

Resolution 84-7

RESOLUTION OF THE BOARD OF DIRECTORS

of the McLean Mews Homeowners Association, Inc.

Resolution Number 84-7

PROCEDURES CONCERNING ENVIRONMENTAL CONTROL

Adopted at a Meeting of the Board of Directors on July 5, 1984

WHEREAS, the affairs of the McLean Mews Homeowners Association, Inc. ("the Association" or "the Corporation") and its Members are governed by the "Declaration of Covenants, Conditions, Restrictions, and Easements for 'McLean Mews', Fairfax County, Virginia" ("the Declaration"); and

WHEREAS, Article IX of the Declaration reads, in part, as follows:

"ENVIRONMENTAL CONTROL

"Section 1. Construction of Improvements. Since the maintenance of environmental and architectural harmony and unity is essential for the preservation and enhancement of the value of the lots and the harmonious functioning of the community affected hereby, no improvements may be erected on any lot by anyone ... without the approval of the Environmental Control Committee ... appointed by the Board of Directors of the Association. The term 'improvements' shall include, but shall not be limited to, the erection of any structure, including, but not limited to, additions to or alterations of any buildings, detached buildings, storage buildings, tool sheds, kennels or other buildings for the care of animals, and greenhouses; the erection of any fence; the moving of any structure from another locality to a lot; the grading, scraping, excavation or other rearranging of the surface of any lot, the construction of any driveway, alleyway, walkway, entryway, patio or other similar item; the alteration or removal of any exterior surface, including the repainting of any painted surfaces except in a color, shade and tone similar to or the same as the previously existing paint, And the painting of formerly unpainted surfaces; and the planting, replanting or rearrangement of any plant life visible from another lot or the public streets.

"Section 2. Environmental Control Committee: The Board of Directors of the Association shall appoint an Environmental Control Committee composed of three (3) persons to approve improvements proposed to be made by any owner The ... Committee shall meet within fifteen (15) days after an owner has made application to it for approval, and has submitted to it two (2) sets of final plans and specifications. The ... Committee shall render its decision within ten (10) days after this meeting, either approving the plans or disapproving them. If the Committee refuses to grant its approval, it shall make specific reference to those features of the plan which caused the disapproval. Approval may be conditioned upon completion within a specified period of time and/or the posting of such bonds as the Committee may require. All decisions shall be made by a majority vote of the ... Committee. The

Committee may also promulgate general rules regarding permitted or forbidden improvements. ..."; and

WHEREAS, Article VII of the Declaration reads, in part, as follows:

"GENERAL OBLIGATIONS OF OWNER

"Section 2. Complaints by Owner. If any owner believes any other owner is in violation of this Declaration, he shall so notify such owner in writing, explaining his reasons for such complaint. If the owner fails to remedy the alleged violations within ten (10) days after delivery of such notice, a complaint may be transmitted in writing to the Chairman [sic] of the Board of Directors of the Association, who shall thereupon choose, within not more than ten (10) days, a neutral party to arbitrate the dispute in such a manner as the arbitrator deems best, but the arbitrator shall in all cases announce his decision within thirty (30) days after the transmittal of the complaint to the Chairman [sic] of the Board of Director of the Association. If the Chairman [sic] of the Board of Directors or the arbitrator fails to act, the complaint will be considered denied. The arbitrator shall be paid his reasonable expenses, the cost of which shall be borne by the losing party.

"Section 3. Complaints by Association: If the Association believes any owner is in violation of these Covenants it shall so notify such owner, in writing, explaining its reason for such complaint. If the owner fails to remedy the alleged violation within ten (10) days following delivery of such notice, then the Association shall have the right to (i) institute appropriate legal action or (ii) submit the dispute to arbitration. Such arbitration to be held in accordance with the rules of the American Arbitration Association, and the arbitrators shall be chosen as follows: (a) one arbitrator shall be chosen by the owner; (b) one arbitrator shall be chosen by the Association, (c) one arbitrator shall be chosen by the two (2) arbitrators previously chosen. If either party fails to choose an arbitrator within fifteen (15) days after the transmission of the complaint to the owner, the other party may choose the second arbitrator. The decision of the arbitrators shall be made within thirty (30) days after the transmission of the complaint to them. If a majority of the arbitrators fails to act within thirty (30) days, the complaint will be considered dismissed. The prevailing party in any such litigation or arbitration shall be entitled to recover from the other party all costs and expenses thereof, including attorneys' fees in connection therewith.

"Section 4. Remedy of Violations. If the arbitrator(s) as provided in Section 2 or Section 3 above upholds the complaint, the owner shall be so notified in writing and shall promptly remedy the violation of this Declaration, and if he fails to remedy such violation within thirty (30) days after the date of such notice or in the time specified in any such proceeding, as appropriate, the Association or any owner may pursue such legal and/or equitable remedies as may be available to it/them, and the Association shall specially assess such defaulting owner for all costs (including reasonable attorneys' fees and disbursements) as the Association (but not any owner acting on his own behalf) shall incur in enforcing the decision of the arbitrator."; and

WHEREAS, the procedures employed and decisions made by the Environmental Control Committee ("the Committee") must afford due process to all Members of the Association; and

WHEREAS, it is desirable for the procedures of the Committee to be regularized and standardized to the fullest extent possible so that equal treatment will be afforded to all Members of the Association; and

WHEREAS, it is desirable for all Members of the Association to be aware of the procedures of the Committee, and to have access to those procedures in printed form, so as to take all necessary steps to protect their rights and avail themselves of the due process those procedures are designed to guarantee to them ---

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors ("the Board") of the Association hereby adopts the following as official policy of the Association, titled "Formation of the Environmental Control Committee, Establishment of Its Procedures, and Enforcement of its Decisions," and declares that these Procedures shall be binding upon and govern the actions of the Board, the Committee, and individual Members of the Association and their tenants, as applicable, with respect to matters addressed herein.

FORMATION OF THE ENVIRONMENTAL CONTROL COMMITTEE, ESTABLISHMENT OF ITS PROCEDURES, AND ENFORCEMENT OF ITS DECISIONS

PART 1. FORMATION OF THE ENVIRONMENTAL CONTROL COMMITTEE, APPOINTMENT OF ITS MEMBERS, SCHEDULING OF ITS MEETINGS, DEFINITION OF ITS OFFICIAL ACTS, AND PRESERVATION OF RECORDS OF THOSE ACTS

I-1. Designation of Members and Terms of Membership: Between November 15 of each year and February 15 of the following year, the Board shall appoint two qualified persons as Committee members. This appointment shall be made by holding an election at a formal, duly-called meeting of the Board. Prior to the election, each member of the Board who expects to nominate an Association member for election to the Committee shall ascertain the willingness of that Member to serve in this capacity. At the Board meeting, the election shall be conducted in the following manner: Members of the Board may nominate such qualified persons as they may choose; each member of the Board in attendance, including the President of the Board or any other officer presiding in the President's absence, may vote for not more than two of the nominees but shall not be allowed to cast more than one vote for any one nominee; the two nominees receiving the highest number of votes shall be appointed as members of the Committee, each for a term that extends until the Board, in accord with the provisions of this paragraph, elects and appoints his/her successor during the next subsequent period of November 15 of one year through February 15 of the following year; each such term shall be known as an "annual term." Between May 15 and August 15 of each year, the Board shall appoint one qualified person as a Committee member. This appointment shall be made through a process identical to that described previously in this paragraph, except that Board members may vote for only one nominee for the Committee position, and the nominee receiving the highest number of votes shall be appointed as a Committee member for a term (which shall be known as an "annual term") that extends until the Board, in accord with the provisions of this paragraph, elects and appoints his/her successor during the next subsequent period of May 15 through August 15. The persons serving as members of the Committee on the date on which this Resolution is adopted by the Board of Directors shall be deemed automatically appointed as Committee members under the provisions of this Resolution. By

adoption of a separate motion, the Board shall specify which two Committee members shall be named to terms that expire upon the Board's selection and appointment of Committee members during the next subsequent period of November 15 of one year through February 15 of the following year which follows the date on which this Resolution is adopted, and which Committee member shall be named to the term that expires upon the Board's selection and appointment of a Committee member during the next subsequent period of May 15 through August 15 which follows the date on which this Resolution is adopted. (However, should there be any vacancies in the Committee's membership on the date on which this Resolution is adopted by the Board, those vacancies shall be filled in accord with the provisions of paragraph I-2.)

I-2. Filling Committee Vacancies: Any vacancy in the Committee membership shall be filled by the Board in the manner provided in paragraph I-1, except that each member of the Board shall be limited to one vote. Each such vacancy shall be filled within thirty-one (31) days of receipt by the Board of information that the vacancy exists. Notices of resignation from the Committee shall be directed concurrently to the Committee's Chairperson and to the President of the Board.

I-3. Removal of Committee Members: At any Regular Meeting of the Board, or any special meeting called for that purpose, at which a quorum of its membership is present, the Board may remove any member of the Committee by the affirmative vote of a majority of the members present and voting, and a successor may then and there be elected in the manner prescribed in paragraph I-2 and appointed to fill the vacancy thus created, provided that a motion to remove a Committee member shall be in order only if the Board member making the motion has provided a minimum of five (5) days notice prior to the meeting at which it will be made of his/her intention to make such a motion to the President of the Board, who must have provided a minimum of three (3) days notice that such a motion will be made to the Committee member whose removal will be proposed. Any Committee member whose removal has been moved by a member of the Board shall be given an opportunity to be heard at any meeting at which the motion is considered. The term of any Committee member who becomes more than thirty (30) days delinquent in payment of any assessment and/or carrying charges due the Association shall be automatically terminated, and a successor shall be elected and appointed as provided in paragraph I-2.

I-4. Qualifications for Membership: Any Member of the Association, who is not currently delinquent in payment of Annual or Special Assessments, shall be qualified to be appointed to the Committee in accordance with the procedure provided in paragraph I-1, including those who may be serving as officers of the Corporation, as members of the Board, or as chairpersons or members of other Association committees. A person may be appointed to sequential annual terms without limit.

I-5. Election of a Chairperson of the Committee: Within fifteen (15) days of the date (between November 15 of a year and February 15 of the following year) on which the Board appoints two persons as Committee members, the Committee shall meet and elect a Chairperson. If the Chairperson of the Committee resigns from the Committee, submits his/her resignation as Chairperson to the President of the Board, is not reappointed to Committee membership by the Board, or otherwise is removed from the Committee's membership, the remaining Committee members shall meet to elect a Chairperson (who may, if the remaining Committee members so desire, be elected on a temporary basis to serve until the Board appoints a person to fill all Committee vacancies) prior to the effective

date of the previous Chairperson's resignation as Chairperson, or no later than fifteen (15) days after the date on which they are advised of the resignation or removal from the Committee of the previous Chairperson, whichever comes later. If the Committee has elected a temporary Chairperson to serve until the Board has appointed members to all Committee vacancies, the Committee shall meet to elect a Chairperson within fifteen (15) days of the appointment by the Board of the third member of the Committee. When electing a Chairperson or temporary Chairperson, each Committee member may nominate any other Committee member, or him/herself, and when nominations have ceased, each member may vote for one nominee. A newly-elected Chairperson shall promptly notify the President of the Board of his/her election. Should the Committee not be able to elect a Chairperson within thirty (30) days of the appointment (during the period between November 15 of one year and February 15 of the following year) of two Committee members, or to elect a Chairperson or temporary Chairperson within thirty (30) days of the effective date of the resignation or removal from the Committee of the previous Chairperson, the Board shall designate a Chairperson at its next meeting. The elected or designated Chairperson shall serve in that capacity at the pleasure of the Committee. Should the Committee not be able to elect a Chairperson to replace a temporary Chairperson, the temporary Chairperson will continue to serve as temporary Chairperson until a Chairperson is elected or designated under the terms of this paragraph.

At any time when the Chairperson or temporary Chairperson anticipates being unable to execute the responsibilities of the Chair for a period of four (4) days or longer, s/he shall notify the President and the other members of the Committee. At any time when another Committee member believes the Chairperson or temporary Chairperson is temporarily unable to execute the functions of the Chair, s/he shall notify the President and the other members of the Committee. In either case, any Committee member may convene a meeting of the Committee for the purpose of electing an acting Chairperson, unless the Board shall adopt a Resolution precluding the election of an acting Chairperson during a specified period of time. Any Committee member elected to serve as acting Chairperson shall so serve, and shall have all the powers and responsibilities of the Chairperson, until the Chairperson or temporary Chairperson asserts the ability to again execute the responsibilities of the Chair, or until the Committee acts to elect a new Chairperson, temporary Chairperson, or acting Chairperson, whichever comes first. If the Committee anticipates an acting Chairperson will serve in that capacity for four (4) days or longer, the Committee as rapidly as practicable shall provide written notice of that fact, and the address and phone number of the acting Chairperson, to all Association Members. When such notice has been provided, the Committee as rapidly as practicable shall notify all Association Members in writing when the Chairperson or temporary Chairperson again is executing the functions of the Chair.

I-6. Communications with the Committee: Formal communications with the Committee by the Board or individual Members of the Association shall be directed through the Chairperson of the Committee, who shall see that all such communications are brought to the attention of the Committee's members on a timely basis.

I-7. Scheduling of Meetings of the Committee and Notice to Committee and Association Members: It shall be the responsibility of the Chairperson to schedule meetings of the Committee (provided that any Committee member may call a meeting of the Committee for the purpose of electing a Chairperson, temporary Chairperson, or acting Chairperson, in which case the Committee member who calls the meeting shall provide the notices required by this paragraph). The Chairperson shall

schedule meetings and see that notice of those meetings is provided in full compliance with all requirements of the Declaration and this Resolution, including the following:

- (a) A written notice of each Committee meeting, containing the meeting's agenda (which shall include both a short description of each application for approval of a proposed improvement(s) and the name of the applicant who submitted each such application scheduled to be considered by the Committee at the meeting, and a brief description of each general guideline or rule scheduled to be considered by the Committee at the meeting), shall be provided to each Committee member, and shall be provided to each Association Member in the case of any Committee meeting at which the Committee will take any formal action on (i) any application(s) for approval of a proposed improvement(s), or (ii) on any guideline(s) or general rule(s) for improvements. This requirement may be satisfied by placing a copy of each such notice in the door handle of each McLean Mews home.
- (b) Whenever and to the extent this requirement is not in conflict with the provisions of the Declaration or this Resolution that require Committee action within limited timeframes, the notices required in subparagraph (a) of this paragraph shall be provided at least five (5) days in advance of the meeting(s) to which they pertain.
- (c) In addition to providing written notice to them as required by subparagraph (a) of this paragraph, a notice of each meeting conveying the same information required by subparagraph (a) shall be provided (i) by telephone; (ii) in person; or (iii) via the U. S. Mail, first class postage prepaid by the Association, to each Committee member, and, in the case of any Committee meeting at which an application for approval of an improvement to any lot will receive any formal consideration, to (A) the Association Member who submitted that application, and (B) any Association Member who has submitted a written request to be kept apprised of the Committee's actions with respect to that application.
- (d) A notice placed in the U. S. Mail, first class postage prepaid, at least seven (7) days prior to the date of the meeting(s) to which it pertains shall be deemed to have complied with the requirement for five (5) days' notice.
- (e) If compliance with the terms of the Declaration or this Resolution which stipulate timeframes for various Committee actions makes providing five (5) days' notice impossible, notice shall be provided as far in advance of the meeting as possible, and an attempt shall be made to notify each person described in subparagraph (c) of this paragraph in person or by telephone in addition to providing to them the written notice for all Association Members.

I-8. Waiver of Notice: Any notice required by this Part may be waived in writing by a Committee member or Association Member. The attendance at a meeting of the Committee by any Committee member or Association Member, unless it is for the sole purpose of objecting to the absence of required notice, shall be deemed a waiver of required notice.

1-9. Quorum of the Committee: At least two of the Committee's members must be present at any meeting in order for business to be transacted.

1-10. Open Meetings: All meetings of the Committee shall be open to any Member of the Association

and to any person designated in writing as his/her representative by any Member of the Association.

1-11. No Voting By Proxy: No member of the Committee may cast his or her vote by proxy. A member must be present at a duly-called meeting in order to cast a vote.

1-12. Official Actions of the Committee: Only those actions taken by the affirmative vote of at least two members of the Committee on a formal motion made by a Committee member, at a duly called meeting at which a quorum is present, shall constitute the official acts of the Committee.

1-13. Minutes of All Official Actions of Committee Required: All official actions taken at each meeting of the Committee shall be recorded as Minutes of the meeting by a member of the Committee designated by the Chairperson (which may be the Chairperson if he or she so chooses). Such minutes shall show (a) the names of all members of the Committee who attended the meeting, and the portions of the meeting during which they were in attendance if not for the entirety; (b) the names of all other Members of the Association who attended any part of the meeting; (c) the language of any motion made by any Committee member, and the vote on the motion of each member of the Committee who was present at the meeting; (d) the names of those specially interested Association Members defined in subparagraph I-7(c) of this Resolution, other than Committee members, who were provided with telephone, personal, or mailed notification of the meeting; and (e) the time and place of convening and adjournment. Appended to such minutes shall be (i) a copy of the notice of the meeting distributed to all Association Members; (ii) a copy of all applications for approval of an improvement(s), together with accompanying plans and specifications, upon which the Committee took final action of approval, conditional approval, disapproval, or return to the applicant without prejudice (in accord with provisions of the Declaration and subsequent provisions of this Resolution); and (iii) a copy of all guidelines or general rules for improvements which the Committee approved in draft form for circulation to Association Members or promulgated in final form. At the next meeting of the Committee, the minutes of the previous meeting shall be read, corrected as necessary, and approved by a formal vote of the Committee. The approved minutes of each meeting shall be kept by the Chairperson and passed from him/her to the next succeeding Chairperson.

I-14. Copy of Approved Minutes Provided to the Board: A copy of each set of minutes approved by the Committee shall be transmitted promptly to the President of the Board, who shall assure that the members of the Board are aware of the actions taken at the meeting, that the Board takes all actions required of it by the Declaration or this Resolution as a result of the actions taken by the Committee at its meeting, that a copy of the approved minutes is transmitted to the Association's General Counsel, and that the copy of the Committee's minutes is filed in the official records of the Association maintained by the Secretary of the Board.

I-15. Parliamentary Procedure: Except where such procedures are inconsistent with the requirements of this Resolution (which requirements shall take precedence), Robert's Rules of Order shall govern the procedures of the Committee.

I-16. Appointment and Service of an Alternate Committee Member: The Board may, at any time it chooses, appoint one alternate Committee member to serve as a member of the Committee when one or more Committee members unavoidably are unavailable to fulfill their Committee responsibilities.

When and if the Board chooses to appoint such an alternate member, or to replace an alternate Committee member who has resigned or was removed from that position, it shall follow the procedure set forth in paragraph I-2 (provided that no time limit for such Board action shall be pertinent). To be eligible to be appointed by the Board as an alternate Committee member, a person must meet the qualifications for a regular Committee member set forth in paragraph I-4. Any appointment as an alternate Committee member shall be for a term of one year (but a person may be appointed to sequential annual terms without limit), and any alternate Committee member shall be subject to the removal provisions of paragraph I-3 just as regular Committee members are subject.

At any time when an alternate Committee member has been appointed by the Board and is qualified to serve, the Committee Chairperson shall provide the same notice to the alternate member of all Committee meetings required to be provided to regular Committee members. If the Committee Chairperson schedules a meeting of the Committee and discovers that one or more Committee members will not be available to attend the meeting, or during a period when one or more Committee member positions is/are vacant, or when the Committee will consider an application for approval of an improvement(s) submitted by a regular Committee member, the Chairperson may request the alternate Committee member to attend the meeting and, during it, exercise all rights and responsibilities of a regular Committee member as set forth in the Declaration and this Resolution. In such a case, at that meeting, the Chairperson shall make whichever of the three following announcements is applicable (which the Committee member taking minutes of the meeting shall enter into the minutes), completed as appropriate: (1) "I confirm that I communicated with each regular member of the Committee concerning scheduling of this meeting; sought unsuccessfully to schedule it when all Committee members could attend; gave each member the notice of this meeting and its agenda required by paragraph I-7 of Resolution of the Board 84-7; was advised by Committee Member(s) (name(s) of absent Committee member(s)) that he/they unavoidably would be absent from part or all of the meeting for the following reason(s): (list general reason for absence for each absent member); and requested Alternate Committee Member (name) to serve as a Committee member during this meeting." or (2) "I requested Alternate Committee Member (name) to serve as a Committee member during this meeting to fill the Committee position that currently is vacant."; or (3) "I requested Alternate Committee Member (name) to serve as a Committee member during the consideration of Committee Member (name)'s application for approval of an improvement(s)." Except in the case where the alternate Committee member is serving as a Committee member for the purpose of considering an application for approval of an improvement(s) submitted by a regular Committee member, if at any point during a meeting all three regular Committee members are present, the alternate Committee member's service as a Committee member at that meeting shall cease, and from that point all rights and responsibilities of Committee membership shall vest in the

regular Committee members and the minutes shall so reflect.

PART II: PROCEDURES FOR SUBMITTING APPLICATIONS FOR THE APPROVAL BY THE ENVIRONMENTAL CONTROL COMMITTEE OF PROPOSED PROPERTY IMPROVEMENTS, AND PROCEDURES GOVERNING THE COMMITTEE'S ACTION ON SUCH REQUESTS

II-1. Application for Approval for Improvements: Any Member of the Association who desires to make any improvement to his McLean Mews property, as the term "improvement" is defined by Article IX,

Section 1 of the Declaration, or as that term may be further defined hereafter by the Association, its Board of Directors, or the Committee, must submit an application for approval of the proposed improvement to the Committee. Each application must contain the following information:

(a) the name of the Association Member seeking approval; (b) the address of the McLean Mews lot on which the Member proposes to make the improvement; (c) the mailing address of the member seeking approval (if different than the address required under (b)); (d) a description of the improvement for which the Member is seeking approval, in one page or less, providing sufficient detail so that all major aspects of the improvement can be ascertained by the Committee; (e) an estimate of the cost of the improvement; (f) how and by whom the improvement is to be effected (e.g., "I will construct this patio myself", or "the D & Q Construction Company will build this fence", or "I will locate a landscape contractor to install these trees and bushes"); (g) the approximate date on which the Member desires work to commence on the improvement if it is approved; (h) the number of days estimated to be needed for all work on the improvement to be completed once work has commenced; (i) a description of the principal materials to be used in the improvement (e.g., color of brick; color and finish of wood; style of fencing; color of paint; type and size of vegetation to be planted, etc.); and (j) a statement signed by the applicant affirming that s/he has received a copy of this Resolution and understands its provisions to his/her satisfaction. (k) a statement signed by the applicant affirming that s/he has discussed the application with the owner of each McLean Mews lot adjacent to his/her lot, or, if the applicant was unable to contact any such adjacent lot owner for this purpose, listing those adjacent lot owners not contacted and affirming that the applicant attempted on at least three separate days without success to contact each such adjacent lot owner to discuss the application with him/her.

The Committee shall, within three (3) weeks of the adoption of this Resolution by the Board, adopt a specific form requesting and providing space for the above-listed information; thereafter make the form available at Association expense to any Association Member who requests it; and encourage but not require its use by applicants for approval of improvements.

Each application must be accompanied, as required in Article IX, Section 2 of the Declaration, by two (2) sets of final plans and detailed specifications for the improvement. The plans need not be drawings of architectural quality except when structural modifications are proposed to be made to an existing home; however, the drawings must be sufficiently detailed, and sufficiently accurate in scale, to provide a clear and accurate depiction of the proposed improvement in the sole judgment of the Committee. Because any complete or conditional approval of the application made by the Committee will be of the specific description, plans, and specifications provided -- and consequently any variation from the description, plans, or specifications, including any item or detail of an improvement that was not depicted or described therein, shall be grounds for declaring the improvement to be in violation of the Declaration and of this Resolution, it is in the best interests of the Member submitting an application to the Committee to make the description, plans, and specifications as complete as possible.

The application shall be delivered in person or sent by first class mail to the Chairperson of the Committee. The time insofar as that measurement applies to all time action by the Committee contained in the Declaration Resolution shall begin on the date it is received by the Chairperson. The Chairperson shall denote on each application the date and time when the application reached his/her

hands.

II-2. Copy of Application Provided to the Board: As soon as practicable after s/he receives an application from a Member of the Association, but in any event no later than five (5) days after receiving it, the Chairperson of the Committee shall transmit a copy of the application to the President of the Board if, in the Chairperson's opinion, it raises any possible question which the Association is obligated to or should address outside the bounds of the Environmental Control process as set forth in the Declaration and this Resolution. If an application is provided to the President under these terms, s/he shall take such steps concerning it as s/he deems appropriate.

II-3. Committee Meeting to Consider an Application for Approval of an Improvement: As required in Article IX, Section 2 of the Declaration, the Committee shall meet within fifteen (15) days after its Chairperson has received a complete application (as defined in Paragraph II-1 above) for approval of a proposed improvement in order to consider the application. The meeting scheduled for this consideration shall be scheduled and announced in conformity with the provisions of paragraph I-7 of this Resolution.

II-4. Opportunity for Applicant and Other Interested Owners to Be Heard: At the Committee meeting at which an application for approval of an improvement is considered, the Committee shall provide an opportunity for the applicant and all other Association Members in attendance to comment on the application. The Committee's Chairperson may unilaterally impose any restriction on the amount of time during which any Association Member other than a member of the Committee will be recognized to speak and/or the number of times any Association Member other than a member of the Committee will be recognized to speak during the meeting, so long as such restriction shall afford every attending Association Member a minimum of five (5) minutes to speak and so long as such restriction shall be equally, effectively, and impartially enforced, and so long as the Chairperson announces the restriction clearly at the meeting. The restriction may exempt the direct responses of the applicant to questions specifically directed to him/her by the Chairperson or other Committee member. Such a restriction imposed by the Chairperson on time for Association Members other than Committee members to speak shall be valid unless a majority vote of the Committee approves a motion by a Committee member to delete or alter such a restriction. Any such restriction shall apply only to the one meeting at which it is imposed. The specific nature of any such restriction shall be stated in the minutes of the meeting at which it was imposed.

II-5. Committee Decisions on Applications: As required in Article IX, Section 2 of the Declaration, the "Committee shall render its decision within ten (10) days after this meeting" (i.e., the meeting described in paragraph II-3 of this Resolution). With respect to any application, the Committee shall choose one of the following actions by approval of a motion consisting of the wording listed below:

(a) "That the Committee give full approval to the application for the" (describe the improvement) "submitted by" (give the name of the applicant) "on" (give the date the application was received by the Committee) "based on the descriptions, plans, specifications, and timetable submitted as a part of the application."

(b) "That the Committee give conditional approval to the application for the" (describe the

improvement) "submitted by" (give the name of the applicant) "on" (give the date the application was received by the Committee) "based on the description, plans, specifications, and timetable submitted as a part of the application as those are required to be modified (if there is a requirement for such modification) by this motion, with the conditional approval premised upon the applicant" (select one or both) (1) "fully complying with the following conditions:" (followed by a clear, concise statement of those deletions, additions, or other alterations in the nature, quality, or extent of the improvements) and/or of the plans, specifications, and/or timetable upon which approval is conditioned); and/or (2) "posting the following bond(s) in a manner satisfactory to the McLean Mews Homeowners Association, Inc. to provide assurance to the Association that the improvement made by the applicant under this conditional approval will adhere fully in all respects to the description, plans, specifications, and timetable submitted as a part of the application as those are required to be modified (if there is a requirement for such modification) by this motion:" (followed by a description of the nature and amount of the bond(s) the Committee will require).

(c) "That the Committee disapprove the application for the" (describe the improvement) "submitted by" (give the name of the applicant) "on" (give the date the application was received by the Committee) "because" (followed by a clear, concise statement of the specific features of the description, plans, specifications, and/or timetable which caused the disapproval and the specific provision(s), if any, contained in the Declaration or this Resolution, or any guideline or general rule promulgated by the Board in accord with the provisions of this Resolution, with which the application or the accompanying plans and specifications failed to comply).

(d) "That the Committee return to the applicant without prejudice the application for the" (describe the improvement) "submitted by" (give the name of the applicant) "on" (give the date the application was received by the Committee) ", together with all matter that accompanied the application, because" (select one or both) (1) "the application fails to satisfy the following requirements of Paragraph II-1 of Resolution of the Board of Directors Number 84-7:" (listing those specific requirements it fails to satisfy); or (2) "the Committee has concluded that additional detail or specificity in the" (select one or more:) "description", "plans", "specifications", and/or "timetable" of the proposed improvement is required for the Committee to reach a properly reasoned decision on this application."

II-6. Procedures for Making a Decision on the Application of a Committee Member: A Committee Member may neither make a motion to approve nor vote to approve his/her own application for an improvement. When the application of a Committee member comes before the Committee, the applicant/Committee member shall act as an applicant and shall not act as a Committee member. If the Board has appointed and there currently is a duly-qualified alternate Committee member, the Chairperson may request said alternate member to serve as a Committee member for the purposes of Committee consideration of said application. In such a case, the Committee shall follow all standard procedures and comply with all applicable terms of this Resolution and the Declaration. If there is no duly-qualified alternate Committee member, or if for any reason a duly-qualified alternate member is not requested or is unable to serve as described above, the Committee may approve or conditionally approve the application of a Committee member only upon the affirmative vote of both the other Committee members upon a motion to that end made by one of those other two Committee members; if no motion made by a Committee member with respect to another Committee member's application receives a second, or if no such motion receives the affirmative vote of both the Committee members

other than the Committee member/applicant, the Committee Chairperson shall present the application as soon as practicable to the President of the Board, who shall place Board consideration of the application on the agenda of a meeting of the Board within fifteen (15) days of the date on which s/he received the application from the Committee Chairperson. With respect to such an application, the Board shall act in the place of the Committee, and shall follow all procedures contained in Parts I and II of this Resolution pertaining to providing notice of consideration of, consideration of, and action on applications for improvement, except that Board action on the application shall be taken by the affirmative vote of a majority of the Board members present and voting at a meeting where a quorum is present. In the case of an application processed in this manner, all references in this Resolution to "the Committee" with respect to consideration and action on applications for improvements, and appeals of decisions on same, shall be deemed to read "the Board", and all references to "the Chairperson of the Committee" shall be deemed to read "the President or other presiding officer" unless the context clearly makes such an alteration inappropriate.

II-7. Notification of the Decision to the Applicant and the Board: As soon as the Committee arrives at its decision on the application, the Chairperson shall notify the applicant of the decision in writing. Such notification shall be delivered in person, or by placing the written notification in the U. S. Mail, first class postage prepaid by the Association, no later than the tenth day following the date of the Committee's first meeting at which the application was considered. Simultaneously, the Chairperson shall deliver to the President of the Board a copy of the written notification and a copy of the original application to which it pertains, which, after the President notes their receipt at the first meeting of the Board held after they are received, shall be given to the Secretary of the Board to be placed in the Association's permanent records.

II-8. Retention of the Committee's Decision in its Records: The Chairperson of the Committee shall be responsible for placing a copy of the notification to the applicant of the Committee's decision on the application in the Committee's permanent files, along with a copy of the application and accompanying plans and specifications and all other pertinent materials considered by the Committee with respect to the application.

II-9. Duration of Committee's Approval, Conditiona1Approval, or Disapproval: Any full approval or conditional approval of an application shall be valid for a period of two years from the date on which the Committee formally acted to grant that approval or conditional approval (except that, if as one condition of a conditional approval of an application, a timetable is required for commencement and/or completion of the improvement(s) for which permission is sought in the application, that timetable shall take precedence over this general rule of validity duration). If an improvement is completed within the two-year period of the validity of the approval of that improvement granted by the Committee (or commences and/or is completed within any lesser period stipulated as a condition of approval), and is completed in full compliance with terms of the approval or conditional approval that had been granted, the approval or conditional approval shall be permanent so long as the improvement shall exist. (However, any later modification to the improvement shall require approval of a separate application.) In the case of an application to which the Committee has granted full approval, or to which it has granted conditional approval that does not stipulate a commencement and/or completion date, the approval is null and void if work on the improvement has not substantially begun within two years of the date of the Committee's action to grant the approval or conditional approval, and a completely new

application must be submitted, and receive complete Committee consideration under this Part, before the improvement may be approved. If work has substantially begun on an improvement for which the Committee has granted full approval, or granted conditional approval with no stipulation of a date for commencement and/or completion, but the improvement has not been completed within two years of the date of the Committee's action to grant the approval or conditional approval, the validity of the full or conditional approval automatically shall be extended for three months to allow completion if the original applicant requests such an extension in writing before the expiration of the two-year period, but no further extension may be granted, and if the improvement is not completed within that extended period of validity of the application, the full approval or conditional approval shall be null and void.

The disapproval of an application by the Committee shall be effective for two years from the date of the Committee's action to disapprove the application. During that two year period, the identical application may not be resubmitted. However, a similar application may be submitted, so long as, in the sole judgment of the Committee, it contains one or more significant differences from the disapproved application. After the expiration of the two-year period following the disapproval, the applicant may resubmit the identical application.

II-10. Consideration of a Resubmitted Application: Whenever the Committee reaches a decision to return an application without prejudice (under the provisions of paragraph II-5 (d) above), any resubmission of the application by the applicant shall be treated as a new application. The resubmitted application must meet all requirements contained in this Resolution and will be subject to full consideration by the Committee as though it were a new application. With respect to the resubmitted application, the measurement of elapsed time as that measurement applies to all deadlines for Committee action contained in the Declaration or this Resolution, shall begin on the date on which the Chairperson of the Committee receives the resubmitted application as provided in paragraph II-1 above.

PART III: RECONSIDERATION OF A COMMITTEE DECISION BASED ON OMITTED FACTS OR INFORMATION

III-1. Opportunity to Request Committee Reconsideration Based on Omitted Facts or Information: An applicant whose application (a) is conditionally approved, with such conditional approval stipulating conditions the applicant believes to be unreasonable; or (b) is disapproved, may request the Committee to reconsider its decision in accord with the provisions of this Part.

III-2. Request for Reconsideration Based on Omitted Information: If the applicant believes that facts or information material to the consideration of the application, that would or should have altered the Committee's evaluation of the application, were inadvertently not made available to the Committee, the applicant may request the Committee to reconsider its decision by transmitting a written request to the Committee's Chairperson within fifteen (15) days of the date of the Committee's decision on the application. Such a request for reconsideration shall contain (a) either (i) all of the additional material facts and information that the applicant believes the Committee should consider before imposing conditions on the approval of the application or before disapproving the application, or (ii) a general but thorough summary of those facts and information and a statement of the willingness of the applicant to discuss the details of those facts and that information with the Committee; and (b) a statement giving

the applicant's view of why these facts and information should alter those facets of the Board's decision to which the applicant objects.

III-3. Consideration by the Committee of the Request for Reconsideration of its Decision: The Committee shall meet to consider a request for reconsideration of an earlier decision, if that request complies with the requirements of paragraph III-2 above, within fifteen (15) days after it has reached the hands of the Committee's Chairperson. The Committee's meeting shall be open, and the Chairperson shall notify the applicant of the time and place of the meeting, but need not provide notification to all Members of the Association.

III-4. Decision of the Committee on the Request for Reconsideration: The Committee shall give an opportunity to the applicant to explain why s/he believes the additional facts or information not previously available to the Committee should alter the aspects of the Committee's previous decision to which s/he objects. The question before the Committee is only whether such additional facts and information are important to reaching an informed, objective judgment on the application, and the Committee's discussion, and the remarks of the applicant, shall be confined to this question, and shall not extend to re-evaluating the application itself on its merits. After hearing the applicant's statements, and deliberating on this question, the Chairperson shall make and the Committee shall vote on the following motion: a motion to reject the applicant's contention that the additional facts and information s/he offers are important in arriving at an objective, informed, and equitable decision on the application. If two members of the Committee vote for that motion, the matter shall be closed and the previous decision of the Committee on the application shall stand. If that motion fails to receive two votes by the Committee's members, the Chairperson shall make and the Committee shall vote on the following motion: a motion to accept the applicant's contention that the additional facts and information s/he offers are important in arriving at an objective, informed, and equitable decision on the application, and the Committee's previous decision should be reconsidered in light of the new facts and information. If this motion fails to receive two votes by the Committee's members, the matter shall be closed and the Committee's previous decision on the application shall stand. If this motion receives two votes from the Committee's members, the Committee shall reconsider the application if it is prepared and submitted so as to include the additional facts and information presented to the Committee by the applicant. The revised application submitted in accord with this paragraph shall be considered and treated by the Committee as if it were a new application. The application shall comply fully with all requirements for applications included in Part II of this Resolution, and the Committee shall take all steps with respect to the revised application as it is required to take for a new application, also as set forth in Part II.

III-5. Notification of the Decision to the Applicant and the Board: A written notification of a decision by the Committee under the provisions of paragraph III-4 shall be sent to the applicant and to the President of the Board, and a copy of the notification shall be placed in the permanent records of the Committee, in accord with the provisions of Paragraphs II-7 and II-8 of this Resolution.

PART IV: APPEALS TO THE BOARD OF DECISIONS OF THE ENVIRONMENTAL CONTROL COMMITTEE

IV-1. Opportunity to Appeal a Decision of the Committee: An applicant whose application has been (a) conditionally approved by the Committee, stipulating conditions the applicant believes to be unreasonable, or (b) disapproved by the Committee, may appeal the Committee's ruling in accord with the provisions of this Part. Any Member of the Association may appeal the Committee's ruling with respect to any application if the Committee has fully or conditionally approved the application.

IV-2. Filing an Appeal: The aggrieved party shall submit to the President of the Board a written statement stating that:

- (a) it is his/her belief that the decision of the Committee was (i) unreasonable, (ii) capricious, (iii) reached without due consideration of all facts and information material to the application, or (iv) reached following the Committee's failure to abide substantially by the requirements for consideration of such applications set forth in the Declaration or this Resolution, in such a manner as to jeopardize the rights and privileges of the aggrieved party;
- (b) s/he wishes to appeal the Committee's decision, or a specific portion of its decision (in which case the specific portion of the decision shall be denoted); and
- (c) s/he has read and understands to his/her full satisfaction the provisions of this Resolution, especially this Part IV governing appeals of Committee decisions.

In order to be valid and to entitle the aggrieved party to avail him/herself of the appellate process provided in this Part, any such statement of appeal must be complete, containing all items noted above in this paragraph, and must be submitted to the President of the Board within sixty (60) days of the date on which the notice of the Committee's decision on the application was provided to the applicant under the provisions of paragraph II-7 of this Resolution.

IV-3. Scheduling and Notice of a Board Meeting on the Appeal: Within fifteen (15) days of receipt of a statement of appeal from an aggrieved party ("appellant"), the President of the Board shall select a place, date, and time for a formal hearing concerning the appeal, which date shall be within forty-five (45) days of receipt of said statement of appeal, and which date shall be selected so as to enable the attendance of at least a quorum of the Board and at least one member of the Committee, and both the appellant and, if other than the appellant, the applicant who submitted the application for approval of a proposed improvement that was the subject of the Committee action being appealed ("the applicant if other than the appellant"). The President shall cause to be transmitted to the appellant, to the applicant if other than the appellant, to each member of the Committee, and to each member of the Board a notice of the hearing, at least ten (10) days in advance of the date of the hearing, that (a) gives the place, date, and time of the hearing; (b) advises that the appellant and the applicant if other than the appellant may attend the hearing and/or be represented by counsel, and that the Committee shall be represented at the hearing by one or more members; (c) advises that, if the appellant or the applicant if other than the appellant cannot be present for a hearing at the designated time but desires to attend such a hearing, s/he must notify the President of the Board, within five (5) days of the date of the notice, of at least six (6) dates within forty-five (45) days after the date of the hearing stated in the notice when s/he will be able to be present for a hearing to begin at 8:00 p.m. Monday through Thursday, or show cause why s/he cannot attend a hearing except on a Saturday or Sunday. If the

appellant or the applicant if other than the appellant promptly complies with the requirement to suggest alternative dates for the hearing, or shows good cause why s/he cannot attend a hearing except on a Saturday or Sunday, the President shall reschedule the hearing and cause notice of the new place, date, and time to be transmitted to the appellant, the applicant if other than the appellant, members of the Committee, and members of the Board. After the deadline has passed for the appellant and applicant if other than the appellant to seek rescheduling of the hearing, the President shall cause each Member of the Association to be notified of the hearing in conformity with the provisions of subparagraph I-7 (a) and I-7 (b) as though it were a notice of a Committee meeting.

IV-4. Notices Required by this Part: All notices required by this Part to be sent to the appellant and to the applicant if other than the appellant shall be sent by U. S. Mail, first class postage prepaid, Certified Mail, Return Receipt requested.

IV-5. Miscellaneous Procedural Requirements Pertaining to Board Conduct of Formal Appeals

Hearings: A quorum of the Board must be present to conduct a formal appeals hearing under this Part, or, subsequent to such a hearing, to take any formal action concerning the appeal as such actions are described in this Part. The provisions of paragraphs I-8, I-10, I-11, I-13, and 1-15 shall be applicable to hearings conducted by the Board under this Part, except that the word "Committee" shall be deemed to read "Board" and the word "Meeting" shall be deemed to read "hearing" wherever the context requires such redefinition of terms for the purposes of this paragraph.

IV-6. Constraints on the Board's Members: It shall be incumbent upon each member of the Board to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the Board and shall become inactive during the proceedings and have it so recorded in the minutes. Any member of the Board has the right to challenge any other member who is unable to function in a disinterested and objective manner, and, prior to the hearing, the appellant may challenge any member of the Board for cause. In the event of any such challenge, the Board shall meet within fifteen (15) days (but, in every case, prior to the hearing) to determine the sufficiency of the challenge. If the Board sustains the challenge, the President (or, in his/her absence, the Acting President) shall direct that the Board member whose challenge was sustained shall not participate in the proceedings. All decisions of the Board in this regard shall be final.

IV-7. Board Decisions on Appeals Under this Part: The Board shall hear the case being appealed *de novo* (i.e., it shall consider all evidence and information available to it concerning the application for approval of an improvement(s), which was the subject of the decision of the Committee that was appealed, and, with respect to that application, shall hold the identical decision-making responsibilities and authorities normally held by the Committee). In particular, following the completion of the hearing, the Board shall reach a decision on the application under the terms of paragraph II-5 (except that the term "Committee" in that paragraph shall be deemed to read "Board" and the word "meeting" shall be deemed to read "hearing" wherever the context requires such redefinition of terms) -- provided that the Board may not decide to return an application to an applicant without prejudice in the manner set forth in subparagraph II-5 (d).

IV-8. Hearing Procedures: The following shall govern the conduct of the hearing on an appeal:

- (a) The President of the Board shall serve as hearing officer and preside over the hearing (or, in his absence, another officer selected in the order such officers are listed in the By-Laws, shall preside). At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Board may determine the manner in which the hearing will be conducted, so long as the rights and privileges of the appellant, the applicant if other than the appellant, and other Association Members are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding.
- (b) The appellant, the applicant if other than the appellant, and the Chairperson or another member of the Committee acting for the Committee shall have the right to do the following, but may waive any or all of these rights: (i) make an opening statement; (ii) introduce evidence, testimony, and witnesses; (iii) cross-examine opposing witnesses; (iv) rebut evidence and testimony; and (v) make a closing statement. Even if the appellant or the applicant if other than the appellant does not testify in his/her own behalf, or if a member of the Committee does not testify on behalf of the Committee, each still may be called by the other and questioned.
- (c) Except as explicitly provided to the contrary elsewhere in this Part, appeals hearings shall be conducted in conformity with the provisions of paragraph II-4 (except that the word "Committee" shall be deemed to read "Board," the word "Chairperson" shall be deemed to read "hearing officer," and the word "meeting" shall be deemed to read "hearing" wherever the context requires such redefinition of terms for the purposes of this subparagraph, and except that the term "the direct responses of the applicant" shall be deemed to read "the direct responses of the appellant, the applicant if other than the appellant, and any member of the Committee").
- (d) Whenever the Board has commenced to hear the matter and a member of the Board withdraws prior to a final determination, the remaining members shall continue to hear the case.
- (e) Oral evidence shall be taken only on oath or affirmation administered by the hearing officer.

IV-9. The Decision of the Board on the Appeal: After completion of the appeals hearing on the application that was the subject of an appeal to the Board, the Board shall announce its decision on the appeal, which shall be reached by an affirmative vote of a majority of Board members present and voting at a duly called meeting of the Board at which a quorum is present (but which need not be at the appeals hearing itself), within twenty-one (21) days of the date of the appeals hearing.

IV-10. Notification of the Board's Decision: As soon as the Board arrives at its decision on the appeal, the President shall notify the appellant, the applicant if other than the appellant, and the Chairperson of the Committee of the decision in written form. Such notification shall be delivered in person, or by

placing the written notification in the U. S. Mail, first class postage prepaid by the Association, no later than the tenth day following the date of the Board meeting at which the decision was reached.

IV-11. Retention of the Board's Decision in its Records: The Secretary of the Board shall be responsible for placing a copy of the notification provided in accord with paragraph IV-10 in the Association's permanent files, along with a copy of the application and accompanying plans and specifications, a copy of the minutes of the hearing and any separate meeting at which Board action was taken on the appeal, and all other pertinent materials considered by the Board in acting on the appeal.

IV-12. Duration of Validity of the Board's Decision: The duration of validity of the Board's decision on an appeal to it shall be identical to the duration of validity of the Committee's decisions under paragraph II-9. Should any extension of validity as contemplated by paragraph II-9 be sought by the applicant, the applicant shall address the request for the extension to the Committee and not the Board.

PART V: FURTHER APPEALS OF APPELLATE DECISIONS OF THE BOARD

V-1. Opportunity to Further Appeal an Appellate Decision of the Board: An applicant whose application has been, in the appellate process, (a) conditionally approved by the Board, stipulating conditions the applicant believes to be unreasonable, or (b) disapproved by the Board, may further appeal the Board's appellate ruling in accord with the provisions of this Part. The appellant, if other than the applicant, may appeal a Board appellate decision if the Board has fully or conditionally approved the application concerning which the Committee's original decision was the subject of the appeal to the Board.

IV-2. Filing a Further Appeal: The aggrieved party shall submit to the President of the Board a written statement stating that:

(a) it is his/her belief that the Board's decision with respect to the appeal was (i) unreasonable, (ii) capricious, (iii) reached without due consideration of all facts and information material to the application, or (iv) reached following the Board's failure to abide substantially by the requirements for consideration of such appeals set forth in the Declaration or this Resolution, in such a manner as to jeopardize the rights and privileges of the aggrieved party;

(b) s/he wishes to appeal the Board's decision, or a specific portion of its decision (in which case the specific portion of the decision shall be denoted);

(c) s/he has read and understands to his/her full satisfaction the provisions of this Resolution, especially this Part V governing further appeals of Board appellate decisions;

(d) s/he has selected an independent arbitrator, which arbitrator shall be a member in good standing of the American Arbitration Association and shall not be a Member of the Association or a resident of a McLean Mews home, to represent him/her in arbitration of the further appeal, and giving the name of

that arbitrator; and

(e) s/he will promptly submit payment in full to the McLean Mews Homeowners Association for all costs it incurs in the arbitration of the further appeal if the arbitration concludes that the further appeal is substantially without merit and/or that the previous decision of the Board on the original appeal is sound and justifiable.

In order to be valid and to entitle the aggrieved party to avail him/herself of the further appellate process provided in this Part, any such statement of appeal must be complete, containing all items noted above in this paragraph, and must be submitted to the President of the Board within sixty (60) days of the date on which the notice of the Board's decision on the original appeal was provided to the aggrieved party under the provisions of paragraph IV-10 of this Resolution.

V-3. Referral of the Further Appeal to Arbitration: Within thirty (30) days of receipt or a statement of appeal from an aggrieved party, the President of the Board shall choose an independent arbitrator, which arbitrator shall be a member in good standing of the American Arbitration Association and shall not be a Member of the Association or a resident of a McLean Mews home, to represent the Association in the arbitration. The arbitrator chosen by the aggrieved Member of the Association, and the arbitrator chosen by the President of the Board, shall together choose a third arbitrator within fifteen (15) days of the date on which the President of the Board names the arbitrator to represent the Association. The proceedings of arbitration shall be conducted in conformity with the rules and procedures of the American Arbitration Association.

V-4. Confines of the Decision to Be Made by the Arbitrators: The arbitrators shall confine themselves to ascertaining if the decision of the Board with respect to the original appeal was fatally flawed in one or more of the following respects: (a) the decision was unreasonable; (b) the decision was capricious; (c) the decision was reached without due consideration of all facts and information material to the application; or (d) the decision was reached following the Board's failure to abide substantially by the requirements for consideration of such appeals set forth in the Declaration or this Resolution, in such a way as to deny rights and privileges of the aggrieved party. The arbitration shall not be on the question of the merits of the application. If the decision of the arbitrators is that the Board's decision on the original appeal was flawed in one of the respects defined above, they shall require the Board to reconsider the appeal on its merits in full conformity with the provisions of the Declaration and Part IV of this Resolution.

V-5. The Decision of the Arbitrators on Appeal: The arbitrators shall announce their decision, reached by an affirmative vote of at least two of them, within thirty (30) days of the date on which the final arbitrator is chosen. If two of the arbitrators cannot reach an agreement on a decision during that period of time, the further appeal shall be deemed dismissed without prejudice.

V-6. Responsibility for Payment of Arbitration Costs: If two or more of the arbitrators agree within the time period stipulated in paragraph V-5 above that the further appeal is meritorious on any one or more of the grounds listed in paragraph V-4 above, the Association shall bear all reasonable costs of the arbitration. If two or more of the arbitrators agree within the time period stipulated in paragraph V-5 above that the further appeal is without merit on the grounds listed in paragraph V-4 above, the

aggrieved party filing the further appeal shall bear all reasonable costs of the arbitration, and shall promptly reimburse the Association for the Association's share of those costs upon presentation by the Association of an invoice for same. If two of the arbitrators cannot reach an agreement on a decision during the period of time stipulated in paragraph V-5 above, the aggrieved party shall be liable for payment only of the arbitrator s/he selected, and the Association shall be liable for payment of the other two arbitrators.

V-7. Notification of the Arbitrators' Decision and Retention in Association Records: The arbitrators shall provide a written notice of their decision to the aggrieved party, to the applicant if other than the aggrieved party, and to the President of the Board within the time period during which the arbitrators are required to reach a decision as stated in paragraph V-5 above. As soon as practicable thereafter, the President of the Board shall transmit a copy to each member of the Board, shall instruct the Secretary of the Board to place a copy in the permanent files of the Association, and shall transmit a copy to the Chairperson of the Committee, who as soon as practicable thereafter shall transmit a copy to each Committee member and place a copy in the permanent files of the Committee.

V-8. Aggrieved Part and Association Bound by Arbitrators' Decision, and Litigation Following the Appeal: Both the Association and the aggrieved party shall be bound by the decision of the arbitrators until and unless that decision is overturned or modified by a court of law with jurisdiction. Either the aggrieved party or the Association may seek relief from a court of jurisdiction concerning the decision of the arbitrators on the further appeal or if the arbitrators could not reach a decision during the time period stated in paragraph V-5. The prevailing party in any such litigation shall be entitled to recover from the other party all costs and expenses thereof, including attorneys' fees in connection therewith.

PART VI. ENFORCEMENT OF ENVIRONMENTAL CONTROLS, DECISIONS OF THE ENVIRONMENTAL CONTROL COMMITTEE, AND APPELLATE DECISIONS

Whenever the Committee or a Member of the Association has reason to believe that any Member of the Association is in violation of the provisions of the Declaration concerning environmental controls or improvements to property in the McLean Mews development, or is in violation of the terms of any decision of the Committee or appellate decision of the Board, it or s/he shall notify the President of the Board as soon as possible, providing as much detail concerning the nature of the violation as possible. The President of the Board shall bring the matter before the Board at its next meeting (or, if s/he deems the matter to be of an emergency nature requiring a more rapid response, s/he shall schedule a Special Meeting of the Board to consider the matter). The Board may request a Board member or the Chairperson of the Committee to undertake an informal investigation of the allegations, and to present a report on his/her findings at a subsequent meeting of the Board, and delay further action on the matter until such a report and/or other additional information is obtained. If at any time the Board determines that the evidence of a violation is substantial, it shall forthwith proceed in accord with the provisions of Article VII, Section 3 of the Declaration; the Board shall determine whether it will institute appropriate legal action or submit the matter to arbitration, and shall promptly take all necessary steps to implement its decision. In so proceeding, the Board shall comply fully with the provisions of the Declaration, particularly Article VII, and with the provisions of any Resolution(s) of the Association or of the Board that contain(s) further detailed procedures for the enforcement of Association rules, regulations, or official decisions and assure(s) that the due process rights of all interested and affected

parties are protected.

PART VII. ISSUANCE OF GENERAL GUIDELINES AND RULES BY THE ENVIRONMENTAL CONTROL COMMITTEE

VII-1. The Committee May Issue Guidelines and General Rules: The Committee may, as provided in Article IX, Section 2 of the Declaration, "promulgate general rules regarding permitted or forbidden improvements," in accord with the process set forth in this Part.

VII-2. Process for Promulgating Guidelines and General Rules: After the affirmative vote of two or more of its members in support of a motion to that end, the Committee may initiate a process of promulgation of guidelines and/or general rules to govern some or all improvements subject to regulation under the terms of Article IX, Section 1 of the Declaration and the interpretive terms of this Resolution. The Committee may promulgate one comprehensive set of such rules and guidelines, or it may promulgate more than one set, each with limited applicability. Whenever and if the Committee so determines to seek to promulgate comprehensive or limited guidelines or rules, in all such cases it shall do the following things:

- (a) Develop a draft of such rules or guidelines which shall be distributed to all Committee members.
- (b) When the Committee is initially satisfied with the language and provisions of the draft, adopt a motion to submit the proposed rules or guidelines to a public comment process.
- (c) If such a motion prevails, circulate a copy of the proposed rules or guidelines to all Association Members, together with a cover memorandum explaining the purpose of the proposed rules or guidelines, requesting written comments from all Association Members, and setting an open meeting of the Committee at which the proposed rules or guidelines will be discussed. The written notice must be circulated to all Association Members at least ten (10) days in advance of the open meeting.
- (d) Hold an open meeting of the Committee, with at least two Committee members in attendance, at which any Association Member may make comments or ask questions concerning the proposed rules or guidelines, placing in the minutes of the meeting a summary of the major comments made there.
- (e) Following the conclusion of the open meeting, meet to discuss the written comments received from, and the oral comments made at the open meeting by, Association Members concerning the proposed rules or guidelines.
- (f) In a duly called meeting of the Committee with at least two members present, make and vote on a motion to approve and adopt the proposed rules or guidelines in the originally circulated form, or with amendments -- with at least two members of the Committee being required to vote affirmatively for such a motion for it to be approved.
- (g) Provide by personal delivery or by first class mail, postage prepaid by the Association, a copy of the

approved and adopted rules or guidelines to all Association Members and their tenants, if any, with a memorandum from the Chairperson of the Committee clearly stating that the attached rules or guidelines have been adopted formally by the Committee and will be used in the future to evaluate any application for permission to make improvements to private property within the McLean Mews development and to determine compliance with or violation of the provisions governing environmental control contained in the Declaration and the interpretive provisions of this Resolution.

(h) Transmit a copy of the approved rules or guidelines to the President of the Board (who at the next Board meeting shall advise the Board of their adoption and instruct the Secretary of the Board to place the copy in the permanent records of the Association and to send a copy to the Association's General Counsel).

(i) Place a copy of the adopted rules or guidelines in the permanent files of the Committee along with (1) all previous drafts of those rules or guidelines, (2) all written comments received from Association Members concerning the proposal for those rules or guidelines, (3) a copy of the minutes of the Committee meeting at which Association Members' comments on the proposal were taken, and (4) a copy of the minutes of the Committee meeting at which the final text of the rules or guidelines was approved and adopted.

VII-3. Appeal of General Rules or Guidelines Promulgated by the Committee: If any Member of the Association believes the Committee, in adopting a general rule(s) or guideline(s) has acted unreasonably, capriciously, without due consideration of all facts and information material to the matter, or in a manner that failed to abide substantially by the requirements set forth in paragraph VII-2, the Association Member may appeal the Committee's adoption of the rule(s) or guidelines in accord with the provisions of this paragraph. Such an appeal shall be filed and handled in accord with the provisions of, shall be subject to the requirements contained in, and shall entail Board responsibilities comparable to those provided in paragraphs IV-2 through IV-10 of this Resolution, except that, solely for purposes described in this paragraph, (a) wherever the word "application" or term "application for approval of an improvements" appears in those paragraphs, the words "adoption of the rule(s) or guidelines being appealed" shall be substituted therefor; (b) wherever the word "decision" (referring to the Committee's decision with respect to an application for approval of an improvement(s)) appears in those paragraphs, it shall be construed to mean the Committee's action of adopting the rule(s) or guideline(s) being appealed; (c) wherever they appear in those paragraphs, all references to the "applicant if other than the appellant" shall be disregarded; (d) where the phrase "notice of the Committee's decision on the application was provided to the applicant under the provisions of Paragraph II-7 of this Resolution" appears in paragraph IV-2, the phrase "Committee provided a copy of the approved and adopted rules or guidelines to all Association Members in accord with the provisions of subparagraph VII-2 (g)" shall be substituted therefor; (e) the final sentence of paragraph IV-7 shall be disregarded; and (f) subsection IV-8 (e) may be disregarded. The Secretary of the Board shall be responsible for placing a copy of the notification provided in accord with paragraph IV-10 in the Association's permanent files, along with a copy of the minutes of the hearing and of any separate meeting at which Board action was taken on the appeal, and all other pertinent materials considered by the Board in acting on the appeal.

VII-4. Further Appeal of the Board's Decisions on Appeals of General Rules or Guidelines: If the

Association Member who appealed the Committee's adoption of a general rule or guideline believes the Board, in acting on the appeal, acted unreasonably, capriciously, without due consideration of all facts and information material to the matter, or in a manner that failed to abide substantially by the applicable procedural requirements, the aggrieved Association Member may further appeal the matter in accord with the provisions of this paragraph. Such a further appeal shall be filed and handled in accord with the provisions of, shall be subject to the requirements contained in, and shall entail Board responsibilities comparable to those provided in paragraphs V-2 through V-9 of this Resolution, except that, solely for purposes described in this paragraph, (a) in paragraph V-2, the phrase "under the provisions of paragraph IV-10 of this Resolution" shall be disregarded; (b) in paragraph V-4, clause (c), the word "application" shall be deemed to read "matter of adopting the rule or guideline;" (c) in paragraph V-4, the phrase "merits of the application" shall be deemed to read "the rule or guideline;" (d) in paragraph V-4, the words "Part IV" in the final sentence shall be disregarded; and (e) in paragraph V-7, the phrase "to the applicant if other than the aggrieved party" shall be disregarded.

VII-5. Fundamental General Rules: The Committee shall not approve any portion of an application to make improvements that seeks permission to make any improvement to or alteration in any portion of the Common Areas. The Committee may make recommendations to the Board concerning such portions of applications. The Committee shall not approve any portion of an application to make improvements that seeks permission to make any improvement to or alteration in any portion of an area over which an ingress/egress easement or sidewalk easement has been granted to the Association (a) if the improvement in or alteration to such an easement area physically and effectively would prevent the full use, by persons entitled to such use, of the easement for the purposes for which it was established, or (b) if the improvement in or alteration to such an easement area would result in a change in the ground level of the easement area at any point so that there would be one or more "steps" or "breaks" in the surface where previously the surface was level, smooth, or even, or so that other surface impediments to full use of the easement for intended purposes are introduced.

PART VIII. CONDITIONS FOR FURTHER ACTION

Any Association Member must exhaust all available remedies prescribed by this Resolution before s/he may resort to a court of law for relief with respect to any grievance concerning environmental control or any alleged violation by an Association Member or such Member's tenant, the Committee, or the Board of any provision of the Declaration or this Resolution pertaining to environmental control. This limitation shall not apply to the Association or to its Board.

PART IX. CONSTRUCTION

This Resolution is intended to serve as a protection to Association Members and to assure that their due process rights are protected, in adversary proceedings and otherwise, pertaining to the Association's exercise of the responsibility placed upon it by the Declaration to exert environmental control. It also is intended to serve as the authority that governs action by the Committee and by the Board as these bodies carry out their duties to enforce the Declaration's provisions pertaining to environmental control.

The Committee and the Board may determine the specific manner in which the provisions of this

Resolution are to be implemented, provided that due process is protected.

Any inadvertent omission or failure to conduct an adversary proceeding or other proceeding in exact conformity with this Resolution shall not invalidate the results of such proceeding, so long as a prudent and reasonable attempt has been made to assure due process according to the general steps set forth in this Resolution.

PART X. COMMUNICATIONS WITH THE ASSOCIATION'S GENERAL COUNSEL

Copies of all correspondence, notices, and written opinions or determinations required by or transmitted in pursuit of the provisions of this Resolution shall be sent to the general counsel for the Association, unless, in the case of any specific item, the Board directs to the contrary.

PART XI. EFFECTIVE DATE

A complete copy of a draft of this Resolution having been provided to all Members of the Association, and an opportunity having been provided to all Members of the Association to make comments to the Board concerning its contents, and because the purpose of this Resolution is to protect the due process rights of all members of the Association concerning matters of environmental control as well as to assure the execution of the responsibilities of the Board and the Committee with respect to such matters -- which steps the Board concludes should be taken as rapidly as possible, this Resolution and its provisions shall become effective immediately. A complete copy of this Resolution shall be transmitted by first class mail, within thirty (30) days of the date of its adoption by the Board, to each Member of the Association with an explanatory cover letter from the President of the Board.

I hereby certify that the language above is an accurate and full statement of Resolution Number 84-7 adopted by the Board of Directors at its meeting on July 5, 1984.

[SIGNED]

Nancy Weiskopf, Secretary