

Declaration  
Lowes Island Condominium

**Notes on this Electronic Copy**

The following document is an electronic copy of the original Declaration of the Lowes Island Condominium. Optical character recognition software was used to create this document and therefore it may contain minor errors. The page numbering is the same as the original, but this copy includes minor variations in formatting from the original. For anything other than general reference purposes, the original recorded copy or photocopies thereof should be referred to.

Stamps on the original Declaration indicate that it was recorded in Loudoun County, VA on October 26, 1993 and are contained in Book 1262, pages 1477 to 1492.

Note that Declaration Exhibits "C" (By-laws) and "D" (Plats) have also been copied to electronic format for general reference.

*Electronic version created by the Board of Directors, Lowes Island Condominium, May 2004*

**DECLARATION**  
**LOWES ISLAND CONDOMINIUM**

**ARTICLE I**  
**SUBMISSION: DEFINED TERMS**

**Section 1.1. Submission of Property.** M/I Schottenstein Homes, Inc., a Delaware Corporation ("Declarant"), owner in fee simple of the land described in Exhibit "A" attached hereto and incorporated herein, located within the County of Loudoun, Virginia ("Submitted Land"), hereby submits the Submitted Land, together with all improvements, easements, rights and appurtenances now or hereafter thereunto belonging ("Condominium Property") to the provisions of Chapter 4.2 of Title 55 of the Code of Virginia, as amended, known as the Virginia Condominium Act ("Condominium Act") and hereby creates with respect to the Condominium Property an expandable condominium to be known as LOWES ISLAND CONDOMINIUM" ( "Condominium").

**Section 1.2. Defined Terms.** As provided in Section 55-79.50(a) of the Condominium Act, terms not otherwise defined herein or in the By-Laws attached hereto as Exhibit "C", as the same may be amended from time to time ("By-Laws"), or in the Plats and Plans, shall have the meanings specified in Section 55-79.41 of the Condominium Act.

**ARTICLE 2**  
**BUILDINGS ON THE LAND: UNIT BOUNDARIES**

**Section 2.1. Location and Dimensions of Building.** The location and dimensions of the building on the Submitted Land is depicted on the Plats" attached as Exhibit "D" hereto.

**Section 2.2. Units.** The location of Units within the building and their dimensions are shown on the "Plans" attached as Exhibit "E" hereto. Attached as Exhibit "B" hereto is a list of the submitted Units, their identifying numbers, and the Common Element Interest appurtenant to each Unit. Each Unit in the Condominium has been allocated an equal undivided interest in the Common Elements.

**Section 2.3. Unit Boundaries.** The boundaries of each Unit are as follows:

(a) Upper and Lower (horizontal) Boundaries: There are no upper and lower boundaries unless indicated otherwise on the Condominium Plats and Plans attached as Exhibits D and E hereto or in the amendment creating the Units.

(b) Vertical (perimetric) Boundaries: The vertical boundaries of the Unit are the vertical planes extending upwards, and downwards from the boundary lines of the building footprints shown on the Condominium Plats and Plans attached as Exhibits D and E hereto, extended to intersections with each other and includes both the townhouse structure within the boundaries, and air space, unless indicated otherwise on the Condominium Plats and Plans or the amendment creating the Units. The Unit boundary extends to and includes the exterior face of the walls in the case of exterior walls, including bay windows, overhangs, windows, window frames, doors, door frames and trim included in such exterior walls, and extends to the centerline of the wall in the case of party walls between Units, unless indicated otherwise on the Condominium Plats and Plans or the amendment creating the Units.

(c) The Unit includes the heating and air-conditioning apparatus serving only that Unit (whether or not located within the Unit boundaries). Notwithstanding subsection 55-79.50(a) of the Condominium Act , any shutters , awnings, doors, windows, eaves, roof overhangs or window boxes appurtenant to the Unit are part of the Unit and any sidewalks are part of the common elements.

**Section 2.4. Maintenance Responsibilities.** Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary description, the provisions of the By-Laws shall govern the division of maintenance and repair responsibilities between the Unit Owner and the Association.

**Section 2.5. Relocation of Unit Boundaries and Subdivision of Units.** Relocation of boundaries between Units and subdivision of Units is permitted subject to compliance with the provisions therefor in Sections 6.7 and 9.8 of the By-Laws and in Sections 55-79.69 and 55-79.70 of the Condominium Act.

**ARTICLE 3**  
**COMMON ELEMENTS**

In accordance with the provisions of section 55-79.55 of the Code of Virginia, each Unit shall be allocated an undivided interest in the Common Elements of the Condominium, Attached hereto and incorporated herein as Exhibit "B" is a schedule listing the submitted Units by their identifying numbers and interest in the Common Elements.

**Section 3.1 Limited Common Elements.** The locations of the Limited Common Elements to which each Unit has direct access, if any, are shown on the Condominium Plats and Plans. Limited Common Element parking spaces shown on the Plans, if any, are

designated as such and may be assigned and reassigned to Units in accordance with the provisions of Section 55-79.57 of the Condominium Act. The Declarant reserves the right to create Limited Common Elements within any portion of the Additional Land added to the Condominium, and/or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements, however no assurances are made with regard to the types, sizes, and/or maximum number of such elements within each such portion.

**Section 3.2. Reserved Common Elements.** The Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in designated Common Elements to the Association or to any Unit Owners and to establish a reasonable charge to such Unit Owners for the use and maintenance thereof. The Common Elements or portions thereof so designated shall be referred to as Reserved Common Elements. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

(a) Yards shown on the Condominium Plats and Plans as "RCE" are part of the Common Elements; however, said yards will be assigned to the adjoining Unit as a Reserved Common Element pursuant to a resolution by the Board of Directors of the Unit Owners Association. Once granted, the Board of Directors shall not revoke its assignment of a yard, except for good cause shown.

(b) If a Unit Owner is permitted to and does cause a deck to be constructed at the rear of a Unit, that deck will be a Reserved Common Element appurtenant to that Unit. Once granted, the Board of Directors shall not revoke its permission to maintain a deck, except for good cause shown.

(c) If a Unit Owner is permitted to and does cause a fence to be constructed at the rear of a Unit, that fence will be a Reserved Common Element appurtenant to that Unit. Once granted, the Board of Directors shall not revoke its permission to maintain a fence, except for good cause shown.

(d) Driveways shown on the Condominium Plats and Plans will be assigned to the specific adjoining Unit as a Reserved Common Element pursuant to a resolution by the Board of Directors of the Unit Owners Association. Once granted, the Board of Directors shall not revoke its permission to maintain a driveway, except for good cause shown.

**Section 3.3. Alteration of Common Elements by the Declarant.** The Declarant reserves the right to modify, alter, remove or improve defective, obsolete or non-functional portions of the Common Elements, including without limitation any equipment, fixtures and appurtenances, when in the Declarant's

judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period. The Declarant's right to remove, restore, and/or replace certain Common Elements is limited to removal, restoration, and/or replacement of warranty items only, in connection with any improvement program for the Condominium.

**ARTICLE 4**  
**OPTTON TO EXPAND CONDOMINIUM**

Declarant hereby expressly reserves unto itself and/or its successors and assigns, the option and right to expand this Condominium pursuant to Section 55-79.54 (c) and Section 55-79.63 of the Condominium A c t and subject to the provisions of this Article.

(a) The option to expand shall be at the sole option of Declarant and shall not require the consent of any Unit Owner or Mortgagee.

(b) This option to expand the Condominium project shall expire seven (7) years after the date of recording of this Declaration if not sooner exercised; however, Declarant may at any time prior to the expiration of such period, terminate its option to expand by recording among the land records wherein this Declaration is recorded, an executed and notarized document terminating this option.

(c) The metes and bounds description of that property which may be added to this Condominium is set forth in Exhibit "A-1" and hereinafter referred to as "Additional Land".

(d) Declarant expressly reserves the right to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation, provided, however, that the Additional Land shall not exceed the total area of all those parcels described in Exhibit "A-1" attached hereto. Both the Submitted Land and Additional Land are graphically depicted on Exhibit "D" entitled "Plat", which Plat is attached hereto and made a part hereof.

(e) At such time as the Condominium is expanded, the maximum number of Units on the Additional Land will not exceed One Hundred Fourteen (114) Units, The maximum number of Units on any portion of the Additional Land added to the Condominium shall not exceed twenty-four (24) Units per acre, Moreover, the maximum number of Units in the Condominium, as a whole, shall never exceed One Hundred Twenty-five (125) Units.

(f) Declarant expressly reserves the right to create Common Elements upon the Additional Land which may be

subsequently assigned as Limited Common Elements or granted to the Association or to any Unit Owners as Reserved Common Elements. Declarant makes no assurances as to the type, size or maximum number of such Common Elements, Limited Common Elements, or Reserved Common Elements.

(g) The Declarant makes no assurances as to the location of buildings in which Units are located on the Additional Land.

(h) All Units to be created on any portion of the Additional Land shall, except for model Units or administrative offices of Declarant, be restricted exclusively to residential use.

(i) Upon the Additional Land, Declarant may (but shall not be obligated to) construct facilities for the purpose of serving this Condominium as may be expanded by the Additional Land. Declarant reserves the right to construct such service facilities on such portion or portions of the Additional Land as it deems necessary, but Declarant makes no assurances that such improvements will be compatible in quality, materials and style with the improvements on the Submitted Land.

(j) The Units to be created and the improvements on the Additional Land will be reasonably compatible in quality with the improvements on the Submitted Land but need not be the same materials or style. No assurances are made by the Declarant as to the size or type of Units that may be created in the future on the Additional Land.

(k) The allocation of interests in the Common Elements for Units created on the Additional Land shall be on an equal basis. Therefore, in the event that the Condominium is expanded to include any portion of the Additional Land, the interests in the Common Elements of all Units in the Condominium shall be based on an equal proportion (including all Units added on the Additional land).

(l) In the event Declarant determines to exercise its option to expand, in addition to such other easements or rights it may have reserved, Declarant shall have the easements as set forth in Section 55-79.65 of the Code of Virginia, as amended.

(m) The Declarant expressly reserves the right to create Convertible Lands or Withdrawable Lands, or both, on any portion of the Additional Land added to this Condominium, pursuant to Sections 55-79.54(b) and 55-79.54(d) of the Code of Virginia, as amended. Notwithstanding the aforesaid, no conversion of Convertible Land shall take place after five (5) years from the date of recordation of this Declaration pursuant to Section 55-79.61(c) of the Code of Virginia, as amended.

**ARTICLE 5**

**PARKING**

Except as to such parking spaces as may be assigned or reserved pursuant to Article 3 hereof and subject to such parking or other easements which may exist in favor of Declarant, or others, all parking spaces located on the Condominium Property and such legal rights as may exist for use of the parking spaces on public streets abutting the Condominium Property, shall be deemed Common Elements and shall be available for use of all Unit Owners on a first-come, first-served basis.

**ARTICLE 6**

**EASEMENTS AND OTHER ENCUMBRANCES, ETC.**

**Section 6.1. Easements, Rights-of Way of Record.** The Submitted Land and the Additional Land are subject to certain easements, rights-of-way and covenants of record. The location of said easements and rights-of-way as well as the Deed Book and Page references wherein said easements and rights-of-way were imposed are shown on the Plat attached as Exhibit "D" hereto.

**Section 6.2. Easement for Ingress and Egress through Common Elements. Access to Units and Support.**

(a) Each Unit Owner is hereby granted an easement in common with each other Unit Owner for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Unit Owners Association. Each Condominium Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same

(b) The Declarant reserves in its favor and in favor of the Managing Agent and/or any other person authorized by the Board of Directors the right of access to any Unit as provided in Section 55-79.79 of the Condominium Act and Article VI, Section 6.8 of the By-Laws. In case of emergency, such entry shall be immediate whether or not the Unit Owner is present at the time. Further, until the expiration of the warranty period, such entry shall be permitted to perform warranty related work (for the benefit of the Unit being entered, other Units or the Common Elements) whether or not the Unit Owner consents or is present at the time.

(c) Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

**Section 6.3. Declarant's Rights to Grant Easements.** The Declarant shall have the right, prior to the termination of maximum time permitted for the Declarant control period for an expandable condominium under Section 55-79.74(a) of The Condominium Act, to grant and reserve easements and rights-of-way through, under, over and across the Condominium Property for access and construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage , gas , electricity, telephone, cable television, or other utilities.

**Section 6.4. Easement to Facilitate Sales.** All units shall be subject to an easement in favor of the Declarant pursuant to Section 55-79.66 of the Condominium Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models, management offices, sales offices (for this and other projects) or customer service offices. The Declarant reserves the right to relocate the same from time to time within the Condominium; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Condominium such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Condominium Property and may be relocated or removed, all at the sole discretion of the Declarant. The Declarant shall have the right to restrict the use of certain Common Element parking spaces for sales purposes and to use such spaces for sales purposes. Further, the Declarant shall have the right to erect temporary offices on certain Common Elements for models, sales, management, customer service and similar purposes. This easement shall continue until the Declarant has conveyed all Units in the Condominium to Unit Owners other than the Declarant. The reservation of easements is expressly applicable to the Submitted and Additional Lands.

**Section 6.5. Easement for Operation or Development of Improvements on Additional Land.** There is reserved to the Declarant and/or its successors, such easements over, across and under the Submitted Land and Additional Land for the purposes of ingress, egress to and construction, installation and maintenance of such drainage areas or structures, utility lines or systems (including, but not limited to, water, storm and sanitary sewer, gas, cable television, electricity and telephone) as may be reasonably necessary for the development of the Condominium or of the normal operation of improvements located on any portion of the Additional Land which may not be added or added and subsequently withdrawn from the Condominium.

**Section 6.6. Easements for Encroachments.** Declarant and each Unit Owner, to the extent required, shall have an easement pursuant to Section 55-79.60 of The Condominium Act.

**Section 6.7. Easement to Facilitate Expansion.** Declarant shall have as to both the Submitted Land and the Additional Land all easements set forth in Section 55-79.65 of the Condominium Act.

**Section 6.8. Easement for Removal of Common Elements, Etc.** There is reserved to the Declarant and/or its contractors, agents and employees the right of entry onto the Common Elements of the Condominium for the purposes of performing such improvements, repairs, alterations, restoration or removal of the Units and Common Elements of the Condominium as Declarant may reasonably deem necessary. This reservation shall be construed so as to permit Declarant and/or its agents to remove and/or replace any and all Common elements requiring repair, modification or alteration.

**Section 6.9. Easement for Construction.** Declarant expressly reserves the right to enter upon the Common Elements for the purpose of performing such improvements as Declarant shall deem advisable in conjunction with its construction of the Units and/or Common Elements. Declarant shall further have the unrestricted right to temporarily store in or upon the common elements such building and construction equipment or supplies used in connection with its construction activities for the Units and Common Elements. The right herein reserved shall be deemed to include the right of Declarant to temporarily locate upon the Common Elements such temporary construction trailers or offices as may in Declarant's sole judgment be deemed necessary for its construction activity.

**Section 6.10. Easement for Decks.** Each Unit Owner obtaining the approval of the Unit Owners Association, the Covenants Committee for Cascades Community Association, and the appropriate governmental agency to construct a deck, shall have a nonexclusive easement across the Common Elements for the construction of the deck and an exclusive easement across the Common Elements for the maintenance and use of a Reserved Common Element deck.

**Section 6.1. Easement for Fences.** Each Unit Owner obtaining the approval of the Unit Owners Association, the Covenants Committee for Cascades Community Association, and the appropriate governmental agency to construct a fence, shall have a nonexclusive easement across the Common Elements for the construction of the fence and an exclusive easement across the Common Elements for the maintenance and use of a Reserved Common Element fence.

**ARTICLE 7**

**EXTERIOR MAINTENANCE**

There is reserved to the Unit Owners Association of the Condominium the exclusive right to provide for all exterior painting and maintenance of all of the Common Element and structures in the Condominium and such maintenance of the exterior of the Common Elements and structures in the Condominium shall be a Common Expense to be paid for as part of the expense of upkeep of the Unit Owners Association.

**ARTICLE 8**

**RIGHT TO LEASE OR SELL UNITS**

The Declarant shall own in fee simple each Condominium Unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant retains the right to enter into leases with any persons for the occupancy of any of the Units owned by the Declarant.

**ARTICLE 9**

**PRIORITY OF MORTGAGES**

Except as specifically provided in the Condominium Instruments, no provision of the Condominium Instruments shall be construed to grant to any Unit Owner, or to any other person, any priority over any right of Mortgagees.

**ARTICLE 10**

**SPECIAL DECLARANT RIGHTS, ETC.**

Declarant rights shall be those specified in Section 55-79.41 of The Condominium Act. Any transfer of any Special Declarant right shall be in accordance with Section 55-79.74(3) of The Condominium Act.

**ARTICLE 11**

**NO OBLIGATIONS**

Nothing contained in the Condominium Instruments shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, renovate or provide any improvements except to the extent required by the Condominium Act.

**ARTICLE 12**

**BY-LAWS OF THE CONDOMINIUM**

Pursuant to Section 55-79.73(a) of The Condominium Act, the By-laws attached as Exhibit "C" to this Declaration, are recorded simultaneously herewith to provide for the self-government of the Condominium by an association of all of the Unit Owners ("The Unit Owners Association").

**ARTICLE 13**

**RESIDENTIAL RESTRICTION**

All Units created on the Submitted Land shall be restricted exclusively to residential use, with the exception of model Units or administrative offices of the Declarant.

**ARTICLE 14**

**AMENDMENT TO CONDOMINIUM  
INSTRUMENTS; REQUIRED CONSENT**

No amendment to the Declaration may be made without the prior written approval of the required percentage of Mortgagees where such approval is provided for in Section 9.11 of the By-Laws or where such approval is required elsewhere in the Condominium Instruments or by Sections 55-79.71 and 55-79.72 of the Condominium Act. No amendment shall be made to any Condominium Instrument during the Declarant Control Period without the prior written consent of the Declarant. No amendment to the Condominium Instruments shall diminish or impair the rights of Mortgagees under the Condominium Instruments without the prior written consent of all Mortgagees, nor diminish or impair the rights of the Declarant under the Condominium Instruments without the prior written consent of the Declarant. No amendment may modify this Article or the rights of any person hereunder.

**ARTICLE 15**  
**MASTER ASSOCIATION COVENANTS**

In accordance with the Amended and Restated Declaration for Cascades dated October 31, 1990, and recorded in Deed Book 1105 at Page 1426, et seq. among the land records of Loudoun County, Virginia, as amended ("Cascades Declaration"):

1. Each Unit Owner is automatically a member of the Cascades Community Association, Inc., a Virginia nonstick corporation, (the "Cascades Association") and upon conveyance of a Condominium Unit, such membership is automatically transferred to the new Unit Owner in accordance with the Articles of Incorporation for Cascades Community Association, Inc. and the Cascades Declaration.

2. Each member of Cascades Community Association, Inc. has a vote at meetings thereof in accordance with the Articles of Incorporation and the Bylaws of the Cascades Community Association.

3. In accordance with the Cascades Declaration, each Unit Owner in the Condominium agrees, by acceptance of a deed to a Condominium Unit, to pay assessments representing a share of the expenses of the Cascades Association, and unpaid assessments for such expenses constitute a lien upon the Unit Owner's Condominium Unit in the same manner as unpaid assessments levied by the Unit Owners Association. Assessments are levied by the Cascades Association for upkeep, insurance, reserves for replacements, maintenance and operation of the property owned and/or leased by the Cascades Association, and for the other purposes set forth in the Cascades Declaration.

In furtherance of the foregoing, the Declaration hereby reserves the right and option at any time or from time to time (i) to submit any or all of the Property to the Cascades Declaration by means of supplementary declarations or other appropriate documents, and (ii) to grant such easements and rights-of-way through and over the Property to the Cascades Community Association, Inc. as Declarant may deem appropriate; and each Unit Owner shall acquire title subject to this reservation.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its Vice-President, this 22nd day of October 1993.

M/I SCHOTTENSTEIN HOMES, INC.  
a Delaware Corporation

*(The original is dated 10-22-93, and signed by Robert C. Moesle, Vice-President, Washington Region)*

STATE OF VIRGINIA  
COUNTY OF FAIRFAX, to wit:

I, the undersigned, a Notary Public in and for the City/County aforesaid in the State of Virginia, do hereby certify that ROBERT C. MOESLE as Vice President of the Washington Region of M/I SCHOTTENSTEIN HOMES, INC., a Delaware Corporation, whose name is signed to the foregoing dated October 22, 1993, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this 22nd day of October, 1993.

*(The original was signed by Beth M. Smith)*

My Commission Expires: 1-31-97

**EXHIBIT A**

*(This Exhibit is a two page survey description of Phase 23 by Urban Engineering and Associates, Inc. of Lowes Island Condominium dated April 6, 1993).*

**EXHIBIT A-1**

*(This Exhibit is a two page survey description of "Additional Land" by Urban Engineering and Associates, Inc. of Lowes Island Condominium dated April 2, 1993).*

**EXHIBIT B**

*(This exhibit is a list of the initially submitted Units, their identifying numbers, and the Common Element Interest appurtenant to each Unit. The final condominium includes 125 units).*

**EXHIBIT C**

*(This exhibit is the By-laws. These have also been converted to electronic format for general reference).*

**EXHIBIT D**

*(This exhibit includes the "Plat" drawings showing the location and dimensions of the buildings. There are now 24 buildings shown on 23 plats. These have also been converted to electronic format for general reference).*

**EXHIBIT E**

*(This exhibit includes the "Plan" drawings showing the location and dimensions of Units within the buildings. These have not yet been converted to electronic format for reference).*