

# Afton Glen Declaration of Covenants, Conditions, and Restrictions

## **Editor's Note**

The official text of the Afton Glen Declaration of Covenants begins after the Table of Contents. This version of the text was re-created by electronic scanning a photocopied document, followed by editing to clean up scanner errors and improve the readability of the document format. In this regenerated version,

- text that appears underlined and within slashes, such as /this/, was a handwritten insertion in the original document; and
- text within square brackets, such as [this], is an editing correction of a typographical or other error found in the original document, or an editing insertion for clarity.

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Declaration of  
Covenants,  
Conditions, and  
Restrictions—Text  
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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS made this /18th/ day of /September/, 1984, by and between Foster Bros., Inc., a Virginia corporation, hereinafter known as “Declarant,” and AFTON GLEN HOMEOWNERS ASSOCIATION, a Virginia non-stock corporation, hereinafter known as “Association.”

WHEREAS, Declarant is the sole owner of certain real property located in Fairfax County, Virginia, known as Lots One (1) through Fifty-six (56), inclusive, Parcels A, C, and D, Section One, AFTON GLEN, as the same is duly dedicated, platted, and recorded in Deed Book /6025/, at page /981/, among the land records of Fairfax County, Virginia; and

WHEREAS, Declarant and its successors and assigns desire to create thereon a residential community with permanent open spaces and other common facilities for the benefit of the community and to provide for the preservation of the values of said community and such other area as may be subjected to this Declaration, and for the maintenance of said open spaces and other facilities; and, to this end, does declare and publish its intent to subject the real property as hereinafter described, and as may from time to time be dedicated and subdivided into lots and open space designated for conveyance to a homeowners association, to the covenants, restrictions, easements, conditions, charges, and liens hereinafter set forth; it being intended that the easements, covenants, restrictions, and conditions shall run with said real property and shall be binding on all persons or entities having or acquiring any right, title, or interest in said real property

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or any part thereof, and shall inure to the benefit of each owner thereof;  
and

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

WHEREAS, Declarant has incorporated under the laws of the Commonwealth of Virginia, as a non-stock corporation, AFTON GLEN HOMEOWNERS ASSOCIATION, for the purposes of exercising the functions aforesaid;

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants contained herein, does hereby grant, establish, and convey to each Owner of a Lot mutual non-exclusive rights, privileges, and easements of enjoyment on equal terms in common with all other owners of Lots, in and to the use of the Common Area; and FURTHER, does hereby declare the real property described in the Deed of Dedication and Subdivision recorded immediately prior hereto and designated as lots One (1) through Fifty-six (56), inclusive, and Parcels A, C, and D, Section One, AFTON GLEN, to be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens (hereinafter referred to as "Covenants and Restrictions"), hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with,

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the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their successors and assigns, and shall inure to the benefit of each owner thereof.

## Article I— Definitions

### **Section 1.**

“Association” shall mean and refer to AFTON GLEN HOMEOWNERS ASSOCIATION, its successors and assigns.

### **Section 2.**

“Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the Office of the Clerk of the Circuit Court of Fairfax County and Fairfax County, Virginia.

### **Section 3.**

“Properties” shall mean and refer to certain real property hereinabove described, and such additions thereto which, from time to time, may be brought within the jurisdiction of the Association.

### **Section 4.**

“Common Area” shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the members of the Association. At this time, the Common Area consists of Parcels A, C, and D, Section One (1), AFTON GLEN.

### **Section 5.**

“Lot” shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties with the exception of the Common Area and streets dedicated to public use.

### **Section 6.**

“Member” shall mean and refer to every person or entity who holds membership in the Association.

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**Section 7.**

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

**Section 8.**

“Declarant” shall mean and refer to Foster Bros., Inc., and its successors and assigns, if such successors or assigns should acquire from the Declarant (including by foreclosure or deed in lieu of foreclosure) two (2) or more undeveloped Lots for the purpose of development, and any person or entity that may dedicate, subdivide, and submit to this Declaration all or a portion of the real property described in Deed Book 4981, at page 303, and Deed Book 5109, at page 589, among the land records of Fairfax County.

**Section 9.**

“Mortgagee” shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot of the Common Area and who has notified the Association of this fact.

## **Article II— Membership**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

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Ownership of such Lot shall be the sole qualification for membership. A

Mortgagee in possession of a Lot shall be entitled to exercise the Owner's rights in the Association with regard thereto.

## Article III— Voting Rights

The Association shall have two classes of voting membership:

### **Class A:**

Class A members shall be all those Owners as defined herein with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

### **Class B:**

The Class B member shall be any Declarant as defined herein. A Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article II; provided that the Class B membership shall cease and a Class A membership with one (1) vote for each lot in which it holds an interest shall issue on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On January 1, 1987.

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## Article IV— Property Rights

### **Section 1. Members' Easements of Enjoyment.**

Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to limit the number of guests of members at such recreational facility;
- (c) The right of the Association, in accordance with the Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, with the assent of more than two-thirds ( $\frac{2}{3}$ ) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, to mortgage said property, subject to this Declaration and the easement of enjoyment created hereby, and to acquire property encumbered by the lien or liens of the deed or deeds of trust securing improvements on said property, provided that any such mortgage of the Common Area must state that it is subject to this Declaration and the easement of enjoyment created hereby and shall not be in conflict with its designation as "open space";
- (d) The right of the Association to suspend the voting rights and right to the use of any recreational facilities constructed on the Common Area by a member for any period during which

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any assessment against his Lot remains unpaid, and for a period

not to exceed sixty (60) days for any infraction of its published rules and regulations;

- (e) The right of the Association at any time and consistent with the then existing zoning ordinances of Fairfax County and its designation as “open space,” or upon dissolution to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that any such dedication or transfer shall have the assent of more than two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents;
- (f) The right of the Association to grant any public utility with or without payment of damages to the Association, and consistent with the “open space” designation thereof, easements for the construction, reconstruction, installation, repair, necessary maintenance of utility lines through or over any portion of the Common Areas. The foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situate upon the Common Areas, or other structures or installations situate thereon which would otherwise be deemed to be part of the realty, without the payment of damages, including

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severance or resulting damages, if any to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this Commonwealth; and

(g) The right of the Association to lease Common Area, provided however that such lease(s) must:

- (1) be only to non-profit organizations,
- (2) such organizations must give preference to members of the Association with regard to membership and use of facilities,
- (3) prohibit assignment and subleasing,
- (4) require approval by the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration,
- (5) be consistent with the then existing ordinances of the County, and
- (6) be consistent with the open space designation thereof.

**Section 2. Delegation of Use.**

Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the member's Lot.

**Article V—  
Covenant for  
Maintenance  
Assessments**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed

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in any such deed or other conveyance, is deemed to covenant and agree

to pay to the Association:

- (a) Annual assessments or charges, and
- (b) Special assessments for capital improvements, or other specified items, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collections thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the payment of taxes, improvements, and maintenance of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

**Section 3. Basis and Maximum of Annual Assessments.**

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant, the maximum annual assessment shall be TWO HUNDRED AND NO/100 DOLLARS (\$200.00) per Lot.

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- (a) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the

Consumer Price Index (All Items Index) for the Washington, D.C., standard metropolitan area (published by the Department of Labor, Washington, D.C.) for the year ending the preceding July 1, or five percent (5%), whichever is greater.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be increased above that established by subparagraph (a) annually provided that any such change shall have the assent by a vote of more than two-thirds ( $2/3$ ) of each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

(c) After consideration of current maintenance costs and further needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments.**

In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction repair or replacement of a capital improvement upon the Common Area, including the fixtures

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and personal property related thereto, or other specified purpose, provided that any such assessment shall have the assent of more than two-thirds ( $2/3$ ) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

**Section 5. Rate of Assessment.**

Both annual and special assessments shall be fixed at a uniform rate for all Lots not owned by the Declarant. Any unoccupied Lot or Lots owned by the Declarant shall be assessed at twenty-five percent (25%) of the rate of Lots not owned by the Declarant so long as the Declarant has Class B membership status. As long as the Declarant retains the right to pay only partial assessments for the unoccupied lots in any section, he must also maintain the Common Area in such section at no cost to the Association and fund all budget deficits including reserves applicable to such section. Thereafter, such Lots will be assessed at the rate for those Lots not owned by the Declarant.

**Section 6. Quorum for any Action Authorized Under Sections 3 and 4.**

At the first meeting called, as provided in Sections 3 and 4 herein, the presence at the meeting of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting

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shall be one-half (1/2) of required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments Due Dates.**

The annual assessments provided for herein shall commence as to all Lots in any section, no later than thirty (30) days following the conveyance of the Common Area pertaining to that section. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due

dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Remedies of the Association in the Event of Default.**

If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum. The Association in its discretion may:

- (a) Impose a penalty as previously established by rule;

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- (b) Accelerate the required payment date of the entire remaining annual assessment; or
- (c) Bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 9. Subordination of the Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve

such Lot from liability for any assessments which thereafter become due or from the lien thereof.

**Section 10. Exempt Property.**

The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all properties dedicated to and accepted by a local public authority;
- (b) the Common Area;
- (c) all properties owned by charitable or other organizations exempt from taxation by the laws of the Commonwealth of Virginia.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

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## **Article VI— Restrictive Covenants**

**Section 1.**

The Properties shall be used exclusively for residential purposes. The Declarant, however, for itself, its successors and assigns, reserves the right, prior to sale and transfer of any Lot, pursuant to a recorded subdivision plat, to alter, amend, and change any lot lines or subdivision plan. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family attached dwelling. Except for those related to real estate sales and construction, no sign, advertisement or message other than for identification purposes only shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of



business solicitation in, or from, any residence or residential property. Notwithstanding the foregoing, the Declarant or its assigns may:

- (a) During the construction and/or sales period, and within five (5) years from the date of subdivision of a particular Section, erect, maintain, and operate real estate sales and construction offices, displays, signs, and special lighting on any part of the Properties and on or in any building or structure now or hereafter erected thereon while owned by the Declarant;
- (b) On Lots now or hereafter specifically designated for such purposes by Declarant, there may be erected and/or operated, a church or place of public worship, a school accredited by the Commonwealth of Virginia Board of Education, a public park,

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or a noncommercial swimming pool, a recreational area, and appurtenances thereto.

**Section 2.**

No clothing, laundry, or wash shall be aired or dried on any portion of the Lots except as approved by the Architectural Review Board.

**Section 3.**

No tree, hedge, or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

**Section 4.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood. Owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs, and trees which shall be neatly maintained, all open Lot areas shall be maintained in lawns or other materials approved by the Architectural Review Board. All lawn areas shall be kept mowed and shall not be

permitted to grow to a height in excess of four (4) inches.

**Section 5.**

No sign of any kind that is illuminated and/or larger than two (2) square feet shall be displayed to the public view on any Lot, except temporary real estate signs not more than four square feet in area advertising the property for sale or rent and except as provided in Paragraph 1(a) above. All signs advertising the property for sale or rent shall be removed within (3) days from the date of execution of any agreement of sales or rental.

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**Section 6.**

No domestic or wild animal shall be kept or maintained on any Lot; however, common household pets, such as dogs and cats may be kept or maintained, provided that they are not kept, bred, or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are in compliance with applicable Fairfax County ordinances.

**Section 7.**

Storage, collection, and disposal of trash shall be in compliance with rules set by the Architectural Review Board.

**Section 8.**

No person shall paint the exterior of any building a color different than the original color of said building without the proposed color having been approved by the Architectural Review Board.

**Section 9.**

The exteriors of all structures, including walls, doors, windows, and roofs shall be kept in good maintenance and repair. No structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm, or other damage, the exterior of no structure shall be permitted to remain in a damaged condition for longer than

three (3) months.

**Section 10.**

No structure or addition to be a structure shall be erected, placed, altered, or externally improved on any Lot until the plan and specification, including elevation, material, color, and texture and a site plan showing location of improvement with grading modifications shall be filed with and approved in writing by the Architectural Review Board. No alterations, additions, or improvements shall be made to any garage which would defeat the purpose for which it was intended. Structure shall be

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defined to include any building or portion thereof, fence, pavement, driveway, or appurtenances to any of the aforementioned.

**Section 11.**

All fences or enclosures must be approved by the Architectural Review Board as to location, material, and design. Any fence or wall built on any Lots shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property.

**Section 12.**

Exterior television antennae or other antennae are prohibited except as approved in writing by the Architectural Review Board.

**Section 13.**

No junk vehicles, recreational vehicles, house trailers, or commercial or industrial vehicles such as, but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, hearses, buses, boats, boating equipment, travel trailers, or camping equipment shall be regularly or habitually parked within the boundaries of the subdivision, except in the areas designated by the Association.

**Section 14.**

No clothes lines or clothes drying apparatus shall be permitted on any

Lot, except as approved by the Architectural Review Board.

**Section 15.**

The provisions of Sections 5, 7, 8, 9, 10, and 11 above shall not apply to any construction or development or improvements on any Lot by a Declarant commencing within five (5) years from the date of submission of said Lot to this Declaration.

**Article VII—  
Architectural Review  
Board**

**Section 1. Composition.**

The Architectural Review Board be comprised of three (3) or more members. Members shall

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serve staggered three (3) year terms, as determined by the Board of Directors.

Until the Declarant loses Class B membership, the Architectural Review Board shall consist of two (2) committees: The New Construction Committee and the Modification and Change Committee. Thereafter, the New Construction Committee shall be terminated. After the Declarant loses Class B membership, no member of the Architectural Review Board may be a Director.

**Section 2. Method of Selection.**

The Declarant shall nominate three (3) persons and one (1) alternate to serve on the New Construction Committee of the Architectural Review Board. The Board of Directors shall appoint or reject such nominees and, in case a nominee is rejected, the Declarant shall thereupon nominate another person for appointment. The Board of Directors shall also appoint the Modification and Change Committee.

**Section 3. Vacancies.**

Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment.

**Section 4. Officers.**

At the first meeting of the Architectural Review Board following each Annual Meeting of Members, the Architectural Review Board shall elect from among themselves, a Chairman, a Vice-chairman, and a Secretary who shall perform the usual duties of their respective offices.

**Section 5. Duties.**

The Architectural Review Board shall regulate the external design, appearance, and locations of the Properties and improvements thereon in such a manner so as to

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preserve and enhance values and to maintain a harmonious relationship among structures, the natural vegetation, and topography. In furtherance thereof, the Architectural Review Board shall:

- (1) Review and approve, modify or disapprove, within thirty (30) days, all written applications of Owners and of the Association for improvements or additions to Lots or Common Areas; in this regard, during the period the Architectural Review Board is composed of the committees described above, the New Construction Committee shall act with respect to initial improvements to the Common Area and Lots; the Modification and Change Committee shall act with respect to modification and changes to the Common Area and Lots, including improvements thereon.
- (2) Periodically inspect the Properties for compliance with architectural standards and approved plans for alteration;
- (3) Adopt architectural standards subject to the confirmation of the Board of Directors;

- (4) Adopt procedures for the exercise of its duties and enter them in the Book of Resolutions; and
- (5) Maintain complete and accurate records of all actions taken.

## Article VIII— Easements

### **Section 1.**

There is hereby granted a blanket easement to the Association, its directors, officers, agents, and employees, to any Manager employed by or on behalf of the Association, and to all policemen, firemen, ambulance personnel, and all similar persons to enter upon the Properties in the exercise of the functions provided by this Declaration and the Articles, Bylaws and

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Rules of the Association, in the event of emergencies, and in performance of governmental functions.

### **Section 2.**

The rights accompanying the easements provided by Section 1 of this Article shall be exercised only during reasonable daylight hours and then whenever practicable only after advance notice to, and with the permission of, any Owner or tenant directly affected thereby when not an emergency situation or a governmental function.

### **Section 3.**

A Declarant, its agents and employees, shall have a right of ingress and egress over the Common Area as required for construction and development of the Properties.

### **Section 4.**

There shall be and is hereby reserved to a Declarant a nonexclusive easement over any Lot or any Common Area, for the purpose of installing, repairing, and/or maintaining utility lines of any sort including,

but not limited to, storm drains and drainage [swales], sanitary sewers, gas lines, electric lines, and/or cables, water lines, telephone lines, and the like. This easement shall automatically expire as to any Lot or Parcel five (5) years from subdivision of such Lot or Parcel.

**Section 5.**

There shall be and is hereby reserved to a Declarant a nonexclusive easement over all Lots, or any Common Area, for the purposes of maintaining, landscaping, mowing, erecting, and maintaining street intersection signs, directional signs, temporary promotional signs, entrance features, and/or “theme areas,” light, stone, wood, or masonry wall features and for the purpose or purposes of executing any of the powers, rights, or duties granted to or imposed on the Association in Article IX

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hereof. This easement shall automatically expire as to any Lot or Parcel five (5) years from subdivision of such Lot or Parcel.

**Section 6.**

Any rights granted to a Declarant in this Article shall extend only to Lots and Parcels submitted to this Declaration by such Declarant.

## **Article IX— Powers and Duties of the Association**

**Section 1. Discretionary Powers and Duties.**

The Association shall have the following powers and duties which may be exercised at its discretion:

- (a) To enforce any or all building restrictions which are imposed by the terms of this Declaration or which may hereafter be imposed on any part of the Properties. Provided, that nothing contained herein shall be deemed to prevent the owner of any Lot from

enforcing any building restrictions in his own name; the right of enforcement shall not serve to prevent such changes, releases, or modifications of the restrictions or reservations placed upon any part of the Properties by any party having the right to make such changes, releases, or modifications in the deeds, contracts, declarations, or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. The expense and costs of any enforcement proceedings initiated by the Association shall be paid out of the general fund of the Association, as hereafter provided for;

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- (b) To provide such light as the Association may deem advisable on streets and for the maintenance of any and all improvements, structures, or facilities which may exist or be erected from time to time on any Common Area;
- (c) To build facilities upon land owned or controlled by the Association;
- (d) To use the Common Area and any improvements, structures, or facilities erected thereon subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;
- (e) To mow and resow the grass and to care for, spray, trim, protect, plant, and replant trees and shrubs growing on the Common Area and to pick up and remove from said property and area all loose material, rubbish, filth, and accumulations of debris and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order;



- (f) To exercise all rights and control over any easements which the Association may from time to time acquire, including, but not limited to, those easements specifically reserved to the Association in Article [VIII] hereof;
- (g) To create, grant, and convey easements upon, across, over, and under all Association properties including, but not limited to, easements for the installation, replacement, repair, and maintenance of utility lines serving lots in the subdivision;
- (h) To create subsidiary corporations;

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- (i) To employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;
- (j) To employ from time to time such agents, servants, and laborers as the Association may deem necessary in order to exercise the powers, rights, and privileges granted to it, and to make contracts.

**Section 2. Mandatory Powers and Duties.**

The Association shall exercise the following rights, powers, and duties:

- (a) To accept title to the Common Area and to hold and administer said property for the benefit and enjoyment of the owners and occupiers of lots in the subdivision. The purpose of this provision is to impose on the Association the obligation to accept title to any Common Area and to hold and maintain the same for the benefit of owners and occupants of Lots in AFTON GLEN;
- (b) To make and enforce regulations governing the use of the Common Area.

## Article X— Rights of Mortgagees

All Mortgagees shall have the following rights:

### **Section 1.**

A Mortgagee, upon request, will be given written notification from the Association of any default in the performance by the Owner of a Lot relating to the mortgage owned by the Mortgagee of any obligation under this Declaration or related Association documents, which is not cured within sixty (60) days.

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### **Section 2.**

Any Mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

### **Section 3.**

A Mortgagee shall have the right to examine the books and records of the Association.

### **Section 4.**

Provided that improvements have been constructed in the Common Area, and provided that a Mortgagee gives notice to the Association that it has relied on the value of the improvements in making a loan on the Properties, then such Mortgagee shall be further entitled to the following rights:

- (a) Unless three-fourths (3/4) of the Mortgagees and the Owners have given their prior written approval, the Association shall not:
  - (i) By act or omission seek to abandon, partition, subdivide,

encumber, sell, or transfer the Common Area or other property owned by the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this clause;

- (ii) Change the method of determining assessments;
- (iii) By act or omission change, waive, or abandon the architectural controls or imposition thereof established by this Declaration;
- (iv) Fail to maintain fire and extended coverage on insurable parts of the Common Area or other Association property

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on a current replacement-cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs, not including land value of the improvements; and

- (v) Use hazard insurance proceeds for losses to the Common Area or other Association property for other than the repair, replacement, or reconstruction of such property.
- (b) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee or Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association;
  - (c) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs, and

replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by special assessments;

(d) The Association shall cause the immediate repair, reconstruction, or renovation of any damage to the Common Area or Association property unless a decision not to repair, reconstruct, or renovate is approved by all Mortgagees;

(e) In the event that there is a condemnation of the Common Area or other Association property, to the extent practicable, condemnation proceeds shall be used to repair or replace the property taken by condemnation; and

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(f) Should there be excess casualty insurance or condemnation proceeds after the renovation, repair, or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot, subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee.

## **Article XI— General Provisions**

### **Section 1. Enforcement.**

The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or thereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any right, provision, covenant, or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies, and privileges granted to

the Association or any Owner pursuant to any term, provision, covenant or condition of this Declaration shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration, or at law or in equity.

**Section 2. Severability.**

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

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**Section 3. Amendment.**

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of twenty (20) years. The covenants and restrictions of this Declaration may be amended in whole or in part, provided that Declarant shall not amend or remove from this Declaration without the consent of the Association and an Owner, other than the Declarant and the Association, of at [least] one Lot in AFTON GLEN. Any such amendment during the first twenty (20) year period shall have the assent of not less than eighty percent (80%) of the lot Owners, and thereafter [an] amendment shall have the assent of seventy-five percent (75%) of the votes of the lot Owners, at a meeting duly called for this purpose, written notice of which shall be sent to all lot Owners not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Any amendment must be properly executed and acknowledged (in the manner required by law for the execution and acknowledgment of deeds) by the Association and

recorded among the land records of Fairfax County, Virginia.

**Section 4. Special Amendment.**

For a period of one (1) year after the recording of this Declaration, the Declarant may make any Amendment required by any of the Federal Mortgage Agencies, such as the Federal Housing Administration, the Veterans Administration or the Federal Home Loan Mortgage Association, or Fairfax

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County, Virginia, as a condition of the approval of the documents, by the execution and recordation of such amendment following notice to all Owners.

**Section 5. Annexation of Additional Properties.**

The Association may, for twenty-one (21) years from the date hereof, annex additional areas and provide for maintenance, preservation, and architectural control of residence Lots, and so add to its membership under the provisions of Article II, provided that any such annexation shall be authorized at a duly held meeting at which a quorum is present by the assent of more than two-thirds (2/3) of each class of the members voting in person or by proxy. After twenty-one (21) years, annexation may be made with the consent of all members. No such consent is required for the annexation of all or any part of the 44.9 acres more or less conveyed by instruments recorded in Deed Book 4981, at page 303, and Deed Book 5109, at page 589, among the land records of Fairfax County, Virginia.

**Section 6. FHA/VA Approval.**

After initial approval of the Lots for FHA or VA financing for so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration:

- (a) annexation of additional properties, except the land within that certain tract described in Section 5 above;

(b) mergers, consolidations, and dissolution of the Association;

(c) mortgaging or dedication of the Common Area; and

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(d) amendment of Declaration of Covenants, Conditions, and Restrictions.

WITNESS the following signature and seal:

FOSTER BROS., INC.

By: /Arthur E. Foster, Pres./

President

STATE OF VIRGINIA, /at large/

COUNTY OF FAIRFAX, to wit:

I, the undersigned Notary Public, in and for the state and county aforesaid, whose commission expires on the /19th/ day of /August/, 19/85/, do hereby certify that /Arthur E. Foster/ as president of Foster Bros., Inc., whose name is signed to the foregoing appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this /18th/ day of /September/, 19/84/.

/Sarah J. Downs/

Notary Public