

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 15th day of June, 1984, by and between THE MILTON COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, hereinafter sometimes called the "Declarant,"

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the real property described in Article II here of and desires to create and develop thereon a residential community with permanent common areas and community facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and community facilities; and to this end, desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the Declarant has deemed it desirable; for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and community facilities, administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed (or intends to form) The Amberfield Homeowners Association, Inc., as a non-profit corporation without capital stock under the Laws of the State of Maryland for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of said property, and shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an interest in said property and improvements, including, without limitation, any person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation:

ARTICLE I

Section 1. Definitions. The following words, when used in this Declaration, shall have the following meanings:

(a) "Association" shall mean and refer to The Amberfield Homeowners Association, Inc., and its successors and assigns.

(b) The "Property" shall mean and refer to all real property described in Article II hereof and such additions thereto as may hereafter be made pursuant to the provisions of Article II.

(c) "Lot" shall mean and refer to all subdivided parcels or property (exclusive of the common areas) which are part of the Property and shall include (without limiting the generality of the foregoing) condominium units created pursuant to the provisions of Title 11, Real Property Article, *Annotated Code of Maryland* (1981 Repl. Vol.) as from time to time amended.

(d) "Common Areas" and "Community Facilities" shall mean and refer to all real property owned or leased by the Association or otherwise available to the Association for the Benefit, use and enjoyment of its members.

(e) "Dwelling" shall mean and refer to any building or portion of a building situated upon the Property and designed and intended for use and occupancy as a residence by a single person or family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated on the Property, including contract sellers, but excluding those having such interest solely as security for the performance of an obligation.

(g) "Declarant" or "Developer" or "Grantor" shall mean and refer to the Declarant hereinabove identified in the preamble to this Declaration, and its successors and assigns to the extent that any of the rights, easements and privileges of the Declarant are specifically assigned by the Declarant to any such successors and assigns by instrument in writing; provided, however, that the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant shall not inure to the benefit of or burden the successors and assigns of the Declarant except to the extent that any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Declarant are specifically assigned or transferred to any such successor or assign by instrument in writing.

(h) "Mortgagee," as used herein, means the holder of any recorded mortgage, or the party secured or

beneficiary of any recorded deed of trust, encumbering one or more of the lots. "Mortgage," as used herein, shall include deed of trusts. "First Mortgage," as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration the terms "holder" and "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

In the event any mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Veterans Administration ("VA"), then as to such mortgage the expressions "mortgagee" and "institutional mortgagee" include the FHA or the VA, as the circumstances may require, acting, respectively, through the Federal Housing Commissioner and the Commissioner of Veterans Benefits or through other duly authorized agents.

(i) "Member" shall mean and refer to every person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds any class of membership in the Association.

(j) The "Project" and the "Community," as used in this Declaration, means that certain community being developed by the Declarant in Montgomery County, Maryland, known as "AMBERFIELD."

(k) The "Private Streets and Roadways" shall mean and refer to all streets, roadways, sidewalks, curbs, gutters and parking areas which are part of the Common Areas and Community Facilities; provided, however, that any area dedicated to public use shall not be a part of the Private Streets and Roadways.

Whenever in this Declaration any action is required to be taken by a specified percentage of "each class of the then members" of the Association, then such action shall be required to be taken separately by the specified percentage of the then outstanding Class A members of the Association and by the specified percentage of the then outstanding Class B members of the Association. Whenever in this Declaration any action is required to be taken by a specified percentage of the "then members" of the Association, then such action shall be required to be taken by the specified percentage of the then outstanding cumulative membership of the Association.

ARTICLE II

Section 1. Property Subject to Declaration. The real property which is, and shall be held, conveyed,

hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Montgomery County, State of Maryland, and is more particularly described on "EXHIBIT A" attached hereto and by this reference made a part hereof.

Section 2. Additions. So long as there are Class B members of the Association, additional property may be annexed to the above-described property without the consent of the Class A members of the Association, if any. Following the lapse or surrender of the Class B memberships as provided for in Article III of this Declaration, additional property may be annexed to the above-described property without the consent of the Class A members of the Association, if any, so long as such additional property is part of the property described on "EXHIBIT B" attached to this Declaration and incorporated herein by this reference. The scheme of the within Covenants and Restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on "EXHIBIT A" as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Covenants and Restrictions among the Land Records for Montgomery County, Maryland, which Supplementary Declaration shall extend the scheme of the within Declaration of Covenants and Restrictions to such annexed property. Such annexations need not be made by the Declarant; provided, however, that any such annexation accomplished by persons other than the Declarant shall have the written consent of the Declarant.

So long as any lot is encumbered by a deed of trust or mortgage which is guaranteed by the Veterans Administration, no annexation shall be made pursuant to this Article, or otherwise, except following a determination by the Veterans Administration that the annexation conforms to a general plan for the development of the community previously approved by the Veterans Administration or, if no such general plan was approved by the Veterans Administration, except following the prior written approval of the Veterans Administration.

Any Supplementary Declaration of Covenants and Restrictions made pursuant to the provisions of this Article may contain such complementary or supplemental additions and modifications to the covenants and restrictions set forth in the within Declaration as may be considered necessary by the maker of such Supplementary Declaration of Covenants and Restrictions to reflect the different character or use, if any, of the annexed property.

ARTICLE III

Membership

Section 1. Membership. The Association shall have two classes of voting membership which shall be known as "Class A" and "Class B":

(a) There shall be 403 Class A memberships in the Association. Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is a record owner of a fee interest in any lot which is part of the premises described in Article II of this Declaration, or which otherwise becomes subject by the covenants set forth in this Declaration to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote for each lot in which such member holds the interest required for Class A membership.

(b) There shall be 403 Class B memberships in the Association. The Class B member shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by specific assignment from the Declarant. Each Class B member shall be entitled to three (3) votes for each Class B membership which it holds. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

- (i) thirty (30) days following the date on which the total authorized, issued and outstanding Class A memberships equal 303; or
- (ii) on January 1, 1990; or
- (iii) upon the surrender of said Class B memberships by the the holder thereof for cancellation on the books of the Association.

Upon the lapse or surrender of any of the Class B memberships as provided for in this Article, the Declarant shall thereafter remain a Class A member of the Association as to each and every lot from time to time subject to the terms and provisions of this Declaration in which the Declarant then holds the interest otherwise required for Class A membership.

The members of the Association shall have no preemptive rights, as such members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided in this Article.

ARTICLE IV

Section 1. Member's Right of Enjoyment. Every member shall have a non-exclusive right and easement of enjoyment, in common with others, in and to the common areas and community facilities and such non-exclusive right and easement shall be appurtenant to and shall pass with the fee title to every lot subject to the following:

(a) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, and with

the consent of two-thirds (2/3) of each class of the then members of the Association, voting separately, to borrow money for the purpose of improving the common areas and community facilities in a manner designed to promote the enjoyment and welfare of the members and in aid thereof to mortgage any of the common areas and community facilities; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration; and

(c) the right of the Association to adopt reasonable rules respecting use of the common areas and community facilities to reasonably limit the number of guests of members to the use of any facilities which are developed upon the Property; and

(d) the right of the Association to suspend the voting rights and the rights to use of the common areas and community facilities for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of any of the published rules and regulations of the Association; and

(e) the right of the Association to dedicate or transfer all or any part of the common areas or community facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of each class of the then members of the Association consent to such dedication, transfer, purpose and conditions, at any special meeting of the members duly called for such purpose; and, provided further, that any such dedication or transfer shall also be subject to the limitations provided for in Sections 9 and 10 of Article XII to this Declaration; and

(f) the rights of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such licenses, rights-of-way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the common areas and community facilities.

Section 2. Delegation of Right of Use. Any member of the Association may delegate his rights to the use and enjoyment of the common areas and community facilities to the members of his family who reside permanently with him and to his tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

Section 3. Limitations.

(a) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the Private Streets and Roadways for both vehicular and pedestrian ingress and egress to and from his lot and for parking.

(b) Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the common areas and community facilities for necessary, ordinary and reasonable pedestrian ingress and egress to and from his lot or to suspend any easement over the common areas and community facilities for stormwater drainage, electrical energy, water, sanitary sewer, natural gas, CATV service, telephone service or similar utilities and services to the lots.

ARTICLE V

Section 1. Annual Maintenance Assessments.

Except as assessment of the Declarant may be limited by the provisions of Article VII of this Declaration, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee owner of a lot within the Property, (i.e., each Class A member of the Association), by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, a monthly sum (hereinafter sometimes referred to as "maintenance assessments") equal to one-twelfth (1/12) of the member's proportionate share of the sum required by the Association, as estimated by its board of Directors, to meet its annual expenses, including but in no way limited to the following:

(a) the cost of all operating expenses of the common areas and community facilities and the services furnished to or in connection with the common areas and community facilities, including charges by the Association for any services furnished by it; and

(b) the cost of necessary management and administration of the common areas and community facilities, including fees paid to any Management Agent; and

(c) the amount of all taxes and assessments levied against the common areas and community facilities; and

(d) the cost of liability insurance on the common areas and community facilities and the cost of such other insurance as the Association may effect with respect to the common areas; and

(e) the cost of utilities and other services which may be provided by the Association, whether for the common areas and community facilities or for the lots, or both; and

(f) the cost of maintaining, replacing and repairing the Private Streets and Roadways, in whole or in part and including, without limiting the generality of the foregoing, the cost of snow removal, parking area striping, sweeping and washing, specialty signing and the like and the cost of maintenance of driveway aprons and drives and walks within or upon the common areas; and

(g) the cost of maintaining, replacing, repairing, and landscaping the common areas, including, without limitation, maintenance of any stormwater detention basins and drainage systems or the like located upon the common areas and the cost of the maintenance of all entrance walls and other entrance features, signs, pathways, jogging and walking trails, exercise areas, bike paths and the like upon the common areas, together with such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(h) the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements.

The Board of Directors shall determine the amount of the maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis hereinabove provided for. Any Class A member may prepay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of the common areas. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner upon reasonable notice to the Board. Written notice of the annual maintenance assessments shall thereupon be sent to the Class A members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Class A member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No Class A member may exempt himself from liability for maintenance assessments by abandonment of any lot belonging to him or by the abandonment of his right to the use and enjoyment of the common areas and community facilities.

This Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the dwellings or their appurtenances and the responsibility of duties of the Association for maintenance and repairs shall be limited to the common areas and community facilities. The owner of any lot shall, at his own expense, maintain his lot and dwelling, and any and all appurtenances thereto, in good order, condition and repair and in a clean, sightly and sanitary condition at all times.

Section 2. Special Maintenance Assessments. In addition to the regular annual maintenance assessments authorized by this Article, the Association may levy in any assessment year a special maintenance assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming a part of the common areas and community facilities including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate; provided, however, that any such assessment shall have the assent of the members representing a majority of the then Class A members of the Association and two-thirds (2/3) of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

Section 3. Reserves for Replacements. The Association may establish and maintain a reserve fund for repairs and replacements of the common areas and community facilities by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such funds shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any State or by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

The reserve for replacement of the common areas and community facilities may be expended only for the purpose of affecting the replacement of the common areas and community facilities, major repairs, equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature relating to the common areas and community facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance of his lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the lot to which it appertains and shall be deemed to be transferred with such lot.

Section 4. Maximum Annual Maintenance Assessments. The initial maximum annual maintenance assessment for each of the lots to which Class A membership is appurtenant shall not exceed the sum of THREE

HUNDRED SIXTY AND * * * NO/100 DOLLARS (\$360.00) per annum. Except as provided for in Section 7 of Article VI of this Declaration, the annual maintenance assessment shall be levied at a uniform rate for each lot to which Class A membership is appurtenant.

Section 5. Increase in Maximum Annual Maintenance Assessment.

(a) from and after January 1, 1985, the maximum annual maintenance assessment for all Class A memberships hereinabove provided for, may be increased by the Board of Directors of the Association, without a vote of the Class A membership, by an amount equal to ten percent (10%) of the maximum annual assessment for the preceding year plus the amount by which any *ad valorem* real estate taxes and casualty and other insurance premiums payable by the Association have increased above amounts payable by the Association for the same or similar items for the previous year.

(b) from and after January 1, 1985, the maximum annual maintenance assessments for all Class A memberships hereinabove provided for may be increased above that established by the preceding paragraph by a vote of the members, as hereinafter provided, for the next succeeding year and, thereafter, at the end of such year, for each succeeding year. Any change made pursuant to this paragraph shall have the assent of a majority of the then Class A members of the Association and two-thirds (2/3) of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

Section 6. Initial Working Capital Contributions. Each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, to whom a Class A membership in the Association is originally issued, by acceptance of a deed for a lot from the Declarant and whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, simultaneously with the acceptance of such deed or other conveyance, the sum of ONE HUNDRED AND * * * NO/100 DOLLARS (\$100.00) as a non-refundable contribution to the initial working capital and reserves of the Association, such contribution to be in addition to, and not in lieu of, any other assessment levied by the Association pursuant to this Declaration.

ARTICLE VI

Section 1. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the lot or lots belonging to the member against whom such assessment is levied and shall bind such lot or lots in the hands of the then owners, his heirs, devisees, personal representatives and assigns. The personal obligation of

the member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland, and may, by resolution of the Board of Directors, subject the member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix, and the Association may bring an action at law against the member personally obligated to pay the same, or foreclose on the lien against the lot or lots then belonging to said member in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the State of Maryland containing a power of sale and consent to a decree, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed shall be added to the amount of each assessment.

To the extent requested in writing so to do by any such mortgagee, the Association shall notify the holder of the first mortgage on any lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the owner of such lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article.

The Board of Directors may post a list of members who are delinquent in the payment of any assessments or other fees which may be due the Association, including any installment thereof, which becomes delinquent, in any prominent location upon the Property.

Section 2. Assessment Certificates. The Association shall upon demand at any time furnish to any member liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Ten Dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

Section 3. Acceleration of Installments. Upon default in the payment of any one or more monthly in-

stallments of any assessment levied pursuant to this Declaration, or any other Installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 4. Priority of Lien. The lien established by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) general and special assessments for *ad valorem* real estate taxes on the lot; and

(b) the liens of any deeds of trust, mortgages or other encumbrances duly recorded on the lot prior to the assessment thereon of the annual maintenance assessments provided for in this Declaration or duly recorded on said lot after receipt of a written statement from the Board of Directors reflecting that payments on account of any such assessments were current as of the date of recordation of said deed of trust, mortgage or other encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the line of any assessment levied pursuant to this Declaration upon any lot, as in this Article provided, shall be subordinate to the lien of any deed of trust, mortgage or other encumbrance duly recorded on such lot and made in good faith and for value received and shall in no way affect the rights of the holder of any such deed of trust, mortgage or other encumbrance; provided, however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to a sale or transfer of the lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any holder of any deed of trust, mortgage or other encumbrance duly recorded on the lot and made in good faith and for value received who comes into possession of the lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any other purchaser at a foreclosure sale, shall take the lot free of any claims for unpaid maintenance assessments levied against the lot which accrue prior to the time such holder comes into possession of the lot or prior to the foreclosure sale, except for claims for a proportionate share of such unpaid maintenance assessments resulting from a reallocation of such unpaid maintenance assessments among the lots upon The Property. Such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the purchaser at any foreclosure sale from any liability for any maintenance assessments thereafter becoming due, or from the lien herein created to secure the payment of such maintenance assessments, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any first mortgage on any lot (or the indebtedness secured thereby) recorded prior to recorda-

tion of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages not otherwise entitled thereto.

Section 5. Additional Default. Any recorded first mortgage secured on a lot in The Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby); but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 4 of this Article shall not be altered, modified or diminished by reason of such failure.

Section 6. Commencement of Annual Assessments. Except as may be otherwise resolved by the Board of Directors of the Association, the annual maintenance assessment for each Class A membership shall commence on the date a deed for the lot to which such Class A membership is appurtenant is delivered by the Declarant to the member. The first monthly installment of each such annual maintenance assessment shall be made for the balance of the month during which a deed for the lot is delivered to the member and shall become due and payable and a lien on the date a deed for the lot is delivered to the member. Except as hereinelsewhere provided, the monthly installments of each such annual maintenance assessment for any lot for any month after the first month shall become due and payable and a lien on the first day of each successive month.

Section 7. Assessment of Declarant. Anything in this Declaration to the contrary notwithstanding, any regular or special assessment levied by the Association for any lot held by the Declarant or by the maker of any Supplementary Declaration made pursuant to Section 2 of Article II of this Declaration shall be in an amount equivalent to twenty-five percent (25%) of the assessment levied by the Association against other lots held by the Class A members; provided, however, that the Declarant agrees to fund all current operating deficits of the Association until the date upon which the Class B memberships have been surrendered by the Declarant or lapse pursuant to the provisions of Section 1(b) of Article III of this declaration or until the Declarant elects to terminate the benefit of the preference provided for in this Section 7 by notice in writing to the Association, whichever date shall first occur; and, provided further, that the exemption and preference provided for in this Section 7 shall not apply with respect to any lot upon which a completed dwelling is situate if that dwelling is occupied for residential purposes.

Section 8. Exempt Property. No portion of the common areas or community facilities shall be subject to assessment of any kind by the Association.

Section 1. Architectural and Environmental Review Committee. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any lot or to the common areas accomplished by the Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, erected, placed, moved, altered, planted or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural and Environmental Review Committee designated by the Board of Directors.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any exterior lighting, shades, screens, awnings, patio covers, fences, wall, slabs, sidewalks, curbs, gutters, patios, balconies, porches, decks, greenhouses or greenhouse windows, platers, bird baths, security bars, ornaments, storm doors or storm windows, driveways, or to make any change or otherwise alter (including any alteration in color and including any comprehensive landscape plan) in any manner whatsoever the exterior of any improvements constructed upon any lot or upon any of the common areas, or to combine or otherwise join two or more dwellings, or to partition the same after combination, or to remove or alter any windows or exterior doors of any dwelling, until the complete plans and specifications, showing the location, nature, shape, height, material color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural and Environmental Review Committee designated by the Board of Directors.

Section 2. Architectural and Environmental Review committee—Operation. The Board of Directors shall appoint an Architectural and Environmental Review Committee. The Architectural and Environmental Review Committee shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors. The affirmative vote of a majority of the members of the Architectural and Environmental Review Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any finding,

determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

Section 3. Approvals, etc. Upon approval by the Architectural and Environmental Review Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Architectural and Environmental Review Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural and Environmental Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Committee (whether by affirmative action or by forbearance from action, as in Section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required.

There shall be no material deviation from the plans and specifications approved by the Committee without the prior consent in writing of the Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 5. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in substantial accordance with plans and specifications approved by the Architectural and Environmental Review Committee in accordance with the provisions of this Article, the Architectural and Environmental Review Committee shall, at the request of the owners thereof, issue a certificate of compliance which shall be *prima facie* evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural and Environmental Review Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of the Declaration as may be applicable.

Section 6. Rules and Regulations, etc. The Architectural and Environmental Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and record such statements of policy, standards, guidelines and establish such criteria relative to architectural styles or details, fences, colors, set-backs, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Architectural and Environmental Review Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural and Environmental Review Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may appeal the decision of the Architectural and Environmental Review Committee to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association.

Section 7. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction or development of the community, or except with the prior written approval of the Board of Directors of the Association or the Architectural and Environmental Review Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the common areas:

(a) No noxious or offensive trade or activity shall be carried on upon any lot or within any dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any lot.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any lot or within any dwelling, except that this shall not prohibit the keeping of dogs, cats or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other members. The Board of Directors or, upon resolution of the Board of Directors, the Architectural and Environmental Review Committee, shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any lot.

(d) Except for parking within garages, and except as hereinelsewhere provided, no junk vehicle, unlicensed or inoperable motor vehicle, motor vehicle with a commercial display, trailer, camp truck, house trailer, boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the common areas and community facilities) shall be kept upon the Property nor (except for *bona fide* emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Architectural and Environmental Review Committee, provide and maintain a suitable area designated for the parking of such vehicles or the like.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any lot.

(f) No lot shall be divided or subdivided and no portion of any lot (other than the entire lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Declarant or any other person for any purpose.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on the Private Streets and Roadways. Firewood shall be neatly stacked along fence lines.

(h) No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on any lot at any time.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community, "theme areas" and such promotional sign or signs as may be maintained by the Declarant or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any lot or dwelling, provided, however, that one temporary real estate sign not exceeding six (6) square feet in area, may be erected upon any lot or attached to any dwelling placed upon the market for sale. Any such temporary real estate sign shall be removed promptly following the sale of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any lot who comes into possession of the lot by reason of any

remedies provided by law or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(j) No structure, planting or other material shall be placed or permitted to remain upon any lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

(k) No outside television aerial or radio antenna, or other aerial or antenna for either reception or transmission, shall be maintained upon the Property except that such aeriels or antennae may be erected and maintained within the dwellings located upon the Property.

(l) No member shall make any private or exclusive or proprietary use of any of the common areas except with the specific approval of the Architectural and Environmental Review Committee and then only on a temporary basis and no member shall engage or direct any employee of the Association on any private business of the member during the hours such employee is employed by the Association, nor shall any member direct, supervise or in any manner attempt to assert control over any employee of the Association.

Section 8. Residential Use—Leasing. All dwellings shall be used for private residential purposes exclusively. No portion of any dwelling (other than the entire dwelling) shall be leased for any period. Any Class A member who shall lease his dwelling shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Board of Directors of the Association. All leases shall be in writing. Any such lease shall contain a provision to the effect that the rights of tenant to use and occupy the dwelling shall be subject and subordinate in all respects to the provisions of this Declaration and shall provide, further, that any failure by the tenant to comply with the provisions of this Declaration shall be a default under the lease. No dwelling shall be rented for transient or hotel purposes. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any lot or dwelling for promotional or display purposes, or as "model homes," a sales office, or the like.

Section 9. Fences. Any fence constructed upon the Property shall be vertical board-on-board and shall not extend beyond the front building line of the dwelling on the lot upon which any such fence is erected or the front building line of the dwellings on all immediately adjacent lots. No fence shall be more than six (6) feet in height. Chain link and other wire fencing is specifically prohibited. The erection of all fences shall be subject to the other provisions of this Article.

Section 10. House Rules, etc. There shall be no violation of any reasonable rules for the use of the common areas and community facilities or "house rules" or other community rules and regulations not inconsistent with the provisions of this declaration which may from

time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

Section 11. Duty to Maintain. Each member shall, at his own expense, keep each lot owned by him, together with any and all improvements thereon constructed, in good order, condition and repair, and in a clean and sanitary condition, and shall do and perform all maintenance and the like which may at any time be necessary to maintain the good appearance of his lot and dwelling.

Section 12. Enforcement — Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any lot, or in the event of any other conduct in violation of any of the provisions or requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article and without the approval of the Architectural and Environmental Review Committee required herein, and, upon written notice from the Architectural and Environmental Review Committee, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the owner of the lot upon which such violation exists, or to the member responsible for such violation if the same shall be committed or attempted on premises other than the lot owned by such member, then the Association shall have the right, through its agents and employees (but only after a resolution of the Architectural and Environmental Review Committee) to enter upon such lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the lot upon which such violation occurred and when so assessed, a statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon such lot, and a binding personal obligation of the owner of such lot, in all respects (and subject to the same limitations) as provided in Article V of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article or any of the other provisions or requirements of this declaration exist on such lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE VIII

Section 1. Party Walls. Each wall which is built as part of the original construction of the dwellings upon the Property and placed on the dividing line between lots or partly on one lot and partly on another shall constitute a party wall, and to the extent not inconsistent with the

provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal shares. Nothing shall be done by any Owner which impairs the structural integrity of any party wall or which diminishes the fire protection afforded by any party wall. No Owner shall use any party wall for any purpose which creates a hazard or nuisance for any other Owner who makes use of the party wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; without prejudice, however, of the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Encroachments. If any portion of a party wall shall encroach upon any adjoining lot, or upon the common areas or community facilities, by reason of reconstruction, settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the building stands, shall exist.

Section 7. Limitations — Exceptions. The provisions of this Article shall not apply in the case of condominium units created pursuant to the provisions of Title 11, Real Property Article, *Annotated Code of Maryland* (1981 Repl. Vol.), as from time to time amended.

ARTICLE IX

Section 1. Joint Driveways. Any driveway which is built or installed as part of the original construction upon the Property and which is situated on the dividing line between lots or partly on one lot and partly on another lot or other lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any lots or other portions of The Property which it is reasonably designed to serve, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

Section 2. Repair and Maintenance. The cost of reasonable repair and maintenance of any joint driveways shall be shared by the Owners who make use of the same, in equal shares.

Section 3. Damage and Destruction. In the event any joint driveway is destroyed or damaged, any Owner who has used the same may restore it, and if the other Owners thereafter make use of the same, they shall contribute to the cost of restoration thereof in equal proportions; without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easements. There shall be a perpetual and non-exclusive easement in, through and over any such joint driveway reserved to the Owners of any lot or lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

Section 5. Right to Contribution runs with land. The right of any Owner to contribute from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE X

Section 1. Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing. The Management Agent shall perform such duties and services as the Board of Directors shall authorize in writing, including, without limitation:

(a) to establish (with the approval of the Board of Directors of the Association) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with law and the provisions of this Declaration; and

(b) to provide for the care, upkeep, maintenance and surveillance of the common areas and community facilities; and

(c) to designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the common areas and community facilities; and

(d) to promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the common areas and community facilities; and

(e) to provide such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Any management agreement entered into by the Association shall provide, *inter alia*, that such agreement may be terminated, with or without cause and without the payment of any termination fee, by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 2. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the common areas or community facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any member for loss or damage, by theft or otherwise, of articles which may be stored upon the common areas or community facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas or community facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE XI

Section 1. Reservation of Easement Rights by the Declarant.

(a) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the common areas and community facilities for the purpose of the storage of building supplies and materials, the installation, construction, maintenance, reconstruction and repair of sanitary sewer lines, water lines, cables, "master" antenna systems, CATV, storm water detention ponds and similar facilities, storm drains and appurtenances to any of the same, and for all other purposes reasonably related to the completion of construction and development of the project and the provisions of utility services, and related services and facilities, whether public or private, to the land and premises described on "EXHIBIT B" attached hereto.

(b) The Declarant hereby reserves the absolute right to grant easements and rights-of-way, both temporary and permanent, over the common areas and community facilities to any and all governmental or quasi-governmental authorities and to any and all public utilities including, without limitation, Montgomery County, Maryland, the City of Gaithersburg, Maryland, the Washington Suburban Sanitary Commission, the

Potomac Electric Power Company, the Washington Gas Light Company and the Chesapeake & Potomac Telephone Company of Maryland.

(c) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the common areas and community facilities for any and all purposes reasonably related to the performance by the Declarant of any duties or obligations it may have or assume with respect to the correction of any defects in workmanship or materials performed or used in connection with the development of the property and the construction of any improvements thereon.

(d) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the common areas and community facilities and in, through, over and across the lots for any and all purposes reasonably related to the maintenance and correction of conditions associated with the drainage of surface water and in order to maintain reasonable standards of health, safety and appearance, which easement shall include, but not be limited to, the right to cut or remove any trees or shrubs located upon the property and the right to make any grading changes upon the property; provided, however, that the Declarant shall make every reasonable effort to restore the property to its original condition as nearly as practicable following the completion of any such work and, provided further, that except in cases involving emergencies or manifest danger to safety of person or property, no such work shall be undertaken without reasonable written notice to the owner of the lot or lots affected.

Any and all grants made by the Declarant to the Association with respect to any of the common areas and community facilities and any and all grants made by the Declarant to any owner shall be conclusively deemed to incorporate these reservations, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, the Association and any owner shall from time to time execute, acknowledge and deliver to the declarant such further assurances of this reservation as may be necessary.

Section 2. Easements for Utilities and Related Purposes. The Association is authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and rights-of-way over the common areas and community facilities for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm water detention ponds and similar facilities, storm drains, cables, underground conduits and such other purposes related to the provision of utility and similar services to the land and premises described on "EXHIBIT C" attached to this Declaration as may be considered necessary and appropriate by the Board of Directors of the Association or by the declarant for the orderly maintenance, preservation and enjoyment of the common areas and community facilities and for the preservation of the health, safety, convenience and welfare of the members of the Association or the declarant.

Section 3. Easement to Montgomery County, Maryland, and to the City of Gaithersburg, Maryland. The Declarant hereby grants to Montgomery County, Maryland, a municipal body corporate, and to the City of Gaithersburg, Maryland, a municipal body corporate, and to their respective agents and contractors, a non-exclusive easement and right-of-way in, through, over and across the common areas and community facilities for all purposes reasonably associated with the inspection, operation, installation, construction, reconstruction, maintenance or repair of any stormwater management facilities for all purposes reasonably associated with the inspection, operation, installation, construction, reconstruction, maintenance or repair of any stormwater management facilities constructed upon the Property; and in the event that, after reasonable notice to the Association by either Montgomery County, Maryland, or the City of Gaithersburg, Maryland, the Association shall fail to maintain any storm water management facility constructed upon the Property in accordance with applicable law and regulations, then either Montgomery County, Maryland, or the City of Gaithersburg, Maryland, may do and perform all necessary repair maintenance work and may assess the Association for the cost of the work and any applicable penalties. The Association shall indemnify and save Montgomery County, Maryland, and the City of Gaithersburg, Maryland, harmless from any and all claims or damages to persons or property arising in connection with the installation, construction, maintenance, repair, operation or use of any stormwater management facility or drainage system constructed upon the Property.

Section 4. Parking and Sidewalk Easements. There is hereby established for the benefit of the owners of the several lots a perpetual and non-exclusive easement and right-of-way for pedestrian and vehicular ingress, egress and regress, and for the parking of motor vehicles, in, through, over and across the Private Streets and Roadways and in, through, over and across any sidewalks and leadwalks constructed upon the common areas and community facilities or the lots. Any grant of a lot made by the declarant shall be conclusively deemed to incorporate this easement and right-of-way, whether or not specifically set forth in such grant. At the request in writing of either the declarant or the owner of any lot, the Association shall, from time to time, execute, acknowledge and deliver such other and further assurances of this easement and right-of-way as may be reasonably necessary.

Section 5. Other Easements. There is hereby established for the benefit of the owners of the several lots a perpetual and non-exclusive easement to permit the uninterrupted encroachment upon or over the common areas and community facilities of any roofs, gutters, downspouts, fireplace structures and the like which are or may be appurtenant to any dwelling constructed upon any lot and which may overhang or otherwise encroach upon the common areas and community facilities. Any grant of a lot made by the Declarant shall be conclusively deemed to incorporate this easement, whether or not specifically set forth in such grant. At the request in writing of either the Declarant or the owner of any lot, the Association shall, from time to time, execute, acknowledge and deliver

such other and further assurances of this easement as may be reasonably necessary.

ARTICLE XII

Section 1. Amendment. Subject to the other limitations set forth in this Declaration, prior to the lapse of all of the Class B memberships in the Association as in Article III provided, this Declaration may be amended only by an instrument executed and acknowledged by two-thirds (2/3) of the Class A members of the Association, if any, and by the Declarant, which instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Subject to the other limitations set forth in this Declaration, following the lapse of all of the Class B memberships in the Association as in Article III provided, this declaration may be amended by an instrument executed and acknowledged by a majority of the Class A members of the Association, which instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

Section 2. Duration. Unless amended in accordance with the provisions of Section 1 of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each.

Section 3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages or both, and against any lot to enforce the line created hereby; and the failure or forbearance by the Association or the owner of any lot to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, by any owner or any mortgagee of any lot which becomes subject to the provisions hereof and by any other person, firm, corporation or other legal entity who has any right to the use of any of the common areas and community facilities owned by the Association.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of

the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 4. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant by instrument in writing, with or without notice to the Association.

Section 5. Incorporation by Reference on Resale. In the event any owner sells or otherwise transfers any lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this declaration.

Section 6. Notices. Any notice required to be sent to any member or owner under the provisions of this declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 7. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common areas or community facility by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the common areas or community facilities.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 9. Consents. Any other provision of this declaration to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the holders of at least two-thirds (2/3) of the first mortgages of record on the lots:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the common areas and community facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the common areas and community facilities by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) abandon or terminate this Declaration; or

(c) modify the method of determining and collecting common expense assessments or other assessments as provided for in this declaration; or

(d) resolve to use the proceeds of casualty insur-

ance for any purpose other than the repair, replacement or reconstruction of the common areas and community facilities; or

(e) modify or amend any material or substantive provision of this Declaration or the By-Laws of the Association.

Section 10. Consent of Veterans Administration. Provided that any lot in the project is then encumbered by a deed of trust or mortgage which is guaranteed by the Veterans Administration and, provided further, that there are then Class B memberships of the Association outstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the Veterans Administration:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the common areas and community facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the common areas and community facilities by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) abandon or terminate this Declaration; or

(c) modify or amend any material or substantive provision of this Declaration or the By-Laws of the Association.

Section 11. Additional Rights of Mortgagees—Notice. No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the first mortgage on the lot which is the subject matter of such suit or proceeding.

Any Institutional first mortgagee of any lot upon The Property may pay any taxes, utility charges or other charge levied against the common areas and community facilities which are in default and which may or have become a charge or lien against any of the common areas and community facilities and any such Institutional first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to the common areas and community facilities. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

Section 12. Casualty Losses. In the event of substantial damage or destruction to any of the common areas or community facilities, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the holders of all first mortgages of record on the lots. No provision of this Declaration or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his lot with respect to the distribution to such member of any insurance proceeds paid or payable

on account of any damage or destruction of any of the common areas or community facilities.

Section 13. Condemnation or Eminent Domain. In the event any part of the common areas and community facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the holders of all first mortgages of record on the lots. No provision of this declaration or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his lot with respect to the distribution to such member of the proceeds of any condemnation or settlement relating to a taking of any of the common areas and community facilities.

Section 14. Captions and Gender. The captions contained in this declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

IN WITNESS WHEREOF, the said THE MILTON COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, has caused these presents to be executed in its corporate name by GEORGE POULSON, its Vice President, and its corporate seal to be hereunto affixed, on the year and day first above written.

THE MILTON COMPANY

/s/ George Poulson
George Poulson, Vice President

STATE OF MARYLAND)
) ss:
COUNTY OF MONTGOMERY)

I HEREBY CERTIFY that on the 15th day of June, 1984, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared in said jurisdiction GEORGE POULSON, personally well known to me (or satisfactorily proven) to be the Vice President of THE MILTON COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, and to be the person who executed the foregoing instrument in its name and on its behalf, and acknowledged that, having authority so to do, he executed the same as the act and deed of said corporation for the purposes therein contained and delivered the same as such.

WITNESS my hand and Notarial Seal the year and day first above written.

/s/ Barry M. Fitzpatrick
Barry M. Fitzpatrick, Notary Public

My Commission expires: July 1, 1986

This is to certify that the undersigned is a member in good standing of the Bar of the Court of Appeals of Maryland and that the within instrument was prepared by him or under his supervision.

/s/ Barry M. Fitzpatrick
Barry M. Fitzpatrick

Pursuant to the provisions of Section 3-501 of Subtitle 5, Real Property Article, *Annotated Code of Maryland* (1981 Repl. Vol.) the following additional information is declared to be contained within this instrument:

- (a) The address of the Declarant:
1951 Kidwell Drive— Suite 200
Vienna, Virginia 22180
- (b) The name of any title insurer insuring this instrument or otherwise involved in the transaction in which this instrument is relevant:
NONE
- (c) The street address of the land and premises described in this instrument:
NONE— Not yet assigned.
- (d) The Parcel Identifier:
Parts of 9-201-2271207 and 9-201-2271195

"EXHIBIT A"

Lots 191 through 220, both inclusive, and Lots 247 through 251, both inclusive, in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 121 at plat 14351, among the Land Records for Montgomery County, Maryland.

COMMON AREA: Parcels "A" and "B" in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 121 at plat 14351, among the Land Records for Montgomery County, Maryland.

Lots 1 through 13, both inclusive, in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 121 at plat 14352, among the Land Records for Montgomery County, Maryland.

COMMON AREA: Parcels "C," "D," "E" and "F" in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 121 at plat 14352 among the Land Records for Montgomery County, Maryland.

Lots 14 through 36, both inclusive, in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 125 at plat 14598, among the Land Records for Montgomery County, Maryland.

COMMON AREA: Parcels "G," "H" and "I" in the subdivision recorded in Plat Book 125 at plat 14598 among the Land Records for Montgomery County, Maryland.

Lots 171 through 190, both inclusive, and Lots 221 through 246, both inclusive, in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 125 at plat 14599, among the Land Records for Montgomery County, Maryland.

COMMON AREA: Parcels "J," "L" and "M" in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 125 at plat 14599, among the Land Records for Montgomery County, Maryland.

Lots 126 through 170, both inclusive, in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 125 at plat 14600, among the Land Records for Montgomery County, Maryland.

COMMON AREA: Parcel "K" in the subdivision known as "AMBERFIELD" per plat of said subdivision recorded in Plat Book 125 at plat 14600, among the Land Records for Montgomery County, Maryland.

"EXHIBIT B"

Loiderman Associates, Inc.
June 7, 1982
Project No. 5-80-03

**DESCRIPTION OF PART OF THE PROPERTY OF
HARRY KOENICK, ET AL
LIBER 3462— FOLIO 136
47.99039 ACRES**

All of that piece or parcel of land situate, lying and being in the Ninth Election District of Montgomery County, MD and being part of a conveyance from Muddy Branch Corporation, a Maryland Corporation, to Harry Koenick, Sarah B. Cohen and Allen M. Rice, joint tenants, by deed dated January 20, 1966, and recorded among the Land Records of the aforesaid county in Liber 3462 at Folio 136, and being more particularly described as follows:

Beginning for the same at the end of the sixteenth or North 89°40'00" West, 1,359.48 foot line of the aforesaid conveyance, 749.90 feet from the beginning thereof, and running thence with the outlines of a conveyance from

Harry Koenick, et al, to the Town of Gaithersburg by deed dated September 15, 1967, and recorded among the aforesaid Land Records in Liber 3700 at Folio 83, as now surveyed by Loiderman Associates, Inc.

- 1) South 23°27'25" East, 169.56 feet to a point; thence
- 2) North 73°12'06" East, 280.00 feet to a point; thence
- 3) 486.16 feet along the arc of a curve to the left having a radius of 500.00 feet and a chord of South 44°39'13" East, 467.24 feet to a point; thence
- 4) South 17°29'29" West, 280.00 feet to a point; thence
- 5) South 58°31'27" East, 129.14 feet to a point on the fourth or south 17°29'07" West, 1,326.69 foot line of a conveyance from Harry Koenick, et al, to the Town of Gaithersburg by deed dated September 15, 1967 and recorded among the aforesaid Land Records in Liber 3700 at Folio 79; thence running with part of said fourth deed line, as now surveyed
- 6) leaving said fourth deed line and running with and along the fourth or North 57°23'37" West, 2,050.34 foot line of a conveyance from Harry Koenick, et al, to the Town of Gaithersburg, by deed dated September 15, 1967 and recorded among the aforesaid Land Records in Liber 3700 at Folio 81, as now surveyed
- 7) North 57°23'15" West, 2,051.91 feet to a point on the fifth or South 01°36'11" East, 878.20 foot line of a conveyance from Harry Koenick, et al, to Eig Enterprises, Inc. by deed dated April 27, 1971 and recorded among the aforesaid Land Records in Liber 4063 at Folio 196, 558.26 feet from the beginning thereof and running thence
- 8) North 01°27'24" West, 558.26 feet to a point on the eighteenth or North 89°40'00" West, 1433.07 foot line of the aforesaid conveyance recorded in Liber 3462 at Folio 136; thence with the outlines thereof
- 9) South 89°32'00" East, 1,339.89 feet to the place of beginning, containing 47.99039 Acres of Land.

VETERANS ADMINISTRATION INFORMATION BROCHURE

THE AMBERFIELD HOMEOWNERS ASSOCIATION, INC.

The Amberfield Homeowners Association, Inc. (the "Association") is a not-for-profit corporation organized or to be organized under the laws of the State of Maryland, without capital stock. The Class A members of the Association will consist of all homeowners in the community being developed by The Milton Company in the City of Gaithersburg, Montgomery County, Maryland, known as "AMBERFIELD."

Each home in the community will be entitled to cast one (1) vote in governing the affairs of the Association; however, until not later than January 1, 1990, the Developer of the community will be entitled to cast at least three (3) votes for each of the lots which it continues to own within the community. This device will effectively permit the Developer of the community to control the affairs of the Association until the earlier to occur of January 1, 1990, or the transfer of title to the first three hundred and three (303) homes in the community. Notwithstanding the fact that the Developer will retain effective control of the Association for the period stated above, the Developer intends to involve the homeowners in the direction and management of the affairs of the Association from its inception.

The Association has been or will be created by the filing of Articles of Incorporation with the State Department of Assessments and Taxation of Maryland and by the recordation of a Declaration of Covenants, Conditions and Restrictions among the Land Records for Montgomery County, Maryland. That Declaration will initially affect only the first phases scheduled for development in the community; however, the Developer has retained the right, so long as it holds one or more of the lots within the community, to expand the Association so that the Declaration will affect additional land within the community. If any homeowner has financed his purchase through a loan guaranteed by the Veterans Administration or the Federal Housing Administration, however, such expansion can only be accomplished with the approval of the Veterans Administration or the Federal Housing Administration, as the circumstances may from time to time require. In addition, no merger, dissolution or substantive amendment of the organizational documents relating to the Association can be accomplished without the approval of the Veterans Administration or the Federal Housing Administration, as the circumstances may from time to time require.

The initial maximum annual maintenance assessment for each home in the community will be \$360.00; however, this is only a maximum and the Developer intends to provide for an initial assessment for each lot in the community at the rate of \$25.00 per lot per month.

After January 1, 1985, the maximum annual maintenance assessment may be increased by the Board of

Directors of the Association, without a vote of the homeowners, by an amount equal to 10% of the maximum annual maintenance assessment for the preceding year. After January 1, 1985, the maximum annual maintenance assessment can be increased above the 10% limitation only if a majority of the Class A members and two-thirds (2/3) of the Class B members consent to such an increase. Any such change in the maximum annual maintenance assessment must be accomplished at a meeting of the members duly called to consider that change.

The Declaration provides to the Association the right to impose a lien or charge upon the title of any member who fails to pay any assessment levied by the Association when it is due. A continued default in the payment of assessments levied by the Association could result in an action by the Association to foreclose its lien or charge in order to enforce payment of the assessment then due. In addition, the Association has the right to file suit against any member for nonpayment of any assessment levied by the Association and to secure a judgment and to execute on that judgment, including the possibility of the attachment of wages and other personal property.

It is not contemplated that the Association will charge "user fees" or the like to any member; rather, the expenses of the Association are to be met by assessments levied against the members by the Association pursuant to the Declaration.

The common property within the community is to be owned by the Association and title to the property is to be transferred to the Association by the Developer free and clear of all contractual liens and encumbrances. The common property is to consist of certain "open" spaces, certain private streets and roadways, certain sidewalks, leadwalks, and a variety of recreational facilities intended for both adults and juveniles. Services to be provided by the Association include the maintenance of the common property. The Association will not assume any responsibility to provide exterior maintenance on any home in the community and exterior maintenance will be the sole responsibility of the homeowners.

Article VII of the Declaration contains certain restrictions on the use, maintenance and improvement of homes within the community. Before making any exterior improvements to his home, the homeowner should review Article VII of the Declaration with care.

The Declaration, the Articles of Incorporation and the By-Laws are attached for your review, convenience and benefit. These documents set forth in detail the substance of what has been outlined above and should be studied and referred to from time to time for a further explanation of the affairs of the Association and the rights and obligations of its members.