

B 2761 P 683  
**HIGHLAND PARK**  
**SECTION 9**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

This declaration is made this 24<sup>th</sup> day of October, 2005 by **JAMES R. SEASE**, Grantor (hereinafter "Declarant").

*Whereas*, the Declarant previously developed eight (8) subdivisions: (1) Highland Park, Section 1, as shown on a plat recorded in the Clerk's Office of Rockingham County, Virginia (the "Clerk's Office") in Deed Book 1037, at page 786 (the "Section 1 Plat"), (2) Highland Park, Section 2, as shown on a plat recorded in the Clerk's Office in Deed Book 1105, at page 260, (3) Highland Park, Section 3, as shown on a plat recorded in the Clerk's Office in Deed Book 1273, at page 52, (4) Highland Park, Section 4, as shown on a plat recorded in the Clerk's Office in Deed Book 1442, at page 390, (5) Highland Park, Section 5, as shown on a plat recorded in the Clerk's Office in Deed Book 1573, at page 537, (6) Highland Park, Section 6, as shown on a plat recorded in the Clerk's Office in Deed Book 1699, at page 570, (7) Highland Park, Section 7, as shown on a plat recorded in the Clerk's Office in Deed Book 1862, at page 287, and (8) Highland Park, Section 8, as shown on a plat recorded in the Clerk's Office in Deed Book 2433, page 165, and

*Whereas*, the Declarant previously recorded a Revised Declaration of Covenants, Conditions and Restrictions with respect to Highland Park, Section 1 in the Clerk's Office in Deed Book 1043, at page 672 (the "Section 1 Declaration"), and

*Whereas*, these revised covenants have been (1) corrected in an instrument recorded in the Clerk's Office in Deed Book 1045, at page 310, (2) adopted for the most part in Highland Park, Section 2 in a declaration recorded in the Clerk's Office in Deed Book 1105, at page 266, (3) added to, with respect to the then unsold lots in Sections 1 and 2, in an instrument recorded in the Clerk's Office in Deed Book 1231, at page 697, (4) adopted for the most part in

Highland Park, Section 3 in an instrument recorded in the Clerk's Office in Deed Book 1273, at page 56, (5) adopted for the most part in Highland Park, Section 4 in an instrument recorded in the Clerk's Office in Deed Book 1442, at page 394, (6) adopted for the most part in Highland Park, Section 5 in an instrument recorded in the Clerk's Office in Deed Book 1573, at page 528, (7) adopted for the most part in Highland Park, Section 6 in an instrument recorded in the Clerk's Office in Deed Book 1699, at page 575, (8) adopted for the most part in Highland Park, Section 7, in an instrument recorded in the Clerk's Office in Deed Book 1862, at page 292, and (9) adopted for the most part in Highland Park, Section 8, in an instrument recorded in the Clerk's Office in Deed Book 2433, page 156, and

*Whereas*, the Declarant now wishes to develop a ninth subdivision as shown on a subdivision plat dated May 2, 2000 entitled "HIGHLAND PARK, SECTION 9" (the "Section 9 Plat"), to be recorded in the Clerk's Office contemporaneously with and immediately prior to the recordation of this instrument, and

*Whereas*, pursuant to § 3.5 of the Revised Declaration for Section 1, (and under the later declarations) and as owner of all lots shown on the Section 9 Plat, Declarant wishes to include the land shown on the Section 9 Plat within the Section 1 Declaration, as it has been corrected and appended through additional covenants, except as may be herein provided, and

*Whereas*, Declarant wishes to restate the entire set of restrictive covenants applicable to the lots shown on the Section 9 Plat,

*Now therefore*, Declarant declares that all lots shown on the Section 9 Plat shall be included within the Section 1 Declaration, pursuant to § 3.5 of that Declaration, except insofar as conflicting provisions are made herein; Declarant further declares that all lots shown on the Section 9 Plat shall be held, transferred, sold, conveyed, and occupied, subject to the following limitations, restrictions, and uses which shall run with the real estate and shall be binding on and inure to the benefit of all present and future owners thereof. This supplemental declaration, however, shall not apply to any later "phases" or sections of Highland Park or any other land owned by Declarant, except for such land as may be added under § 3.5 of the Section 1 Declaration, as restated in § 3.5 hereof.

## **Article 1**

### **Architectural Control**

§ 1.1 No building, fence, or other improvements shall be erected or placed on any lot and no exterior addition, change or alteration to any improvements on any lot shall be made until the plans and specifications showing the nature, kind, shape, height and materials and a plat showing the location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee ("ACC"). The ACC shall be composed of three members appointed by the Declarant until the earlier of the following:

- (a) the date on which the last lot shown on the subdivision plat is sold by the Declarant, or
- (b) assignment by the Declarant of its right to appoint the committee to the owners of lots in the subdivision, as evidenced by an instrument recorded in the Clerk's Office.

These members appointed by the Declarant shall hold office until removed by the Declarant or their successors are elected as later provided.

§1.2 Upon the happening of the events listed in § 1.1 (a) or (b), the Declarant shall give notice to all Lot Owners of the election of members of the ACC. If Declarant for any reason fails to do so, then any owner may give the notice. The notice shall be in writing and mailed first-class at least thirty (30) days in advance of the proposed election to each owner at the address listed with the Treasurer of the County of Rockingham, Virginia. A ballot shall be attached to the notice which shall contain the names of at least three persons suggested by the Declarant or other mailing party with the right reserved to each owner to nominate and vote for additional or other persons if desired.

§1.3 The three persons receiving the highest number of votes shall be elected, the ballots shall be counted and certified by the person calling the election.

§1.4 The person receiving the highest number of votes shall serve a term of three years; the person receiving the next highest number of votes shall serve a term of two years, and the person receiving the third highest number of votes shall serve a term of one year.

Thereafter, all persons elected shall serve for a term of three years. No persons shall be elected to more than two successive terms. Vacancies—whether caused by resignation, removal, or expiration of term—shall be filled by the remaining members of the ACC. If all three offices are vacant, any owner may request an election to be held as earlier provided. All matters decided by the ACC shall be determined by majority vote.

§ 1.5 The ACC shall have full and complete discretion to approve or disapprove proposed buildings, fences, and other improvements and alterations on the lot and in the exercise of its discretion, the committee shall not be bound to approve any proposed buildings and improvements solely because they comply with the other restrictions and covenants or are equal in cost or value to buildings and improvements on other lots. In the event the ACC fails to approve or disapprove the plans and specifications within thirty days after submission, the plans and specifications shall be deemed to be approved, but the failure of the ACC to act shall not be construed to waive any violation of these covenants.

§ 1.6 The ACC may base its approval or rejection of plans or specifications upon any grounds, including purely esthetic considerations, which in the sole discretion of the committee shall seem sufficient. Representatives of the ACC shall have the right to inspect the building during construction to insure that it complies with the approved plans and specifications. Where discrepancies exist, the ACC may require corrective work, or, where warranted in its opinion, it may issue a notice to cease construction until compliance is assured to its satisfaction. Failure to heed such a notice from the ACC shall operate as a default under this covenant and shall give the ACC, in addition to any rights under general law, all of the rights and powers set out in this declaration.

§ 1.7 The exterior of any dwelling or building constructed on any lot shall be completed within nine months after the commencement of construction.

§ 1.8 The ACC shall have the power to approve any proposed buildings or improvements on any of the lots in the subdivision even though the buildings or improvements do not meet the requirements of this instrument, if, in the discretion of the committee, such deviations are not harmful to the value of the adjoining property. The ACC shall be under no duty to exercise this power, however. Further, the ACC shall have no power to permit a deviation from §§ 2.1 and 2.2 of this instrument.

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§ 1.9 Neither the Declarant nor the ACC shall be liable to any owner or other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an owner or other person arising out of or in any way related to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Declarant or the ACC, whether given, granted, or withheld.

§ 1.10 Any purchaser for value of any lot in this subdivision and any lender who secures a lien on any lot in this subdivision may assume that any improvements on the lot which have been completed for more than six months are satisfactory to the ACC.

**Article II**  
**General Use Restrictions**

- § 2.1 No lot in the subdivision shall be used except for residential purposes.
- § 2.2 The only buildings allowed on each lot are as follows: one detached dwelling not exceeding two and one-half stories in height, a private garage for not more than three cars, and such other outbuildings as may be approved by the ACC.
- § 2.3 The minimum ground floor area (exclusive of porches and garages) of any dwelling shall be as follows:

	<i>One Story Dwellings</i>	<i>Dwellings with One and One-half or More Stories</i>
All lots	2000 sq. ft.	1200 sq. ft

- § 2.4 No dwelling having a flat roof shall be constructed upon any of the lots.
- § 2.5 No sign of any kind shall be displayed to the public view on any of the lots except one sign of not more than five square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during construction. Nevertheless, one sign not exceeding one-half square foot displaying the name of the owner or occupant of the property shall be permitted on any of the lots.
- § 2.6 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of the lots of the subdivision, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

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§ 2.7 Whenever animals are permitted outside a building or other enclosed area approved by the ACC for the maintenance and confinement of animals, they must be secured by a leash or lead or be under the control of a responsible person and obedient to that person's command at all times.

§ 2.8 All lots in the subdivision shall be kept at all times in a sanitary, healthful, attractive and safe condition, and the owner and occupants of all lots shall keep all weeds, grass, and dead trees thereon cut.

§ 2.9 None of the lots in the subdivision shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary enclosed containers. All containers and incinerators shall be appropriately screened from view from any street or road on which the lot fronts.

§ 2.10 No motor vehicle shall be kept on any lot unless it bears a current inspection sticker.

§ 2.11 No individual sewage disposal system shall be constructed, maintained, or used on any of the lots of the subdivision.

§ 2.12 No dwelling shall be permitted on any lot of the subdivision unless adequate off-street parking for at least three vehicles is provided on the lot. No trailer, basement, tent, shack, barn, or other outbuilding erected on any of the lots in the subdivision shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No house trailer shall be parked on any lot or street adjacent thereto at any time. No truck larger than three-quarter ton, bus, camping trailer, travel trailer, boat, or boat trailer shall be parked upon any lot or street adjacent thereto unless within a structural enclosure.

§ 2.13 No dwelling shall be permitted on any lot with any type of exterior finish except brick, faux stucco, wood siding, or wood shingles, a sample of which shall be submitted to the ACC for approval prior to construction; provided that this § 2.13 shall not apply to Lot 11.

§ 2.14 No more than two unrelated persons may occupy any dwelling on any lot in Highland Park. As used herein, "unrelated persons" shall mean persons unrelated by either blood or marriage.

§ 2.15 [Not applicable to Section 9.]

§ 2.16 No antennae or satellite receiving devices of any kind shall be erected on any lot or on any structure located thereon, except as approved by the ACC.

§ 2.17 No noxious or offensive use or activity shall be carried on upon any lot, nor shall any practice be engaged in by the owners of the lots, their tenants, agents, guests, or assigns, that shall become an annoyance or nuisance to the neighborhood.

§ 2.18 No improvement which has been partially or totally destroyed by fire or other casualty shall remain in such condition for more than three months from the date of such destruction.

§ 2.19 The drying of clothes in public view is prohibited, and the owner or occupants of any lots at the intersection of streets where the rear yard or a portion of the lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

§ 2.20 No skateboard ramps shall be constructed, placed, or used on any lot.

§ 2.21 Watch lights are prohibited on lots. For the purposes of this section, a watch light is an exterior light of a type typically mounted on a telephone pole, utility pole, or street light pole, or any other light which the ACC determines casts an unacceptable level of light on neighboring properties.

§ 2.22 No yard sales, auctions, or similar events intended to dispose of household goods shall be permitted on any lot.

§ 2.23 Any liquified petroleum (L.P.) gas tanks on any lot shall be buried.

§ 2.24 No chain link fences or other fences made of metal are permitted on any lot.

§ 2.25 No above-ground pools are permitted on any lot.

### **Article III Miscellaneous Provisions**

§ 3.1 No lot in the subdivision shall be re-subdivided into smaller lots, nor shall any portion of any lot be sold or conveyed by the owner thereof without the prior approval of the ACC.

§ 3.2 All drainage and utility easements shown on the subdivision plat are hereby reserved and dedicated to the appropriate utility company or governmental unit.

§ 3.3 The restrictions, conditions, covenants, and limitations shall continue in force until January 1, 2011, at which time they will expire. Nevertheless, upon the expiration of this term and any subsequent term, they shall be automatically renewed for ten year periods unless terminated or amended by the owners of 75% of the lots in the subdivision. For purposes of this section, lienholders shall not be deemed to be owners.

§ 3.4 Any water drainage or detention system traversing or abutting any lot in the subdivision shall be maintained by the owner or owners of the lot.

§ 3.5 The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this declaration additional property, so long as the property is adjacent to the property shown on the subdivision plat or on later plats brought within the declaration. Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, indicating the additional property which shall be subject to this declaration. Property added to this declaration shall be treated for all purposes as if it had been shown on the original subdivision plat, but the added property may be subject to other restrictions in addition to this declaration.

§ 3.6 The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia. The sale of lots to a successor Declarant shall not be deemed a sale for purposes of § 1.1 (a).

#### **Article IV Validity and Enforcement**

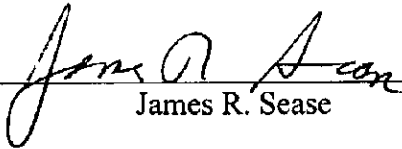
§ 4.1 The failure on the part of the Declarant or any owner to enforce any restrictions contained in this instrument shall not be deemed a waiver of the right to do so thereafter for the same breach or one occurring prior or subsequent thereto.

§ 4.2 Enforcement of this instrument shall be by proceedings instituted by any lot owner in the subdivision at law or in equity against any persons or other entities violating or attempting to violate any covenant, either to restrain violation or to recover damages therefor. In any such proceeding, an owner found to have breached any covenant contained in this instrument shall be responsible for the cost of the enforcement proceeding, including the prevailing party's attorney's fees.



§ 4.3 Invalidation of one or more of the provisions of this instrument by judgment or court order shall not affect any of the remaining provisions, which shall remain in full force and effect.

WITNESS the following signature and seal.

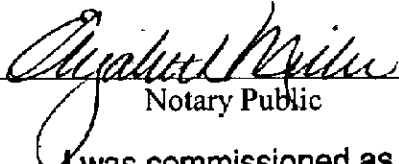
 (SEAL)  
James R. Sease

**COMMONWEALTH OF VIRGINIA**

**CITY OF HARRISONBURG, to-wit:**

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 25<sup>th</sup> day of October, 2005, by James R. Sease.

My commission expires: April 30, 2008

  
Notary Public  
I was commissioned as  
Elizabeth Miller Muterspaugh

05 OCT 27 11:10:57

L. WAYNE HARPER, CLERK

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County  
The foregoing instrument was this day presented in the office aforesaid, and is  
together with the certificate of acknowledgment annexed, admitted to record this  
27 day of Oct, 20 05 at 10:57 A.M. I certify that  
taxes were paid when applicable:  
Sec. 58-54 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_ Transfer \_\_\_\_\_  
Sec. 58-54.1 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
Recording 21.00 Copies 450 TESTE  
L. WAYNE HARPER  
CLERK  
Dead Book No 2761 Page 683 25-50

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