpayment of Assessment.

If an Assessment is not paid on the date when due, then such Assessment shall be delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the respective Single Family Lot and Improvements thereon, which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors in title and assigns, provided, however, that a transfer of title shall not relieve an Owner of his personal liability to pay any assessment unless his successor expressly assumes such obligation in a writing delivered to the Community Association.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at lower of (I) one and one-half (1.5%) percent per month, or (ii) the highest rate allowed by law, and the Community Association may, seven (7) days after giving written notice to an Institutional Mortgagee, if any, holding a mortgage covering the Lot in question, bring an action at law against the Owner to collect amounts due or bring an action to foreclose the lien against such Lot

and Improvements thereon, and there shall be added to the amount of such Assessment the costs of preparing the filing the complaint in such action; and, in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorney's fees together with the costs of the action and any other collection costs.

5.11 Subordination of the Lien to Mortgages.

The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages, now or hereafter placed upon the Lot and Improvements thereon subject to such assessment, which are held by an Institutional Mortgagee; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot and Improvements thereon pursuant to a foreclosure, or any other proceeding or transfer in lieu of foreclosure, which are not secured by a claim of lien for the Assessment that is recorded prior to the recording of the mortgage held by an Institutional Mortgagee which is foreclosed or subject to another proceeding or transfer in lieu of foreclosure. Such sale or transfer shall not relieve an Owner of such Lot and Improvements thereon from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

5.12 Statement of Unpaid Assessments.

The Community Association shall promptly provide any member requesting the same in writing a written statement of all unpaid Assessments due from such member in form suitable for recording. The recording of such statement with said Registry of Deeds shall operate to discharge the Member's Living Unit from any lien for any Assessments not described in such statement which were due prior to the date of such statement.

5.13 Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement.

Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly and at their sole option, to pay any Assessments which are in default and which may or have become a charge against any Lot and Improvements thereon. Further, Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly and at their sole option, to obtain new insurance on behalf of the Community Association upon the lapse of any policy or to pay insurance premiums or fidelity bond premiums or other required items of the Community Association Expenses on behalf of the Community Association, where the same are overdue and where lapses in policies or services may occur which have or may become a charge against Common Elements. Declarant and any Institutional Mortgagee paying such overdue Community Association Expenses on behalf of the Community Association shall be entitled to immediate reimbursement from the Community Association plus any costs

of collection, including but not limited to reasonable attorney's fees, and the Community Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement. Declarant or any Institutional Mortgagee paying overdue Community Association Expenses on behalf of the Community Association shall be subrogated to the assessment and lien rights of the Community Association against the Owners for the purpose of reimbursing Declarant on such Institutional Mortgagee, as the case may be.

5.14 Working Capital Contribution.

The initial purchases of each Single Family Lot shall pay at closing to the Community Association a working capital contribution (the "Capital Contribution") in the amount set forth in the respective purchase and sale agreement, but not less than one-quarter (1/4) of the Annual Assessments. If Declarant reacquires a Single Family Lot which has been conveyed to a purchaser, the purchaser to whom Declarant next conveys legal title is not required to make a Capital Contribution. The Community Association shall deposit the Capital Contributions in a segregated account or invest the Capital Contributions to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Community Association Board, whether prior to or after the Turnover Date. Capital Contributions are not advance payments of Assessments.

Assessment for Community Association Expenses levied against a Living Unit or vacant Single Family Lot shall be payable without any reduction on account of any Capital Contribution previously paid. Notwithstanding the above, if, prior to conveyance of a Living Unit to a purchaser, the Declarant has made a Capital Contribution to the Community Association on behalf of the Living Unit or vacant Single Family Lot to be conveyed, upon conveyance by Declarant to a purchaser of that Living Unit or vacant Single Family Lot, the purchaser shall reimburse the Declarant an amount equal to the Capital Contribution paid by the Declarant to the Community Association, and the purchaser shall have no obligation to the Community Association for payment of the Capital Contribution.

5.15 Community Association Expenses.

The following expenses relating to owning, operating and maintaining the Community Association Property and the Common Elements are hereby declared to be Community Association Expenses which the Community Association is obligated to assess and collect and which the Members are obligated to pay as provided herein or as may be otherwise provided in the Documents.

5.15(a) Taxes. Any and all taxes levied or assessed at any and all times upon the Community Association property, or any Improvements thereto or thereon, or

any income of the Community Association, by any and all taxing authorities and water drainage districts, including without limitation all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments and in general all taxes and tax liens which may be assessed against the Community Association Property and against any and all personal property and improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.

5.15(b) Utility Charges. All Charges levied by utilities providing services for the Common Elements, whether supplied by a private or public firm, including but not limited to all charges for water, gas, electricity (including electricity supplied to street lights located with the Roadways), telephone, trash removal, septic system service and maintenance, snow removal and sanding, and any other type of utility or any other type of service charge.

5.15(c) Insurance. The premiums on the policy or policies of insurance which the Community Association in its sole discretion determines to obtain; provided, however, that the Community Association shall obtain and maintain the following insurance coverage:

(i) Property insurance in an amount equal to the current full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all improvements now or hereafter located upon the Common Elements, such insurance to afford protection against such risks as shall customarily be covered with respect to areas similar to the Common Elements in developments similar to Falmouth Woods in construction, location and use.

(ii) A comprehensive policy of policy liability insurance and, if appropriate, owners, landlord and tenant policies naming the Community Association and Declarant as named insureds thereof, and including the Members as insureds thereunder, insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance, repair, improvement and use of the Common Elements (including the Roadways and the Trails) and any improvements located thereon, and for any other risks insured against by such policies, with limits of not less than Three Million (\$3,000,000.) Dollars for damages incurred or claimed by any one person for any one occurrence and not less than Five Million (\$5,000,000.) Dollars for damages incurred or claimed for any one occurrence and for not less than One Hundred Thousand (\$100,000.) Dollars property damages per occurrence with no separate limits stated for the number of claims. Such coverage shall include, as appropriate, without limitation, protection against liability for nonowned and hired automobiles, liability for property of others, host liquor liability and such other risks as are customarily covered with respect to areas similar to the Common Elements in developments similar to Falmouth Woods in

construction, location and use. The insurance purchased shall contain a “Severability of Interest Endorsement”, or equivalent coverage, which would preclude the insurer from denying the claim of a Member because of the negligent acts of the Community Association, the Declarant, or any other Member, or denying the claim of the Declarant or the Community Association because of negligent acts of each other or the negligent acts of a Member. Such insurance shall also provide, where possible, for waiver of subrogation with respect to all Members for any damage caused to improvements on the Common Elements by such Members not arising from their willful misconduct.

(iii) Adequate fidelity coverage to protect against dishonest acts on the part of officers, directors and employees of the Community Association and all others who handle or are responsible for handling funds of the Community Association, such coverage to be in the form of fidelity bonds which meet the following requirements:

A. Such bonds shall name the Community Association as an obligee;

B. Such bonds shall be written in an amount equal to at least one hundred fifty (150%) percent of the estimated annual Community Association Expenses;

C. Such bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.

(iv) Officer and Director liability insurance and liability insurance for members of the Architecture Committee, if available, as shall be determined by the Community Association Board to be required or beneficial for the protection of the members of the Community Association Board; the officers of the Community Association and the members of the Architecture Committee.

(v) Such other forms of insurance and coverage, in such amounts as the Community Association shall determine to be required or beneficial for the protection or preservation of the Common Elements and any improvements now or hereinafter located thereon, or in the best interests of Falmouth Woods or the Community Association.

(vi) All policies of insurance or fidelity bonds required to be obtained by the Community Association pursuant to this Section 5.15(c) shall provide that they may not be canceled or substantially modified by any party without at least twenty (20) days prior written notice to the Community Association and to each Institutional Mortgagee which is listed in such insurance policy as a scheduled holder of a first mortgage encumbering a Single Family Lot.

5.15(d) Reconstruction of Common Elements. Any and all sums necessary to repair, improve, replace, construct or reconstruct any improvements upon the Common Elements damaged by any casualty not covered in whole or in part by insurance and any deficiency between the amount of insurance proceeds received with respect to such damage and the amount of funds necessary to repair, replace, construct or reconstruct the improvements so damaged shall be a Community Association Expense and the Community Association shall levy a Special Assessment for the funds necessary to pay such Community Association Expense within ninety (90) days from the date such damage was incurred. The Community Association shall pay into an account with a federal or state commercial or savings bank or savings and loan association located in the Commonwealth of Massachusetts any such funds collected by Special Assessment and all insurance proceeds collected by the Community Association so that the funds on deposit will equal the cost of repair, replacement, construction or reconstruction of the damaged improvements, and the Community Association shall go forward with all deliberate speed so that such repair, replacement, construction or reconstruction shall be completed as soon as is reasonably possible after the date of the damage.

All repair, replacement, construction and reconstruction of improvements upon the Common Elements necessitated by damage due to an insurable hazard shall be performed substantially in accordance with the original plans and specifications for such improvement, unless other action is approved by the Owners of fifty-one (51%) percent of the Single Family Lots and Institutional Mortgagees holding at least fifty-one (51%) percent (by number and not by unpaid amounts thereof) of the first mortgages of record held by Institutional Mortgagees encumbering Single Family Lots.

Should the insurance proceeds be sufficient to repair, replace or reconstruct the building or Improvement so damaged and there remains an excess after payment for repair, replacement and reconstruction, then any excess shall be held by the Community Association unless the Owners of at least seventy-five (75%) percent of the Single Family Lots shall have consented in writing to a distribution of such proceeds. Notwithstanding the foregoing, no such distribution shall be made unless the Institutional Mortgagees holding at least seventy-five (75%) percent (by number and not by unpaid amounts thereof) of the first mortgages of record held by Institutional Mortgagees encumbering Single Family Lots have given written consent to the distribution of the insurance proceeds. If the requisite consent of such Owners and the required approval of such Institutional Mortgagees are received, such excess shall be distributed to the Owners of, and the Institutional Mortgagees holding mortgages encumbering, the Single Family Lots, as said Owners' and Institutional Mortgagees' respective interests may appear, in the same proportion as a Special Assessment which would have been levied if all Single Family Lots existing at the time of the aforesaid written consent of the Owners (including but not limited to the Single Family Lots owned by Declarant) were to be included in such Special Assessment. The Community Association, as a condition of distribution of

the excess insurance proceeds to an Owner, or an Institutional Mortgagee, may require any Owner to execute an instrument indemnifying the Community Association (the "Indemnity Instrument") from any damage, loss, liability, costs and expenses (including, but not limited to, court costs and reasonable attorney's fees for the services of the Community Association's attorneys) arising from or in connection with such distribution and any and all actions undertaken in respect thereof.

In the event that repairs and replacements were paid for by any Special Assessment in addition to insurance proceeds, then, if after the completion of and payment for the repair, replacement or reconstruction, there shall remain any excess in the hands of the Community Association, it shall be presumed that the monies disbursed in payment of any repair, replacement and reconstruction were first disbursed from insurance proceeds and any remaining funds (but not more than the amount collected by such Special Assessment) shall be deemed to be remaining Special Assessment which shall be returned to the Owners by means of a distribution pro rata to the collection of that Special Assessment.

Notwithstanding the foregoing, in the event there is any conflict between the provisions of this Paragraph 5.15(d) and the provisions of any mortgage held by an Institutional Mortgagee now or hereafter encumbering any Common Elements as to the distribution of excess proceeds after restoration or insurance proceeds as they become available, the provisions of any such mortgage shall control as to the property encumbered thereby.

5.15(e) Maintenance, Repair and Replacements. Any and all expenses necessary (i) to maintain and preserve the landscaped, grassed, open or natural portions of Common Elements, including such expenses as grass cutting, tree trimming, sprinkling, fertilizing, spraying and the like, erosion prevention planting and maintenance programs and other measures to control and offset erosion; and (ii) to keep, maintain, operate, repair and replace any and all buildings, improvements, personal property and furniture, fixtures and equipment upon the Common Elements and the drainage facilities within any Service Easements in manner consistent with the development of Falmouth Woods and in accordance with the covenants and restrictions contained herein, and in conformity with all applicable federal, state, county or municipal laws, statutes, ordinances, orders, rulings and regulations; and (iii) to maintain, repair, improve and replace all street signs installed or placed on any part of the Land by Declarant or the Community Association which are not maintained, repaired and replaced at the expense of any governmental body or agency; and (iv) to maintain, repair and replace the Boundary Fence and all signs, decorative walls, fences and other structures installed, placed or erected by Declarant or the Community Association within the Common Elements constituting signs and entry features for Falmouth Woods or any part thereof; and (v) to construct, improve, maintain and operate any street lights within or adjacent to the streets and roads within Falmouth Woods including but not limited to payment of all

charges of any utility company providing electric service for such street lights to the extent any of such costs and charges are not paid for by governmental agencies or the utility company providing service with respect thereto; and (vi) to provide snow removal and related services for the Common Elements, including the Roadways; and (vii) to comply with agreements, easements, restrictions and other requirements affecting title to the Common Elements.

The Community Association may enter into an agreement with the owner or owners of certain properties contiguous to the boundaries of Falmouth Woods (including but not limited to certain property of the Town of Falmouth adjacent to or within the right-of-way for Route 151 and Sam Turner Road) to landscape such properties and to maintain such landscaping, in which event such properties shall be maintained by the Community Association in accordance with any such agreement, and the expense thereof shall be a Community Association Expense.

5.15(f) Administrative and Operational Expenses. The costs of administration of the Community Association in the performance of its functions and duties under the Documents including, but not limited to, costs for secretarial and bookkeeping services, salaries of employees, legal and accounting fees and contracting expenses. In addition, the Community Association may retain a management company or companies or contractors (any of which management companies or contractors may be, but are not required to be, a subsidiary, affiliate, or an otherwise related entity of Declarant) to assist in the operation of the Common Elements, or portions thereof, and to perform or assist in the performance of certain obligations of the Community Association under the Documents and the fees or costs of any management company or contractor so retained shall be deemed to be part of the Community Association Expenses.

5.15(g) Compliance with Laws. All costs of the Community Association resulting from such action as it determines necessary or appropriate to take in order for the Common Elements and the improvements thereon to be in compliance with all laws, statutes, ordinances and regulations of any governmental authority, whether federal, state or local, including without limitation any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards.

5.15(h) Indemnification. The costs and expenses of fulfilling the following covenants of indemnification:

(i) Indemnification of Declarant. The Community Association covenants and agrees that it will indemnify and hold harmless Declarant against and from any and all claims, suits, actions, causes of action and/or damage to property sustained on or about the Common Elements and improvements thereof and thereon; and from and against all costs, expenses, attorney's fees, expenses and liabilities incurred by Declarant

arising from any such claim or the settlement thereof, the investigation thereof, or the defense of any action or proceedings brought thereon; and from and against any orders, judgments and/or decrees which may be entered thereon. The foregoing provision for indemnification shall be inapplicable only if the claim arises solely out of Declarant's own gross negligence or willful misconduct. The Community Association shall also indemnify Declarant for any expense Declarant may incur in bringing any suit or action for the purpose of enforcing the rights of Declarant under any of the Documents or of compelling the specific enforcement of the terms, conditions and covenants contained in any of the Documents to be kept or performed by the Community Association or the Members.

(ii) Indemnification of Architecture Committee. Every member of the Architecture Committee shall be indemnified by the Community Association as set forth in Section 6.7 and shall have the maximum right of indemnification to which a member of the Architecture Committee may be entitled under statute or under common law.

(iii) Indemnification of Directors and Officers. Directors and officers of the Community Association shall be indemnified as set forth in the Community Association By-laws and shall have the maximum right of indemnification to which a director or officer may be entitled under statute or under common law.

5.15(I) Failure or Refusal of Members to pay Assessments. Funds needed for Community Association Expenses due to the failure or refusal of Members to pay Assessments levied may themselves be deemed by the Community Association Board to be Community Association Expenses and properly the subject of an Assessment; provided, however, that any Special Assessment for any such sums so needed to make up a deficiency due to the failure of Members of pay an Assessment shall itself be deemed to be a Special Assessment subject to the limitations thereon with respect to Living Units owned by Declarant.

5.15(k) Costs of Reserves. The funds necessary to establish an adequate reserve fund (the "Reserves") for depreciation and/or deferred maintenance of the Common Elements and the facilities and improvements thereupon, in amounts determined sufficient, appropriate and adequate by the Community Association Board from time to time, shall be a Community Association Expense. The Reserves shall be deposited in a separate interest bearing account, certificate of deposit, or money market fund investing only in U.S. Treasury Bills, Notes and other obligations issued or guaranteed by the United States Government, its agencies or instrumentalities, or repurchase agreements pertaining to such securities. The monies collected by the Community Association on account of Reserves shall be and shall remain the exclusive property of the Community Association and no Member shall have any interest, claim or right to such Reserves or any fund composed of same.

5.15(l) Entertainment Expenses. The net cost of social activities for Members such as dances, parties, concerts, athletic competitions, etc. sponsored by the Community Association may be deemed a Community Association Expense by the Community Association Board.

5.15(m) Cable Television Expenses. Any amounts billed directly to the Community Association pursuant to a contract between the Community Association and a cable television company or other entity to provide cable television service, telecommunication services, security, fire and medical alert systems, or related telecommunication service or any combination of the same to Falmouth Woods (a “Cable Agreement”); provided, however, any such amounts allocable to Living Units shall be billed to such Living Units to the extent practicable.

5.15(n) Miscellaneous Expenses. All items of cost or expense pertaining to or for the benefit of the Community Association or Common Elements, or any part thereof, not herein specifically enumerated and which are determined to be appropriate items of Community Association Expense by the Community Association Board in its sole discretion shall be a Community Association Expense.

5.16 Right of Declarant or Community Association to Perform Needed Maintenance on Single Family Lots.

In the event any Owner fails to maintain his/her Lot properly in accordance with the requirements of Section 4.5 (the “Defaulting Owner”), as shall be determined (I) by Declarant and/or the Community Association, at the discretion of either or both, during the period ending when Declarant no longer owns any portion of the Land, or (ii) by the Community Association in its sole discretion after Declarant no longer owns any portion of Land, then, after such determination, Declarant or the Community Association, as the case may be, shall have the right, but not the obligation, upon ten (10) days written notice, to enter the property of the Defaulting Owner for the purpose of performing the maintenance referred to and described in the notice, including but not limited to: mowing, removing, clearing, cutting or pruning grass, underbrush, weeds or other growth on the Lots; staining or painting or other maintenance, repairs or replacement of the exterior surfaces of the Improvements, including the roofs, downspouts and gutters; and repairing, maintaining, cleaning or replacing any septic system. Entrance for such purpose by the agents or employees of Declarant or the Community Association shall not be deemed to be a trespass.

5.17 Lien for the Cost of Maintenance Performed Pursuant to Section 5.16

The cost of performing maintenance pursuant to Section 5.16 and the expense of collection, if any, including court costs and reasonable attorney’s fees, shall be assessed against the Defaulting Owner and, together with interest thereon as hereinafter set forth,

shall become a lien upon the property of the Defaulting Owner. The Defaulting Owner shall be liable to Declarant and/or the Community Association, as the case may be, for payment of amounts assessed against said Defaulting Owner and for all costs of collecting the same plus interest and attorney's fees as hereinafter provided. In the event the amounts assessed against the Defaulting Owner are not paid within twenty (20) days of the date of the assessment, Declarant and/or the Community Association may proceed to enforce and collect said Assessments against the Defaulting Owner in any manner provided for by the laws of the Commonwealth of Massachusetts, including foreclosure and sale of the property subject to the lien. Said lien shall be effective only from and after the time of filing in said Registry of Deeds of a written, acknowledged statement signed by an authorized agent of Declarant and/or of the Community Association setting forth the amount due. All sums assessed shall earn interest at the highest rate permitted under law. Upon full payment of all sums secured by such lien, the party making payment shall be entitled to a recordable satisfaction of lien. The provisions of Section 4.5 and 5.16 may also be enforced in accordance with the provisions of Section 8.5

ARTICLE VI

ARCHITECTURE COMMITTEE

In order to preserve the values and appearance of Falmouth Woods, an Architecture Committee shall be established. The Architecture Committee shall administer and perform the architectural review and control functions of Declarant and the Community Association.

6.1 Organization.

The Architecture Committee shall consist of no fewer than three (3) nor more than five (5) members who need not be Owners or members of the Community Association Board. The Wildlife Ecologist shall be one member of the Architecture Committee. The other members of the Architecture Committee shall be appointed by Declarant and Declarant shall have the right to remove any member of the Architecture Committee and to fill any vacancy occurring on the Architecture Committee for any reason whatsoever until the "Architecture Committee Turnover Date" (as hereinafter defined). The "Architecture Committee Turnover Date" shall be the earliest to occur of the following:

(i) Ninety (90) days after Declarant and Builders no longer own any Single Family Lot; or

(ii) the date Declarant, by written notice thereof to the Community Association Board, relinquishes its right to appoint members of the Architecture Committee.

Employees of Declarant and members of the Community Association Board may serve on the Architecture Committee. After the Architecture Committee Turnover Date, the members of the Architecture Committee shall be appointed by the Community Association Board which shall have the right to remove any member of the Architecture Committee and to fill any vacancy occurring on the Architecture Committee for any reason whatsoever. After the Architecture Committee Turnover date, at least three (3) members of the Architecture Committee shall be an Owner of a Living Unit on a single Family Lot. Three (3) members of the Architecture Committee shall constitute a quorum to transact any business of the Architecture Committee and the action of the majority present at a meeting in which a quorum is present shall determine the action taken by the Architecture Committee. The Architecture Committee may designate a representative to act on behalf of the Architecture Committee, subject to the approval of Declarant until the Architecture Committee Turnover Date and thereafter subject to the approval of the Community Association Board. No member of the Architecture Committee or any representative of the Architecture Committee shall be entitled to any compensation for services performed hereunder.

6.2 Method of Obtaining Architecture Committee Approval.

In order to obtain the approval of the Architecture Committee as required in Section 4.1(c) or elsewhere in this Declaration, an applicant may either:

(i) apply first for Preliminary Approval, as hereinafter set forth, and after obtaining Preliminary Approval apply for Final Approval as hereinafter set forth; or

(ii) apply for Final Approval at the outset.

6.3 Preliminary Approval.

In order to apply for the Preliminary Approval of the Architecture Committee, an Owner shall submit to the Architecture Committee two (2) sets of plans which show the proposed location, preliminary elevations, shape and dimensions of the proposed Improvements. The Architecture Committee may request additional information as may be reasonably necessary for the Architecture Committee to evaluate on a preliminary basis the proposed construction, landscaping or alteration.

The Architecture Committee shall review and discuss Preliminary Plans with the Owner with a view to advising the Owner about changes, modifications and additional requirements which should be considered before submitting Final Plans. In no event shall preliminary approval be deemed a commitment on the part of the Architecture Committee to approve the Final Plans.

6.4 Final Approval.

In order to obtain the final approval of the Architecture Committee, an Owner shall submit to the Architecture Committee two (2) complete sets of plans and specifications (the "Final Plans"), which shall include a site plan described in Section 4.1(a), a foundation plan, working drawings for the proposed Improvements embossed with the seal of an architect licensed to practice in the Commonwealth of Massachusetts, front, side and rear elevations, the Landscape Plan required under Section 4.1(d). Such Final Plans shall include as appropriate: the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs; and nature, size, type and color of building materials; and grass and landscaping to be used. The Architecture Committee may also require the submission of samples of building and landscaping materials proposed for use on the Land and the submission of additional information and materials as may be reasonably necessary for the Architecture Committee to evaluate the proposed construction, landscaping or alteration. The Architecture Committee may waive portions of the above requirements for Improvements of a minor nature but shall not approve any Final Plans which in its judgment would impair the general scheme or plan of development of Falmouth Woods.

6.5 Approval or Disapproval by the Architecture Committee.

Except as provided in Section 4.1(c), the Architecture Committee may decline to approve any Preliminary Plans or Final Plans which, in its sole judgment, it deems not suitable or desirable. Any and all approvals or disapprovals of the Architecture Committee shall be in writing and shall be sent to the Community Association Board and the Owner. If requested, evidence of such approval or disapproval shall be made by a certificate, in recordable form, executed under seal by the President or Clerk of the Community Association. Upon proposed Improvements being approved by the Architecture Committee, such approval cannot be revoked; provided, however, that the approval for Improvements on the Single Family Lots shall expire in the event construction does not commence within the time period set forth in Section 4.1(b). After the Architecture Committee Turnover Date, any Owner aggrieved by a decision of the Architecture Committee shall have the right to request a review thereof by the Community Association Board by written request within thirty (30) days after such decision. The determination of the Community Association Board upon reviewing any such decision of the Architecture Committee shall be final.

In the event the Architecture Committee fails to approval or to disapprove, in writing, any Preliminary Plans or Final Plans (i) within thirty (30) days after the date of submission to the Architecture Committee, as evidenced by a dated receipt thereof by the Architecture Committee, or (ii), in the event of a written notice of a deficiency to applicant, within thirty (30) days after submission of any reasonably requested information and materials related thereof required to correct the deficiency, then said

Preliminary Plans or Final Plans shall be deemed to have been approved by the Architecture Committee and the appropriate written approval shall be delivered forthwith.

6.6 Rules and Regulations.

The Architecture Committee shall have the right to promulgate and impose rules and regulations for the processing of applications submitted to the Architecture Committee as the Architecture Committee deems necessary in order to preserve the values and appearance of Ballymeade Estates, and thereafter to modify, alter, amend, rescind and augment any of said rules and regulations (collectively, the “Architecture Committee Rules”), provided that the Architecture Committee Rules so promulgated shall not be in conflict with the provisions of the Documents and further provided that such Architecture Committee Rules be approved by Declarant in writing, so long as Declarant or any Builder owns any portion of the Land, and thereafter be approved in writing by the Community Association Board.

6.8 Indemnification.

Every member of the Architecture Committee shall be indemnified by the Community Association against all expenses and liabilities, including attorney’s fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a member of the Architecture Committee, or any settlement thereof, whether or not he is a member of the Architecture Committee at the time such expenses are incurred, except in cases wherein the member of the Architecture Committee is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. The foregoing rights to indemnification shall be in addition to and not exclusive of any right of indemnification to which a member of the Architecture Committee may be entitled, whether by statute or by common law.

6.8 Standard Review.

The Architecture Committee shall review and approve or disapprove all Preliminary Plans and Final Plans submitted to it for proposed Improvements on the basis of aesthetic consideration and the overall benefit or detriment which would result to the immediate vicinity and to Ballymeade Estates as a whole. The Architecture Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of dwellings or buildings, landscaping, color schemes, exterior finishes and materials, known soil conditions, restrictions, easements, the topography of the site and other Improvements in the immediate vicinity.

The Architecture Committee shall not be responsible for the quality of construction, and shall be under no obligation or liability relating to construction of any

Improvements as a result of the Architecture Committee's review or approval of any Preliminary Plans or any Final Plans. The Architecture Committee review and approval of Preliminary Plans or Final Plans shall not be deemed an evaluation for the purpose of determining whether the Final Plans will be structurally sound. No member of the Architecture Committee nor the Architecture Committee's duly authorized representative shall have any obligation or liability to the Community Association or to any Owner or any other person or entity with respect to any loss, damage, injury or expense arising out of or in any way connected with the performance of his duties hereunder as a member of the Architecture Committee except for willful misconduct or malfeasance.

6.9 Reliance and Enforcement.

Notwithstanding the foregoing, unless notice of action to enforce these restrictions is recorded in the Registry of Deeds (indexed in the grantor index under an Owner(s) name) within three (3) months after completion of construction, alteration or addition of or to any building or other Improvements on such Owner's Lot, the same shall be conclusively deemed to have complied with these restrictions. If the completion of any such Improvement is evidenced by a Certificate of Occupancy issued by the Building Inspector having jurisdiction, the date of the issuance of such Certificate shall be conclusive evidence of said data of completion.

Any person dealing with any Owner or Lot subject to these provisions may rely on a certificate signed by the Declarant or by a majority of the members appearing in the records of the Registry of Deeds to be members of the Architectural Committee as to the existence or non-existence of any fact or facts which are in any manner germane to these provisions, which facts shall include, but shall not be limited to, the granting of approvals and compliance with any of these provisions.

Any member or properly designated agent of the Architecture Committee may, at any time after reasonable notice, enter, inspect and report upon any lot or structure thereon as to compliance with the restrictions imposed hereunder and said Committee or any properly designated agent or member thereof shall not thereby be guilty of any manner of trespass or other violation for such entry or inspection.

ARTICLE VII

RIGHTS RESRVED BY DECLARANT

7.1 Right to Make Improvements.

Notwithstanding the provisions of Article IV and VI hereof regarding approval by the Architecture Committee and any other provisions of this Declaration to the contrary, Declarant and its nominees shall have the right to construct, develop, install, alter,

maintain and repair Improvements, including, but not limited to, Living Units, recreational facilities and other improvements on Community Association property, a satellite receiving dish, a master antenna system, cable television equipment and appurtenant distribution facilities and other such equipment and landscaping, including the carrying on of all activities appurtenant thereto or associated therewith, as Declarant in its sole judgment deems necessary or advantageous for the development of Falmouth Woods.

7.2 Development and Marketing Activities.

Declarant and its nominees reserve the right to enter into and transact on the Land any business necessary to consummate the sale, lease, improvement, repair, maintenance or encumbrance of Single Family Lots, Living Units, or other real property in Ballymeade Estates including, but not limited to, the right to maintain models and a sales office, place signs, employ sales personnel, show Living Units and Single Family Lots and other portions of the Land, and use the portions of the Land and Living Units and other improvements owned by Declarant of the Community Association or which Declarant or its nominees have the right to use, pursuant to a lease, for purpose set forth above and for storage of construction materials and for assembling construction components on site.

7.3 Sales and Construction Offices.

Declarant shall have the right to use one (1) or more Living Units, a trailer located on a portion of the Land owned by Declarant or a portion of any sales office as a construction office. Any such models, sales area, sales office, construction office, signs and any other items pertaining to such sales, construction, maintenance and repair efforts shall not be considered a part of the Common Elements and shall remain the property of Declarant or its nominees, as the case may be. Declarant for itself and its nominees hereby reserves unto Declarant and its nominees an easement for an office to carry on Declarant's or its nominee's sales and resales business ("Sales Office") on any of Lots 50, 51, 52 and 53 on the Subdivision Plan and easements for access to the Sales Office and for furnishing all required services and utilities to the Sales Office and easements for such other purposes as may be required in connection with the operation of the Sales Office. Declarant further specifically reserves the right in its sole discretion to place the Sales Office upon some other portion of the Land in which event the Sales Office shall remain the property of the Declarant. Declarant further reserves the right to use the Sales Office as a sales and business office until Declarant no longer owns any Single Family Lot. At such time as Declarant no longer owns any Single Family Lot, or such earlier time as Declarant may determine in its sole discretion, Declarant may remove the Sales Office from the Land, in which event the Sales Office shall remain the property of the Declarant, or Declarant may convey the Sales Office to the Community Association. This right of use and transaction of business as set forth herein and any other rights reserved by Declarant in the Documents may be assigned, in writing, by the Declarant in whole or in part.

7.4 Veto Right.

Anything in this Declaration to the contrary notwithstanding, until the earliest to occur of:

(i) a date sixty (60) days following the conveyance by Declarant of two hundred twenty-five (225) Lots;

(ii) the date which is seven (7) years after the Declaration is recorded with said Registry of Deeds; or

(iii) such earlier time as determined by Declarant in its sole discretion;

no action authorized by the Members of the Community Association or the Community Association Board shall become effective, nor shall any action, policy or program be implemented, which materially affects Declarant or impairs any of the rights or privileges granted to Declarant pursuant to this Declaration, the Community Association Articles or Community Association By-laws until and unless:

(iv) Declarant shall have been given seven (7) days written notice of all related annual, special and class meetings of the Members and all related regular and special meetings of the Community Association Board by certified mail, return receipt requested, or by personal delivery, at the address Declarant has registered with the Clerk of the Community Association, as it may change from time to time, which notice shall set forth in reasonable detail the agenda to be followed at said meeting; provided, however, that Declarant may waive in writing receipt of such notice during or after such meeting and such waiver shall be deemed equivalent to the receipt of the required notice by Declarant; and

(v) Declarant or its designated representatives or agents shall be given the opportunity, at any such related meeting, if the Declarant or its designated representatives or agents do desire, to join in, or to have its representative or agents join in, discussions from the floor of any prospective action, policy or program to be implemented by the Members of the Community Association or the Community Association Board.

At such meeting Declarant shall have a veto power over any such action, policy or program which materially affects Declarant or impairs any of the rights or privileges granted to Declarant pursuant to this Declaration, the Community Association Articles or Community Association By-laws and which is authorized by the Members of the Community Association or the Community Association Board to be taken by said Community Association Board, the Community Association or any individual member of the Community Association if Community Association Board approval or the Members'

approval is necessary for said Member's action. Said veto may be exercised by the Declarant, its representatives or agents at the related meetings held pursuant to the terms and provisions hereof. Any veto powers are not to extend to requiring any action or counteraction on behalf of the Community Association Board or the Community Association.

7.5 Lender Rights.

For purposes of this Article VII, the term "Declarant" shall include any Lender (as defined in Paragraph (iv) if the definition of "Institutional Mortgagee" in Article I hereof) who acquires title to any portion of the Land as a result of the foreclosure of any mortgage encumbering the Land securing any such loan to Declarant or acquired title thereto by deed in lieu of foreclosure. Declarant shall have the rights and privileges set forth in this Article VII which are in addition to and in no way limit any other rights or privileges of Declarant under the Documents, unless Declarant shall notify the Community Association in writing of Declarant's voluntary written election to relinquish the aforesaid rights and privileges of use.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Lawful Use of Land.

Each portion of the Land will be subject to, and the Community Association and each Owner, Member and Secondary User, if any, shall conform to and observe all applicable laws, statutes, ordinances, rules and regulations of governmental and public authorities and boards of officers of the same relating to such Land, any Improvements thereon, or the use thereof, and no illegal or immoral activity shall be permitted on such Land.

8.2 Open Space and Wildlife Corridor.

Declarant agrees to convey the Open Space parcels described in Section 3.1(b)(ii) and the Wildlife Corridor to the Community Association not later than twelve (12) months after all of the Single Family Lots have been sold or transferred by Declarant. The Community Association shall have the right and power to convey all or any part of its interest in such Open Space and the Wildlife Corridor to the Town of Falmouth for conservation purposes or to any other charitable entity organized for conservation purposes, provided, however, that any such conveyance of Open Space and the Wildlife Corridor shall require the affirmative vote of two-thirds of the Owners.

8.3 Incorporation of Documents.

Any and all deeds conveying a Lot or any other part of the Land shall be conclusively presumed to have incorporated therein all the terms and conditions of the Documents, including, but not limited to, this Declaration, whether or not the incorporation or the terms and conditions of the Documents is specifically set forth by reference in such deeds, and acceptance by the grantees of a deed to any Lot on the Subdivision Plan shall be deemed to be acceptance by such grantees of all terms and conditions of the Documents.

8.4 Notices.

Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) any Member whose name appears as a Member on the records of the Community Association at the address shown on such records at the time of such mailing, or, in the absence of any specific address, at the address of any Living Unit owned by such Member; and (ii) the Community Association, Bell Tower Mall, 1600 Falmouth Road, Unit 40, Centerville, Massachusetts 02632 or such other address as the Community Association shall hereafter notify Declarant and the Members of in writing; and (iii) Declarant at Bell Tower Mall, 1600 Falmouth Road, Unit 40, Centerville, Massachusetts 02632, or such other address or addresses as Declarant shall hereafter notify the Community Association of in writing, any such notice to the Community Association of a change in Declarant's address being deemed notice to the Owners. Upon request of a Member, the Community Association shall furnish to such Member the then current address for Declarant as reflected by the Community Association records.

Upon receipt by the Community Association from any Institutional Mortgagee of a copy of the mortgage held by such Institutional Mortgagee on a Lot, or upon receipt of such mortgage from the guarantor or insurer thereof, together with a written statement from such Institutional Mortgagee, guarantor or insurer specifying the address to which the following items are to be sent, the Community Association shall thereafter timely send to such Institutional Mortgagee, guarantor or insurer the following (until the Community Association receives a written request from such Institutional Mortgagee, guarantor or insurer to discontinue sending the following items or until the mortgage is discharged of record):

8.4(a) Written notices of any condemnation or eminent domain proceedings, or proposed acquisition arising therefrom, with respect to the Common Elements or the Lot encumbered by such mortgage;

8.4(b) Written notices of any damage or destruction to the improvements located on the Common Elements which materially affects the Lot encumbered by such mortgage;

8.4(c) Written notices of any failure by the Owner of a Lot encumbered by a first mortgage held by such Institutional Mortgagee or insured by such insurer or guaranteed by such guarantor, to perform his obligations under the Documents, including, but not limited to, any delinquency in the payment of any Assessments where such failure or delinquency has continued for a period of sixty (60) days;

8.4(d) Written notice of the lapse, cancellation, termination or material modification of any policies of insurance covering the Common Elements or any improvements thereon, or fidelity bonds of the Community Association for its officers, governors or employees;

8.4(e) Written notice of any material amendment of, or the abandonment or termination of, this Declaration in accordance with the terms hereof, or of any proposed action which would require the consent of Institutional Mortgagees;

8.4(f) A copy of any notice of a meeting of the Community Association or of the Community Association Board which is sent to the Owner of the Lot encumbered by such mortgage;

8.4(g) A copy of the financial statement of the Community Association which is sent to the Owner of the Lot encumbered by such mortgage; and

8.4(h) Written notice of any termination by the Community Association of any professional management of the Common Elements, and the assumption by the Community Association of the management of the Common Elements, it being understood that such assumption by the Community Association of the management of Common Elements shall not occur unless approved by the Owners of sixty-seven (67%) percent collectively of the Living Units and vacant Single Family Lots and by the Institutional Mortgagees holding first mortgages encumbering fifty-one (51%) percent collectively of the Lots encumbered by such first mortgages, if such professional management has previously been required by an Institutional Mortgagee.

The failure of the Community Association to send any such notice to any such Institutional Mortgagee, guarantor or insurer shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor any effect on the validity thereof.

8.5 Enforcement.

Until the Turnover Date, the covenants and restrictions herein contained or contained in any of the Documents may be enforced only by the Declarant or its designee. After the Turnover Date, the covenants and restrictions may be enforced by the Community Association, the Owners of twenty-five (25) or more Single Family Lots or any Institutional Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder if, after seven (7) days written notice of such violation or attempted violation to the offending party, the offending party has not cured such violation or attempted violation. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party thereafter to enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, reasonable attorney's fees.

8.6 Captions, Headings and Titles.

Article and Section captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

8.7 Context.

Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

8.8 Attorney Fees.

Any provision in this Declaration for the collection or recovery of attorney's fees shall be deemed to include, but not be limited to, fees of attorney's services and court costs at all trial and appellate levels and post-judgment proceedings and, unless the context clearly indicates a contrary intention, whether or not suit is instituted.

8.9 Severability.

In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any

provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or reduction in the scope or term of the same by reason of judicial application of the legal rules against perpetuities or otherwise shall in no way affect any other provisions which shall remain in full force and effect for such period of time and to such extent as may be permitted by law.

8.10 Amendment and Modification.

8.10(a) This Declaration may be amended as follows:

(i) by the consent of the Owners of two-thirds (2/3) of the Single Family Lots (the aforementioned consent of such Owners may be evidenced by a writing signed by the required number of such Owners or by the affirmative vote of the required number of such Owners at any regular or special meeting of the Community Association called and held in accordance with the Community Association By-laws evidenced by a certificate of the Clerk or an Assistant Clerk of the Community Association; and

(ii) the approval or ratification of a majority of the Community Association Board.

8.10(b) Notwithstanding the foregoing provisions of this Section 8.10, amendments for correction of scrivener's error(s) or other nonmaterial changes may be made by Declarant alone until the Turnover Date, and amendments for correction of scrivener's error(s) or other nonmaterial changes may be made after the Turnover Date by the Community Association Board without the need of consent of the Owners.

8.10(c) Notwithstanding the foregoing provisions of this Section 8.10:

(i) The approval of the Owners of seventy-five (75%) percent of the Single Family Lots plus Institutional Mortgagees holding first mortgages encumbering at least fifty-one (51%) percent of the Single Family Lots encumbered by mortgages held by Institutional Mortgagees shall be required to amend materially any provisions hereof (or to add hereto or eliminate herefrom any material provision) which establish, provide for, govern or regulate any of the following;

1. Voting;
2. Assessments, assessments liens or subordination of such liens;
3. Reserves for maintenance and repair and improvement of Common Elements;

4. Responsibility for maintenance and repair of the Land;
5. Insurance or fidelity bonds;
6. Leasing of Living Units;
7. Any right of first refusal or similar restriction on the rights of the Owner of any Living Unit to sell, transfer, or otherwise convey his or her Unit;
8. A decision by the Community Association to establish self-management when professional management has been required previously by an Institutional Mortgagee;
9. Restoration and repair of the Common Elements (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;
10. Any action to terminate the Declaration after substantial destruction or condemnation occurs; or
11. Any provisions hereof which is for the express benefit of Institutional Mortgagees or the holders, insurers or guarantors of first mortgages held by Institutional Mortgagees encumbering Living Units or vacant Single Family Lots.

(ii) The approval of the Owners of seventy-five percent (75%) of the Single Family Lots plus Institutional Mortgagees holding first mortgages encumbering at least fifty-one percent (51%) of the Single Family Lots encumbered by mortgages held by Institutional Mortgagees shall be required to amend materially any provisions hereof (or to add hereto or eliminate herefrom any material provision) which establish, provide for, govern or regulate any of the following:

1. Rights to use the Common Elements;
2. Convertibility of Living Units into Common Elements or of Common Elements into Living Units; and
3. Expansion or contraction of Falmouth Woods, or the addition, annexation or withdrawal of property to or from Falmouth Woods.

(iii) Any action to terminate this Declaration for reasons other than substantial destruction or condemnation of the Property must be approved by the Institutional Mortgagees holding mortgages encumbering at least sixty-seven percent (67%) of the Single Family Lots encumbered by first mortgages held by Institutional Mortgagees.

8.10(d) Notwithstanding the foregoing, however, for so long as Declarant has the veto power set forth in Section 7.4, no amendment shall be made to this Declaration which changes, impairs or affects any rights or privileges of Declarant set forth herein without compliance with the provisions of said Section 7.4 and Declarant's prior written approval.

8.10(e) Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which would increase the liabilities of a Member or prejudice the rights of a Member or his family members, guest, invitees and lessees to use or enjoy the benefits of the Common Elements unless such Member and the holder, insurer or guarantor of a first mortgage, if any, encumbering a Single Family Lot consent to such amendment in writing (or unless such amendment is adopted in accordance with the procedures required for adoption of an amendment to this Declaration after the Turnover Date) and such amendment so approved by at least fifty-one (51%) percent collectively of the Institutional Mortgagees holding first mortgages on Single Family Lots encumbered by such mortgages.

8.11 Interpretation.

In the event of a conflict between the provisions of this Declaration and the provisions of the other Documents, the provisions of this Declaration shall control.

8.12 Condemnation.

In the event the Community Association receives any award or payment arising from any taking of the Common Elements or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall be applied first to the restoration of the remaining Common Elements and improvements thereon to the extent deemed advisable by the Community Association; and the remaining balance of such net proceeds, if any, shall then be distributed to the Owners of all Lots based on their proportionate shares for Annual Assessments, each such distribution shall be paid jointly to each Owner and to the holder of any mortgage encumbering his/her Lot, as their respective interests may appear and the balance of such shares shall be distributed to the Declarant.

8.13 Duration.

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 Community Association, the Declarant and Owners as heretofore more particularly set forth for a term of thirty (30) years from the date this Declaration is recorded. These restrictions may then be extended for periods of up to twenty (20) years at a time by Owners of record who hold at the time of recording of the extension at least fifty (50%) percent or more of the Single Family Lots. To be effective, such extension must be recorded with the Registry of Deeds before the expiration of such thirty (30) years and must name or be signed by all Owners of record of Single Family Lots at the time of such recording; and in case of such recording, the said restrictions shall expire on the twentieth (20th) anniversary of the date of recording of such extension with the Registry of Deeds, or the specified extension term if less than twenty (20) years, and may be further extended only by the proper recording of an additional extension which satisfies the above requirements.

8.14 Additional Rights of First Mortgages.

Notwithstanding anything to the contrary in this Declaration, the Community Association Articles or the Community Association By-laws, the following provisions shall govern and be applicable insofar and for so long as the same are required in order to qualify mortgages of Living Units for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA) under laws and regulations applicable thereto, to wit:

8.14(a) Except as provided by applicable statute, in case of condemnation or substantial loss to the Common Elements, unless at least two-thirds (2/3) (or such higher percentage as herein provided) of the first mortgagees (based upon one (1) vote for each mortgage for each Living Unit or Single Family Lot encumbered by a first mortgage owned by such mortgagee), and Owners owning at least two-thirds (2/3) of the Living Units or Single Family Lots have given their prior written approval, the Community Association shall not be entitled to (i) by act or omission seek to abandon the Common Elements or terminate this Declaration; (ii) change the pro rata interest or obligations of any Living Unit or Single Family Lot for the purpose of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards; (iii) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause); (iv) use hazard insurance proceeds for losses to any part of the Common Elements in a manner other than as set forth in this Declaration.

8.14(b) No provision of this Declaration shall give an Owner, or any other party, priority over any rights of first mortgagee of the living Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Elements.

8.14(c) Any agreement for professional management of the Common Elements or any other contract for providing for services of the Declarant may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice or less.

IN WITNESS WHEREOF, this Declaration has been executed as a sealed instrument by Declarant and joined in by the Community Association for the purposes heretofore set forth on the day the year first above written.

CLSV ASSOCIATES LIMITED PARTNERSHIP
By its General Partner
BALLYMEADE DEVELOPMENT

CORPORATION

By: _____
John T. Callahan, III
President and Clerk

FALMOUTH WOODS AT BALLYMEADE
COMMUNITY ASSOCIATION, INC.

By: _____
John T. Callahan, III
President and Clerk