

3477

DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION, made this 9th day of September, 1983, by IVY HILL DEVELOPMENT CORPORATION, hereinafter referred to as "Declarant", party of the first part:

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the County of Bedford, State of Virginia, as shown on a plat entitled "Plat of Subdivision of Ivy Hill, Block 3 of Section 1, Property of Ivy Hill Development Corporation...", dated August 11, 1983, made by J.A. Gustin & Associates, which plat is attached hereto and recorded herewith;

WHEREAS, Declarant intends to offer the lots as shown on said plat for sale subject to the covenants, agreements, reservations, easements and restrictions as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares for itself, its successors and assigns, that all lots as shown on said plat shall be sold and conveyed subject to the following covenants, conditions, reservations, easements and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These covenants, conditions, reservations, easements and restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to IVY LAKE HOME OWNERS ASSOCIATION, INC., its successors and assigns which shall be a non-stock corporation organized under the laws of the State of Virginia.

Section 2. "Streets" shall mean and refer to the streets designated on said plat as "Sail View Drive" and the extension of "Ivy Lake Drive".

Section 3. "Lot" shall mean and refer to any of the subdivided lots shown on said plat.

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Ivy Hill Development Corporation, its successors and assigns.

ARTICLE II

MEMBERSHIP

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

ARTICLE III

VOTING RIGHTS

The Association shall have one class of voting membership, which class shall consist of owners as defined in Article I. Each owner shall be entitled to one vote for each lot owned by them. When more than one person or entity holds an ownership interest in any lot, all such persons or entities

shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

ARTICLE IV
EASEMENT RIGHTS

Section 1. Every member shall have a right and easement of ingress and egress along and over the streets shown on the plat for themselves, their heirs, successors and assigns, and their invitees. Said easement shall be appurtenant to and pass with the title to each of the lots subject to the following provisions:

A. The right of the Association to charge reasonable assessments for the maintenance and improvements of the streets.

B. The right of the Association to borrow money for the purpose of maintaining and improving the streets.

C. The right of the Association to suspend the voting rights of any member for any period during which any assessment against his lot remains unpaid.

D. The right of the Association to dedicate all or any portion of the streets to the public or transfer the same for use as a public street. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the owners of the lots in the subdivision agreeing to such dedication, sale or transfer has been recorded.

E. The reservations as hereinafter set forth in Article VI hereof.

Section 2. Maintenance of Streets. The Association shall maintain and improve as necessary the streets in the subdivision unless and until the said streets should be taken over by some governmental or other proper authority. Maintenance of the streets shall be deemed to include (but not be limited to) mowing along the sides of streets and snow removal.

ARTICLE V

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 and each owner of any lot by acceptance of a deed therefor, 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 (1) annual assessments or charges and (2) special assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection therefore as hereinafter provided shall be a continuing lien and charge upon each lot against which each such assessment is made and sale or transfer of any such lot shall not affect the assessment lien. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation 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 maintaining and improving the streets in the subdivision.

Section 3. Assessments. The Association may levy such special and annual assessments as are deemed necessary to carry out the above-stated purpose of assessments, provided that any such assessment shall have the affirmative vote of a majority of the lot owners. Said vote shall be taken in person or by proxy at a meeting duly called for this purpose, pursuant to the normal notice required for meetings as provided under the By-Laws of the Association or under the law of the Commonwealth of Virginia, if none is so provided.

Section 4. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots as a class.

Section 5. Date of commencement of annual assessments. The annual assessments provided for herein shall commence after 60% of the lots shown in the plat have been sold and transferred by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall notify lot owners of the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment; but, in the absence of such action by the Board of Directors, the annual assessment shall be in the amount last fixed. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date 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 the certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Effect of Non-Payment of Assessments. Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, as established by the Association, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, and foreclose a lien against the property and, in either case, 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 streets in this subdivision or abandonment of his lot.

Section 7. Subordination of the lien to mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on any lot. Foreclosure of any such first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosure (and such lien shall attach to any excess proceeds of the foreclosure) and no such foreclosure shall release such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

RESERVATION OF RIGHTS TO DECLARANT

Section 1. Declarant reserves unto itself, its successors and assigns and invitees an easement for ingress and egress along and over the streets shown on the aforesaid subdivision plat.

Section 2. Water and Utility Lines. Declarant reserves unto itself, its successors and assigns the right to lay construct, maintain, operate, renew and remove water utility lines and any other type utility lines along, over and under the streets shown on said plat.

ARTICLE VII

FUTURE ENLARGEMENT OF THE DEVELOPMENT: ADDITIONS

Section 1. Additions. The Declarant shall have the right without further consent from the Association to bring within the scheme and obligation of this declaration additional properties in future stages of development. It is anticipated that additional areas will be subdivided in the future by the Declarant and that the additional streets, extensions of existing streets, and possibly other areas will be maintained by the Association. The additions authorized under this subsection shall be made by filing of record a supplementary declaration of covenants and restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of

this declaration to such property. Such supplementary declaration may contain such complimentary additions, modifications or revisions of the covenants and restrictions contained in this declaration as may be necessary to reflect the different character, if any, of the added properties as are not inconsistent with the scheme of this declaration.

ARTICLE VIII

Section 1. The restrictions attached hereto as Exhibit A shall be binding on all parties having or acquiring any right, title or interest in and to the lots shown upon said plat. Except as provided above, these restrictions shall not be applicable to any of the adjacent property owned by the Declarant unless expressly made so applicable by a further deed of dedication.

ARTICLE IX

EASEMENT FOR PROPOSED LAKE

Section 1. Declarant is constructing a lake by impounding the waters of Ivy Creek and, as a result thereof, the portion of the lots adjoining the lake which lie below the 820-foot contour line will be subject to flooding. An easement is reserved by the Declarant, its successors and assigns to flood that portion of the lots as shown on said plat which lie below the 820-foot contour line and which is more particularly shown on the aforesaid plat.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be executed by its proper officer, pursuant to due corporate authority.

IVY HILL DEVELOPMENT CORPORATION

By  (SEAL)

Its President