

DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WHITTIER COMMUNITY ASSOCIATION, INC.

This Declaration of Covenants, Conditions, and Restrictions (Declaration) is made this 22nd day of December, 1989, by Ausherman Development Corporation, a Maryland Corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property described in Exhibit "A" attached hereto and incorporated herein by reference, and
WHEREAS, Declarant intends by this Declaration to impose upon the Properties described hereinafter covenants, conditions, restrictions, and easements under a general plan of improvement for the benefit of all Owners of residential property within the Properties and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties.

NOW, THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors in title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Whittier Community Association, Inc., a Maryland non-profit, non-stock corporation, and its successors and assigns.

Section 2. "Common Area" shall mean all real and personal property thereon now or hereafter owned or leased by that Association or otherwise held for the common use and enjoyment of the Owners.

Section 3. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association in connection with the use, maintenance, and operation of the Common Area and Corporation of the Association, whether for the benefit of all members or due to enhanced services provided to a specific Neighborhood. Common Expenses shall include amounts necessary to establish and maintain any reserve fund determined to be necessary and appropriate by the Board of Directors.

Section 4. "Community Assessment" shall mean those assessments that are levied equally against all Lots and Residential Units within the properties to cover the basic expenses for services and facilities that benefit all Members and all Lots and Residential Units.

Section 5. "Community Standard" shall mean the standard of maintenance, condition, repair, appearance, cleanliness, or other activity generally prevailing on the common Area. Such Standard may be specifically determined and set forth in Rules, Regulations and policies adopted by the Board of Directors.

Section 6. "Declarant" shall mean and refer to Ausherman Development corporation, a Maryland corporation, and its successors and assigns to whom any or all of the special rights, reservations, easements, interests, exemptions, privileges, and powers of the Declarant are specifically assigned or transferred in writing.

Section 7. "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a unit who has requested notice from the Association of amendments to the Association documents or other significant matters which would affect the interests of the mortgagee.

Section 8. "Lot" shall mean and refer to any plot of land (with the exception of the Common Area" regardless of the size, shown upon any recorded subdivision plat of the Properties, on which is intended to be constructed a residential dwelling unit; provided, however, that Lot shall not include any parcel of land on which is located a condominium unit or an apartment unit, both of which hereinafter will be known as a residential unit.

Section 9. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 10. "Mortgage" shall mean any recorded instrument, including a deed of trust, encumbering a Lot or Residential Unit which is intended to secure the performance of an obligation.

Section 11. "Mortgagee" shall mean 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 or Residential Units and shall also include a beneficiary, holder or party secured by a first deed of trust.

Section 12. "Mortgagor" shall include the trustee of a deed of trust as well as a mortgagor.

Section 13. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one (1) or more housing types, subject to this Declaration in which Owners may have common interests other than those common to all Association members, such as common theme, entry feature, development name, and/or common areas and facilities that are not intended for the primary benefit to all Association members. Each parcel of land described in Exhibit "A" attached hereto containing Lots shall be designated a Neighborhood or made part of a Neighborhood when it is made subject to the provisions of this Declaration except the Residential Units shall not be included within a Neighborhood. The Declarant shall initially establish the number and boundaries of Neighborhoods. Following the lapse of

the Class B memberships, the Board of Directors shall establish and be the final arbiter of the number and boundaries of Neighborhoods.

Section 14. "Neighborhood Committee" shall refer to the committee established in each Neighborhood whose responsibility it is to recommend adoption of rules and regulations, mediate neighborhood disputes, and recommend enforcement of rules and regulations concerning the use of those Common Areas and facilities located within the Neighborhood which are not generally used by all Association members including, but not limited to, parking regulations; the submission of maintenance requests to the Association; the preparation and submission of budget recommendations concerning -Neighborhood Assessments,- the submission of material for incorporation into the Association newsletter, if any, and the performance of any other such related activities in its role as liaison between the Neighborhood residents and Association as are not specifically reserved to the Association.

Section 15. "Neighborhood Assessments" shall mean those assessments levied equally against all Lots in a Neighborhood benefitting from the services supported thereby which are levied in addition to the Community Assessments. The Neighborhood Assessments shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Lots against which the specific Neighborhood Assessment is levied and of maintaining those Common Areas and facilities located in the Neighborhood not intended for the primary benefit of all Members of the Association. The Neighborhood Assessment may be set at any amount sufficient to maintain the Common Area at a higher standard than the established Community Standard- if the Neighborhood Association recommends an increase to the Association and the Association approves the increase in the assessment.

Section 16. "Owner" shall mean and refer to one or more persona or entities who hold the record title to any Lot or Residential Unit but shall not include any party holding an interest merely as security for the performance of an obligation.

Section 17. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 18. "Property" or "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property such as that described in Exhibit "A" attached hereto when and if they are annexed pursuant to the filing of a Supplementary Declaration.

Section 19. "Residential Unit" shall mean and refer to a dwelling unit contained in a horizontal property regime (condominium) or rental apartment units on a part of the Property which is subject to this Declaration.

Section 20. "Supplementary Declaration" shall mean and refer to a supplement to this Declaration which, in accordance with Article VIII of this Declaration, adds additional real property to the real property encumbered by this Declaration. Such Supplementary Declaration may, but is not required to, impose, expressly or by

reference, additional restriction, and obligation, on the land subjected by that Supplementary Declaration to the provisions of this Declaration.

ARTICLE II
PROPERTY RIGHTS

Section 1. "Owner's Easements of Enjoyment." Every Owner shall have a non-exclusive right and easement of enjoyment, in common with others, in and to the Common Area, including an easement for the use and enjoyment of any private streets, parking lots, and walkways within the Common Area, which shall be appurtenant to and shall pass with the title to every Lot and Residential Unit Subject to the following provisions:

- a. the right of the Association to charge reasonable and uniform admission and other fees for the use of any recreational facility situated upon the Common Area;
- b. the right of the Association to suspend the voting rights by a member for any period during which any assessment against his Lot or Residential Unit remains unpaid;
- c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes as are consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless two-thirds (2/3) of each class of the then Members consent to such dedication or transfer, at any special meeting of the Members duly called for such purpose; provided, that any such dedication or transfer shall also be subject to the limitations provided for in Article XI, and Article XX of this Declaration.
- d. the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the right of the Association to suspend the right to use of the facilities situated on Common Area for a period not to exceed thirty (30) days for each and any infraction of any rules and regulations;
- e. the right of the Association to provide for the exclusive use by certain Members of designated parking spaces provide for the exclusive use by certain Members of designated parking spaces within the Common Areas.
- f. the right of the Association, the Declarant, utility companies, cable companies, and other Owners with respect to the easements established in Article XX hereof;
- g. the right of the Association in accordance with it. Articles of Incorporation and By-Laws, and with two-thirds (2/3) consent of each class of the Members, voting separately, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof to mortgage any of the Common Area;

- h. the right of the Association to take such steps as are routinely necessary to protect the Common Area against mortgage default and foreclosures, provided, however, that such steps are in conformity with the other provisions of this Declaration;
- i. the right of the Association, acting by and through its Board, to grant easements, licenses, or other rights of use of the Common Area to persons or entities who are not Members for such consideration and on such terms and conditions as the Board of Directors may from time to time consider appropriate, provided, however, that no such easements, licenses, or other rights of use of the Common Area shall be unreasonably and permanently inconsistent with the rights of Members to the use and enjoyment of the Common Area, and;
- j. the right of the Association to assign maintenance obligations of Common Area to Frederick City if the City agrees to accept such maintenance obligation.

Section 2. Walkway Easements. Every Owner shall also have a nonexclusive right and easement of enjoyment, in common with other., to use and enjoyment of walkways intended for common use but located on property within the Properties which is in private Ownership, if any.

Section 3. Implied Utility Easements. The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines, and other utilities shall be governed by the following;

- a. Whenever water, sanitary sewer, electric, gas, cable television or telephone connections, lines, cables, or any Portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association, may have the right, and is hereby granted an easement to the extent necessary therefore to enter upon or have the utility company enter upon any portion of the Property in which said installations lie, to repair, replace, and generally maintain said installations.
- b. The right granted in subparagraph (a) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to its full and responsible use and enjoyment, and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

Section 4. Limitations. Any other provision of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Owner to use the Common Area for necessary, ordinary, and reasonable pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Area for storm water drainage, electrical energy, water, sanitary, sewer, natural gas, CATV or similar service, telephone service, or similar utilities and services to the Lot.

Section 5. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws and adopted rules and regulations, his right of enjoyment to the Common Area, and to walkways intended for common use but located on privately owned property, to the members of his family, his tenants invitees, or contract purchasers.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership.

- a. Every Owner shall be deemed to have membership in the Association. No Owner, whether one or more persons, shall have more than one membership per Lot or Residential Unit owned. In the event the Owner of a Lot or Residential Unit is more than one person or entity, the right to vote and the rights of use and enjoyment shall be as provided herein;
- b. There shall be two forms of membership. Class "A" Members shall be all Owners with the exception of the Class "A" Members, if any. Class "A" Members shall be the Declarant and any successor of the Declarant who acquires title to two or more Lots for the purpose of development and sale and who is designated as a successor of the Declarant in a written instrument executed by Declarant.

Section 2. Voting Rights.

- a. Class "A". Class "A" Members shall be entitled on all issues to one (1) vote for each Lot or Residential Unit in which they hold the interest required for membership by Section 1 hereof. There shall be only one (1) vote per Lot or Residential Unit. When more than one person or entity holds such interest in any Lot or Residential Unit, the vote for such Lot or Residential Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of such Lot or Residential Unit shall be suspended in the event more than one person or entity seeks to exercise it.
 - i. Any Owner of a Lot or Residential Unit which is leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot or Residential Unit to the lessee, provided that a copy of such lease or other written instrument is furnished to the Secretary prior to any meeting.
- b. Class "B". The Class "B" Member shall be entitled to three (3) votes for each Lot or Residential Unit owned, or each Lot or Residential Unit planned as shown on the PND plan for the development of the Property as approved by the city of Frederick that has not already been conveyed to an initial purchaser. The Class "B" membership shall cease and be converted to a Class "A" membership on the

happening of the earlier of the following events;

- i. when the total authorized and outstanding votes of the Class 'A' Members equal the total authorized and outstanding votes of the class "B" Members or;
 - ii. twenty (20) years from the date of recordation of this Declaration, provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water, or building permit moratorium or any other cause or event beyond the Declarant's control, then, the aforesaid twenty (20) year period shall be extended by a period of time equal to the length of the delays or two (2) years, whichever is less; or
 - iii. upon the surrender of said Class "B" membership by the then-holders thereof for cancellation on the books of the Association.
- c. Upon the lapse or surrender of the Class "B" memberships as provided for in this Article, the Declarant shall thereafter become a Class "A" Member of the Association as to each and every Lot or Residential Unit in which the Declarant then holds the interest otherwise required for such Class "A" membership.

ARTICLE IV ASSESSMENTS

Section 1. Creation of Assessments and Personal Obligation of Owners. The Declarant, for each Lot or Residential Unit owned within the Property, hereby covenants, and each Owner of any Lot or Residential Unit by acceptance of a deed therefor, (including an Owner of a parcel of land improved with apartment unit, herein called "Residential Unit"), whether or not it shall be so expressed in such deed, is deemed to covenant and Agree to pay the Association assessments which are described and are applicable as follows:

- a. a Community Assessment, which shall include:
 - i. annual assessments or charges, and
 - ii. special assessments, and
- b. a Neighborhood Assessment (where applicable) which shall include:
 - i. annual assessments or charges, and
 - ii. special assessments, such assessments to be established and collected as hereinafter provided, except that there will be no neighborhood assessment levied against a Residential Unit.
 - iii. Residential Units. Residential Units within a condominium regime shall be subject to the Community Assessment only as well as all assessments

levied by the established condominium regime. Residential Units within a rental apartment complex shall be subject only to the Community Assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area, including any storm water management facilities, the payment of real estate taxes and assessments, utility services for the Common Area, and management fees, administration expenses, and all 'other costs and expenses incurred by the Association in the proper conduct of its activities, including without limitation, charges accruing under any cross-easement or reciprocal easement agreements.

Section 3. Creation of Lien for Easements. The Community Assessment, and Neighborhood Assessment, where applicable, together with interest, costs, and reasonable attorneys' fees, shall be a charge on a Lot, a condominium unit or the parcel on which is located an apartment unit, and shall be a continuing lien upon the property against which each such assessment is made; provided, however, that the provisions of the Maryland Contract Lien Act (Section 14-201, et seq., Real Property Article, Maryland Annotated Code) shall, if applicable, govern the establishment and enforcement of said lien. Each such lien shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4. Types of Assessments.

- a. Community Assessments. Each Owner of a Lot or Residential Unit is deemed to covenant and agree to pay the Community Assessment which shall be levied uniformly among all the Lots and Residential Units within the Association and shall be for those basic expenses determined by the Board of Directors to be for the benefit of all Lots or Residential Units.
- b. Neighborhood Assessments. In addition, each Owner of a Lot is deemed to covenant and agree to pay the Neighborhood Assessment which shall be allocated uniformly among all Lots within a Neighborhood and shall be for those expenses determined by the Board of Directors to be intended for the primary benefit of the residents of the Neighborhood.

Section 5. Maximum Community and Neighborhood Annual Assessments.

- a. Until January 1 of the year immediately following the conveyance of the first Lot or Residential Unit to an Owner. the Maximum Community Annual Assessment shall be One Hundred Twenty-Five Dollars (\$125.00) per Lot or Residential Unit;

and the maximum Neighborhood Annual Assessment shall be One Hundred Dollars (\$100.00). The Board of Directors may from time to time fix the Community or Neighborhood Annual Assessment at an amount not in excess of the maximum. The Declarant shall pay twenty five percent (25) of all assessment for Lots and Residential Units which it owns. Notwithstanding the foregoing, the Declarant, its successors and assigns, shall pay the full Maximum Community Annual Assessment and Special Assessments for Lots or Residential Units owned by Declarant, its successors and assigns, upon which a dwelling unit has been completed and is occupied.

- i. If the Maximum Annual and Special Assessments levied are insufficient in any given year to pay the expenses incurred by the Association, Declarant hereby covenants and agrees for the benefit of each Class "A" Member to pay all such expenses incurred by the Association but in an amount not to exceed what could be collected from such Lots and Residential Units had they been owned by a Class "A" member.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot or Residential Unit to an Owner, the maximum community or Neighborhood Annual Assessment may be increased by the Board of Directors of the Association; without a vote of a Class "A" membership, by an amount equal to ten (10%) percent of the Maximum Community or Neighborhood Annual Assessment for the preceding year.
- c. From and after January 1 of the year immediately following the conveyance of the first Lot or Residential Unit to an Owner, the Maximum Community or Neighborhood Annual Assessment may be increased above the amount provided for in Article IV, Section 5 (b) immediately above by a vote of two-thirds (2/3) of each class of members who are voting, in person or by proxy, at a meeting duly called for this purpose.
- d. Because of the desirability of creating working capital for the initial operation of the Association, the Declarant hereby establishes a one-time capital contribution to be payable by an initial purchaser and collected upon the settlement of a completed dwelling located on any Lot, or the settlement of a completed Condominium Unit (Residential Unit), or in the event of an apartment unit upon initial occupancy of said apartment unit. This initial capital contribution shall be in the amount of One Hundred Dollars (\$100.00) and may be increased annually by the Declarant in an amount up to, but not exceeding, the prevailing consumer price index for the Washington Metropolitan Area. The funds collected by such a capital contribution shall be applied to operating expenses, contingencies, or a capital asset replacement fund as the Board sees fit in its sole discretion.

Section 6. Special Assessments for Capital Improvements and Expenditures. In addition to the annual assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and to meet unforeseen or special expenditures as well as any budget deficit, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. This Special Assessment may be for a Community or Neighborhood improvement or expense.

Section 7. Notice and Quorum for an Action Authorized under Section 5 and 6. Written notice of an meeting called for the purpose of taking any action authorized under section 5 or 5 shall be sent to all members not less than thirty (30) days nor more tan sixty (60) days in advance of the meting except that where such action relates only to Neighborhood Assessment, only the members within that Neighborhood need receive notice. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Meetings shall continue to be called subject to the same notice requirement until a quorum is present. At each meeting, the required quorum shall be one half (1/2) of the required quorum at the preceding meeting.

Section 8. Uniform Rate of Assessment. Except as otherwise provided in Sections 5 and 6 of this Article IV, both Annual and Special Community Assessments must be fixed at a uniform rate for all Lots and Residential Units and may be collected in advance at a frequency established by the Board. Annual and special Neighborhood Assessments may be collected in advance at a frequency established by the Board and need only be at a uniform rate for Lots within a Neighborhood.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots or Residential Units as of the date of settlement. The first annual assessment shall be adjusted on a pro-rata basis from the date of settlement. The Board of Directors shall fix the amount of the annual assessment against each Lot or Residential Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The failures of the Board of Directors to fix the annual assessment thirty (30) days in advance of each annual assessment. The due dates for payment shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer for the Association setting forth whether the assessments on a specified Lot or

Residential Unit have been paid. A properly executed certificate of the Association with the status of assessments on the Lots or Residential Units shall be binding on the Association upon the date of its issuance.

Section 10. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of eighteen percent (18%) per annum or the maximum amount permitted by law (or such lesser sum as VA and/or FHA may specify if any Lot or Residential Unit subject to this Declaration is then encumbered by a deed of trust or mortgage which is guaranteed by VA or insured by FHA). Additionally, the entire balance of the unpaid annual assessments for the remainder of the fiscal year shall also become due, payable and collectible in the same manner as the delinquent portion of such annual assessment. The Board may also impose a 'late charge' the amount of which shall be determined by the Board. The Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, Condominium Unit, or parcel on which an apartment unit is located (and all improvements thereon) in the same manner as provided by Maryland law for the foreclosure of mortgage containing a power of sale, and in either event, interest, costs, and reasonable attorneys' fees of an such action shall be added to the assessment, provided, however that the provisions of the Maryland Contract Lien Act (Section 14-201, et seq, Real Property Article, Maryland Annotated Code), shall if applicable govern the establishment and enforcement of said lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Residential Unit.

Section 11. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale and transfer of an Lot or Residential Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Residential unit pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Residential Unit from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on any lot or residential unit (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 12. Reserves for Replacements. The Association shall establish and maintain a capital asset replacement fund for replacements of improvements to the Common Area including any storm water management facilities and community facilities. The annual appropriation to this fund shall be based on the replacement value of all common properties and facilities, which have been placed in service and their expected life. Such fund shall not be used to finance operating and maintenance costs. 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 or Residential Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot or the Residential Unit to which it appertains and shall be deemed to be transferred with such Lot or Residential Unit.

ARTICLE V MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good order the Common Area to the Community Standard, such maintenance to be funded as elsewhere herein provided.

Section 2. Owner's Responsibility. Each owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external repair maintenance care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Each owner shall be responsible for the removal of snow, ice and debris, repair, maintenance and replacement of all walkways located on his property including those walkways intended for common use and those walkways in the public ways along the frontage of each lot.

Section 3. Remedial Work by Association. In the event an owner of any lot shall fail to maintain the lot and the improvements situated thereon, the Board of Directors or its agent shall have the right, but not the obligation to enter upon said Lot to correct drainage, and to repair, maintain, or restore the Lot and the exterior of the buildings and any other improvements erected thereon. Except in the case of an emergency, the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to undertaking such maintenance.

Section 4. Creation of Lien. All costs related to such correction, maintenance, repair or restoration shall become a lien upon such Lot, and such lien may be enforced in the same manner as an assessment levied in accordance with Article IV. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect such lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish such lien as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the in thereof. 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 recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join the execution of such amendment.

ARTICLE VI
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Area of Common Responsibility. The Association, subject to the rights of the owners set forth in this declaration, shall be responsible for the effective management and control of the common area and all improvements thereon (including, without limitation, furnishings and equipment related thereto, private drainage facilities, and common landscaped areas), and shall keep the Common Area in good clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof and the Community Standard. The neighborhood committee shall have the responsibility for making recommendations to the association concerning the maintenance of those common areas and facilities located within the neighborhood , which are not generally used by all Association members. The neighborhood committee shall also have the right to recommend adoption of rules and regulations, meditate neighborhood disputes, and recommend enforcement of rules and regulations concerning the use of those Common areas.

Section 2. Personal Property and Real Property for Common Use. The Association, thorough action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, shall accept an real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right or privilege reasonably to be implied from the existence of right or privilege given to it herein or responsibly necessary to effectuate any such right or privilege.

ARTICLE VII
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall be required to obtain, maintain and pay the premium as a Common Expense, upon policies of Insurance providing the coverage described below;

- a. Property insurance. A policy of property insurance covering all of the common area (except land, foundation, excavation, and other items normally exclude from coverage) including fixtures and building service equipment, to the extent that they are a part of the common area of the association, as well as common personal property supplies. Such insurance policy shall afford at a minimum protection against loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standards "All Risk" endorsement, where such is available. Such policy shall also contain or have

attached the following (1) a standard mortgage clause, (2) an Agreed Amount endorsement; (3) an inflation guard endorsement, if available, and (4) a construction code endorsement, if the common area in the Association are subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s) thereby imposing significant costs in the event of partial destruction of the property by and insured peril. Such property insurance policy shall be in an amount equal to one hundred percent 100% (less a deductible deemed reasonable by the Board of Directors of the current replacement costs of the common area and shall name as the insured the association.

- b. Comprehensive General Liability Policy. The Association shall obtain and maintain a policy providing comprehensive general liability insurance coverage covering all of the common area, public ways and other areas that are under the supervision of the Association (collectively, the Common Area). Any such comprehensive general liability policy shall be for such amount as is deemed reasonable by the Board of Directors.
- c. Blanket Fidelity Bonds. The Association shall be required to maintain blanket fidelity bonds for all officers, directors, managers, trustees, employees, and volunteers of the association and all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for its officers employees and agents handling or responsible of funds of, or administered on behalf of, the Association. The total amount of fidelity coverage required shall be based upon the best business judgment of the Board.
- d. Worker's compensation insurance. The Board of Directors' may obtain a worker's compensation policy covering the employees of the association, if such insurance is necessary.
- e. In no event shall the insurance coverage obtained and maintained by the Board of Directors or its duly authorized agent hereunder is brought into contribution with insurance purchased by individual owners, occupants, or their mortgagees.

Section 2. Immediately after damage or destruction by fire or other casualty to all or any part of the improvements to a common area, the association shall proceed with the adjustment of all claims arising from such loss and shall apply such proceeds to repair for the benefit of the Association as it sees fit.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation without approval of class "A" Memberships. As the owner thereof, or if not the owner, with the consent of the owner, thereof, Declarant shall have the unilateral right and privilege (but under no circumstances the obligation), from time to

time until the year 2010, to subject to the provisions of this Declaration and the jurisdiction of the Association, all or any portion of the real property described in Exhibit "A" attached hereto and by reference made a part hereof, by filling in the Land Records of Frederick County, Maryland, a Supplementary declaration annexing such real property, provided that so long as a lot or residential unit is encumbered by a deed of trust or mortgage which is guaranteed or insured by the Veteran's Administration ("VA") or the Federal Housing Administration (FHA), the VA or FHA, as applicable shall approve any annexations not in accord with a development plan (and amendments thereto), submitted to and approved by VA or FHA. Such Supplementary Declaration shall no require the vote of Members and shall be effective by filing for record of the supplementary declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the right, privilege and option to annex such transferee or assignee shall be the developer of at least a portion of said real property described in said Exhibit "A" attached hereto and that such transfer is memorialized in a written recorded instrument.

Section 2. Annexation with Approval of Class "A" Membership. Subject to the consent of the owner thereof, upon the written consent or affirmative vote of (1) a majority of the class "A" members present or represented by proxy at a meeting duly called for such purpose), and (ii) the Declarant (so long as Declarant owns property, lots or residential units, subject to this declaration of which may become subject in accordance with Section 1 of this Article), the Association may annex to the provisions of this Declaration real property other than that shown on the provisions of this Declaration real property other than that shown on Exhibit "A", Following the expiration of the right reserved unto the Declarant in section 1, any real property described in Exhibit A which has not theretofore been annexed to the provisions of this Declaration may be so annexed upon the written consent of the owner of such real property and the written consent of the owner of such real property be so annexed upon the written consent of the owner of such real property and the written consent of affirmative vote of a majority of the Class "A" Members b filling in the Land Records of Frederick County, Maryland, a Supplementary Declaration in respect to the real property being annexed. Supplementary Declaration in respect to the real property being annexed. Any such supplementary declaration shall be signed by the president and the Secretary f the Association and the owner of the real property being annexed, and any such annexation shall be effective upon filing unless otherwise provided herein. The time within which and the manner in which notice of any such meeting of the class "A" members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting shall be as specified in the by-laws of the association for regular or special meetings as the case may be.

Section 3. Acquisition of Additional Common Area. Declarant may convey additional real property, improved or unimproved, located within the real property described in

Exhibit "A", which upon conveyance or dedication in the association shall be accepted by the association and thereafter shall be deemed to be a part of the common area and shall be maintained by the Association as a common expense.

Section 4. Amendment. This article shall not be amended without the written consent of Declarant, so long as the Declarant owns an property described in Exhibit "A".

Section 5. Common Area adequate to accommodate the initial community swimming pool will be conveyed to the Association prior to the conveyance of the three hundredth (300th) Lot to the initial homebuyer. The community swimming pool to be constructed on this Common Area will be completed prior to the conveyance of the three-hundredth (300th) Lot to the initial homebuyer.

Article IX Architectural Control

Section 1. General Authority. The Board of Directors shall have the authority and standing on behalf of the Association, to enforce in courts of competent jurisdiction decisions made pursuant to the provisions of this Article whether made by the Board of Directors or its designees the Architectural Control Committee. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any of the property described in Exhibit "A".

Section 2. Construction or Alteration

- a. No building, fence, wall or other structure shall be constructed, erected, or maintained upon the Property, nor shall any exterior addition to or change to or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the property as approved by the Board of Directors of the Association, or by a covenant committee composed of an uneven number of three or more representatives appointed by the Board of Directors of the Association or a corporate entity represented by three corporate employees ("Architectural Control Committee").
- b. Design and approval by the Architectural Control Committee or by the Board shall in no way be construed as to pass judgement on the correctness of the location, structural, utilities, or other qualities of the item being reviewed, nor will it eliminate the need for the Owner to obtain all necessary permits and licenses to perform such construction or alteration. The Owner is still required to obtain all permits, including but not limited to building permits, and licenses from Frederick City or other appropriate governmental agencies.
- c. The Architectural Control Committee shall approve or disapprove the proposed use of the Lot and/or the plans, within a sixty (60) day period from receipt thereof. The aforesaid sixty (60) day period for the Architectural Control

Committee review of the proposed use and plans shall not commence to run until two (2) complete sets of the final drawings, plans and specifications have been received the Architectural Control Committee in complete and final form. Additionally, in the event that the Architectural Control Committee has not confirmed, in writing, the receipt of such final drawings, plans and specifications within thirty (30) days of the delivery of the two (2) complete sets as set forth above, then the Owner submitting Such drawings, plans and specifications must resubmit two (2) complete sets of the final drawings, plans and specifications within five (5) days following the lapse of such thirty (30) day period. If the Architectural Control Committee fails either to approve or disapprove said plans and specifications within the period provided above (provided the Owner submitting such plans and specifications has complied with all of the requirements set forth herein), it shall be conclusively presumed that the Architectural Control Committee has approved said plans and specifications. The Architectural Control Committee shall have the right, but not the obligation, to conditionally approve the proposed plans by specifying the changes to the plans that would make the plans acceptable.

- d. The Association shall have the right to charge a reasonable fee for reviewing each application which shall be payable upon the submission of such application.
- e. Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at the Owner's cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits therefor having first been obtained by the Owner from applicable public authorities or agencies.
- f. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article IX shall not be applicable to the Declarant or any part of the property owned by the Declarant.

Section 3. Completion of Work. Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article shall be completed within one (1) year following the date upon which the same are approved by the Architectural Control Committee (whether by affirmative action or by forbearance from action as in Section 2 of this Article provided). Once work has commenced, it shall be diligently pursued. In the event construction is not completed within the period aforesaid, then approval of the plans and specifications by the Architectural Control Committee shall be exclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. Approval of any particular plans -and specifications or design shall not be construed as

a waiver of the right of the Architectural Control Committee to disapprove such plans and specifications or any elements thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 4. Rules and Regulations. The Architectural Control 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 such statements of policy, standards and guidelines and/or establish such criteria relative to architectural styles or details, or other matters, 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 decisions of the Architectural Control committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the Board of Directors. Such appeal must be submitted in writing within fifteen (15) days of the action of the Committee, and if not filed within that period, shall be forfeited. Two— thirds (2/3) of the Board of Directors shall be required to reverse the decision of the Architectural Control Committee.

Section 5. Committee Members and Failure to Act. The Architectural Control Committee shall consist of three (3) persons and/or a corporate entity with no less than three (3) corporate employees. The Architectural Control Committee shall initially be Ausherman Construction company. The right to appoint and remove all members of the Architectural Control Committee or select a new corporate entity to perform the functions of the Architectural Control Committee shall be and is hereby vested solely in Declarant and in any assign(s) to whoa such right is specifically transferred. The Association shall accept the responsibility for architectural control if such responsibility is assigned to it. The mailing address of the Architectural Control Committee shall be 8031 Reaches lord Road, Frederick, Maryland 21701, or such other address as shall from time to time be designated by the Association. A majority of the Architectural Control Committee may designate a chairman to act for it. Neither of the members of the Architectural Control Committee nor its designated representatives shall be entitled to any compensation for services, other than expenses, performed pursuant to these covenants. The Architectural Control Committee's approval or disapproval as required shall be in writing. A majority of the membership of the architectural control committee shall constitute a quorum, and all actions shall require only a majority vote.

ARTICLE X

Use Restrictions

In addition to all other covenants contained herein, the use of the Properties and each Lot therein is subject to the following:

Section 1. Permitted Uses. The Lots shall be used for any uses permitted, whether by right or by special zoning approval, in the zones in which they are located, as set forth in the Frederick City Zoning Ordinance except as further restricted by this Declaration and

any Amendments thereto. 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 or improvement thereon for promotional or display purposes or as "model homes" or as a sales and/or construction office, or the like.

Section 2. Signage. No sign or billboard of any kind shall be displayed to the public view on any portion of the Properties or any Lot, except for a sign for a member of a recognized profession not exceeding one (1) foot square in area, and except for one (1) sign for each building site, of not more than eight (8) square feet advertising the parcel of land for sale or rent, provided however, that signs used by Declarant to advertise the Properties or any Lot during the construction and sales period and all permanent community identification signs erected by Declarant are permissible and are exempt from this restriction.

Section 3. No Interference with Quiet Enjoyment. No noxious or offensive activity shall be carried out upon any Lot or any part of the Property, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way unreasonably interfere with the quiet enjoyment of each of the Owners of his respective Lot or dwelling unit thereon, or which shall in any way increase the rate of insurance for any other Lot, or a dwelling unit thereon or the Common Area.

Section 4. Prohibited Structures and Vehicles. No automobiles, trucks under two (2) tons, vans, recreational vehicles, boats or any other vehicles or equipment of a similar nature shall be allowed on any Lot or portion of the Common Area unless they display a valid current license or registration or are stored in a garage and out of public view, excepting that recreational vehicles and boats may be parked on a Lot only with the approval of the Architectural Control Committee as to the location and screening. In addition, no such vehicle shall be parked on the streets of the Properties for a continuous or intermittent period to exceed twenty-four (24) hours. No trucks over two (2) tons, buses, tractors, trailers or similar items are permitted to be parked on any Lot or any streets of the Properties with or without a current registration or license, except for vehicles that any builder may require to be located during the construction and sales period. The Association shall have the right to tow and remove from the Property (at the expense of the Owner of such vehicle) any vehicle in violation of this Declaration or any adopted Rules and Regulations.

Section 5. Animals. No swine, poultry or livestock shall be permitted or raised on any Lot, except dogs, cats, or other usual household pets, not in excess of two (2) of each type of such household pet may be kept (i.e., two (2) dogs, two (2) cats, etc.); provided that they are not kept, bred or maintained for any commercial purposes and are not permitted to roam at large.

Section 6. Trash Removal. All rubbish, trash, and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon nor be burned on any Property. No rubbish, trash or garbage shall be kept or placed outside of any dwelling

on the Property except that covered trash containers may be placed in front of a Lot for pick—up if so placed not earlier than dusk on the evening preceding the day of such pickup. All refuse containers, wood piles, storage areas, and machinery and equipment shall be stored in the rear yard of any Lot, in a neat and orderly fashion.

Section 7. Antennae, Garages, Clothes Lines and Fences.

- a. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any Lot. Normal radio and television installations wholly within a building are excepted.
- b. All Owners are hereby put on notice that Frederick Cablevision owns and operates a facility on Yellow Springs Road near the Properties subject to this Declaration. This facility is not owned by the Declarant and is not subject to the covenants or use restrictions contained in this Declaration, and said facility may be modified or expanded in the future, without the approval of the Association.
- c. Under no circumstances may garages be converted into living space.
- d. No clothing or any other household laundry shall be hung in the open to dry on any Lot unless hung from a device located in the rear yard that is removed from view when not actually in use.
- e. No chain link fences shall be installed on any Lot. All other fences shall be approved by the Architectural Control Committee. The Architectural Control Committee shall have the right to establish the location, type and height of fencing and all fencing details permitted in different sections of the Properties.

Section 8. Tree Removal. Trees may be removed from a Lot where reasonably necessary for the construction of driveways, paths, utility lines and structures, but in order to preserve the scenic beauty of the Property hereby subjected to these restrictions, except for such designated purposes, no tree larger than four (4) inches in diameter (measured two feet above the ground) or more than twenty (20) feet in height shall be removed from the Property or destroyed without the written approval of the Architectural Control Committee. Said permission not being required for removal of dead trees or deadfall. Declarant will be providing trees along the streets of the Properties for the purpose of enhancing the appearance of the Properties. In addition, Declarant may be landscaping certain areas around the improvements constructed on each Lot. It is intended that each individual Owner will maintain, water and nurture said landscaping and street trees as installed by the Declarant and by acceptance of the deed of conveyance for any Lot, the Owner undertakes an affirmative responsibility to maintain, care for, and/or replace such landscaping and Street trees. The Declarant, its agents and employees shall have an irrevocable right and a general easement to enter any Lot for the purpose of supplement hereto, including, without limitation, the right to maintain and care for the landscaping and street trees, located within the area adjoining any street and/or roadway. Such right and easement shall in no way be

construed as an obligation on the part of the Declarant to maintain said landscaping and/or street trees.

Section 9. Vegetable Gardens. No vegetable garden may be planted in the front of any Lot.

Section 10. Minimum Living Area. The total minimum living area (excluding basements, porches and garage areas) of any dwelling erected on any Lot shall be determined by the Architectural Review Committee from time to time.

Section 11. Prohibited Dwellings. Structures and Equipment. No trailer, unlicensed vehicle, shack, or garage only or basement only shall be erected or allowed to remain on any Lot; nor shall the same at any time be used as a dwelling, temporarily or permanently; nor shall any structure of a temporary character be used as a dwelling. The Architectural Review committee may allow a dog house structure or an accessory structure (including, but not limited to, a shed or storage structure) provided such structure meets the requirements of Article IX hereof.

Section 12. Subdivision. 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 in any way apply to the Declarant, it being understood and agreed by each Owner that the Declarant is free to further divide or subdivide any portion of any Lot as long as the Declarant is in title to such Lot. 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, the Declarant or any other person for any purpose.

Section 13. Obstructions. 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 private streets and roadways.

Section 14. Exterior Installations. No water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot; except for such items as installed by a utility company and cannot be buried and/or hidden from view.

Section 15. Interference with Easements. 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. Such easement area on each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements in such easement areas for which a public authority or utility company is responsible for maintaining.

Section 16. Vacant Lots. That portion of any Lot covered by this Declaration, which is not occupied by a building shall be kept free and clear of all weeds and debris so that the same may be identified as a residential lot. Any Lot which has been sold, but on which no building has been constructed, shall likewise be kept free and clear of debris,

pending the construction of a residence thereon. Each Owner shall promptly remove or otherwise dispose of any accumulation of trash, garbage or rubbish, and at all times maintain said Lot in a neat and sanitary condition.

Section 17. Rules and Regulations. All Owners and occupants shall abide by the By—Laws and any rules and regulations adopted by the Association.

Section 18. Lease Agreements. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject in —all respects to the provisions of this Declaration, and the Articles of Incorporation and By—Laws of the Association and any rules and regulations, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing.

Section 19. Exemptions. None of the foregoing restrictions shall be applicable to the activities of:

- a. Declarant, its officers, employees, agents, or assigns in their development, marketing, and sale of Lots or other parcels within the Property; or
- b. The Association, its officers, employees, and agents in connection with the proper maintenance, repair, replacement, and improvement of the Common Area and community facilities thereon.

ARTICLE XI RESERVED RIGHTS AND BASEMENTS

The following easements and rights are hereby declared or reserved:

- a. As long as it owns any part of the property, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Area.
- b. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, drainage, gas, cable television, telephones, and electricity subject to an obligation on the part of the user of the easement to repair and replace the ground disturbed as near as possible to the condition that existed prior to the work.
- c. An easement is hereby reserved to Declarant to enter the common Area during the period of construction and sale of the Property and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction and sale of residences, including without limitation, a business office, sales office, storage area; construction yard, signs, displays, and model units.
- d. Declarant also reserves the right to enter into the Common Area for the purpose of carrying out any obligation. it may have or assume with respect to the curing

of any defects in workmanship or materials in the Property or the improvements thereon.

- e. For a period of twenty (20) years from the date of conveyance of the first Lot, the Declarant reserves a blanket easement and right on, over and under the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant, an emergency exists which precludes such notice.

ARTICLE XII BOARD OF DIRECTORS

Section 1. Selection and Number.

- a. The affairs of the Association shall be managed by a Board of Directors initially consisting of three (3) person. who shall be designated by the Declarant and who shall hold office until the election of their successor. at the first annual meeting of the Member. of the Association.
- b. Commencing with the first annual meeting, the Board of Directors shall consist of three (3) persons who shall be elected by the Members of the Association and who need not be members of the Association. While there is any Class B Member, the number of directors shall be determined from time to time by a vote of the initial directors or their replacement(s) named by the Declarant. Thereafter, the number of directors shall be nine (9) who shall be elected in accordance with a process set forth in the By-Laws.

Section 2. Powers. The Board of Directors shall have power to;

- a. Adopt and publish rules and regulations governing the use of the Common Area and facilities and the personal conduct of the members and their guests thereon and to establish penalties for infraction thereof.
- b. Suspend the voting rights and right to use of the recreational facilities located within the Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. The right to use of the recreational facilities may also be suspended for a period not to exceed thirty (30) days for each infraction of published rules and regulations;

- c. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- d. Employ a manager, an independent contractor, or such other employees as they deem necessary to prescribe their duties.
- e. To borrow funds without mortgages for purposes set forth in the By-Laws, in a total aggregate amount not to exceed fifty percent (50%) of the annual assessment income of the Association. Borrowings without mortgages in excess of this amount must be approved by a majority vote of the members present at a meeting of the Association when a quorum is present.
- f. After there are no longer any Class B Members, combine or redistrict Neighborhoods in order to ensure fair and adequate representation within the Association.
- g. Grant all necessary easements and rights-of-way over the Common Area.
- h. Exercise for the Association all powers, duties, and authority vested in-or delegated to this Association and not reserved to the membership by other provisions of this Declaration or the By-Laws or Articles of Incorporation.

Section 3. Duties. It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class "A" Members who are entitled to vote.
- b. Supervise all officers, agents, and employees of this Association and to see that their duties are properly performed.
- c. Cause an annual operating budget to be prepared, based on estimated or actual expenses so as to maintain a ten percent (10%) contingency each year and to fund a capital asset replacement fund in amounts established by the Board, to set an annual assessment sufficient to satisfy the approved budget requirements (except where the membership must set such assessment in accordance with this Declaration), to require that such budget be reviewed for adequacy by an independent Certified Public Accountant prior to approval, and to supply a copy of the accountant's report to the Frederick City Treasurer.
- d. Fix the amount of the Community and Neighborhood Assessments against each Lot or Residential Unit in advance of each annual assessment period, send written notice of each assessment to every Owner subject thereto in advance of each annual assessment period, and foreclose the lien Against any property for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same and to cause notices to be sent to first mortgagees.

- e. Issue, or cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether or not any assessment has been paid, and releases of liens when the assessment, interest, and reasonable attorneys' fees relating thereto have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- f. Procure and maintain adequate liability and hazard insurance on property owned by the Association as specified in By-Laws.
- g. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- h. Cause the Common Area to be maintained.
- i. Grant necessary easements across the Common Areas.
- j. Retain any person, firm, entity or organization necessary to assist the Board in fulfilling its obligations and duties.
- k. Cause the books and records of the Association to be reviewed annually by an independent Certified Public Accountant in accordance with generally accepted accounting principles except that when the annual budget exceeds Seventy Thousand Dollars (\$70,000.00) the books and records shall be subject to an annual audit by an independent Certified Public Accountant.
- l. Otherwise perform or cause to be performed the functions and obligations of the Board and the Association as provided for in the Articles of Incorporation, By-Laws and this Declaration.

ARTICLE XIII NEIGHBORHOOD COMMITTEE

Section 1. Composition of Neighborhood Committee. A Neighborhood Committee shall be composed of an uneven number of not less than three (3) nor more than seven (7) Lot Owners who actually reside in a particular Neighborhood, as defined in Article I. These members shall be elected by the Owners within the same Neighborhood.

Section 2. Role of Neighborhood Committee. It shall be the role and responsibility of the Neighborhood Committee to perform the following;

- a. prepare and submit to the Association budget recommendations relating to the "Neighborhood Assessments" for its respective Neighborhood,
- b. prepare and submit maintenance requests pertaining to Common Area located within the Neighborhood,
- c. recommend adoption of rules and regulations, mediate, and recommend enforcement of rules and regulations concerning use of those Common Areas and facilities which are located within the Neighborhood and which are generally for use by the residents of the Neighborhood. This task shall include,

but not be limited to, the recommendation for the adoption, mediation, and recommendation of enforcement of parking rules and regulations;

- d. submit material for incorporation into the Association Newsletter, if any and;
- e. perform any other such related activities in its role as liaison between the Neighborhood residents and Association as are not specifically reserved to the Association.

Section 3. Mediation of Disputes. Should a dispute arise between or among residents in the Neighborhood concerning a violation of the rules and regulations adopted by the Committee (Including, but not limited to, parking rules and regulations) of the Association or a violation of the architectural and use restrictions, it shall be the responsibility of the Neighborhood Committee to attempt to amicably resolve the dispute before the matter may be referred or brought before the Board of Directors of the Association.

ARTICLE XIV PARTY WALLS

The rights and duties of the Owners of Lots with respect to party walls shall be governed by the following;

Section 1. General Rules of Law to Apply. Each wall which is constructed as a part of the original construction on the Property and any part of which is placed on the dividing line between separate Lots shall constitute a party wall and, with respect to such wall, each of the adjoining Owners shall assume the burdens and be sub-beneficiaries of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance and Destruction by Fire or other Casualty. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, their agents or families (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the party wall.

Section 3. Repairs of Damage Caused by One Owner. If any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then, the first of such Owners shall forthwith proceed to rebuild and repair the same to as good a condition as formerly, without costs to the adjoining Owner.

Section 4. Other Changes. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions, or rebuild his residence in any manner

which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

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. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusively binding upon the parties.

ARTICLE XV NO PARTITION

Except as is permitted in this Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in any portion of the Properties seek any such judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article XV shall not be construed to prohibit the Board of Directors from acquiring and disposing of any tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE XVI CONDEMNATION

Section 1. Notice of Condemnation. Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of or under threat of condemnation), each Owner shall be entitled to notice thereof.

Section 2. Disbursement of Condemnation Proceeds. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

- a. If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class "A" Members of the Association shall otherwise agree, the Association shall promptly restore or replace such improvements as taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the above provisions in Article VII hereof regarding the disbursement of funds in respect of casualty damage or destruction which is to be repaired shall apply.
- b. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then, such

award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE XVII MANAGEMENT

Section 1. Management Agent. The Board of Directors may employ for the Association a professional 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.

Section 2. Duration of Management Agreement. Any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party. The term of any such management agreement shall not exceed two (2) years, provided, however, that the terms of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods.

Section 3. 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 Area 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, or articles which may be stored upon the Common Area 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 Area 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 XVIII FHA/VA APPROVALS

Provided that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is insured by FHA or guaranteed by VA, and further provided 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 or approval of the Federal Housing Administration ("FHA") and the Veterans Administration ("VA"), as circumstances may require:

- a. change the basic organization of the Home Owners' Association, including the merger, consolidation, or dissolution of the Home Owners' Association, or
- b. dedicate, convey, or mortgage the Common Area, Or

- c. annex additional properties not shown on the plan of development approved by VA or FHA.
- d. modify or amend any material provision of this Declaration, the By-Laws, or the Articles of Incorporation of the Association.

**ARTICLE XIX
DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that no such transfer shall be effective unless it is in a written instrument signed by the Declarant.

**ARTICLE XX
GENERAL PROVISIONS**

Section 1. Term. 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 properties and shall inure to the benefit of and shall be enforceable by the Association and the Owners of the Lots and Residential Units, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Amendments. Except as otherwise provided herein, this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than seventy-five percent (75%) of the Lots and Residential Units, and thereafter by an instrument signed by the Owners of not less than a majority of the Lots and Residential Units. Any amendment must be recorded.

Section 3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors), to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Owners), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or

former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. If the Association shall prevail in a Court of law, then all costs or expenses incurred by the Association in such enforcement proceedings, including attorney's fees, shall become a lien upon such Lot, condominium unit or parcel on which an apartment unit is located, and such lien may be enforced in the same manner as an assessment levied in accordance with Article IV of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of anyone of these covenant. or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. Required Changes. Notwithstanding any provisions to the contrary contained in the Articles of Incorporation or By-Laws of the Association or this Declaration, the Declarant shall have and hereby reserves the right to make modifications, additions, or deletions to the Declaration, the Articles of Incorporation, and the By-Laws of the Association if such modifications, additions, or deletions are required by VA, FHA, FHLHC or FNMA. The Declarant further reserves the right to waive in writing any exemption, right or privilege granted or reserved the Declarant by this Declaration or the Art1cles of Incorporat1on or the By Laws of the Association.

Section 7. Taxes and Assessments. It is the intent of this Declaration that insomuch as the interests of each Owner to use and enjoy the Common Area is an 1nterest in real property appurtenant to each Lot or Residential Unit, the value of the interest of each Owner in such Common Area shall be included in the assessment for each such Lot or Residential Unit and as a result, any assessment directly Against such Common Area should be of a nominal nature reflecting that the full value of the same should be included in the several Assessments of the various Lots or Residential Units.

Section 8. 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.

Section 9. Counterparts. This Declaration may be executed in counterparts.