# Belle Pond Farm

# Declaration of Covenants, Conditions and Restrictions



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Note: In Article III, Section 2, Class B, (a), this condition has been met, and only Class "A" members exist.

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration, made this 2nd day of March 1982, by JAMES H. ROSENBERG and KAY ROSENBERG, his wife, hereinafter referred to as Declarant.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of a certain tract or parcel of land situated in the County of Fairfax, State of Virginia, containing 13.01537 acres, which has been subdivided by the attached Deed of Dedication into Lots one through thirty-three, both inclusive, and Parcel "A" of a Subdivision known as BELLE POND FARM, SECTION ONE-A, being the first Section of Belle Pond Farm Subdivision, a residential planned development.

NOW, THEREFORE, Declarant hereby declares that all of the property described above and such additions thereto as may hereafter be made pursuant to Article IX, Section 4a hereof shall be held, sold and conveyed subject to the following easements, charges, liens, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property 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 BELLE POND FARM HOMEOWNERS ASSOCIATION, a Virginia Corporation, its successors and assigns.

Section 2. "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 3. "Properties" shall mean and refer to the real property hereinabove described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean and refer to Parcel "A" containing 3.05399 acres of land as shown on the plat attached to the Deed of Dedication of Belle Pond Farm, Section One-A, and any other land owned by the Association or in which it has an interest for the common use and enjoyment of the Owners.

Section 5. "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 6. "Declarant" shall mean and refer to James H. Rosenberg and Kay Rosenberg, their successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Facilities" shall mean and refer to recreation facilities and all other facilities and improvements built or to be built on the Common Area and on any other land in which the Association has an interest.

## ARTICLE II

## PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner 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.

(c) 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 maybe agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-third (2/3) of each class of Members agreeing to such dedication or transfer has been recorded.

(d) the right of the Association to limit the number of guests of Members.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment to the Common Area and Facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an 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 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,

(b) Five years after subjecting each group of lots to this declaration.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Every Owner, except Declarant, of any Lot within the Properties, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) annual assessments or charges for maintenance of the Common Area, and

(2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and

(3) special assessments to provide reserves for future replacement costs and expenses.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, whether made by the corporate ownership or by Fairfax County, shall be a continuing pro rata lien upon the property against which each such assessment is made, subordinate only to taxes and any bona fide duly recorded first trust lien on each Lot. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person, except Declarant, who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments 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 areas subjected to this Declaration and in particular for the improvement and maintenance of the Properties, services and Facilities devoted to these purposes and related to the use and enjoyment of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Fifty Dollars ($50.00).

(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 by an affirmative vote of the Members, such vote to be taken at a duly constituted meeting; provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members present in person or by proxy.

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

(c) The annual assessment for any Lot owned by Declarant shall be one-fourth (1/4) of the Class A assessment until conveyance of the Lot to a bona fide purchaser.

(d) The assessments collected by the Association shall in each year be sufficient to maintain and operate the Common Area as herein set forth, in neat and good order, to pay all taxes, assessments and expenses payable with respect to the maintenance and operation of the Common Area by the Association for the aforesaid purposes, and to provide reserves for future replacement costs and expenses.

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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto and to provide reserves for future replacement, costs and expense, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any actions authorized under Sections 3 and 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members of or proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be

called subject to the same notice requirement, and the required quorum at the 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.

Section 6. Uniform Rate of Assessment. As to all Lots owned by Class A Members, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall be on a calendar year basis and 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 the 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 date of the annual assessment shall be the first day of February in each year or at such other date as shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Non-payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. 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 mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to first mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such

Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable non-profit organization, exempt from taxation by the laws of the Commonwealth of Virginia, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessment.

## ARTICLE V

## ARCHITECTURAL CONTROL

No building, fence, wall or other exterior structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, dimensions, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by James H. Rosenberg and Kay Rosenberg (Rosenberg). In the event Rosenberg fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Upon the sale of the last Lot in Belle Pond Farm Subdivision owned by Rosenberg, the rights and obligations of Rosenberg under this Article shall automatically become vested in the Board of Directors of the Association, or in an Architectural Committee composed of three (3) or more representatives appointed by the Board.

## ARTICLE VI

## MAINTENANCE

Section 1. Association's Obligations. The Association shall maintain, repair and restore all of the Common Area and any structures or facilities thereon for the common use and benefit of its Members. The cost of same shall be paid by the Association from the aforesaid assessments and charges referred to in Article IV hereof.

## ARTICLE VII

## USE RESTRICTIONS

All of said Properties shall be subject to the following protective covenants, restrictions and reservations. In addition thereto, the Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

1. No Lot shall be used except for residential purposes or for purposes incidental or accessory thereto, and except for model homes used by the Declarant.

2. No sign of any kind larger than one foot square shall be displayed to the public view on any Lot, except temporary signs not more than five square feet advertising the 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 in the Properties.

3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, and other household pets may be kept provided that they are not raised, bred or kept for any commercial purpose.

4. No building, structure, or other improvement whose plans and specifications have been approved initially by the Board of Directors of the Association shall be used for any purpose other than that for which such building, structure or other improvement was originally designed, without the approval of the Board of Directors of the Association.

5. Owner shall not erect any building, structure, fence, wall, nor any other improvement of any kind including but not limited to trees, hedges, shrubs and plantings, within the Common Area, nor shall Owner obstruct free passage across all of the Common Area.

6. No temporary structure of any nature may be erected or placed on any Lot at any time, nor shall any structure of a temporary nature be used as a residence. Nothing contained herein shall be construed as prohibiting Declarant or any builder from using temporary structures and equipment and gear required in the building and development of the land and improvements during development and construction. In no case shall a trailer or camper or vehicular devise be used as a residence, temporarily or otherwise.

7. No lot within this Subdivision shall be used for the conduct of any business, nor shall anything be done on any of the said Lots which will constitute a nuisance. However, at the sole discretion of Declarant as evidenced by written approval, professional offices in conjunction with residential use, as permitted Fairfax County Zoning Regulations, may be allowed. Nothing contained herein shall be construed as prohibiting such business activities as may be required for the development of the Lots, construction of the residences and the sale or resale of residences erected upon the Lots.

8. No noxius or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

9. No portion of the Properties shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers, and all trash cans or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and not in public view except on trash collection days.

10. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date of these covenants, after which time said covenants shall be automatically extended as hereinafter provided.

11. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages.

12. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

## ARTICLE VIII

## EASEMENTS AND RESERVATIONS

1. Easements for the installation, repair and maintenance of underground or above ground utilities, supply and transmission lines, sewer, water and drainage facilities are reserved to Declarant, their successors and assigns, throughout all area of the Properties, whether within the boundaries of the residential Lots, or in the Common Area, while Declarant is still the Owner of any Lot. Such easements shall include the right of ingress and egress, provided that any damage resulting from such installation, repair or maintenance shall be promptly repaired or replaced at the expense of the Association or authority which directed the entry.

2. For a period of five (5) years from the date of conveyance of each Lot, the Declarant reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected

property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice. During the aforesaid period of five (5) years from the date of conveyance of each Lot, the Declarant further reserves the right to grant and establish any such required drainage easements on, over and under the ground within that Lot that may be required by any public authority. Each Owner, as evidenced by the recording of the Deed vesting fee simple title in said Owner, hereby constitutes and appoints Declarant as said Owner's true and lawful attorney in fact, to grant and establish in said Owner's name any such required drainage easement.

3. Easements across and over and to use and occupy all or any portion of the Common Area are reserved to Declarant during the period that Declarant holds record title to any Lot to permit Declarant's development and maintenance of the Properties. Such easements shall include the right of ingress and egress to and from such Common Area to accomplish aforesaid purpose during said period.

4. A temporary construction easement six (6) feet wide is reserved to Declarant, its successors and assigns over Lots adjoining pipe stem Lots and the pipe stems of any common area Parcels to facilitate, where necessary, the construction of driveways and/or walkways within the pipe stems. Said temporary construction easements to become null and void at such time as the driveways and/or walkways are completed.

## ARTICLE IX

## GENERAL PROVISIONS

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 of the Association or 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 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 for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional properties may become subject to this Declaration in the following manner:

(a) Annexation by Declarant. Additional land within the areas described in Deed Book 5518, Page 994 of the land records of Fairfax County, Virginia may be annexed by the Declarant without the consent of members within ten (10) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

(b) Other Annexations. Additional residential property and Common Area, other than that described in (a) above, may be annexed to the Properties with the consent of more than two-third (2/3) of each class of Members.

Section 5. Dissolution. The Association may be dissolved with the assent given in writing and signed by more than two-thirds (2/3) of each Class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

## ARTICLE X

## COMMON DRIVEWAYS

Section 1. Definitions.

(a) "Common Driveways" shall be the areas providing ingress and egress to two or more contiguous Lots as shown upon any recorded subdivision plat of the Properties.

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

Section 2. Restrictions.

(a) Common Driveways shall be used jointly by the owners of said Lots, their employees, guests and invitees for the purpose of ingress and egress only to the Affected Lots, for governmental and other emergency vehicle ingress and egress, for construction and maintenance of said Common Driveway and for construction and maintenance of utilities therein.

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

(c) There shall be no storing of any goods or other property or parking within a Common Driveway 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. Repair and Maintenance.

(a) The cost of the reasonable repair, maintenance and snow removal of the driveway areas shall be shared by the owners who make use of the driveway equally, irrespective of whether one owner may make greater use of the driveway. Any owner who uses a driveway may make

reasonable repairs, provide for maintenance and snow removal, and if the other owners thereafter make use of the driveway, they shall contribute equally to the cost of the maintenance, repair and snow removal.

(b) In the event of any dispute arising concerning the use, repair and maintenance of said 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 arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

WITNESS the following signatures and seals:

James H. Rosenberg

Kay Rosenberg

STATE OF VIRGINIA )
) ss
CITY OF ALEXANDRIA )

The foregoing instrument was acknowledged before me this 2nd day of March, 1982 by James H. Rosenberg and Kay Rosenberg, his wife.

Notary Public

My commission expires:

July 1, 1983

53.20
STATE TAX .15
COUNTY TAX .05
TRANSFER FEE
CLERK'S FEE 53.00
GRANTOR TAX
FEES

1527



RECORDED AFTER PRIOR ANNEXED with plat attached
1982 MAR 22 PM 3:56
FAIRFAX COUNTY, VA.
TESTE: CLERK