

THESE MASTER PROTECTIONS, A DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS, is made as of the 17th day of November, 1988, by SPRING RUN ASSOCIATES, a Virginia general partnership.

## RECITALS

Spring Run Associates is the owner of certain real estate situate in Chesterfield County, Virginia, as more particularly described in Exhibit A hereto, and desires to create thereon a planned community of high quality to be known as "Birkdale", to provide for the preservation and enhancement of property values, amenities and opportunities within the community, and to provide for the management, maintenance and care of certain of the improvements within the community. For the foregoing purposes, the undersigned desires to subject the real estate described in Exhibit A (together with such additions thereto as may hereafter be made pursuant to Article II hereof) to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the Birkdale community and the owners of property within such community.

NOW, THEREFORE, the undersigned hereby declares that the real estate described in Exhibit A hereto, and such additions thereto as may hereafter be made pursuant to Article II hereof (but as to such additions, subject to any additions, deletions and modifications to the provisions of this Declaration as are made pursuant to Section 2.2), is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. As used in this Declaration, terms listed below shall have the indicated meanings unless otherwise required by the context.

"Additional Area" shall have the meaning set forth in Section 2.1 of this Declaration.

"Architectural Review Committee" shall have the meaning set forth in Section 6.1 of this Declaration.

"Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time to time.

"Association" shall mean Birkdale Community Association, Inc., a Virginia nonstock corporation, its successors and assigns.

"Bylaws" shall mean the bylaws of the Association, as the same may be amended from time to time.

"Clerk's Office" shall mean the Clerk's Office of the Circuit Court of Chesterfield County, Virginia.

"Common Area(s)" shall mean (i) all real estate specifically designated as such or as "Open Space" (other than Lots) on recorded plats of the Properties, in any Supplemental Declaration or in any amendment to this Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office and (ii) all other real property and improvements and facilities now or hereafter owned by the Association which are intended to be devoted to the common use and enjoyment of the Owners. The Common Area includes, without limitation, areas set aside for pedestrian and bicycle paths and other recreational facilities intended to be used by all of the Owners but excludes the Golf Course and the Lakes and the Recreation Area.

"County" shall mean Chesterfield County, Virginia.

"Declarant" shall mean Spring Run Associates, a Virginia general partnership, and its successors as developers of the Properties to whom Spring Run Associates has assigned its rights hereunder by instrument(s) recorded in the Clerk's Office as provided in Section 9.7. In addition, as used in Section 7.7, the term "Declarant" shall include a successor fee simple owner of the Lakes, and, as used in Section 7.8, such term shall include a successor fee simple owner of the Golf Course.

"Declaration" shall mean this instrument, as the same may from time to time be amended or supplemented.

"Golf Course" shall mean the golf course, practice range, club house and related facilities which Declarant contemplates developing around and in the vicinity of the Properties.

"Golf Course Area" shall mean that portion of the Lots and Common Areas which is located within fifty (50) feet of the Golf Course.

"Lakes" shall mean (i) the three lakes which the Developer contemplates constructing in and around the Properties as more particularly shown on the master plan for Birkdale approved pursuant to the Zoning Ordinance, as such master plan may be amended from time to time, and (ii) such other ponds or lakes as Declarant may from time to time construct in and around the Properties and which Declarant

designates as a "Lake" in an amendment to this Declaration, in a Supplemental Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office. Any such amendment shall not require the consent of any other Owners as provided in Section 9.4.

"Lot" shall mean any lot designated as such on a recorded subdivision plat of the Properties or any subsequently recorded subdivision plat of the Properties, as the same may be amended from time to time. With respect to any portion of the Properties which is developed for multifamily, commercial or other purposes other than single family residences, the term "Lot" shall mean each parcel of land subjected in whole or in part to this Declaration and which is under separate ownership.

"Member" shall mean every person or entity who holds membership in the Association.

"Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers but excluding those having such interest merely as security for the performance of an obligations.

"Properties" shall mean that certain real property described in Exhibit A and such additions thereto as may hereafter be subjected in whole or in part to this Declaration by Declarant pursuant to Article II hereof.

"Recreation Area" shall mean the portion or portions of the Properties which the Declarant has designated or may designate as a recreation area in any amendment to this Declaration, in a Supplemental Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office, together with the improvements and recreational amenities now or hereafter located thereon. Any such amendment shall not require the consent of any other Owners as provided in Section 9.4.

"Recreation Area Lease" means the lease of the Recreation Area to be entered into between the Association, as lessee, and the Declarant, as lessor, and any amendments thereto and renewals and replacements thereof.

"Supplemental Declaration" shall have the meaning set forth in Section 2.3 of this Declaration.

"Zoning Ordinance" shall mean the ordinance adopted by the Board of Supervisors of the County on February 24, 1988 (Case No. 88S003), pursuant to which approximately 495.12 acres of real estate to be known as Birkdale was rezoned as a Conditional Use Planned Development, together with all other zoning ordinances, rules and regulations as may be applicable to the Properties from time to time, as any of the same may be amended from time to time.

Section 1.2. Interpretation. For the purpose of construing this Declaration, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, and words in one gender shall be deemed to include words in all other genders. The table of contents, titles to articles and section headings are for convenience only and neither limit nor amplify the provisions of this Declaration.

## ARTICLE II

### ADDITIONS TO THE PROPERTIES

Section 2.1. Additional Area. The real estate which is subject to this Declaration as of the first date of its recordation in the Clerk's Office is described in Exhibit A hereto and constitutes the first phase of the community generally known as "Birkdale". Declarant contemplates the extension of this Declaration to the real estate described in Exhibit B hereto or portions thereof and the possible extension of this Declaration to other real estate from time to time hereafter designated by the Declarant and located within a one-half (0.5) mile radius of the real estate described in Exhibit B (the real estate described in Exhibit B and such other real estate hereafter designated by Declarant and within such one-half (0.5) mile radius being collectively referred to as the "Additional Area"). However, Declarant shall not be obligated to bring all or any part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then subject to such additions, deletions and modifications as are made pursuant to Section 2.2.

Section 2.2. Right to Subject Additional Area to Declaration. Declarant reserves the right, at its discretion, at such time or times as it shall determine on or before fifteen (15) years from the date hereof, to subject the Additional Area, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Area which is not, on or before fifteen (15) years from the date hereof, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Properties", shall cease to be "Additional Area". Each of the additions authorized pursuant to this Section 2.2 shall be made by Declarant's recording in the Clerk's Office an appropriate instrument describing the portion(s) of the Additional Area subjected to this Declaration. Each such instrument may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by the Declarant. However, no negative reciprocal easement shall arise out of any

additions, deletions or modifications to this Declaration made in the instruments subjecting the Additional Area to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications.

Section 2.3. Supplemental Declarations. In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to a specific portion or portions of the Additional Area to be developed for a specific type of use, including, without limitation, single family residences, patio home residences, multifamily housing and commercial uses. However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any portion of the Properties not expressly subjected thereto.

Section 2.4. Power Not Exhausted by One Exercise, Etc. No exercise of the power granted Declarant hereunder as to any portion of the Additional Area shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Area not so subjected to the provisions hereof or to the provisions of a Supplemental "Declaration." The discretionary right of Declarant to subject the Additional Area to the provisions of this Declaration or a Supplemental Declaration is not conditioned upon or subject to the approval of other Owners and therefore the requirements set forth in Section 9.4 for amendments to this Declaration shall be inapplicable to this Article II. The failure of Declarant to extend the provisions of this Declaration to the Additional Area or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Area to which this Declaration is not extended.

Section 2.5. Development of Additional Area. The portion(s) of the Additional Area subjected to the provisions of this Declaration may contain additional Common Areas and facilities to be owned and/or maintained by the Association and additional residential dwelling units (including without limitation patio homes and multifamily structures) and commercial properties, certain aspects of which may be maintained by the Association.

Section 2.6. Master Plan. The existence of a master plan for Birkdale as part of the Zoning Ordinance or otherwise shall not be deemed to constitute a representation by Declarant that the real estate shown thereon shall be developed as depicted on the master plan, and the master plan may be amended from time to time in the sole discretion of Declarant.

## ARTICLE III

### COMMON AREAS

Section 3.1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the maintenance, management, operation and control of the Common Areas (except for such portions thereof as are the responsibility of Owners as hereinafter set forth) and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the same in good, clean and attractive condition, order and repair. The Association shall also maintain any pedestrian access paths located within the road right-of-way. The Association is also responsible for maintenance of the Recreation Area pursuant to the Recreation Area Lease.

Section 3.2. Common Area Obligations of Owners. Each Owner shall maintain in good and attractive condition the landscaping located on any Common Area located between the side lot line of his Lot and the nearest road right-of-way, including periodic mowing of grass.

Section 3.3. Owners' Rights of Enjoyment. Subject to the provisions of this Declaration and any Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot.

Section 3.4. Limitations on Owner's Rights. The Owners' rights of enjoyment in the Common Areas and Recreation Area shall also be subject to the following:

(i) the right of the Association to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Areas and Recreation Area and recreational facilities situated thereon;

(ii) subject to the limitation imposed by the last sentence of Va. Code Ann. Section 55-514C, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas and Recreation Area for any period during which any assessment against his Lot is delinquent;

(iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas and Recreation Area for any period during which any other infraction by the Owner of this Declaration, a Supplemental Declaration or the rules promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the infraction complained of and the manner of its correction) and for not more than

sixty days after such correction;

(iv) subject to Section 4 of Article VII of the Bylaws, the right of the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto;

(v) subject to Section 4 of Article VII of the Bylaws, the right of the Declarant or the Association to grant utility easements across the Common Areas as provided in Section 8.1;

(vi) subject to Section 4 of Article VII of the Bylaws, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association;

(vii) all of the other easements, covenants and restrictions provided for in this Declaration and applicable to the Common Areas; and

(viii) the provisions of the Recreation Area Lease.

Section 3.5. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and Recreation Area to members of his family living on his Lot, to his tenants and to his guests subject to the Recreation Area Lease and to such rules and regulations and fees as may be established from time to time by the Association.

Section 3.6. Damage or Destruction of Common Area by Owner. In the event any Common Area or improvement thereon or Association facility is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment upon the Lot of such Owner and shall constitute a lien upon such Owner's Lot and be collectible in the same manner as other assessments set forth herein. Notwithstanding the foregoing, the Owner shall be released of liability for such costs to the extent that the same are covered by the proceeds of insurance paid under the Association's insurance policies (but only if such release of liability will not invalidate such insurance).

Section 3.7. Rights in Common Areas Reserved by Declarant. Until such time as Declarant conveys a parcel of real estate constituting Common Area to the

Association, Declarant shall have the right as to that parcel, but not the obligation, (i) to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, including, without limitation, directional signs, pedestrian and bicycle trails, playgrounds, swimming pools, tennis courts and other recreational facilities, (ii) maintain such Common Area in neat condition and repair, including mowing and removing underbrush and weeds, and (iii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration.

Section 3.8. Title to Common Area. Declarant may retain legal title to the Common Areas or portions thereof, but notwithstanding any provision herein to the contrary, Declarant shall convey each Common Area to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record, not later than ten (10) years from the date such Common Area is designated as such by recordation of an appropriate instrument in the Clerk's Office. Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, any applicable rules and the Articles and Bylaws with respect to the Common Areas from and after the time such Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office, regardless of whether the Common Areas have been conveyed to the Association, and the Association shall be liable from that date for payment of taxes, insurance and maintenance costs with respect thereto.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 4.1. Owners as Members. Every Owner of a Lot shall be a Member of the Association. Membership shall not be separated from ownership of any Lot. Upon the closing of the sale of a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

Section 4.2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners including Declarant. Each Class A Member (except Declarant) shall be entitled to cast one vote for each Lot owned. Declarant as a Class A Member shall be entitled to cast ten votes for each Lot owned. Notwithstanding the foregoing, if a Lot is designated for multi-family or commercial use, the Owner thereof shall be entitled to cast the product of three Class A votes multiplied by the acreage of the Lot except that so long as Declarant is the Owner, Declarant shall be entitled to that number of Class A votes equal to the product of thirty votes multiplied by the acreage of the Lot. If either such product is other than a whole

number, the product shall be adjusted upward to the nearest whole number.

Class B. The Class B Member shall be Declarant, who shall be entitled to cast the Class B vote. The Class B membership shall terminate on the earliest of the following:

(a) the date on which Declarant ceases to own any of the real estate described in Exhibit B hereto exclusive of the Golf Course and the Lakes;

(b) the date on which Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership (which amendment shall not require the consent of any other Owners as provided in Section 9.4); or

(c) fifteen (15) years from the date hereof.

Section 4.3. Suspension of Voting Rights. The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration during the period when any such assessment shall be delinquent, but upon payment of such assessment the voting rights of such Member shall automatically be restored.

Section 4.4. Articles and Bylaws to Govern. Except to the extent expressly provided in this Declaration, all of the rights, powers and duties of the Association and the Members, including the Member's voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B Member shall appoint the members of the Board of Directors of the Association until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of the Articles or Bylaws, this Declaration shall control.

## ARTICLE V

### ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Properties, hereby covenants (subject to Sections 5.5, 5.7 and 5.10), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including attorney's fees, shall be a continuing lien

upon the Lot against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas or abandonment of his Lot. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed 12% per annum. Each assessment that is not paid within seven (7) days of its due date shall incur a late charge equal to 5% of the delinquent assessment.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the performance of the Association's obligations under the Recreation Area Lease and to provide recreational amenities and opportunities to Owners in the Recreational Area, for the discharge of all real estate taxes and other levies and assessments against the Common Areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association as more particularly described in the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles or Bylaws or this Declaration or any Supplemental Declaration, and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

Section 5.3. Regular Assessments. Regular assessments (other than those provided for in Section 5.4) shall be established (and increased or decreased from time to time) by the Board of Directors of the Association pursuant to the Bylaws.

Section 5.4. Special Assessments. In addition to the regular assessments, the Board of Directors of 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 of a capital improvement upon the Common Areas and Recreation Area, including fixtures and personal property related thereto or for any other extraordinary or unanticipated cost incurred by the Association in carrying out its duties. If any such special assessment is in an amount greater than the regular assessment for the same year, then no such special assessment shall be levied without the approval of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose; otherwise, such special assessment may be established by the Board of Directors of the Association without a vote of the membership.

Section 5.5. Assessment Rate. Except as otherwise provided in Section 5.10, both regular and special assessments shall be fixed at a uniform rate for all Lots

classified under the Zoning Ordinance for the same use. Thus, all Lots zoned for single family dwellings shall be assessed uniformly, but the assessments for other Lots such as multifamily, commercial or patio home Lots may, in the discretion of the Declarant, be assessed at a different rate as set forth in the Supplemental Declaration applicable to such Lots.

Section 5.6. Loans from Declarant. If the funds available to the Association from regular and special assessments are not sufficient to defray expenses incurred by the Association, then subject to the terms and conditions hereafter set forth, Declarant may, at its option, lend funds to the Association to enable it to defray such expenses. Such loans by Declarant shall be subject to the following terms and conditions:

(a) Maximum Loan. The aggregate outstanding principal balance at anyone time of the loans which may be made by Declarant to the Association shall not exceed \$25,000.00; provided, however, that Declarant may lend the Association principal amounts such that the outstanding principal balance at anyone time of the loans may be in excess of \$25,000.00 upon the approval of a majority of each class of Members voting in person or by proxy at a meeting duly called for this purpose.

(b) Type Loan and Interest Rate. Such loans shall be unsecured and shall not bear interest at a rate in excess of 2% per annum above the prime rate of interest announced from time to time by Signet Bank/Virginia or its successors. No such loan shall be made for the purpose of construction of additional capital improvements to the Common Areas.

(c) Prepayment. Such loans may be prepaid in whole or in part at any time without penalty.

(d) Payment. Interest only on such loans shall be payable in such installments as Declarant elects. The principal balance of any such loans together with all accrued interest thereon shall be due on demand and if demand is not otherwise made shall become due and payable in full on the first to occur of (i) four years from its date or (ii) one year after the date that Declarant's Class B membership in the Association terminates.

Section 5.7. Date of Commencement of Regular Assessment; Due Dates. Subject to Sections 5.5 and 5.10, the regular assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner other than the Declarant, except as otherwise provided in Sections 5.10 and 5.11. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the regular assessment as provided in the Bylaws.

Section 5.8. Effect of Nonpayment of Assessments; Remedies of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Va. Code Ann. Section 55-516. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot. The Association also may bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien.

Section 5.9. Priority of Lien. The lien for assessments hereunder shall have the priority set forth in Va. Code Ann. Section 55-516A.

Section 5.10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) all property owned by Declarant except for any Lot owned by Declarant on which a building has been constructed, in which case the assessments shall commence on the first day of the month following the date on which the County issues a certificate of occupancy (temporary or permanent) for the building; (ii) all properties dedicated and accepted by a public authority; (iii) all Common Areas; (iv) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 5.11. Annual Budget. The Board of Directors shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of assessments (including provision for reserves, including physical damage insurance deductibles) and an allocation of expenses. There shall be no responsibility for the payment of assessments until after the Board of Directors adopts its initial budget.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 6.1. Architectural Review Committee. There is hereby established a committee (the "Architectural Review Committee") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Architectural Review Committee shall be composed of three persons from time to time appointed by Declarant so long as its Class B membership in the Association continues or by the Board of Directors of the Association from and after the date on which the Class B membership terminates or Declarant delegates this responsibility to the Association. The members of the Architectural Review Committee shall serve for such terms as may be determined by

Declarant or the Board of Directors of the Association, as the case may be.

Section 6.2. Plans to be Submitted. Before commencing the construction, erection or installation of any building, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement") on a Lot, including any site work in preparation therefor, and before commencing any alteration, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, each Owner shall submit to the Architectural Review Committee a proposed construction schedule and at least two sets of plans and specifications of the proposed construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include (unless waived by the Architectural Review Committee): (i) a site plan showing the size, location and configuration of all Improvements, including driveways and landscaped areas, (ii) as to Improvements initially constructed on a Lot, landscaping plans showing the trees to be removed and to be retained and shrubs, plants and ground cover to be installed and (iii) architectural plans of the Improvements showing exterior elevations, construction materials, exterior colors, driveway material and such other information as the Architectural Review Committee in its discretion shall require (collectively, the "Plans"). The Architectural Review Committee shall not be required to review any Plans unless and until the Plans contain all of the foregoing items. The Plans and the proposed construction schedule may be submitted to the Architectural Review Committee at the address of Declarant in the same manner as notices are to be sent to Declarant pursuant to Section 9.5, for so long as all of the members of the Architectural Review Committee are appointed by Declarant, and thereafter the Plans and the proposed construction schedule may be submitted to the Architectural Review Committee at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Section 9.5.

In connection with its discharge of its responsibilities, the Architectural Review Committee may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person seeking the approval of the Architectural Review Committee agrees to pay all fees thus incurred by the Architectural Review Committee and further agrees to pay an administrative fee to the Architectural Review Committee in such amount as the Architectural Review Committee may from time to time establish but not to exceed \$100.00 per submission. The payment of all such fees is a condition to receipt of the decision of the Architectural Review Committee, and the commencement of review of any submission may be conditioned upon the payment of the Architectural Review Committee's estimate of such fees.

Section 6.3. Approval of Plans. The Architectural Review Committee shall not approve the Plans for any Improvement that would violate any of the provisions of this

Declaration or of any Supplemental Declaration applicable thereto. In all other respects, the Architectural Review Committee may exercise its sole discretion in determining whether to approve or disapprove any Plans, including, without limitation, the location of an Improvement on a Lot. Notwithstanding anything contained herein to the contrary, the Architectural Review Committee shall not have the right to approve any changes to the landscaping on any Lot except upon the initial construction of the Improvement. If the Architectural Review Committee does not approve or disapprove, or approve subject to conditions, any Plans or proposed construction schedule within 60 days after it receives the same in compliance with Section 6.2 of this Declaration, such Plans (or construction schedule, as the case may be) shall be deemed approved.

Section 6.4. No Structures to be Constructed, etc. Without Approval. No Improvement shall be constructed, erected, installed or maintained on any Lot, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, unless the Plans and construction schedule therefor have been approved by the Architectural Review Committee. After the Plans therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Committee.

Section 6.5. Guidelines May Be Established. The Architectural Review Committee may, in its discretion, establish guidelines and standards to be used in considering whether to approve or disapprove Plans. Such guidelines may include, without limitation, uniform standards for signage and mailboxes and mailbox supports. However, nothing contained in this Declaration shall require the Architectural Review Committee to approve the Plans for Improvements on a Lot on the grounds that the layout, design and other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Architectural Review Committee for another Lot.

Section 6.6. Limitation of Liability. The approval by the Architectural Review Committee of any Plans, and any requirement by the Architectural Review Committee that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Committee of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Committee shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Architectural Review Committee have any liability

whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Committee's approval, disapproval or conditional approval of any Plans.

Section 6.7. Other Responsibilities of Architectural Review Committee. In addition to the responsibilities and authority provided in this Article VI, the Architectural Review Committee shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration, in any Supplemental Declaration and in the Bylaws.

## ARTICLE VII

### RESTRICTIONS

Section 7.1. Use of Properties. All of the Lots shall be used only for the purposes permitted by the Zoning Ordinance and any Supplemental Declaration applicable thereto.

Section 7.2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may become a nuisance or annoyance to other Owners.

Section 7.3. Appearance. All Lots and the Improvements thereon shall at all times be maintained in a good, clean, attractive condition, order and repair consistent with a high quality development.

Section 7.4. Off street Parking. Each Owner shall provide adequate space for the parking of automobiles on his Lot rather than on the street or road on which his Lot fronts. Each Owner shall comply with such parking restrictions as may apply to any public road within the Properties.

Section 7.5. Water and Sewer. The principal building(s) on each Lot shall be connected to the public water and sewer systems. No septic system shall be constructed on any Lot.

Section 7.6. Dumping on Common Areas. Without the approval of the Board of Directors of the Association, no Owner shall dump or otherwise dispose of or place trash, garbage, debris or any unsightly or offensive materials on the Common Areas, nor shall any Owner permit any member of his family or any of his guests, tenants, licensees or agents to do so.

Section 7.7. The Lakes.

(a) Lakes Not Common Areas. The Lakes and the land on which they are or will be situated shall not be Common Areas, and therefore the Owners shall not have any rights, easements or privileges to use or enjoy the Lakes for boating, fishing, swimming, ice skating, water skiing, hunting or any other purpose whatsoever except to the extent expressly permitted by Declarant. Any such right to use the Lakes which may be granted by Declarant shall be subject to such rules and regulations as Declarant may impose from time to time in its sole discretion.

(b) Use of Lakes by Lakefront Lot Owners. The Owners of Lots which front on a Lake shall not have any riparian rights appurtenant to their Lots to use the Lakes for any purposes whatsoever, and, except as expressly provided in this Declaration, such Owners' rights, if any, with respect to the Lakes shall be no greater than the rights of any other Owners. Without limiting the generality of the foregoing, the Owners of such Lots shall not have the right to construct or maintain any pier, dock or other structure in or affecting the Lakes except as provided in Subsection 7.7(g) or to take any water from the Lakes for irrigation or otherwise.

(c) Use of Lakes by Declarant. Without limiting Declarant's rights with respect to the Lakes, Declarant shall have the right (i) to use the Lakes to provide irrigation for the Golf Course or for any other property, (ii) to install drainage facilities and other utilities in or under the Lakes, (iii) to construct improvements in the Lakes, (iv) to lower the level of the Lakes for repairs or maintenance of the darns or other facilities associated therewith, (v) to reconstruct and reconfigure the Lakes, (vi) to drain the Lakes and not replenish the same and thereafter use the land on which the Lakes are situated for some other purpose and (vii) to use the Lakes and the land on which they are situated for any other lawful purpose.

(d) Trash and Debris. Each Owner of a Lot adjoining the Lakes shall keep his Lot free of trash, debris and any unsightly items. No bottles, cans, trash, garbage, chemicals, wastes or other potentially harmful substances or pollutants shall be deposited or discharged on or into the Lakes or on the property surrounding the Lakes.

(e) Drainage Into Lakes. Except as expressly permitted by this Declaration or any Supplemental Declaration or by Declarant, no Owner shall install or maintain any drainage ditches, pipes or other facilities to drain surface water into the Lakes without the prior approval of Declarant, it being the intention hereof that only natural drainage of surface water shall be permitted into the Lakes. No Owner (other than Declarant) shall in any manner decrease or disturb the flow of water into or out of the Lakes.

(f) Land Management Plan. The topography and vegetation of that portion of the Lots and the Common Area which is located within thirty (30) feet of the Lakes shall not be altered by removal, reduction, excavation, grading, clearing, cutting, transplanting, landscaping or any other means, nor shall any pesticides, herbicides, fertilizers or other chemicals be applied to such property, except in accordance with a land management plan designed to protect the Lakes from pollution resulting from such activities and promulgated by Declarant.

(g) Bulkheads. Notwithstanding anything contained in this Section 7.7 to the contrary, the Owner of a Lot adjacent to a Lake or the Association (as to any Common Area adjoining a Lake) may bulkhead the shoreline in order to stabilize the same and may backfill behind such bulkhead, subject to the conditions that (i) the work is performed in accordance with plans and specifications approved by Declarant, (ii) the boundary line of the Lake is not altered and (iii) Declarant has approved the type of material used for the bulkhead.

#### Section 7.8. Golf Course.

(a) Right to Remove Balls, Etc. Golf Course players and their caddies shall have the right, without being deemed to have committed a trespass, to enter upon the Golf Course Area to remove a golf ball or to play the same subject to the rules of play of the Golf Course, provided, however, that after a building is constructed on a Lot, such right shall be limited to removing balls and not playing them. Players on the Golf Course shall also have the right to hit balls over the Golf Course Area while playing on the Golf Course and generally to engage in all common and usual activity associated with playing golf and with the operation of the Golf Course. However, players on the Golf Course shall not have the right to enter onto any Lots with a golf cart, to spend an unreasonable amount of time on any Lot or to create a nuisance while on any Lot.

(b) Distracting Activities. The Owners of Lots within the Golf Course Area shall refrain from any actions which would detract from the playing qualities of the Golf Course, including, without limitation, permitting barking dogs and other distracting pets, carrying on or allowing any loud, obnoxious or annoying activities, picking up golf balls or otherwise interfering with play.

(c) Right to Maintain Areas. Declarant shall have the right, but not the obligation, to maintain in neat condition any of the Golf Course Area, including, without limitation, planting grass, watering, mowing, applying fertilizer and removing underbrush, stumps, trash and trees of less than six inches in diameter four feet above ground level. In addition, Declarant shall have the right to install and maintain any landscaping or screening within the Golf Course Area as may be required by the County pursuant to the Zoning Ordinance and so long as the same does not require the

removal of any Improvement.

(d) Owners Not Permitted on Golf Course. Ownership of a Lot shall not entitle an Owner, his family, guests, tenants, licensees and agents, to use or enter the Golf Course or any portion thereof for any purpose, including playing golf and walking, jogging or bicycling on the fairways or cart paths.

Section 7.9. Recreation Area. The Recreation Area is not Common Area. The rights and obligations of the Association and Owners to the use thereof is set forth in the Recreation Area Lease. The Association shall perform its obligations as tenant under the Recreation Area Lease, but the Association shall have no obligations with respect to the Recreation Area except to the extent provided in the Recreation Area Lease during the term thereof. A copy of the Recreation Area Lease is available for examination at the offices of Declarant. Upon the expiration of the term or upon the earlier cancellation of the Recreation Area Lease, the fee simple owner of the Recreation Area has the right to devote the Recreation Area to other uses or to change the basis on which Owners should be permitted to use the Recreation Area.

## ARTICLE VIII

### EASEMENTS

Section 8.1. Utility Easements. Declarant reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public conveniences or utilities, upon, in or over those portions of the Properties (including Lots and Common Areas) as the Declarant, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). However, no Utility Easements shall be placed on the portion of a Lot on which is already located a building which was approved by the Architectural Review Committee or on which a building is to be located pursuant to Plans approved by the Architectural Review Committee or on any portion of a Lot which is not described or shown as an easement area on a recorded subdivision plat or Supplemental Declaration applicable to such Lot. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant or the governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements may be installed above or below ground level, except as otherwise provided in any Supplemental Declaration. Declarant shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association and to any other party or parties.

Section 8.2. Erosion Control. Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Declarant or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (as to the Common Area) at least ten days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association in undertaking such erosion control measures on any Lot shall become a special assessment upon the Lot and shall constitute a lien against the Lot and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.3. Maintenance of Lots. Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter upon any Lot, after at least ten days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Properties or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action shall constitute a special assessment upon the Lot and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots owned by Declarant.

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.1. Enforcement. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration and such failure continues for at least ten days after notice thereof is given to the Owner, then either Declarant or the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the

Owner's Lot(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by the Declarant, the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

In the event of the violation by any Owner or his family, tenants, guests or other invitees of this Declaration, any Supplemental Declaration, the Articles, the Bylaws or the rules and regulations adopted by the Board of Directors or the Association, the Board of Directors of the Association may assess a charge against the Owner for such violation within the limitations and subject to the procedural requirements set forth in Va. Code Ann. Section 55-513B. Any such charge shall, at the election of the Board of Directors of the Association, be either a lien against the Owner's Lot or the personal obligation of the Owner.

Section 9.2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 9.3. Covenants Running with the Properties; Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the Properties and the Owners thereof, for a term of 30 years from the date this Declaration is recorded, after which time they shall be automatically extended for three (3) successive periods of ten (10) years each unless revoked by a recorded instrument executed by the Owners of a majority of the Lots subject hereto. Notwithstanding the foregoing, the provisions of Article VIII shall be perpetual.

Section 9.4. Amendments. Except as otherwise set forth in this Declaration and subject to Section 4 of Article VII of the Bylaws, this Declaration may be amended only with the written consent of (i) Declarant so long as its Class B membership in the Association continues and (ii) the vote of two-thirds of the Class A votes (including Declarant as to Class A votes held by Declarant). Notwithstanding the foregoing, the provisions of Article II and of Sections 3.6, 3.7, 4.2, 5.6, 5.10, 7.7, 7.8 and 8.1 may not be amended in any event without the written consent of Declarant regardless of whether the Class B membership has terminated. In addition, Declarant shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Properties to comply with applicable laws now or hereafter enacted or to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, as the same may be amended from time to time, with respect to their purchase of mortgage loans secured by Lots.

Section 9.5. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in

person or sent by U.S. first class mail, postage prepaid. Notices to the Declarant shall be sent c/o Birkdale Community Association, Inc., P.O. Box 2007, Midlothian, Virginia 23113, or to such other address as the Declarant shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.4. Notices to the Association or to Owners (other than the Declarant) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given upon the earlier of (i) delivery at the appropriate address specified above, whether in person, by express courier or by mail, or (ii) three days after the postmark date of mailing. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, the notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Va. Code Ann. Section 55-516C.

Section 9.6. Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by members of the Association in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 9.7. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner or to any other party in Declarant's sole discretion. Each such assignment shall be evidenced by an instrument which shall be recorded in the Clerk's Office.

Section 9.8. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of the Declarant, the Association, and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

WITNESS the following signature.

SPRING RUN ASSOCIATES

By: \_\_\_\_\_  
General Partner