

BY-LAWS  
OF  
MONTIVIDEO SQUARE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION. The name of the corporation is Montivideo Square Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at 4015 Chain Bridge Road, Fairfax, Virginia, 22030, but meetings of members and directors may be held at such places within the State of Virginia and County of Fairfax as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Montivideo Square Homeowners Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants Conditions and Restrictions and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owner.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot which is a part of the Properties, including contract performance of an obligation.

Section 6. "Declarant" shall mean and refer to W & A Partnership, a Virginia General Partnership, its successors and assigns, if such successor or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of Clerk of Circuit Court of Fairfax County, Virginia.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

## ARTICLE III

### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association and each subsequent regular annual meeting shall be held on the same day of the same month of each year thereafter, at the hour of 2 o'clock p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-four (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 25 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

## ARTICLE IV

### BOARD OF DIRECTORS: SELECTION: TERMS OF OFFICE

Section 1. Number. Until the first annual meeting the affairs of this Association shall be managed by the initial Board of three (3) directors; thereafter the affairs of this Association shall be managed by the a Board of not less than six (6) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect one-third of the directors for a term of one year, one-third of the directors for a term of two years and one-third of the directors for a term of three years; and at such meeting thereafter the members shall elect one-third of the directors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V

##### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations.

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these ByLaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at

any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### PRESIDENT

(a) The president shall preside at all meetings of the Board of Directors; shall see that all orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### VICE PRESIDENT

(b) The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### SECRETARY

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses and shall perform such other duties as required by the Board.

#### TREASURER

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

### ARTICLE IX

#### COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE X

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI

### ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment which is not paid when due shall be delinquent. If the 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%) per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same 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.

## ARTICLE XII

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Montivideo Square Homeowners Association, Inc.

## ARTICLE XIII

### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that in the event that any of the properties described in Article II Section II have been developed in accordance with general plan submitted to the Federal Housing Administration and the Veterans Administration or similar governmental agency, the Federal Housing Administration and the Veterans Administration or similar governmental agency shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the undersigned, constituting the Incorporators of this Association, have executed these By-Laws this 8<sup>th</sup> day of November, 1982.

Dee Ann R. Schmidt

DEE ANN R. SCHMIDT

4015 Chain Bridge Road  
Fairfax, Virginia 22030

C Stephen Kaplan

C STEPHEN KAPLAN

4015 Chain Bridge Road  
Fairfax, Virginia 22030

Stephen K. Christenson

STEPHEN K. CHRISTENSON

4015 Chain Bridge Road  
Fairfax, Virginia 22030

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 1982, Dee Ann R. Schmidt, C. Stephen Kaplan, Stephen K. Christenson whose names are signed to the foregoing By-Laws as Incorporators of the corporation.

My Commission Expires: January 3, 1986

Stacie L. Ride  
Notary Public



DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 29<sup>th</sup> day of November, 1982, by and between W & A PARTNERSHIP, a Virginia General Partnership, hereinafter referred to as "Declarant", and MONTIVIDEO SQUARE HOMEOWNERS ASSOCIATION, INC., a Virginia non-stock corporation hereinafter known as "Association".

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

WHEREAS, it is the desire of the Declarant to convey said property subject to certain covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and be binding on all parties having any right, title and interest in the described properties having any rights, title and interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Montivideo Square HOMEOWNERS ASSOCIATION, (a non-stock, non-profit Virginia corporation), its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association, comprised of Parcels "A", "B" and "C", Section One, Montivideo Square, as shown on plat thereof.

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

Section 6. "Declarant" shall mean and refer to W & A PARTNERSHIP, a Virginia General Partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

#### ARTICLE II - ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3rds) of the 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 requirement 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 area described in the Articles of Incorporation of MONTIVIDEO SQUARE HOMEOWNERS ASSOCIATION, INC., such additional lands may be annexed to said Properties without the assent of the Class A members; provided, however, that the development of the additional lands described in this section shall be in accordance with a 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 and the Veterans Administration prior to such development if 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-fourth (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 seventy-five (75%) per cent of all of the votes of the Class A member-

ship shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be 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 or record to assessment by the Association, including contract sellers shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separate from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

#### 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 in Article III 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 from membership by Article III. 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 members shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1985.

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 votes 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) Nine (9) years from the date of recordation of the Deed of Dedication for such annexed property.

ARTICLE V - PROPERTY RIGHTS

Section 1. Owners' 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 limit the number of guests of members;
  - (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;
  - (c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, with the assent of 2/3 of each class of membership, to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;
  - (d) the right of the Association to suspend the voting rights and right to use of the recreational facilities 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 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. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast more than two-thirds (2/3rds) of the votes of the Class A membership and more than two-thirds (2/3rds) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance;
  - (f) the right of the individual owners to the exclusive use of parking spaces as provided in this Article;
- and
- (g) the party hereto does hereby grant to the County of Fairfax, its agents, contractors and employees, an easement on,

over and across the streets and areas shown and designated on said attached plat as Common Area, for the purpose of performing any and all municipal functions, governmental or proprietary, which the County may find necessary or desirable to perform including but not limited to police and fire protection and trash removal, together with all other rights necessary for full enjoyment and use of the aforesaid easement. The terms and provisions of this easement shall extend to and be binding upon the successors and assigns of the party hereto.

Section 2. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas.

#### 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, and each Owner of any lot by acceptance of a deed therefor, whether or not is shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessment or charges and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessment together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each 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 Assessment. 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 improvement and maintenance of the Properties, services and facilities devoted to this purpose and related to the use of enjoyment of the Common Area, and of the homes situate upon the Properties.

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, the maximum annual assessment shall be at the rate of \$25.00 per month, per lot for Class A members and Twenty-five (25%) per cent of the Class A members' assessment per month for Class B members.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) per cent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment:

may be increased above five (5%) per cent by a vote of 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.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. 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, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 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 for all Lots not owned by the Declarant. Any Lot or Lots owned by the Declarant shall be assessed at twenty-five (25) per cent of the rate of Lots not owned by the Declarant so long as the Declarant has Class B membership status. The Declarant shall fund all budget deficits and maintain the common area at no costs to the Association until termination of the Class B membership. Upon termination of the Class B membership, all lots owned by the Declarant shall be assessed 100% of the annual assessment of the Association.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60%) per cent 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 requirement set forth in Sections 3 and 4, 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. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be

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

Section 8. 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, the late charge shall be \$5.00. The Association may bring an action at law against the Owner personally obligated to pay the same, 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 assessment 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 deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage pursuant to a decree of foreclosure thereof, shall extinguish the lien of such assessments to payment thereof which became due prior to such assessment as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments 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 Areas;
- (c) All property owned by charitable or non-profit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE VII - PARTY WALLS

Section 1. General Rules of Law To Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportions to such use.

than 4" measured 2' above ground level, lying outside of the building driveway and parking area, shall be removed without the approval of the architectural control committee.

(5) No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a lot or other parcel of the Properties.

(6) Easements for the installation and maintenance of underground utilities, supply and transmission lines, and drainage facilities are reserved to the Declarant through all areas shown on the plat attached to the Deed of Dedication of Section One, MONTIVIDEO SQUARE, whether within the boundaries of residential lots or in common properties until such time as the common area is conveyed to the Association. Such easements shall include the right of ingress and egress, provided that any damage resulting from the installation, maintenance or repair of an underground utility, supply or transmission line, or drainage facility shall be promptly repaired or replaced at the expense of the Association or authority which directed the entry. And, further, the Association shall have the right to establish easements over the common area as needed for utility purposes after such time as the common area has been conveyed to the Association. Easements for individual lots for utilities may be established only by the recorded plan of the subdivision, or as granted thereafter by the individual lot owners.

(7) No exterior clothesline, or clothes hanging device, except that of an umbrella-type nature with a diameter not exceeding 7 feet, shall be allowed upon any lot. Washing may be dried only between 9 A.M. and 5 P.M. Monday thru Saturday.

(8) No sign of any kind larger than one foot square shall be displayed to the public view on any lot, except temporary signs of more than four square feet advertising the said lot for sale or rent and except for temporary signs erected by the Declarant in connection with the construction, lease, or sale of buildings and lots or other parcels of the Properties.

(9) No livestock including horses, cattle and hogs, nor fowl such as chickens and pigeons shall be kept on the property. The breeding of animals for commercial use is prohibited, but nothing contained herein shall be construed to prohibit the keeping of the usual domestic pets. No more than two domestic pets shall be kept at any one time. Pets shall be restrained and controlled as required by ordinance now or hereafter promulgated by Fairfax County, Virginia.

(10) The Association shall have the right (if after 20 days notice to the owner of the lot or lots involved, setting forth the action intended to be taken, such action has not been taken by the Owner) to trim or prune, at the expense of the Owner, any hedge or other plating that in the opinion of the Architectural Control Committee, by reason of its location or the height to which or the manner in which it is permitted to grow, is detrimental to adjoining property or is unattractive in appearance. The Association shall further have the right, upon notice and conditions, to care for any vacant or unimproved lot, and to remove grass, weeds, and rubbish therefrom and do any and all things necessary or desirable in the opinion of the Architectural Control Committee to keep such lot in neat and good order, all at the cost and expense of the Owner.

(11) No antenna for the transmission or reception of radio or television signals shall be erected or permitted on any building or lot or other parcel of the Properties except upon approval of the Architectural Control Committee.

(12) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No material or refuse or any container for the same shall be placed or stored in the front.



of any house, or on the patio or stoop at any time. The Association shall have the right to impound any trash can or garbage receptacle which is placed in violation of this paragraph and to enter onto any lot for this purpose.

(13) No commercial truck, commercial bus, or other commercial vehicle of any kind shall be permitted to be kept or parked overnight upon any portion of the Properties.

(14) No portion of the Properties shall be used for the repair of automobiles, nor shall any vehicle other than a private automobile be parked in any of the parking spaces maintained by the Association. After ten (10) days written notice to the owner of any vehicle parked in violation of this covenant, the Association may remove such vehicle at the expense of the owner thereof.

(15) No baby carriages, velocipedes, bicycles or other articles of personal property shall be deposited, allowed or permitted to remain on any lot except in the enclosed rear area. The Association may impound all such articles and make a charge for their return.

(16) No boats, trailers, tents, or other structures of a temporary character, or portable vehicle other than automobiles shall stay parked forward of any dwelling for a period exceeding four (4) calendar days.

(17) Open space not contained in lots and streets shall not be denuded, defaced or otherwise disturbed in any manner, at any time without the approval of the appropriate County Departments and in concurrence with the County Planning Engineer.

The Declarant hereby grants to members of the Association in good standing, who are owners of townhouses, and their agents and employees an easement upon and across any lot adjacent to a lot owned by said member for the purpose of temporary support of ladders during cleaning, painting, and maintenance operations on said member's lot, and all members are granted an easement over and across all walkways and sidewalks not dedicated to public use.

#### ARTICLE IX - GENERAL PROVISION

Section 1. Enforcement. 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. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise 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 this Declaration is recorded after which time said covenants shall be automatically extended for successive periods of twenty (20) years. The covenants and restrictions of this Declaration may be amended during the first twenty-five

per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners. Any amendment must be properly recorded. Any Amendment to Articles I, III, IV, V, VI and IX must also be approved by the appropriate officials 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 L, Section 2, and Article II, Section 2, have been developed in accordance with the general plan submitted to 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 to this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, MONTIVIDEO SQUARE HOMEOWNERS ASSOCIATION, INC. (being the "Association" herein), has caused this Declaration of Covenants, Conditions and Restrictions to be signed by its \_\_\_\_\_ President, this 27<sup>th</sup> day of November 1982.

IN WITNESS WHEREOF, W & A PARTNERSHIP, (being the Declarant herein) has caused this Declaration of Covenants, Conditions and Restrictions to be signed by its \_\_\_\_\_ Partner, this 29th day of November, 1982.

MONTIVIDEO SQUARE HOMEOWNERS ASSOCIATION

BY: \_\_\_\_\_

President

W & A PARTNERSHIP

BY: \_\_\_\_\_

Partner

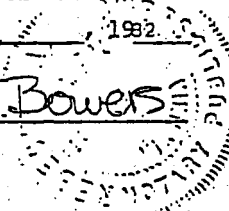
STATE OF VIRGINIA AT LARGE

The foregoing instrument was acknowledged before me this 29th day of November, 1982, by James S. Albrittain, President of Montivideo Square Homeowners Association on behalf of the corporation.

My Commission expires on the 18th day of November, 1982.

Rebecca A. Bowers

Notary Public



STATE OF VIRGINIA AT LARGE

The foregoing instrument was acknowledged before me this 29th day of November, 1982, by James S. Albrittain, Partner of W & A PARTNERSHIP.

My Commission expires on the 18th day of September, 1982.

Rebecca A. Bowers

