

Rolling Valley HOA Declaration of Covenants, Conditions and Restrictions

*This is a scan and conversion of the Declarations into Microsoft Word 2000 – 14 July 2004
Amended Declaration on file in Deed Book 4466 page 426*

**AMENDED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDED DECLARATION, made on the date hereinafter set forth by MACHICOTE LAND CO., a Nevada corporation ("Declarant"), as successor in interest to Berger//Berman Builders, Inc., and Jack Cohen, J. Edward Sears and S.B. Bartlett, Trustees, and ALEXANDER TITLE AGENCY, INC., Trustee ("Alexander")

WITNESSETH:

WHEREAS, by Deed of Dedication and Subdivision dated November 17, 1975, and recorded December 11, 1975, in Deed Book 4319 at page 19 among the land records of Fairfax County, Virginia, that certain tract of land located in Fairfax County, Virginia, containing 64.43534 acres of land and more particularly described on Exhibit A attached thereto (the "Properties") was subdivided and subjected to a Declaration of Covenants, Conditions and Restrictions attached to the aforesaid Deed of Dedication and Subdivision as Exhibit B and made a part thereof by reference; and

WHEREAS, Alexander is Trustee on a Deed of Trust on a portion of the Properties securing Centex Financial Corporation, dated November 17, 1975, and recorded in Deed Book 4322 at page 486 among, the aforesaid land records, as amended by Amendment to Trust Deed dated May 6, 1976, and recorded in Deed Book 4412 at page 523 among the aforesaid land records; and

WHEREAS, the parties hereto desire to join in and consent to the amendment of the Declaration of Covenants, Conditions and Restrictions, as hereinafter set forth.

NOW, THEREFORE, Declarant, with the consent and joiner of Alexander, hereby declares that the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the 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 ROLLING VALLEY SECTION (8-D) HOMEOWNERS ASSOCIATION, 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 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 that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exceptions of the Common Area.

Section 6. "Declarant" shall collectively mean and refer to MACHICOTE LAND CO., 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 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 pass with 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 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 land to 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 two-thirds (2/3) of each class of members, agreeing to such dedication or transfer has been recorded.

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

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 Member 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 Member shall be the Declarant and shall be: entitled to three (3) votes for each Lot owned. The Class B membership shall terminate 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, 1980.

However, in the event of annexation of additional properties, Class B membership shall be revived with respect to those lots contained in the annexed property; provided, however, this Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first: (i) 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 annexed property, or (ii) Four (4) years from the date of recordation of the instrument of annexation for such annexed property.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, 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, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Such assessments with respect to any particular Lot shall commence to be due upon conveyance of such lot to an Owner from the Declarant. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney' 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 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes, situated upon the Properties.

Rolling Valley HOA Declaration of Covenants, Conditions and Restrictions

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 SIXTY Dollars (\$60 00) per Lot

(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 percent (5%) above the maximum assessment for the previous year without a vote of 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 percent (5%) by a vote of two-thirds (2/3) 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 of the Association 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, reconstruction repair replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, 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 action authorized under Section 3 or 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 such meeting, the presence of members of proxies entitled to cast sixty per cent (60) of all the votes of each class of membership shall constitute quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at 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.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, and may be collected by the lending institution holding the Deed of Trust on the Lot, and in turn delivered to the Association.

Section 7. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein, shall commence to each Lot on the first day of the month following the conveyance of such Lot to an Owner from the Declarant. 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 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, 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 Nonpayment 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 six percent (6%) 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 Lot owned by such Owner. No Owner may waive or other for wise 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 bona fide mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to first mortgage or deed of trust 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 the Owner of such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V ARCHITECTURAL CONTROL

No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered in any Lot nearer to any street than the minimum building set back line unless similarly approved. Notwithstanding anything contained herein to the contrary the Declarant shall at all times be exempt from the architectural control imposed by this Article. The Architectural Control Committee shall be composed of at least three (3) members to be designated by the Board of Directors. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members committee nor its designated representative, shall be entitled to any compensation for performing any of the services envisioned herein. At any time, the then record owners of two-thirds (2/3) of the Lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to revoke from the Committee or restore to it any of its powers and duties. Requests for action by the Committee shall be submitted in writing. The Committee's approval or disapproval, as

Rolling Valley HOA Declaration of Covenants, Conditions and Restrictions

required in these covenants, shall be in writing. Following written request, if the Committee or its designated representative fails to approve or disapprove the requested modification to a Lot within thirty (30) days after plans and specifications therefore have been submitted to it, or in any event, if no suit to enjoin such work has been commenced prior to the completion thereof, approval will not be required and the provisions of this Article shall be deemed to have been fully complied with.

ARTICLE VI GENERAL PROVISIONS

Section 1. Enforcement. The Association and 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 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, 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 ten (10) 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, among the land records of Fairfax County, Virginia.

Section 4. Annexation. Annexation of other additional property not provided for herein shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) 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 ten (10) days nor more than fifty (50) days in advance of the meeting, setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty-seven percent (67%) 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 at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) 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 5 Annexation, continued. If within five (5) years of the date of incorporation of this Association, the Declarant should develop additional lands

within Fairfax County, Virginia, such additional lands may be annexed to the 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, should such agencies be involved. If such agencies are involved, the proposed annexation must be approved by the Federal Housing Administration and/or the Veterans Administration prior thereto. If such approval is not obtained, such annexation must comply with Section 4 immediately above.

ARTICLE VII
USE RESTRICTIONS

1. LAND USE AND BUILDING TYPE. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half (2-1/2) stories in height and a private garage for not more than two cars.

2. FENCES, No fence of any kind shall be erected or maintained on any portion of a Lot along the front property line or from the front building line to the front lot line. No fence of any kind shall be erected or maintained in or along the rear of a Lot or along the front building line to the rear lot line or from the side of any building to the said lot line except hedge fence or wooden fencing.

3. EASEMENTS, Easements for installation and maintenance of utilities and drainage facilities are reserved to the County of Fairfax, as shown on the recorded plat and over the rear five (5) feet of each Lot and this instrument shall and in no way affect, limit or restrict same.

4. NUISANCES. No noxious or offensive activity shall be carried on upon the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No commercial vehicle, whether owned by the Lot Owner or any other person, shall be permitted to remain on or be parked on any Lot over night.

5. BUSINESS. No trade or business of any kind shall be advertised from, or on a Lot, except that this covenant shall not prevent a lawyer, physician, dentist, podiatrist, chiropract, or any other member of the medical, dental or legal profession from practicing such profession from his Lot, provided that such person also resides therein, and that the same is permitted by law. The foregoing shall not prevent use of one or more of the homes erected or to be constructed on the Properties as a sales office, model home and/or construction office by the Declarant during development of the Properties and construction of homes thereon.

6. SIGNS. No signs of any kind or character shall be exhibited, displayed or placed upon any portion of a Lot, except that the Owner of a Lot may place a sign not larger than two (2) square feet thereof, bearing the words "For Sale" or "To Rent" together with the name and address of the person to whom inquires

Rolling Valley HOA Declaration of Covenants, Conditions and Restrictions

regarding the sale or rent of such property are to be addressed. The Owner or occupant of a Lot may also place one sign thereon, but no such sign shall be larger than one (1) square foot, and the same must be permitted and approved as required by applicable ordinances and regulations. Nothing herein contained shall prevent the Declarant or Association from erecting and maintaining on the Properties entrance signs, directional signs, signs for traffic control or safety, community "theme" areas and promotional signs.

7. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. The foregoing covenants and restrictions shall not apply to or prohibit the erection or maintenance of a sales office by the Declarant and shall not apply to or affect any signs, used by the Declarant or by any firms, persons or corporation, holding a mortgage or mortgages, or by any persons, firms, corporations and agents who may, will and do insure and guarantee said mortgage or mortgages, as to the plots or parcels hereinabove described.

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

9. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. 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.

10. TREES No hardwood trees in excess of "6" in diameter, 2 feet above the ground, shall be removed from any Lot without the prior written approval of the Association acting through its Architectural Control Committee or its duly appointed representative. The Architectural Control Committee may from time to time adopt rules and regulations regarding the preservation of trees and other natural resources as it may consider appropriate.

11. STRUCTURES. No barn, kennel, run, stable, outdoor clothes dryer, play house, shed, or other structures shall be erected, used or maintained on any Lot at any time, except with the prior written approval of the Architectural Control Committee.

12. PLANTING. No 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 measurably change, obstruct or retard the direction or flow of any drainage channels

13. EXEMPTION OF DECLARANT. Notwithstanding the foregoing, the Declarant shall be entitled to conduct on the Properties all activities normally associated with and convenient to the development of the Properties and the construction and sale of single family residential units on the Properties.

Rolling Valley HOA Declaration of Covenants, Conditions and Restrictions

IN WITNESS WHEREOF, the undersigned have hereto set their hands and seals this 15th day of August, 1976.

The graphic scan of the signatures of this document was deleted to enlarge and format for use of document on web site, attachment to Disclosure Packets and other use as required.