

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
GATES HEAD ASSOCIATION, INC.

1645

THIS DECLARATION, made on the date hereinafter set forth by INVESTORS SERVICE CORPORATION, a Virginia corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Investors Service Corporation is the owner in fee simple of the real property hereinafter described on Schedule "A" hereof, attached hereto and by this reference made a part hereof; and

WHEREAS, the land described on Schedule "A" is to be known as Section 1 of Gates Head.

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 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 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 Gates Head Association, Inc., 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. 1646

Section 3. "Properties" shall mean and refer to that certain real property hereinabove 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 Declarant or by the Association and held for the common use and enjoyment of the Owners. The Common Area at the time of the conveyance of the first lot is more particularly described on Schedule "B" attached hereto and by this reference made a part hereof.

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 Investors Service Corporation, a Virginia Corporation, and any developer to whom lots may be sold for development purposes out of the Properties.

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.

The Owners' easement of enjoyment in the Common Area designated as flood plain is dedicated as Common Area, but is subject to the rights of the appropriate governmental authorities to effect the public purposes of the flood plain designation.

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In order that there may be an orderly development of the Properties, Declarant reserves the right to dedicate and/or grant easements for utilities and drainage, and dedicate roads and road widening strips over, across and under the Common Area as may be required by the appropriate governmental authorities.

The easement of enjoyment in and to the Common Area is not for the general public but shall be held for the enjoyment of the homeowners in Gates Head.

Each Lot shall be subject to the following:

(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 of an Owner and to suspend the right of an Owner to use the recreational facilities for any period during which any assessment against such Owner's Lot remains unpaid, and the right of the Association to suspend an Owner's membership for a period not to exceed 60 days for any infraction of the published rules and regulations of the Association;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the

Association 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 agreeing to such dedication or transfer shall have been signed by two-thirds (2/3) of each class of members of the Association and shall have been recorded in the Clerk's Office of the Circuit Court of Henrico County, Virginia. 1648

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his rights of enjoyment in 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 as provided in Article IV 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. Class A members 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 who 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: 1649

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on January 1, 1987.

Section 3. The affairs of the Association shall be managed by its Board of Directors which shall elect the officers of the Association.

Section 4. Maintenance of the Common Area shall be the responsibility of the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in 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. 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 Lot against which each such assessment is made. Each such assessment, together with interest, costs,

and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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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.

The Association shall pay any real and personal property taxes and other charges assessed against the Common Area.

Section 3. Maximum Annual Assessment. The Board of Directors of the Association may, in its sole discretion, fix the annual assessment; however, in no event shall such assessment exceed an amount to be determined as follows:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twenty and 00/100 dollars (\$20.00) per Lot.

(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 each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(c) 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 5% at a meeting duly called for such purpose by a vote, in person or by proxy, of two-thirds (2/3) of each class of members.

Notwithstanding any of the foregoing to the contrary, there shall be no assessment against any Lot until it has been sold by Declarant.

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Section 4. Special Assessment 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, provided that any such assessment shall have been approved at a meeting duly called for such purpose by a vote, in person or by proxy, of two-thirds (2/3) of the votes of each class of members.

Section 5. Notice 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 Section 4 of this Article IV shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of such 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, bi-monthly, quarterly, semi-annual or annual basis.

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 conveyance of the first Lot to an Owner. The **1652** 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 and written notice thereof shall be sent to every Lot owner. 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 twelve percent (12%) 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 assessment provided for herein shall be subordinate to the lien of any first mortgage, but the Association shall have a lien upon the proceeds from foreclosure junior only to the foreclosed first mortgage and senior to the equity of redemption of the mortgagor. Sale or transfer of any Lot shall not affect the assessment lien,

except that the sale or transfer of any Lot pursuant to foreclosure on a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. 1653
No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Lien. Any assessments, charges and costs of maintenance of the Common Area shall constitute a pro rata lien upon the individual subdivision lots, inferior in lien and dignity only to taxes and bona fide duly recorded first deeds of trust.

ARTICLE V

LOT RESTRICTIONS

Section 1. No use shall be made of the Lots, or any part thereof, that will constitute a nuisance or injure the value of the neighboring lots. No stables, swine, cows, sheep or the like shall be permitted on the Properties. No chain link fence shall be permitted to project closer to the front street line than the line of the rear main walls of the respective dwellings on said Lots. No board fences shall be permitted; however, lattice, picket and ranch fences shall not be construed as being board fences within the meaning of this section. No fence shall be permitted to be over four (4) feet high unless around a patio or swimming pool.

Section 2. 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.

Section 3. All of the Lots shall be known and described as residential lots, and no structures shall be erected on any Lot other than one detached single-family dwelling, provided, however, that the usual outbuildings, including a private garage, may be erected on any Lot. Storage sheds must be of the same type and quality construction as the dwelling on any respective Lot. 1654

Section 4. No trailer, tent, shack, garage, barn or other outbuilding erected on any lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence; provided, however, this clause shall not be construed to prevent servants quarters from being installed over a detached garage or other outbuilding.

Section 5. No trailer, or boat-trailer combination having a height of five feet (5') or more shall be parked over twelve (12) hours in any one week on any lot or driveway so as to be visible from the street.

Section 6. Declarant reserves unto itself the right and privilege to lay gas, water, sewers, storm sewers, sewer pipes, electric light, telephone and telegraph poles, lines and wires, and other utilities in the streets and roads of Gates Head subdivision and along the property line of the Lots and to install sewer connections under and in the land sold and lay such light, telephone and telegraph poles, lines and wires along the property lines of the Lots, and to give other persons, companies or corporations any or all of such rights and privileges; however, there being no obligation to do so, they reserve the right to make necessary charges upon the purchaser therefor.

Section 7. All plans for the construction and erection of any residence outbuildings, or additions to any residences as hereinabove provided to be built on said lots shall be submitted to Investors Architectural Control Committee (the "Committee") for its approval. Such conditions shall be strictly complied with and the Declarant shall have the full right and privilege to enforce this and all other restrictions and conditions herein by appropriate proceedings at law for damages and/or in equity for appropriate injunctive and restraining orders to prevent violations together with damages sustained. The Committee shall be composed of the following persons: Richard M. Nelms, Edward F. Sinnott, Jr., and Robert G. Butcher, Jr. In the event of death or resignation of any number of the Committee, the remaining members shall have authority to designate a successor. The majority of the Committee may designate a representative to act on behalf of the Committee providing written approval of the construction plans and specifications. Richard M. Nelms is hereby designated as such representative until a majority of the Committee may designate a new representative. Neither the members of the Committee nor their designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of eighty percent (80%) of Lots in Gates Head Subdivision, Section I, shall have the power through a duly recorded written instrument to create a Committee consisting of not less than three (3) persons to assume the powers and duties hereby placed upon the Committee or to withdraw from the Committee or restore to it any of its powers and duties. At

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such time when only five Lots remain, this power shall be assigned to Gates Head Association Architectural Control Committee.

ARTICLE VI

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GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If in any litigation for the enforcement of these covenants, conditions and restrictions, the Association or any Owner bringing suit prevails, the Association or Owner, as the case may be, shall be entitled to be reimbursed for reasonable attorney's fees incurred in seeking such enforcement. 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 not 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 amendments must be recorded in the Clerk's Office of the Circuit Court of Henrico County, Virginia.

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Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

IN WITNESS WHEREOF the undersigned Declarant has caused this Declaration to be executed this 14th day of March, 1983.

INVESTORS SERVICE CORPORATION
[Signature]
Title: *[Signature]*

STATE OF VIRGINIA
COUNTY OF HENRICO, to-wit:
The foregoing instrument was acknowledged before me this 21st day of MARCH, 1983, by ROBERT G. RUTCHER, JR., CHAIRMAN OF BOARD, of Investors Service Corporation, a Virginia corporation.

My commission expires: 1-12-2087

[Signature]
Notary Public

Subscribed
Approved as to Form
[Signature]
march 25, 1983

APPROVED:
Subscribed
Dept. or Div.
Form
County Atty.

SCHEDULE A

ALL those certain lots, pieces or parcels of land, lying and being on the west line of Pemberton Road in Tuckahoe District, Henrico County, Virginia, and designated as Lots 1 through 8, Block A and Lots 1 through 18, Block B, Section 1, Gates Head, containing 7.54 acres of land in the aggregate, all as shown on a certain plat of survey entitled, "Gates Head, Section 1, Tuckahoe District, Henrico County, Virginia", made by Lewis & Owens, Inc., Consulting Engineers & Surveyors, and dated March 23, 1982, a copy of which plat is recorded or is to be recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia.

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SCHEDULE B

ALL that certain area designated as "Common Area" containing 0.23 acres of land as shown on a certain plat of survey entitled "Gates Head, Section 1, Tuckahoe District, Henrico County, Virginia", made by Lewis & Owens, Inc., Consulting Engineers & Surveyors, 1659 dated March 23, 1982, a copy of which plat is recorded or is to be recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia.

VIRGINIA: IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF
THE COUNTY OF HENRICO, April 7, 1983
THIS DEED WAS PRESENTED AND WITH THE CERTIFICATE
ANNEXED, ADMITTED TO RECORD AT 2:33 o'clock P. M.

State Tax Paid
County Tax Paid

Teste:

Margaret B. Baker Clerk