

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
OAKTON MILL ESTATES HOMEOWNERS ASSOCIATION, INC.  
UPDATED JANUARY 2024**

ATTACHMENT 2 SCHEDULE "B"

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made on this 6th day of December, 1984, by and between SMC- GREENCASTLE, INC., a Maryland corporation, hereinafter known as "Declarant" and OAKTON MILL ESTATES HOMEOWNERS ASSOCIATION, INC., a Virginia non-stock corporation, hereinafter known as "Association".

WITNESSETH:

WHEREAS, Declarant and Association are the sole owners of certain real property located in Fairfax County, Virginia, known as Oakton Mill Estates, Section One, as the same is duly dedicated, platted and recorded with these presents; and

WHEREAS, Declarant and its successors, assigns and Association 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, do declare and publish their intent to subject the real property as hereinafter described and as may from time to time be dedicated and subdivided into lots and open spaces designated for conveyance to a homeowner's 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 or any part thereof, and shall insure 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 and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Virginia, as a non-stock corporation, Oakton Mill Estates Homeowners Association, Inc., the Association herein for the purpose 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 with

these presents and designated as Lots 1 through 34, and Parcel A Section One, Oakton Mill Estates, to be held, transferred, sold and conveyed and occupied subject to the covenants, restrictions, easements, conditions, charges and lien (hereinafter referred to "Covenants and Restrictions"), hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title or interest in the said described properties or any part hereof, 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 Oakton Mill Estates Homeowners Association, Inc., its successors and assigns, if such successor or assign should acquire from the Declarant (including by foreclosure or deed in lieu of foreclosure) more than one (1) undeveloped lot for the purpose of development.

Section 2. "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 3. "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.

Section 4. "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 areas dedicated as public use.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 7. "Declarant" shall mean and refer to SMC- Greencastle, Inc., its successors and assigns, if such successors or assigns should acquire from the Declarant (including by foreclosure or deed in lieu of foreclosure) more than two (2) undeveloped Lots for the purpose of development.

Section 8. "Mortgage" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the common area and who has notified the Association of this fact.

## ARTICLE II ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3rds) of a Class A members and two-thirds (2/3rds) of the Class B members, if any at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty days in advance of the meeting. The presence of members or of proxies entitled to cast sixty per cent (60%) of 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 above, and the required quorum of such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3rds) of the Class A membership or two-thirds (2/3rds) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within ten (10) years of the date of incorporation of this Association, the Declarant should develop additional lands within the vicinity of the parcel of land described in the Articles of Incorporation of Oakton Mill Estates Homeowners Association Inc., such lands may be annexed to said Properties without the assent of the Class A member; provided, however, that the development of the additional lands described in this section shall be in accordance with the general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section if such agencies shall be involved, and otherwise in accordance with the preliminary plat heretofore submitted to Fairfax County, Virginia. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration or the Veterans Administration prior to such development is such agencies shall be involved. If either the Federal Housing Administration or the Veterans Administration determines that such detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of three- fourths (3/4ths) of the Class A members who are voting in person or by proxy at a meeting called for this purpose, written notice of which shall be sent to all members not less than ten (10) days or more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. At this meeting the presence of members or of proxies entitled to cast three-fourths (3/4ths) of all the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may he called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

## ARTICLE III 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 entitles 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. 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 IV VOTING RIGHTS

Section 1. 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 I. 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 the Declarant as defined herein and its successors and assigns, if such successors or assigns should acquire from the Declarant more than two (2) Lots for the purpose of development. The 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 in 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) October 1, 1989

Section 2. Upon annexation by the Declarant of additional properties pursuant to Article II, Section 2, and in the event that Class B membership shall have ceased as hereinabove provided, Class B membership shall be revived with respect to those lots so annexed, provided that, the Class B membership in these annexed lots shall cease and be converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) When the total vote outstanding in the Class A membership in the annexed property equals the total votes outstanding in the Class B membership in such property; or

(b) Four (4) years from the date of recordation of the Deed of Dedication for such annexed property.

## ARTICLE V 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 situate 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 By-Laws, 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 (2/3rds) of each class of members, to mortgage said property, 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 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 use any recreational facilities constructed on the Common Area by a member for any period during which 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 ordinance 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 (2/3rds) 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 thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. And 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, and/or 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 thereon which would otherwise be deemed to be part of the realty, without the payment of damages, including severance or resulting damages, if any to the Association, all in amounts and in manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this State.

(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, which must be in accordance with the Declaration.
- (5) be consistent with the then existing ordinances of the County, and
- (6) be consistent with the general space designation thereof.

Section 2. Delegation of Use. Any member may delegate in accordance with the By-Laws, 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 VI COVENANTS 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, for each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessment or charges, and
- (b) Special assessments for capital improvements, or other specified items, such assessment to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost 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 fee, 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 and 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 \$200.00 per annum, per lot.

(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) above by a vote of the members for the next succeeding three (3) years, and thereafter for each succeeding period of three (3) years, provided that any such change shall have the assent by a vote of more than two-thirds (2/3rds) 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 thirty (30) days nor more than sixty (60) 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 any 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 and personal property related thereto, or other specified purpose, provided that any such assessment shall have the assent of more than two-thirds (2/3rds) of the votes 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 thirty (30) days nor more than sixty (60) 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 of all Lots. Any unoccupied lot or lots owned by the Declarant shall be assessed at twenty-five (25%) percent of the uniform rate so long as Declarant has Class B Membership Status; any occupied lot or lots owned by the Declarant shall be assessed at 100% of the uniform rate. As long as the Declarant has Class B Membership Status, Declarant will fund any budget deficit of the Association in connection therewith.

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 (60%) percent of all of 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 as set forth in Section 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of required quorum at the preceding meeting. No 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 upon conveyance of the Common Area to the Association. 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 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 (8%) percent per annum. The Association in its discretion may:

- (a) Impose a penalty as previously established by rule;
- (b) Accelerate the required payment date of the entire remaining annual assessment; or
- (c) Bring an action at law against the Lot 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 assessment 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 State of Virginia; and (d) Out Lots A3



and B, as long as they are deemed to be “unbuildable,” will have an assessment obligation that is be fifty percent (50%) of the current assessment rate. In the event Out Lots A3 and/or B are deemed suitable to build by Fairfax County, the assessment obligation will be one hundred percent (100%) of the current assessment rate. However, no land or improvements devoted to dwelling use shall be exempt from said assessment.

## ARTICLE VII RESTRICTIVE COVENANTS

Section 1. All lots in the tract shall be known and described as residential lots and no structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached, single-family dwelling not to exceed two and one-half stories in height and a private garage. The erection and use of a private garage for more than two cars, and its location, size and appearance, may be permitted subject to the supplemental approval of the Association through the Board of Directors. The erection and use of sheds or similar buildings may be permitted subject to the supplemental approval of the Association through the Board of Directors. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any other improvements.

Section 2. The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any lot or within any dwelling, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purpose and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other members. The Board of Directors or, upon resolution of the Board of Directors, the Architectural and Environmental Control Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the common areas unless accompanied by a responsible person and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

Section 3. No burning of any trash and no accumulation of storage or litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any lot.

Section 4. Except as herein elsewhere provided, no junk vehicle, vehicle larger than a 3/4 ton truck, house trailer, boat or other similar machinery or equipment of any kind of character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and

machinery as the Association may require in connection with the maintenance and operation of the common areas and community facilities) shall be kept upon The Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Horse trailers may be parked on the property if reasonably hidden from view from the street on which said Property may front.

Section 5. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any lot. Garbage, trash and other refuse shall be placed in covered containers.

Section 6. Except for hoses and the like which are reasonable necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained on any lot above the surface of the ground.

Section 7. No lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 8. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, or other buildings shall be erected, used or maintained on any lot at any time. The erection and use of sheds or similar buildings may be permitted subject to the supplemental approval of the Association through the Board of Directors.

Section 9. No structure, planting or other material shall be placed or permitted to remain upon any lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonable change, obstruct or retard direction or flow of any drainage channels.

Section 10. No exterior television or radio antenna or other aerial or antennae for either reception or transmission, shall be maintained upon the Property except that such aerials or antennae may be erected and maintained within the dwellings located upon the Property.

Section 11. No chain link fences shall be erected on any lot at any time. No fences shall be permitted in the front yards of any lots or in the side yard (street side) of any corner lot. Permitted fences shall be six (6) feet or less in height and must have the specific approval of the Architectural and Environmental Control Committee.

Section 12. No member shall make any private or exclusive or proprietary use of any of the common areas except with the specific approval of the Architectural and Environmental Control Committee and then only on a temporary basis and no member shall engage or direct any employee of the Association on any private business of the member during the hours such employee is employed by the Association, nor shall any member direct, supervise or in any manner attempt to assert control over any employee of the Association.

Section 13. Invalidation of any one or more of covenants set forth herein (or part thereof) by judgement or court order shall in no wise affect any of the other covenants set forth herein which shall remain in full force and effect.

Section 14. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration of Covenants, Conditions and Restrictions. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15. The Architectural and Environmental Control Committee shall consist of a committee of three or more persons appointed by the Directors of the Association. Applications for approval by the Architectural and Environmental Control Committee shall be in writing. Approval or disapproval by the Committee shall also be in writing. Failure of the Committee to approve or disapprove a request within sixty (60) days shall be construed as committee approval of the request.

Section 16. The Association through the Board of Directors may establish rules and regulations for the construction, location, size and appearance of an addition to a residence, other structures, and improvements on the Lot.

Section 17. Prior to the construction of an addition to a residence, other structures, and improvements on a Lot, a written application must be filed with the Association's Architectural and Environmental Control Committee (AECC). Applications shall include detailed plans and specifications, including but not limited to design, location, size and appearance. The AECC reserves the right to require any additional information deemed reasonably necessary to properly process and assess any application. The AECC may assist the Board in establishing guidelines, procedures, and regulations relating to the preparation of an application pursuant to the Declaration.

Section 18. The AECC is authorized to approve or disapprove any complete plan or specification submitted by an Owner for exterior work in accordance with this Article, and consistent with the Governing Documents. Any approval or disapproval of plans and specifications by the AECC shall be in writing. Any party aggrieved by a decision of the AECC may appeal such decision to the Board by giving written notice of such appeal to the Board within thirty (30) days of the adverse decision. If the Board of Directors fails to decide an appeal within sixty (60) days after receipt, it shall be deemed automatically approved, unless it is contrary to the provisions of the Governing Documents. The approval of all plans and specifications is entirely separate and independent from any permitting requirements established by local or other law. Owners are solely responsible for determining the necessity of, and obtaining the approval of, any appropriate authority or governmental agency, such as obtaining any necessary building permits.

Section 19: In the event the AECC fails to act upon any properly completed written application within sixty (60) days after the plans and specifications have been received by the

AECC, those plans, and specifications shall be deemed approved by the AECC, unless in conflict with the provisions of this Declaration, or any published rules or architectural standards adopted, thereto.

The Owner will submit a proposed schedule for completion of the project within the AECC application. An Owner may request an extension of time to complete the project if a written request is received by the AECC before the scheduled project completion date. The AECC can grant an extension on a project for any period of time.

## ARTICLE VIII COMMON DRIVEWAYS

Section I. Definitions (a) "Common Driveways" shall be in the areas within the Ingress and Egress Easements as shown on the plats attached to the Deeds of Dedication and Subdivision for any Section of Oakton Mill Estates, or as may subsequently be established by Declarant.

(b) "Affected Lots" shall be the Lots encumbered and/or served by a Common Driveway.

Section 2. Restrictions (a) Common Driveways shall be used for the purposes ingress and egress to the Affected Lots served by the Individual Ingress and Egress Easements, for governmental and other emergency vehicle ingress and egress, and for construction and maintenance of utilities.

(b) No act shall be performed by any Member, their tenants, guests, or agents which would in any manner affect or jeopardize the free and continuous use and enjoyment of any other authorized Member in and to the Common Driveway of an Affected Lot.

(c) There shall be no parking within Common Driveways at any time except for delivery and/or emergency vehicles, unless all Owners of Affected Lots pertaining thereto shall agree upon other parking limitations.

Section 3. Damage or Destruction. In the event that any Common Driveway is damaged or destroyed (including deterioration from ordinary wear and tear and lapse of time):

(a) through the act of Member or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Member to rebuild and repair the Common Driveway without cost to the Owners of Affected Lots for that Driveway.

(b) other than by the act of Member, his agents, guest or family, it shall be the obligation of all owners of Affected Lots served by any Common Driveway to rebuild and repair such common Driveway at their joint and equal expense. To this end, the Owners of Affected Lots served by said Common Driveway shall assess themselves periodic dues which shall be used to defray the costs of said rebuilding and repair. Any lien arising out of an assessment for repair and maintenance of Common Driveways shall be subordinate to the lien of any first or second deed of trust or mortgage.

(c) in the event of any dispute arising concerning the use, repair and maintenance of said Common Driveways as set forth herein, which cannot be resolved by the Owners, such dispute shall be resolved by arbitration. Each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be a majority of all of the arbitrators.

## ARTICLE IX 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 their functions, in accordance with the 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 practical 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. Any rights granted to a Declarant in this Article shall extend only to Lots and parcels submitted to this Declaration by such Declarant.

## ARTICLE X 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.

(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 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.

(d) 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 an area all loose material, rubbish, filth, and accumulations of debris; and to do any other thing necessary in the judgement of the Association to keep the Common Area in neat appearance and in good order.

(e) To exercise all rights and control over any easement which the Association may from time to time acquire, including, but not limited, those easements specifically reserved to the Association in Article VIII, hereof.

(f) 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.

(g) To employ counsel and institute such suits as the Association may deem necessary and to defend suits brought against the Association.

(h) 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 occupiers of Lots in Oakton Mill Estates.

(b) To make and enforce regulations governing the use of the Common Area.

## ARTICLE XI 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.

Section 2. Any Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of the 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. The Association shall be empowered to obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees, or agents responsible for handling funds collected and held for the benefit of the Association.

Section 5. The Association shall maintain a comprehensive policy of public liability insurance covering the Common Area. Such insurance policy shall contain a severability of interest clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location, and use.

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:

Section 1. Unless all Mortgagees and three-fourths (3/4ths) of the Owners have given their prior written approval the Association shall not:

(a) 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.

(b) Change the method of determining assessments.

(c) By act or omission change, waive or abandon the architectural controls of imposition thereof established by this Declaration.

(d) Fail to maintain fire and extended coverage on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred (100%) per cent of the insurable value based on current replacement costs, not including land value of the improvements.

(e) Use hazard insurance Proceeds for losses to the Common Areas or other Association property for other than the repair, replacement, or reconstruction of such property.

Section 2. A Mortgagee may, jointly or singularly, 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 immediately reimbursement therefor from the Association.

Section 3. 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.

Section 4. 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.

Section 5. 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.

Section 6. 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 per Lot, subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee.

## ARTICLE XII 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 any 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 judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

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-five (25) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive period 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 this Declaration without the consent of the Association and an owner, other than the Declarant and the Association, of at least one Lot in Oakton Mill Estates. Any such amendment during the first twenty-five (25) year period shall have the assent of not less than two-thirds of each class of membership, and thereafter any amendment shall have the assent of sixty (60%) percent 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 thirty (30) days nor more than sixty (60) 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 acknowledgement of deeds) by the Association and recorded among the land records of Fairfax County, Virginia.

Section 4. FHA/VA Approval. As long as there is a Class B membership and if any of the Properties described in Article I, Section 2, and Article II, Section 2, have been developed in accordance with the general plan submitted to the Federal Housing Administration and the Veterans Administration, or similar Governmental Agency, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration; Annexation of additional properties ( other than those described in Article II, Section 2,) mergers or consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of this Declaration of Covenant, Conditions and Restrictions.

Section 5. Indemnification. All Directors, Officers, committee members, employees, agents and volunteers, past or present, shall be indemnified by the Association for all expenses and liabilities reasonably incurred in the defense of all claims, actions, suits, proceedings, civil or criminal, arising from the performance of his/her duties of the Association. The Association may seek reimbursement for any expenses and fees incurred in which any of the aforementioned parties was found to be criminally liable or have committed gross negligence or willful misconduct.

IN WITNESS WHEREOF, SMC-GREENCASTLE, INC. and OAKTON MILL ESTATES HOMEOWNERS ASSOCIATION, INC., has caused this document to be signed by their respective VICE Presidents.

SMC-GREENCASTLE, Inc.

ORIGINAL SIGNED BY

BY: GERALD E. STRASBAUGH

OAKTON MILL ESTATES HOME- OWNERS ASSOCIATION, INC.

ORIGINAL SIGNED BY

BY: GERALD E. STRASBAUGH