

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EVERGREEN ESTATES HOMEOWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by The Artery Organization, Inc., a Maryland corporation, hereinafter referred to as the "Artery Organization,"

Witnesseth:

WHEREAS, Declarant is the owner of certain property in Prince George's County, State of Maryland, which is more particularly described on the legal description attached hereto and made a part hereof as Exhibit A; and

WHEREAS, Declarant wishes to impose on said property certain covenants, conditions and restrictions.

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

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Evergreen Estates Homeowners Association, Inc., a non-stock, non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property described on Exhibit A hereto, or any property annexed pursuant to Article II, Section 4.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described more particularly on the legal description attached hereto and made a part hereof as Exhibit B.

Section 5. "Lot" shall mean and refer to any plot of land shown upon



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any recorded subdivision map of the Property with the exception of the Common Area.

**Section 6. "Declarant"** shall mean and refer to The Artery Organization, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant are specifically assigned or transferred to such successors or assigns.

**Section 7. "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. "Mortgage," as used herein, shall include a deed of trust. "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"), 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 term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

**Section 8. "Dwelling Unit"** shall mean any building or portion of a building originally designated and intended for use and occupancy as a residence by a single family.

**Section 9. "Member."** Every Owner of a Lot which is subject to assessment shall be a member of the Association. An Owner of more than one (1) Lot shall be deemed to have a membership for each Lot owned.

## ARTICLE II

### Property Subject to Declaration and Property Rights

**Section 1. Property Subject to Declaration.** The real property which is hereby subject to the terms and conditions of this Declaration is all that property located in Prince George's County, Maryland, described in Exhibit A attached hereto and made a part hereof.

**Section 2. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, including an easement for the use and enjoyment of the walkways within the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, 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, if any;

(b) the right of the Association to suspend the voting rights and right of use of any recreational facilities by an Owner for any period during which any assessment against his Lot is more than thirty (30) days delinquent; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all of any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;

(d) the right of the Association, by and through the Board of Directors, to grant easements and rights-of-way for the installation, maintenance, repair, and reconstruction of utility lines or appurtenances, to a municipality, public or private utility, or otherwise. No easements or rights-of-way shall unreasonably affect the use of the Common Area by the members;

(e) the right of the Association to limit the number of guests of members;

(f) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the facilities thereon; and

(g) the right of the Association, the Declarant, utility companies and other Owners with respect to the easements established in Section 16 of Article VI hereof.

**Section 3. Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

**Section 4. Annexation.** There shall be no additions or annexations to the Property subject to this Declaration, except as hereinafter provided: If within seven (7) years of the date of incorporation of the Association the Declarant should develop additional lands within the area described in Exhibit C attached hereto and made a part hereof, such additional lands may be annexed to said Properties in whole or in part without the assent of the Class A members; provided, however, that if any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the Veterans Administration or insured by the Federal Housing Administration, no annexation shall be made except following a determination by the Veterans Administration or Federal Housing Administration, or if no such general plan was so approved, except following the prior written approval of the Veterans Administration or Federal Housing Administration. Annexation shall be evidenced by an amendment to the Declaration executed by Declarant and recorded among the Land Records of Prince George's County, Maryland. Upon recordation, all the terms and conditions of the Declaration shall apply to the Lots and

Common Areas as if they had been originally included in this Declaration.

### ARTICLE III

#### Membership and Voting Rights

**Section 1. Membership.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot owned.

**Class B.** The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Each Class B membership shall cease and be converted to a Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) thirty (30) days after the date on which the total outstanding Class A memberships equal the total outstanding Class B memberships multiplied by three (3); or

(ii) seven (7) 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 seven (7) 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 Class B memberships by the holders thereof to the Association.

**Section 3. Annexation.** Upon annexation by the Declarant of additional properties pursuant to Article II, Section 4, and in the event that Class B membership shall have ceased as hereinabove provided, Class B membership shall be revived with respect to those Lots so annexed; provided, that the Class B membership in these annexed Lots shall cease and be converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership in the annexed property equals the total votes outstanding in the Class B membership in such property; or

(b) four (4) years from the date of recordation of the Supplemental Declaration annexing said property or upon the surrender of Class B memberships by the holders thereof to the Association.

## Covenant For Maintenance Assessments

Section 1. Creation of the **Lien** and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest costs and reasonable attorneys fees, and a "late charge" as may be determined by the Board, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien-up-on 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 assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The Board of Directors shall determine the annual assessment at least annually. The Board of Directors shall determine whether the assessments are payable annually, monthly or quarterly. The annual assessment shall be based upon a budget prepared by or for the Board of Directors prior to the beginning of the assessment period. However, the failure to determine the annual assessment prior to the beginning of an assessment period shall not be deemed a waiver or modification of the provisions of this Article, but the annual assessment for the preceding period shall continue until the Board has determined the new annual 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, maintenance, repair and replacement of the Common Area, including the payment of taxes and any front foot benefit assessments for the Common Area.

## Section 3. Basis of Assessments and Maximum Assessment:

(a) Basis of Assessments. For general and special assessment purposes, there shall be two (2) classes of Lots:

(i) Class I Lots shall be all the Lots except those Lots defined hereafter as Class II Lots. Class I Lots shall be assessed at One Hundred Percent (100%) of the general or special assessment rate.

(ii) Class II Lots shall be those Lots owned by Declarant on which a Dwelling Unit has not been completed and occupied and for which it holds a Class B membership. Class II Lots shall be assessed at Twenty-Five Percent (25%) of the general or special assessment rate. In consideration

of Declarant's exemption from a full assessment, Declarant hereby covenants and agrees to maintain (exclusive of real estate taxes and insurance premiums) the Common Area, without cost to the Association for one (1) year from the date of conveyance of the first Lot to an Owner, or until the Declarant has conveyed Seventy-Five Percent (75%) of said Lots to Owners, whichever occurs first. Said maintenance shall apply upon subsequent annexation pursuant to Section 4, Article II, with respect to the Common Area contained in the property so annexed, which maintenance shall end one (1) year from the date of conveyance of the first Lot in such annexed property to an Owner, or until the Declarant has conveyed Seventy-Five Percent (75%) of the Lots contained in such annexed property to Owners, whichever occurs first. Declarant further agrees to fund any deficit in the Association's budget for any fiscal year of the Association where Declarant is a Class B member.

(b) Maximum Annual General Assessment:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment rate shall be Two Hundred Forty Dollars (\$240).

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment 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 insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above Ten Percent (10%) 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.

(iv) The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

(c) Initial Capital Contribution. Each grantee from Declarant of a lot improved with a Dwelling Unit shall contribute a sum as hereinafter determined as a non-refundable, non-transferable contribution to the capital of the Association. Said contribution shall be in addition to, and not in lieu of, general or special assessments. Said contribution shall be the sum of Forty Dollars (\$40) for each Lot.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, 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, provided that any such assessment shall have the assent of two-thirds ( $2/3$ ) of the votes of each class of members who are

voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. 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.

**Section 6. Uniform Rate of Assessment.** Except as otherwise provided in Section 3 of this Article IV, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected in advance on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the first conveyance of a Lot, with improvements, to an owner (other than Declarant). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer for the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association with the status of assessments on the Lots shall be binding on the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate of Eighteen Percent (18%) per annum; provided, however, that if said interest rate is higher than that permitted by law, then the highest interest rate permitted by law shall be applicable. The Board may also impose a "late charge," the amount of which shall be determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot (and all improvements thereon) in the manner as provided by Maryland law for the foreclosure of mortgages containing a power of sale, and in either event, interest, costs and reasonable attorneys' fees of any 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 nonuse of the Common Area, or abandonment of his Lot. If assessments are paid other than annually, and if any installment is not paid when due, then the Association may declare the entire annual assessment due and payable.

Section 9. Subordination of **the Lien**. The lien established by this Declaration shall have preference over any other assessment, 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, mortgage instrument or encumbrances duly recorded on the Lot prior to the assessment thereon of the lien 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 said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the lien 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 mortgagee in possession or 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 recordation 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 (or the indebtedness secured thereby) not otherwise entitled thereto.

**Section 10.** Additional Default. Any recorded first mortgage



secured on a Lot 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 9 of this Article shall not be altered, modified or diminished by reason of such failure.

Section 11. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the Common Area 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 fund shall be conclusively deemed to be a common expense of the Association and may be deposited in 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 replacements of the Common Areas may be expended only for the purpose of effecting the replacement of the Common Areas, major repairs to any equipment or replacement thereof, and for startup expenses and operating contingencies of a nonrecurring nature relating to the Common Areas. 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.

## ARTICLE V

### Architectural Control

Section 1. **Bowie** Town Center Architectural **Review** Committee, Inc. ("**BTCARC**"). The Property is subject to a Declaration (the "**BTCARC Declaration**") dated September 15, 1986, recorded among the Land Records of Prince George's County, Maryland in Liber 6424, folio 827, a copy of which is attached to this Declaration as Exhibit D. The Association is an "**Association**" as defined in the BTCARC Declaration.

(a) The Property, the Common Areas, the Lots, and all **Owners** are subject to and bound by the terms and conditions of the BTCARC Declaration. Therefore, all alterations, construction, improvements, etc., to any Lot or Dwelling Unit shall require application to and approval by the BTCARC as provided in the BTCARC Declaration.

(b) Any alteration, construction, improvement, etc., to any Lot or Dwelling Unit requiring approval by the BTCARC shall also require approval by an **Architectural Committee** composed of three (3) or more representatives appointed by the Board. In the event the Architectural Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have

been fully complied with. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article V shall not be applicable to the Declarant or any part of the Property owned by the Declarant, nor to a successor or assign of Declarant (pursuant to Article I, Section 6) if such successor or assign is specifically granted by Declarant the right to be exempted from the provisions of this Article V. Until an Architectural Committee is established, the Board of Directors shall constitute the Committee. The Board of Directors is specifically authorized to establish rules and regulations regarding the procedures for filing and processing of applications for changes and for the time and manner of implementing approved applications.

(c) It is specifically declared that approval of the BTCARC ~~and~~ the approval of the Architectural Committee is necessary prior to any alteration, construction, improvement, etc., as stated above. In the event that the BTCARC ceases to exist or assigns or delegates its duty to the Board, then only the approval of the Architectural Committee is required.

## ARTICLE VI

### Use **Restrictions** and Easements

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

Section 1. The Property is subject to the terms, conditions and restrictions of the BTCARC Declaration. The restrictions contained in Section 2.07 and Section 2.08 of the BTCARC Declaration are incorporated herein by reference and shall be applicable to the Property notwithstanding the subsequent amendment or termination of the BTCARC Declaration.

Section 2. Except as provided in Section 1, no part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any' business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes.

Section 3. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot, except one (1) sign for each building site, of not more than eighteen inches (18") by twenty-four inches (24"), advertising the Property for sale or rent, except signs used by Declarant to advertise the Property during the construction and sales period.

Section 4. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon the Property at any time. Outdoor clothes dryers or clothes lines shall not be maintained upon any of the Property at any time. There shall be no visible storage on any Lot; all refuse containers, wood piles, storage areas and machinery and equipment shall be prohibited upon any Lot, unless ~~obscured from view of~~ other Lots, passageways or streets by a fence or appropriate screen approved by the Architectural Committee., Nothing herein shall be deemed to apply to the ~~storage~~ on the Property by Declarant of building materials during, and for use in, the construction of the improvements on the Property. Trash and garbage containers shall not be permitted to remain in public view except on days of collection and shall be placed in designated trash pick-up areas ~~during~~ hours established by the Board of Directors. All refuse must be ~~deposited~~ in containers or sealed packages.

The designated trash pick-up areas are as follows. The Owners and occupants of all Dwelling Units, except as hereafter provided, shall place their refuse on the curb on (and not before) the day of collection. The Owners and occupants of the Dwelling Units of the Lots listed below shall place their refuse on (and not before) the day of collection in the respective areas designated "Garbage Pick-Up Area" on the Site Plan prepared by CHK Architects & Planners entitled "New Bowie Town Center, Owner: The Artery Organization:"

<u>Garbage Area</u>	<u>Building Number</u>	<u>Unit Number</u>
A	4	1 & 2
B	9	1 & 2
C	10	1 & 2
D	13	1 & 2
E	16	1 & 2
F	17	1 & 2
G	25	2, 3 & 4
H	26	4; 5 & 6
I	32	1 & 2
J	34	1, 2 & 3

The designated trash pick-up areas shall be subject to change by the Board of Directors, but only with the express written approval of the City of Bowie or its designee. In connection with the deposit and collection of refuse and as a part of its general obligation to properly maintain the common areas, the Board of Directors shall have the specific authority and responsibility to take such appropriate action as is necessary to maintain the designated trash pick-up areas in a neat and orderly condition.

**Section 5.** There shall be no obstruction of the Common Areas nor shall anything be stored or placed in the Common Area without the prior consent of the Board of Directors. No waste shall be committed in the Common Area.

**Section 6.** No Owner shall make or permit any disturbing noises in his Lot by himself, his family, servants, employees, agents, visitors, or licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Owners. No Owner shall play upon, or suffer to be played upon, any musical instrument or operate or suffer to be operated a phonograph, television set or radio in his Lot at such high volume or in such other manner that it shall cause unreasonable disturbances to other Owners.

**Section 7.** All baby carriages, playpens, bicycles, wagons, toys, benches or chairs or similar items shall be kept inside the Dwelling Unit when not in use. No such items shall be placed in the Common Areas.

**Section 8.** All vehicles belonging to an Owner or to members of an Owner's family or to a guest, tenant, or employees of an Owner, shall be parked in the spaces provided, and no such vehicle shall be parking in such a manner as to impede or prevent ready access to any other parking space.

**Section 9.** No Owner shall decorate or redecorate any exterior portion of a Dwelling Unit so as to change the exterior color or design of a Dwelling Unit without first obtaining the written approval of the Board of Directors.

**Section 10.** Soliciting of any type is forbidden.

**Section 11.** The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Whenever water, sanitary sewer, electricity, 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, shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a 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 reasonable 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, and provided further that the right granted in Subparagraph (a) shall be subject to the rights of the utility company or governmental agency owning or controlling said utilities and facilities.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of

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the cost thereof, 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 the Board shall be final and conclusive on the parties.

Section 12. The Board of Directors 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, guidelines and establish such criteria relative to architectural styles or details, or other related 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 herein. The Architectural 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 Committee shall be final except that any Owner who is aggrieved by any action or forbearance from action by the Architectural Committee may appeal the decision of the Architectural Committee to the Board of Directors, and upon the request of such Owner, shall be entitled to a hearing before the Board of Directors.

Section 13. The Architectural Committee shall be bound by at least the following limitations in connection with the approval of any application for the construction of a fence and/or storage shed: all fences and storage sheds must be constructed of wood with natural finishes as established by the Declarant in the model home park. No other type of fencing or storage sheds shall be allowed. Fencing shall be reasonably uniform in height throughout the Property. The minimum height of any fence shall be forty-eight (48) inches and the maximum height of any fence shall be seventy-two (72) inches. A storage shed roof shall not exceed the height of the fence. Fences shall be permitted only for the backyards of the Lots; no fences shall be permitted for side yards. For the purposes of this section, an "interior unit" is a house with other houses on both sides, sharing a common wall on the side lot lines. For interior units, "backyards" shall be defined to be the area bounded by the rear of the house, the rear lot line and the two side lot lines. An "end unit" is a house with another house on only one side sharing a common wall, and the other side lot line adjacent to a public or private street or road or common area. For end units, "backyards" shall be defined to be the area bounded by the rear of the house, the rear lot line, the side lot line that is coincident with the common wall extended to intersect the rear lot line, and a line coinciding with the side of the end unit facing the public or private road or common area, extended to intersect the rear lot line.

Section 14. 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 that 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 15. 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 Property;  
or

(b) to the Association, its officers, employees and agents, in

connection with the proper maintenance, repair, replacement and improvement of the Common Areas.

Section 16. The following easements and rights are hereby declared or reserved:

(a) Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Areas, or areas designated as easement areas on the recorded subdivision plats.

(b) Each Lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(c) An easement is hereby reserved to Declarant to enter the Common Area during the period of construction and sale on 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 yards, signs, displays and model units.

(d) Declarant also reserves the right to enter into the Common Area for the purpose of carrying out any obligations 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 seven (7) 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 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.

(f) There is hereby created a blanket easement upon, across, over

deducted from any insurance proceeds in the hands of the Insurance Trustee, pro rata, as the reconstruction or repair progresses;

(f) such other provisions not inconsistent with the provisions hereof as the Board of Directors or the Insurance Trustee may reasonably require.

Upon completion of the reconstruction or repair and payment in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the Insurance Trustee shall be paid to the Board of Directors if such funds relate to Common Areas, or (ii) to the Owner of any Lot to which any such proceeds may relate.

## ARTICLE XIII

### Books and Records - Fiscal Management

**Section 1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association which shall begin at the date of recordation of the Declaration among the Land Records for Prince George's County, Maryland. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should the practice of the Association subsequently dictate.

**Section 2. Principal Office - Change of Same.** The principal office of the Association shall be as set forth in Article II of the Articles of Incorporation of the Association. The Board of Directors, by appropriate resolution, shall have the authority to change the location of the principal office of the Association from time to time.

**Section 3. Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with generally accepted accounting practices, consistently applied. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures and other transactions of the Association and its administration and shall specify the maintenance and repair expenses of the Common Areas services required or provided with respect to the same and any other expenses incurred by the Association. The amount of any assessment or portion of any assessment, required for payment of any capital expenditure or reserves of the Association shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by the members.

**Section 4. Auditing.** At the close of each fiscal year, the books and records of the Association shall be audited by an independent Public Accountant whose report shall be prepared in accordance with generally accepted auditing standards.

**Section 5. Inspection of Books.** The books and accounts of the Association, vouchers accrediting the entries made thereupon and all other records maintained by the Association, shall be available for examination by the members and their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Lot and its duly authorized

thereof, shall extinguish any 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 lien 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 in the execution of such amendment.

## ARTICLE VIII

### Management

**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. If the standards and regulations of FNMA and/or FHLMC prohibit self-management by the Association and FNMA and/or FHLMC holds an interest in a first mortgage or deed of trust against any of the Lots, then no such self-management shall be undertaken by the Association without the prior written consent and approval of all the holders of the first mortgages of record on the Lots.

Provided, that any Lot subject to this Declaration is then encumbered by a deed of trust or mortgage which is insured by the Federal Housing Administration or guaranteed by the Veterans Administration, and, provided further, that if FHA and/or VA standards and regulations prohibit self-management of the Association, then no such self-management shall be undertaken by the Association without the prior written consent and approval of FHA or VA, as the circumstances may require.

**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 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 (1) year periods.

**Section 3. Limitation of Liability.** Except for its negligence, 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 easement area, or from any wire, pipe, drain, conduit or the like. Except for its negligence, 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 Area. 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 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 IX**

Party Walls

Section 1. Party Walls. Each wall which is built as part of the original construction of a Dwelling Unit upon the Property and placed on the dividing line between Lots 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. Repair 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 proportion to such use.

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, to the right of any such Owners 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, an Owner, who by his negligent or willful act causes the 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.

**ARTICLE X**

General Provisions

Section 1. Enforcement. The Association, or any Owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner or by any mortgagee of any Lot to enforce any covenant or restrictions herein contained or any provision of the By-Laws or Articles of Incorporation of the Association shall in no event be deemed a waiver of the right to do so thereafter. In the event enforcement of these covenants is effected by the institution of a suit in equity, 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 or any provision of the By-Laws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively

by recovery of damages; provided, however, that the aforesaid shall not preclude an action at law for recovery of damages.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Duration and Amendment. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of the Declaration shall run with and bind the land 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. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots.

Section 4. FHA-VA Approvals. Provided that any Lot is then encumbered by a deed of trust which is insured by the Federal Housing Administration or 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 or approval of the Federal Housing Administration and the Veterans Administration, as the circumstances may require:

(a) make any annexation or additions, other than as provided in Article II, Section 4; or

(b) abandon, partition, dedicate, subdivide, encumber, sell or transfer any of the Common Areas; 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 by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(c) abandon or terminate this Declaration; or

(d) materially modify or amend any provision of this Declaration, the By-Laws or the Articles of Incorporation of the Association; or

(e) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association in any other entity.

Section 5. Consents by Lenders. Any other provision of this Declaration or the By-Laws or Articles of Incorporation of the Association 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 at least two-thirds (2/3) of all the holders of the first mortgages of record on the Lots:

(a) abandon, partition, alienate, release, hypothecate, dedicate,

subdivide, encumber, sell or transfer any of the Common Areas or community facilities directly or indirectly owned by the Association; 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 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 of the By-Laws or of the Articles of Incorporation of the Association; or

(d) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association to any other entity; or

(e) substantially modify the method of determining and collecting assessments against an Owner or his Lot as provided in this Declaration; or

(f) waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of buildings or structures on the Lots, the exterior maintenance of buildings or structures on the Lots, the maintenance of the Common Areas, party walls or common fences and driveways, or the upkeep of lawns and plantings within the Property; or

(g) fail to maintain fire and extended coverage on insurable Association Common Area property on a current replacement cost basis in an amount not less than One Hundred Percent (100%) of the insurable value (based on current replacement cost); or

(h) use hazard insurance proceeds for losses to any Association Common Area property for other than the repair, replacement or reconstruction of such Common Area or property.

Section 6. Additional Rights of Mortgagees - Notice. The Association shall promptly notify all Eligible Mortgage Holders who hold first mortgages on any Lot for which any assessment levied pursuant to the Declaration, or any installment thereof, becomes delinquent for a period in excess of sixty (60) days and the Association shall promptly notify said Eligible Mortgage Holders with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Lot and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

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. If the Association undertakes "self-management," it shall promptly give written notice of such occurrence to all of the holders of first mortgages of record on the Lots.

Any first mortgagee of any Lot may pay any taxes, utility charges or other charge levied against the Common Areas which are in default and which may or have become a charge or lien against any of the Common Areas and any such 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. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

Section 7. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold first mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation 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.

Section 8. Condemnation or Eminent Domain. In the event any part of the Common Areas 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 Eligible Mortgage Holders who hold first mortgages of record on the Lots. No provision of this Declaration or the Articles of Incorporation 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.

Section 9. 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 10. Rights of the Maryland-National Capital Park **and** Planning Commission ("**Commission**" herein). Any other provision of this Declaration or the By-Laws or Articles of Incorporation of the Association 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 of the Commission, which consent shall not be unreasonably withheld or delayed:

(a) make any annexation or additions, other than as provided in Article II, Section 4; or

(b) abandon, partition, dedicate, subdivide, encumber, sell or transfer any of the Common Areas; 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 by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(c) abandon or terminate the Declaration; or

(d) modify or amend any material or substantive provision of this Declaration, or the By-Laws or the Articles of Incorporation of the Association; or

(e) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association to any other entity; or

(f) substantially modify the method of determining and collecting assessments as provided in this Declaration.

The Commission shall have the right to bring action for any legal or equitable relief necessary to enforce the rights and powers granted to the Commission hereunder.

IN WITNESS WHEREOF, Declarant has executed this instrument this \_\_\_ day of \_\_\_\_\_, 1987, by Alfred R. Guerieri, its ~~Assistant~~ Vice-President, attested to by Dorothy Sheldon, its ~~Secretary~~ ASSISTANT.

ATTEST

Dorothy Sheldon  
ASSISTANT Secretary

THE ARTERY ORGANIZATION, INC.

BY: Alfred R. Guerieri  
Assistant Vice President

STATE OF MARYLAND  
COUNTY OF ~~MONTGOMERY~~ Prince Georges

On this 50<sup>th</sup> day of August, 1987, before me, the undersigned officer, personally appeared ALFRED R. GUERIERI, who has satisfactorily proven to be the ~~Assistant~~ Vice-President of THE ARTERY ORGANIZATION, INC., whose name is subscribed to this written instrument, and who acknowledged his execution thereof, for the purposes therein contained as ~~Assistant~~ Vice-President.

Given under my hand and seal this 20<sup>th</sup> day of August, 1987,

Collins  
Notary Public

My commission expires: 7/1/90

**ATTORNEY'S CERTIFICATE**

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the within instrument was prepared under my supervision.

Robert L. Brownell  
Robert L. Brownell

**EXHIBIT A**

Description of Lots and Parcels (Common Areas)  
originally subject to Declaration

Lots numbered "148" through "184," inclusive, and Parcel lettered "D," in a subdivision known as "Plat Four, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland. For reference purposes, the aforesaid lots and parcel are a part of the property described in Exhibit C-2. However, only the aforesaid lots and parcel are included in this Exhibit A.

**EXHIBIT B**

Description of Common Areas to be originally  
subject to Declaration

Parcel lettered "D" in a subdivision known as "Plat Four, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland. For reference purposes, the aforesaid parcel is a part of the property described in Exhibit C-2. However, only the aforesaid parcel is included in this Exhibit B.

- 6747 - 395

**EXHIBIT C**

Description of Property that can be annexed

Lots numbered "1" through "11," inclusive, and Lots numbered "62" through "73," inclusive, and Parcel lettered "A," all in a subdivision known as "Plat One, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland.

Lots numbered "12" through "61," inclusive, and Parcel lettered "B," all in a subdivision known as "Plat Two, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland.

Lots numbered "74" through "119," inclusive, and Lots numbered "185" through "201," inclusive, and Parcel lettered "C," all in a subdivision known as "Plat Three, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland.

Lots numbered "120" through "147," inclusive, all in a subdivision known as "Plat Four, Evergreen Estates," per plat thereof to be recorded among the Land Records of Prince George's County, Maryland.

The aforesaid lots and parcels are a part of the property described in Exhibit C-2.



~~6765-951~~  
5747-372

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AMENDMENT TO DRCLARATION

THIS AMENDMENT TO DECLARATION, made as of the 6<sup>th</sup> day of November, 1987, by The Artery Organization, Inc., a Maryland corporation, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the maker of a certain Declaration of Covenants, Conditions and Restrictions dated undated, and recorded among the Land Records of Prince George's County, Maryland, in Liber 6747, folio 372; as supplemented by a Supplementary Declaration dated September 3, 1987 and recorded among the Land Records of Prince George's County, Maryland, in Liber 6765, folio 951 (the "Declaration"); and

WHEREAS, it is the desire of Declarant to amend the description of the property described in Exhibit "C" attached to said Declaration.

NOW, THEREFORE, THIS AMENDMENT TO DECLARATION WITNESSETH:

Nov 13 9 52 AM '87

1. Exhibit "C" of the Declaration is amended by adding the following property to the description of the Property that can be annexed:

Reservation Parcel PT-1 in the subdivision known as "Plat One, Evergreen Estates," per plat thereof recorded among the Land Records of Prince George's County, Maryland in Plat Book 134 at Plat 60.

2. Declarant certifies that it is the owner of all the Lots and Parcels subject to the Declaration.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date and year first hereinabove written.

ATTEST

THE ARTERY ORGANIZATION, INC.

Deborah Sheldon  
Deborah Sheldon

BY: Alfred R. Guerin, Jr.  
Vice-President  
Alfred R. Guerin, Jr.

STATE OF MARYLAND  
COUNTY OF Prince George's

On this 6<sup>th</sup> day of November, 1987, before me, a Notary Public of the State and County aforesaid, personally appeared Alfred R. Guerin, Jr. who acknowledged himself to be the Vice-President of The Artery Organization, Inc., a Maryland corporation, and that he, as such Vice-President, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation as Vice-President.

In Witness Whereof, I have hereunto set my hand and official seal.

Christine Collins  
Notary Public  
Christine Collins

My Commission Expires: 7-1-89/oc

87

Description of property obtained by Declarant from Mark R. Vogel by deed recorded in Liber 6432, folio 146.

September 16, 1986

DESCRIPTION OF 24.3800 ACRES  
PART OF THE MARK R. VOGEL PROPERTY  
SEVENTH ELECTION DISTRICT  
CITY OF BOWIE, PRINCE GEORGES COUNTY, MARYLAND

Beginning for the same at an iron bar set in the northerly right of way of Enfield Drive (60 feet wide) as shown on Plat One, Enfield Chase, Section Two recorded in the Plat Records of Prince Georges County, Maryland in Plat Book N.L.P. 122 page 68, said pipe also marking the beginning of the 59th or North 42° 49' 26" West, 49.64 foot line as described in a deed to Mark R. Vogel, trustee, dated January 14, 1986 and recorded in the Land Records of Prince Georges County, Maryland in Liber 6256 folio 241; thence from the beginning point so fixed and binding on the Enfield Drive right of way and said 59th and 60th lines of the aforementioned Vogel deed

1. North 42° 49' 26" West, 49.64 feet an Iron bar set and
2. With the arc of a curve to the left 161.57 feet to an iron bar set, said curve having a radius of 430.00 feet and a chord bearing of North 53° 35' 18" West, 160.62 feet to the 12th or South 42° 49' 26" East, 171.80 foot line as described in a deed to the Maryland National Capital Park and Planning Commission dated March 28, 1984 and recorded in the aforementioned Land Records in Liber 5899 folio 757; thence leaving Enfield Drive and binding on said 12th line reversely
3. North 42° 49' 26" West, 171.80 feet to an iron bar set, passing in transit at 87.79 feet the southerly corner of a 200 foot wide reservation for Public Transportation Facilities; thence binding on the Park and Planning Commission lands and continuing with the 62nd through 64th courses of the aforementioned Vogel deed the following three courses and distances

4. North 28° 51' 35" East, 180.72 feet to an Iron bar set
5. With the arc of a curve to the right 225.56 feet to an Iron bar set, said curve having a radius of 3100.00 feet and a chord bearing of North 75° 05' 32" East, 225.51 feet, and
6. With the arc of a curve to the left 545.58 feet to an Iron bar set, said curve having a radius of 900.00 feet and a chord bearing of North 59° 48' 37" East, 537.27 feet to the southerly side of Evergreen Parkway (100 feet wide); thence with the southerly side of Evergreen Parkway the following two courses and distances
7. With the arc of a curve to the left 677.75 feet to an Iron bar set, said curve having a radius of 950.00 feet and a chord bearing of South 80° 01' 53" East, 663.46 feet, passing in transit at 209.06 feet in said line the southerly side of the aforementioned Public Transportation Facilities Reservation and
8. With the arc of a curve to the right 43.86 feet to an Iron bar set, said curve having a radius of 25.00 feet and a chord bearing of South 50° 11' 51" East, 38.45 feet to the easterly side of Everest Drive (60.00 foot wide); thence crossing Everest Drive parallel to Evergreen Parkway and not radial to Everest Drive, and
9. North 66° 59' 13" East, 64.31 feet to an Iron bar set in the easterly side of proposed Everest Drive; thence binding on the easterly side of proposed Everest Drive the following two courses and distances
10. With the arc of a curve to the right 307.45 feet to an Iron bar set, said curve having a radius of 380.00 feet and a chord bearing of South 19° 26' 35" West, 294.14 feet and
11. With the arc of a curve to the left 451.82 feet to an Iron bar set,

- said curve having a radius of 320.00 feet and a chord bearing of South  $02^{\circ} 10' 20''$  West, 415.22 feet to the end of the North  $51^{\circ} 43' 23''$  East, 60.00 foot line as shown on Plat Six, Enfield Chase, Section Two as recorded in the aforementioned Plat Records in Plat book N.L.P. 122 page 71; thence crossing Everest Drive and running reversely with said line
12. South  $51^{\circ} 43' 21''$  West, 60.00 feet to an iron bar set at the end of Curve Number 14 as shown on the aforementioned Plat Six; thence blinding reversely on Curve Number 14
  13. With the arc of a curve to the right 38.59 feet to an iron bar set, said curve having a radius of 25.00 feet and a chord bearing of South  $05^{\circ} 56' 52''$  West, 34.87 feet to the northerly right of way of proposed Enfield Drive (60.00 feet wide); thence crossing Enfield Drive and continuing reversely with the lines of the aforementioned Plat Six
  14. South  $39^{\circ} 49' 39''$  East, 60.00 feet to an iron bar set in the northerly side of Lot 34 as shown on Plat Five, Enfield Chase, Section Two as recorded in the aforementioned Plat Records in Plat book N.L.P. 122 page 70; thence blinding on the northerly side of Lots 34 through 40 and Eric's Way as shown on said plat
  15. With the arc of a curve to the left 313.93 feet to an iron bar set, said curve having a radius of 636.05 feet and a chord bearing of South  $64^{\circ} 18' 43''$  West, 310.75 feet to the center of Eric's Way; thence blinding on the remainder of Eric's Way and the northerly side of Lots 1 through 11 as shown on Plat Four, Enfield Chase, Section Two as recorded in the aforementioned Plat Records in Plat book N.L.P. 122 page 69 and the northerly side of Lots 52 through 49 as shown on Plat Two, Enfield Chase, Section Two as recorded in the

Description of 24.3800 Acres

Page 4

Plat book N.L.P. 122 page 67

16. With the arc of a curve to the right 766.32 feet to an Iron bar set, said curve having a radius of 930.00 feet and a chord bearing of North  $77^{\circ} 56' 35''$  West, 744.82 feet to the end of the South  $35^{\circ} 39' 46''$  West, 60.00 foot line as shown on Plat One, Enfield Chase, Section Two as recorded in the aforementioned Plat Records in Plat book N.L.P. 122 page 66; thence binding reversely on said line and the easterly end of the dedicated portion of Enfield Drive
17. North  $35^{\circ} 39' 46''$  East, 60.00 feet to an iron bar set in the northerly side of Enfield Drive; thence leaving the proposed Enfield Drive and binding on the northerly side of Enfield Drive as shown on the last mentioned plat
18. With the arc of a curve to the right 174.82 feet to an Iron bar set, said curve having a radius of 870.00 feet and a chord bearing of North  $48^{\circ} 34' 50''$  West, 174.53 feet to the point of beginning;  
Containing 24.3800 acres, more or less, as surveyed by Greenman-Pedersen Inc. in September, 1986.  
Being part of the land conveyed by Four Thirty Seven Land Company, Inc. to Hark A, Vogel, trustee, by deed dated January 14, 1986 and recorded in the Land Records of Prince Georges County, Maryland in Liber 6256 folio 241;  
Being subject to a 200 foot wide Reservation for a Public

Transportation Facility

Also being subject to a 10 foot wide Utility Easement.

8747 400

EXHIBIT D

6121 827

THIS Declaration, made this 15<sup>th</sup> day of September, 1986, by Mark R. Vogel, Trustee (hereinafter sometimes referred to as "DECLARANT").

WHEREAS, Declarant is the Trustee empowered to act on behalf of the owners of the real property described in Exhibit A, attached hereto (and as set forth in the deed recorded in the Land Records for Prince George's County, Maryland in Liber 6256 at Folio 241), and by reference made a part hereof; and

WHEREAS, Declarant intends that a new town, to be known as Bowie New Town Center (hereinafter sometimes referred to as "BNTC") will be developed on the land included in the Property as hereinafter defined, affording well-planned Residential, commercial, recreational, institutional and open space uses, buildings, facilities and areas; and

WHEREAS, Declarant desires to subject the Property to the covenants, easements, charges, and liens imposed hereby in order to assure an orderly, cohesive and compatible scheme of development upon the property; and

WHEREAS, Declarant has formed, or will form, the Bowie Town Center Architectural Review Committee, Inc. (hereinafter sometimes referred to as "BTCARC"), a non-profit civic organization to serve as the reviewing and approval authority for any and all development of and upon the Property.

NOW, THEREFORE, Declarant declares that the property described in Exhibit A and such additions thereto as may hereinafter be made, is and are and shall be transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, and further that Declarant delegates and assigns to the BTCARC the power of reviewing and approving all development of and upon the Property and any and all authority necessary to carry out such reviewing, and approval authority. This Declaration shall be deemed to run with and bind the land and shall inure to the benefit of and be enforceable by Declarant, his successors and assigns and any person or entity acquiring or owning an interest in said Property and any improvements thereon.

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ARTICLE I

Section 1.01. Definitions: The following words, phrases, or terms when used herein shall have the following meanings:

(a) "Approval" shall mean and refer to the issuance by BTCARC and/or, if applicable, any public agency having jurisdiction, of written approval, or any written waiver of approval rights, or a letter of "no objection".

(b) "Association" shall mean and refer to any Homeowner's Association; or any Office, Retail or Residential Tenant's Association established upon the "Property", and its successors and assigns.

(c) "Common Area" shall mean and refer to all real Property and improvements thereon owned or leased by an Association or over which an Association has an easement for maintenance, for the use and enjoyment of its members.

(d) "Community" shall mean and refer to the development upon the Property to be known as the Bowie New Town Center.

(e) "Declarant" shall refer to Mark R. Vogel, Trustee, his successors and assigns.

(f) "Declarant Land" shall mean and refer to such part of the Property as may at any time hereafter be owned by Mark R. Vogel, Trustee, or Mark R. Vogel, or any entity in which Mark R. Vogel is a General Partner with fifty percent (50%) or greater interest, or my successor or assign so designated by Mark R. Vogel, Trustee, for so long as Mark R. Vogel Trustee, or Mark R. Vogel, or any entity in which Mark R. Vogel is a General Partner with fifty percent (50%) or greater interest or any successor or assign so designated by Mark R. Vogel Trustee shall be the Owner thereof.

(g) "Declaration" shall mean and refer to the covenants, conditions, and Restrictions and all other provisions herein set forth in the entire document, as they may be from time to time amended.

(h) "Deed" shall mean and refer to a deed, assignment or other instrument conveying the fee simple or leasehold interest in a "Lot", as hereinafter defined.

(i) "Developer" shall mean and refer to the Declarant, Mark R. Vogel, Trustee, his successors and assigns; provided that no successor or assign of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or unless such rights pass by operation of law.

(j) "Development" shall mean any construction, reconstruction, or exterior maintenance or repair in or on the Property..

(k) "Dwelling" shall mean a building or portion thereof arranged or designed to provide living facilities for one or more families. This term shall not include hotels or motels.

(l) "Lot" shall mean and refer to a portion of the Property which is less than the whole thereof and which is assessed as a Unit by the appropriate public officials for the purpose of real estate taxes imposed by the State of Maryland and Prince George's County.

(m) "Members" shall mean and refer to the directors of the Bowie Town Center Architectural Review Committee.

(n) "Notice" shall mean and refer to (1) written notice delivered personally or mailed, United States postage prepaid, to the last known address of the intended recipient, or (2) notice published at least once each week for two consecutive weeks in a newspaper having a general circulation in Prince George's County.

(o) "Owner" shall mean and refer to the Owner of any "Unit" within the Property, or any common or joint interest therein if such Unit is owned by more than one person or entity.

(p) "Permanent ~~Restrictions~~" shall mean and refer to all buildings, structures and other matters and things exclusive



of land which are taxable by the State of Maryland or Prince George's County as real property under applicable law.

(r) "Project" and "Community", as used in this Declaration, shall mean and refer to that certain Community being developed by Declarant in Prince George's County, Maryland, known as "Bowie New Town Center".

(a) "Property" as used herein shall mean and refer as follows:

(i) all land described in Exhibit A attached hereto and all presently existing Permanent Improvements built, installed or erected thereon;

(ii) from and after the building, installation or erection of each new Permanent Improvement upon the land described in Exhibit A annexed hereto, the term "Property" shall also include each such new Permanent Improvement;

(iii) from and after each addition to the land subjected to the "Restrictions", as hereinafter defined, pursuant to Article VI hereof, the term "Property" shall also include each such new parcel of land and arch Permanent Improvement existing on arch such new parcel of land at the time that the same is subjected to the Restrictions; and

(iv) from and after the building, installation or erection of each new Permanent Improvement on arch new parcel of land referred to in subparagraph (iii) above the term "Property" shall also include each such new Permanent Improvement.

(t) "Resident" shall mean and refer to (i) arch tenant actually residing on (or conducting a business on) any part of the Property, and (ii) Members of the immediate family of each Owner and of each such tenant actually living in the same household with such Owner or such tenant. The term "Resident" shall also include the employees, guests or invitees of any such Owner or tenant.

(u) "Restrictions" shall mean and refer collectively to all covenants, easements, charges, and liens created or imposed by this Declaration.

(v) "Unit" shall mean and include (i) the fee simple or long term leasehold title to any Lot within the Property; (ii) the fee simple or long term leasehold title to a Unit in any condominium development within the Property; and/or (iii) any share, membership or other interest in any cooperative or other entity organized for the purpose of making Residential Dwelling Units available to its shareholders, members, or other beneficiaries, which share, membership, or other interest entitles the Owner thereof to possession of any Residential Dwelling Unit within the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

## ARTICLE II

Section 2.01. BTCARC. NOTHING HEREIN CONTAINED SHALL BE CONSTRUED AS REVIEWING OR APPROVING ANY DEVELOPMENT FOR COMPLIANCE WITH FEDERAL, STATE, OR LOCAL LAWS, RULES, ORDINANCES OR REGULATIONS WHICH MAY BE APPLICABLE. SUCH APPROVALS AS MAY BE



GRANTED HEREUNDER PERTAIN ONLY TO HARMONY OF EXTERNAL DESIGN, COLOR AND LOCATION IN RELATION TO SURROUNDING STRUCTURES AND TOPOGRAPHY AND CONFORMITY WITH THE DESIGN CONCEPT WR THE COMMUNITY. Except for purposes of proper maintenance and repair of existing Permanent Improvements in a manner consistent with the original construction and design, no building, fence or wall or other improvements or structures shall be commenced, directed, placed, moved, altered 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 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 BTCARC) shall have been submitted to and approved in writing as to 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 BTCARC.

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 lighting, shades, screens, awnings, patio covers, decorations, fences, wall, aerials, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, walls, or to make, any change or otherwise alter (including any alteration in color) 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 or to make any change or alteration within the Dwelling which will alter the structural integrity of the building or otherwise affect the Property, interest, or welfare of any other Lot Owner, materially increase the cost of operating or insuring any of the Common Areas or impair any easement, until the complete plans and specifications, showing the location, nature, shape, ~~color~~ color; type of construction and any other proposed form of change (including, without limitation, any other information specified by the BTCARC) shall have been submitted to and approved in writing as to the 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 BTCARC.

Section 2.02. BICARC Operation. The BICARC shall be composed of those seven (7) or more individuals so designated in the Articles of Incorporation of the Bowie Town Center Architectural Review Committee, Inc. A majority of votes entitled to be cast by the Members of the BTCARC 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 2.03. Approvals, etc. Upon Approval by the BTCARC 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 the BTCARC and a copy of such plans and specifications bearing such Approval, in writing, shall be returned to the applicant submitting 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 BTCARC) 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 2.04. Limitations. Construction of alterations in accordance with plans and specifications approved by the BTCARC pursuant to the provisions of the 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 2.03 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 BTCARC 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 BTCARC shall be conclusively deemed to have lapsed and compliance with the provision of this Article shall again be required. There shall be no material deviation from the plans and specifications approved by the BTCARC without the prior consent, in writing, of the BTCARC. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the BTCARC 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 2.05. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the BTCARC in accordance with the provisions of this Article, the BTCARC in accordance with the provisions of this Article, shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alterations or other improvements referenced in such certificate have been approved by the BTCARC and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

Section 2.06. Rules and Regulations, etc. The BTCARC 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, 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 BTCARC 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 BTCARC shall be final.

Section 2.07. Prohibited Uses and Nuisances. Except as may be usual in the course of construction and necessary in the Development of the Exempt Property, or except with the prior written Approval of the BTCARC, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any structure or upon the Common Areas:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any structure, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell 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.

(b) The maintaining, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Residential 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. The BTCARC shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other persons and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Areas unless they are accompanied by an adult and unless they are carried or leashed. The BTCARC 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 material\* or trash of any other kind shall be permitted on any Lot.

(d) Except as herein provided, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat or other 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 and operation of the Common Areas and Community facilities) shall be kept upon the Residential Lots nor (except for bona fide emergencies as distinguished from ordinary maintenance and repairs) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The BTCARC may provide and maintain a suitable area designated for 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. Garbage, trash and other refuse shall be placed in covered containers.

(f) Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained on any Lot above the surface of the ground.

(g) No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(h) 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.

(i) No outside television or radio aerial or antenna, or other aerial or antenna or similar device, for reception or transmission, shall be maintained upon the exterior of any Dwelling.

Section 2.0%. Residential Uses. Except as otherwise permitted by BTCARC all Dwellings shall be used for private Residential purposes exclusively, except that a professional office may be maintained in a Dwelling, provided that such maintenance and use is limited to the person actually residing in the Dwelling and, provided further, that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this Section the term "office" shall mean rooms used for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics. Nothing contained in this Article or elsewhere in this Declaration, shall be construed to prohibit the Declarant from allowing individual builders the use of any Lot or Dwelling for promotional or display purposes, or as "model homes", a sales office, or the like.

Section 2.09. 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 and 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 BTCARC required herein, and, upon written Notice from the BTCARC, 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 provided 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 person or entity responsible for such violation if the same shall be committed or attempted on premises other than the Lot owned by such person or entity, then BTCARC shall have the right, through its agents and employees (but only after a resolution of the BTCARC), 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 shall 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 as provided in Article IV of this Declaration. BTCARC 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 BTCARC 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.

Section 2.10. Delegation of Power. Upon a Vote of two-thirds (2/3) of the voter entitled to be cast by the BTCARC



members, any one or more of the powers or authority to act herein granted to the BTCARC may be delegated to any Association upon the Property provided such grant of power, or authority to act is specifically set forth in writing and signed by the President of the BTCARC and the designated authorized representative of the Association accepting such power or authority.

#### ARTICLE III

Section 3.01. Reservation of Easement Rights by Declarant. 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, CATV cables, storm drains, sediment controls, stormwater management facilities, and appurtenances to any of the same, and for all other purposes reasonably related to the completion of construction and the provision of utility services, whether public or private, to the Community and to other Property adjacent to, or in the vicinity of, the Community.

Section 3.02. Easements for Utilities and Related Purposes. The BTCARC 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, electrical cables, telephone cables, gas lines, storm drains, CATV cables, underground conduits and such other purposes related to the provisions of utility services to the Community as may be considered necessary and appropriate by the BTCARC 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 Owners of the lots of Declarant.

Any and all streets, walkways, roadways, sidewalks and the like which are owned by an Association shall be subject to non-exclusive easements for ingress, egress and regress for the benefit of the Declarant, all members of an Association, Owners, Tenants, their respective heirs, personal representatives and assigns and all other persons or other parties claiming under any of them.

Section 3.03. Incorporation and Assurances. Any and all instruments of conveyancing made by Declarant, his successors or assigns to the BTCARC or an Association with respect to any of the Common Areas and Community facilities shall be conclusively deemed to incorporate any reservation or easement in Section 3.01 and Section 3.02, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, his successors or assigns, the BTCARC or an Association shall from time to time execute, acknowledge and deliver to the Declarant, his successors or assigns such further assurances of any reservation or easement under Section 3.01 and Section 3.02 as may be necessary.

#### ARTICLE IV

Section 4.01. Non-Payment of Assessments. Any assessment levied pursuant to Section 2.09, 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, shall bear interest at a rate to be established by the BTCARC at intervals of not less than 3 months. The BTCARC or its agents may bring an action at law against the person or entity personally obligated to pay the same, or foreclose on the lien against the Lot or Lots then belonging to said person or entity in the manner now or hereafter provided for the foreclosure of mortgaged, Deeds of trust or other liens on real Property in the State of Maryland containing a power of sale or 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, reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed and costs shall be added to the amount of each assessment.

The BTCARC shall notify the holder of a 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.

A Lot Owner shall advise the BTCARC of the name of the holder of its first mortgage upon request of the BTCARC.

Section 4.02. Assessment Certificates. The BTCARC shall, upon demand at any time furnish to any person 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 MCARC, 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 Thirty Dollars (\$30.00) may be levied in advance by the BTCARC for each certificate so delivered.

Section 4.03. Priority of Lien. The lien established by this Declaration shall have preference over any other assessment, liens, judgments or charges of whatever nature; except the following:

- (a) general and special taxes and assessments on the Lot; and
- (b) the liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the

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assessment thereon of the lien provided for in this Declaration or duly recorded on said Lot after receipt of a written statement from the BTCARC reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot, 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. Such foreclosure, Deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the mortgagee in possession or 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 shall have the same effect and be enforced in the same manner as provided therein.

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 in the execution of such amendment.

The BTCARC may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto.

#### ARTICLE V

Section 5.01. Declarant Representative on BTCARC. The composition term and voting rights of the BTCARC shall be as set forth in the Articles of Incorporation and By-laws of the corporation. At no time, however, shall the Declarant, its successors or assigns ever have less than two-thirds (2/3) of the votes entitled to be cast by the BTCARC.

#### ARTICLE VI

Section 6.01. Amendment. Subject to the other limitations set forth in this Declaration amendments may only be made by a two-third (2/3) vote of those votes entitled to be cast at a duly called meeting of the BTCARC.

Section 6.02. Duration. Unless amended in accordance with the provision!, 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 Property, and shall inure to the benefit of and be enforceable by the BTCARC, 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 6.03. 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 covenant or restriction, either to restrain or enjoin violation or to recover damages, or both, and against any Lot to enforce the lien created hereby; and the failure or forbearance by the BTCARC 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 BTCARC, 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 an Association, including, again without limitation, any person, firm, corporation or other legal entity who has any right to the use of any of the streets or roadways owned by an 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 6.04. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of Declarant, his successors or assigns, hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by Declarant, its successors or assigns, with or without Notice to any Association.

Section 6.05. 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.

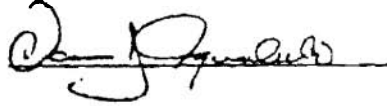
Section 6.06. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas or Community facility by any public or municipal agency, authority, or utility; provided, however that the foregoing shall not be construed to prohibit dedication of street rights-of-way to public use and maintenance, by plat recordation by the Declarant.

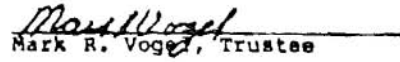


Section 6.07. Severability. Invalidation of any one of these covenants or Restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect,

IN WITNESS WHEREOF, Mark R. Vogel, Trustee has caused these presents to be executed and delivered in accordance with the powers contained in the Trust Agreement (Exhibit B).

ATTEST:

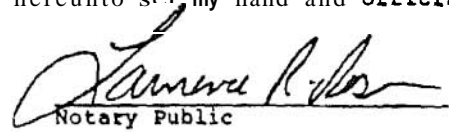


  
Mark R. Vogel, Trustee

STATE OF Maryland  
COUNTY OF Montgomery

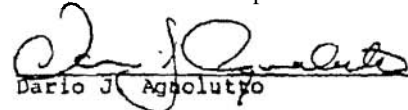
On this 12<sup>th</sup> day of Jan, 1986, before the undersigned officer personally appeared Mark R. Vogel, who acknowledged himself to be Mark R. Vogel Trustee, and that he, as such Trustee being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing his name as Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission Expires: 7-1-90

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 this instrument was prepared by him or under his supervision.

  
Dario J. Agolutyo