



ADVANCE MILLS VILLAGE

SECOND AMENDMENT TO STATEMENT OF
RESTRICTIONS AND COVENANTS

THIS DECLARATION made this 1st day of December 1999, by the Advance Mills Village Homeowners' Association, a registered corporation of the Commonwealth of Virginia, hereinafter referred to as the "Association" provides:

WHEREAS, The Association desires to Amend and restate in full the STATEMENT OF RESTRICTIONS AND COVENANTS for Advance Mills Village, said Statement being dated 8 August 1979 and recorded in the Clerk's Office of the Circuit Court of Albemarle County in Deed Book 687 page 46, and the First Amendment to Statement of Covenants and Restrictions, dated December 1, 1979, by providing for the Homeowners Association to be responsible for the maintenance and improvements of the private roads in Advance Mills Village and pursuant thereto is creating the Advance Mills Village Homeowners Association, Inc., a Virginia non-stock corporation; and,

WHEREAS the Association is the governing body of certain real estate situate in the White Hall Magisterial District of Albemarle County, Virginia, and desires to subject said real estate described on the plat of W. S. Roudabush, Inc., dated 23 January 1979, revised 20 February 1979 and revised 11 October 1979 captioned "Advance Mills Village located on State Route 743 approximately 3/4 miles north of Advance Mills in the Rivanna Magisterial District of Albemarle County; Virginia," attached hereto and recorded herewith to covenants, restrictions, easements and charges hereinafter set forth, each and all of which is for the benefit of said property and the owner and owners thereof.

NOW THEREFORE the Association declares that the real property described on said subdivision plat is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and charges hereinafter set forth in this first amendment to the hereinabove described statement of restrictions and covenants of Advance Mills Village previously recorded in said Clerk's office. THIS AMENDMENT RESTATES IN FULL THE RESTRICTIONS AND COVENANTS OF ADVANCE MILLS VILLAGE, AS WELL AS THE FIRST AMENDMENT, AND THE ORIGINAL RESTRICTIONS AND FIRST

AMENDMENT ARE SUPERCEDED BY THIS AMENDMENT AND ARE OF NO FURTHER FORCE AND EFFECT.

ARTICLE I. DEFINITIONS

1.01. Declaration. The term "Declaration" as used herein shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire Document, as same may from time to time be amended.

1.02. Property. The term "Property" as used herein shall mean or refer to only the real property described in the attached subdivision plat described above.

1.03. Lot. The term "Lot" as-used herein shall mean or refer to any plot of land designated as a "Lot" upon any recorded subdivision plat of the property.

1.04. Owner. The term "Owner" as used herein shall mean or refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.05. Supplementary Declaration. The term "Supplementary Declaration" as used herein shall mean any declaration of covenants, conditions and restrictions which may be recorded by the Association, which extends the provisions of this Declaration to an additional parcel or tract of land and contains such complementary or modifying provisions for such additional parcel or tract of land as are not inconsistent with the concept of this Declaration.

1.06. Association. The term "Association" as used herein shall mean or refer to the Advance Mills Village Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.07. Member. The term "Member" as used herein shall mean or refer to every person or entity who holds membership in the Association.

ARTICLE II. PROPERTY SUBJECT TO DECLARATION

2.01. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupies subject to this Declaration is Lots 1 – 35 as shown on the subdivision plat attached hereto.

ARTICLE III. ASSOCIATION

3.01. Creation of Association. Advance Mills Village Homeowners Association, Inc. is a non-stock, non-profit membership corporation which has been duly organized under the laws of the State of Virginia for the purposes of interpreting, applying, administering, and enforcing the covenants, restrictions, conditions, liens and charges contained in the Declaration.

3.02. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot 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. Ownership of such lots shall be the sole qualification for membership.

3.03. Voting Rights. The Association shall have one class of voting membership, which shall be called Class A and which shall consist of all those owners as defined in Section 3.02. Class A members shall be entitled to one vote for each Lot in which they own the interest required for membership by Section 3.02. When more than one person or entity holds such interest in any Lot, all such persons or entities shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

3.04. Quorum. At any duly called meeting of the Association, the presence of members or of proxies entitled to cast 60% of all votes shall constitute a Quorum.

3.05. Majority. At any duly called meeting of the Association having a Quorum, the Majority of such Quorum shall decide any question or matter that may come before the meeting.

3.06. Duties. The Association shall be responsible for the maintenance and improvements of the Private Road in Advance Mills Village. The Association shall be the sole governing body responsible for architectural control and enforcement of all covenants, restrictions and conditions, and the granting of necessary appropriate utility and drainage easements.

ARTICLE IV. ARCHITECTURAL CONTROL

4.01. Architectural Control. The ARCHITECTURAL CONTROL BOARD (hereinafter referred to as "ACB") shall consist of two or more persons or entities named by the Association. Selection of the members composing the Architectural Control Board shall be by the Association.

4.02. Purpose. The ACB shall regulate the external design, appearance and use of the Lots and of improvements thereon in such manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography and to conserve existing natural amenities.

4.03. Conditions. No improvements, alterations, repairs, excavations, changes in grade, major landscaping or other work which in any way alters the exteriors of any property or the improvements located thereon from its natural or improved state shall be made or done until the plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, type, materials and location thereof shall have been submitted to and approved in writing by the ACB, pursuant to Section 4.04. No building, fence, wall, residence, or other structure shall be commenced without the prior written approval of the ACB.

4.04. Procedures. In the event the ACB fails to approve, modify or disapprove in writing a request for approval required herein, within fifteen (15) days after plans, specifications, or other appropriate materials, have been submitted in writing to it, approval will be deemed granted.

4.05. Presumption. In the event that the appropriate equitable action together with a lis pendens has not been commenced within 60 days after the completion of any improvements or alterations, it shall be conclusively presumed that such construction, alterations or improvements are approved by the ACB.

ARTICLE V. GENERAL RESTRICTIONS

5.01. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by an owner and no portion less than all of any such Lot shall be conveyed or transferred by an owner; provided, however that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments. No Lot shall be

used as a roadway for access to any property lying outside of the boundaries of the property without the written consent of the Association, its successors and assigns.

5.02. General Restrictions.

(a) No building of any kind shall be erected or maintained upon any Lot except one private detached single-family dwelling, and buildings accessory thereto, e.g. garages, toolsheds, and guest cottages.

(b) No structure of a temporary character, tent, or trailer shall be used on any Lot at any time as a residence either permanently or temporarily for a time greater than three days.

(c) No billboards or signs of any kind shall be erected or maintained or displayed except "For Sale" or "For Rent" signs not larger than two feet by four feet, which may be placed upon any property for sale or for rent.

(d) No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(e) No building or any part thereof shall be erected hereafter within the building-line distance of any street or road (as shown on the subdivision plat) within twenty feet of any side line or within twenty-five feet of any rear line. However, no suit shall be brought more than sixty days after the completion of any such- structure (as signified by issuance of the Certificate of occupancy) on account of its location.

(f) For architectural design approval, see Paragraph 4.03 above.

(g) Any tree within the foundation lines, over the water or other utility lines, or within the bounds of a driveway of ordinary size, may be cut and removed; but no other healthy tree over six inches in diameter shall be cut and removed without approval of the ACB. Such approval shall not be unreasonably withheld by the ACB, but the ACB shall consider the opinions of the immediately adjacent owners provided such opinions are received within three days of receipt of notice by the adjacent Owners. The Owner requesting approval shall give notice to the adjacent owners by certified mail or personal delivery evidenced by a signed receipt . The owner shall also submit to

the ACB and adjacent Owners a tree removal plat or sketch showing the location, size and variety (if known) of trees to be removed and trees to be retained. This may be an informal, hand-drawn sketch and does not require the precision of a survey,

- (h) There shall be no animals permitted except for horses, dogs and cats.

ARTICLE VI. PRIVATE ROADS

6.01. Establishment. Fray Road and Burnett Lane are private roads in Advance Mills Village Subdivision and shall require private maintenance by the Owners of Lots 1 to 35 in said Subdivision. The right-of-way easement for Fray Road and Burnett Lane shall be fifty feet as shown on the attached subdivision plat. The costs of construction, maintenance, upkeep or replacement of such roads will not be borne by the County, the Commonwealth of Virginia, or any other public agency. The necessary money for the future maintenance upkeep or replacement of the Private Roads shall, be provided by the annual and special assessments on each Lot as hereinafter described in Article VII.

ARTICLE VII. MAINTENANCE ASSESSMENTS

7.01 Creation of the Lien and Personal Obligation of Assessments. The Association hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Associations annual assessments, 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 assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made in the manner as hereinafter provided, and subject to prior liens of the Lot as hereinafter provided. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person or entity who was the owner of such Lot at the time when the assessment falls due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

7.02. Purpose of Assessments. The assessment levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the residents in the property and in particular for the repair, upkeep, maintenance and improvement of the Private Roads, and facilities related thereto. The Association shall provide for snow removal and may provide for the collection of garbage and trash.

7.03. Basis-and Maximum of Annual Assessments. Until January 1, 2000, the maximum annual assessment shall be \$200.00 annually per Lot, improved or unimproved. Each calendar year thereafter the maximum annual assessment may be increased by up to 5% per year of the prior year's annual assessment effective January 1 of each year without a vote of the membership, by the Board of Directors of the Association, which Board of Directors may fix such annual increase after due consideration of current maintenance costs and needs of the Association. Any increase requested by the Board of Directors in the usual annual assessments above the annual 5% increase over the prior year's assessment must be approved by a vote of two-thirds (2/3) of all members voting in person or by proxy at a duly called meeting of the Association for this purpose.

7.04. Special Assessments for Capital Improvements. In addition to the annual assessment 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 the Private Roads or facilities related thereto, provided that any such special assessment shall have the consent of two-thirds of the vote of all members who are voting in person or by proxy at a duly called meeting of the Association for this purpose.

7.05. Notice for Any Action Authorized Under Section 7.03 and 7.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.03 or 7.04 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting.

7.06. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all improved Lots as a class and all unimproved Lots as a class, and may be collected on an annual basis.

7.07. Date of Commencement of Annual Assessment Due Dates. The annual assessments provided for herein shall commence as to all Lots on the 1st day of January, 1980. The Board of Directors shall fix the amount of the annual assessment of each Lot at least 30 days in advance of each annual

assessment. Unless otherwise established by the Board of Directors, the assessment shall be due in one installment on the first day of January of each year unless other due dates are established by the Board of Directors and the annual assessment shall be prorated where sale is made between the annual January 1 assessment dates. 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 of Directors for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.08. 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 30 days after the due date the assessment shall bear interest from the date of delinquency at a maximum rate of interest on judgments provided by law, and the Association may bring an action at law against the owner personally obligated for the same, or foreclose the lien against the Lot, and interest costs, court 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 nonuse of the Private Roads, or abandonment of his/her Lot.

7.09. Lien for Payment of Assessments and Subordination of Lien to First and Second Lien Deeds of Trust. There shall be a continuing lien upon each of the individual Lots in order to secure payment of any of the assessments provided under this Declaration, but such lien shall be at all times subject and subordinate to any trust first or second mortgages or deeds of trust placed on the property at any time. However, at such time as the Association places to record in the Clerk's office of the Circuit Court of Albemarle County, Virginia, a notice of delinquency as to any particular Lot on a form prescribed by the Board of Directors, then, from the time of recordation of said notice the lien of such delinquent assessments in the amount stated in such notice shall be a lien prior to any subsequently recorded first or second mortgages or deeds of trust in the same manner as the lien of a docketed judgment in the State of Virginia.

The lien of assessments provided for herein, whether or not notice has been placed on record as above provided, may be foreclosed by a Bill in Equity in the same manner as provided for the foreclosure of mortgages, vendor's liens, and liens of similar nature. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and delinquency, if any, due on a particular Lot.

7.10. Records and Receipts. The Association shall keep and maintain detailed, accurate records in chronological order of the receipts and expenditures affecting the Private Roads and facilities related thereto, specifying and itemizing the maintenance and repair expenses of the Private Roads, and any other expenses

incurred. Such records and vouchers authorizing the payment shall be available for examination by members and others with an interest such as encumbrancers or prospective lenders at convenient hours of weekdays upon reasonable notice.

ARTICLE VIII. EASEMENTS

8.01. Utility and Drainage Easements. The Association reserves unto itself, its successors and assigns, a perpetual and alienable easement and right-of-way above ground and under ground within ten feet of any Lot line through all areas subject to this Declaration and any Supplementary Declaration, within the boundaries of Lots, to construct, maintain, inspect, replace, and repair electric and telephone poles, wires, cables, conduits, pipes and other suitable equipment for the conveyance of water, telephone, electricity, cable, communications and other utilities and public conveniences, and for storm and surface water drainage, together with the right of ingress and egress to all such facilities and easements for the construction and maintenance thereof. The easements provided for in this Section shall include the right to cut any trees, brush, and shrubbery, make any grading of soil, and take other similar action reasonably necessary to provide economical and safe utility installation and drainage facilities. The rights herein reserved may be exercised by any licensee of the Association, but shall not be deemed to impose any obligation upon the Association, but shall not be deemed to impose any obligation upon the Association to provide or maintain any utility or drainage services.

ARTICLE IX. GENERAL PROVISIONS

9.01. Enforcement. Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate the covenant either to restrain violation or to recover damages. Such action may be brought by the Association, or its successor or assigns, the Association or the Owner of any Lot.

9.02. Severability. Invalidation of any one or more of the provisions of this Declaration or any Supplementary Declaration by judgement, court order or otherwise, shall in no way affect any other provisions which shall remain remain in full force and effect.

9.03. Amendments. This Declaration may be amended in whole or in part by recorded instrument bearing the signatures of the Owners of record, including joint tenants and tenants in common of 90% of the lots or more.

9.04. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration is recorded and thereafter shall be renewed for successive periods of ten years, unless modified, amended or rescinded as provided in Paragraph 9.03.

WITNESS the following signatures and seals.