

DECLARATION OF COVENANTS AND RESTRICTIONS

[As Amended]

THIS DECLARATION, made this 2nd day of February, A.D., 1971, by CIMBCO, a Limited Partnership, hereinafter sometimes called "the Declarant,"

WITNESSETH

WHEREAS, the Declarant is the owner of the real property described in Article II hereof and desires to create thereon a residential community with permanent open spaces and other community facilities for the benefit of said community; and

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

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

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

NOW, THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth:

ARTICLE I

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

(a) "Association" shall mean and refer to The East Gate II Homes Association, Inc., and its successors or assigns.

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

(c) "Lot" shall mean and refer to all parcels or property which are part of the Property.

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

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

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

(g) "Member" shall mean and refer to every person, group of persons or entity who holds membership in the Association.

(h) "Developer" shall mean and refer to the Declarant, CIMBCO, a Limited Partnership, and its successors.

ARTICLE II

Section 1. Property Subject to Declaration. The real property which is, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied, and improved subject to this Declaration is located in the County of Montgomery, State of Maryland, and is more particularly described on "Exhibit A" attached hereto and by this reference made a part thereof.

Section 2. Additions. So long as there are Class B members of the Association, additional property may be annexed to the above-described property without the assent of the Class A members of the Association, if any. Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the above-described property. The scheme of the within Covenants and Restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on "Exhibit A", as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration of Covenants and Restrictions among the Land Records for Montgomery County, Maryland, which Supplementary Declaration shall extend the scheme of the within Covenants and Restrictions to such annexed property. Such Supplementary Declaration may contain such complementary additions and modifications to the covenants and restrictions set forth in the within Declaration as may be necessary to reflect the different character or use, if any, of such annexed

property provided, however, that in no event shall any such addition or modification be inconsistent with the provisions of the within Declaration.

ARTICLE III

Section 1. Membership. The Association shall have two classes of voting membership:

(a) Every person, group of persons or entity who is a record owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Class A member of the Association, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member and provided, further, that any person, group of persons or entity who holds such an interest in any Lot designated as Common Area shall not be a member on account thereof. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership.

(b) There shall be 200 Class B memberships, all of which shall be issued to the Developer or its nominee or nominees. The Class B Members shall be entitled to one vote for each membership so held, provided, however, that each Class B membership shall lapse and become a nullity on the first to happen of the following events:

- (i) when the total authorized, issued and outstanding Class A memberships equal 92; or
- (ii) on January 1, 1976; or
- (iii) upon surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.

ARTICLE IV

Section 1. Members' Right of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and Community Facilities in a manner designed to promote the recreation, scenic enjoyment and welfare of residents on the property and in aid thereof to mortgage said property. In the event of a default and foreclosure upon any such mortgage, the lender shall have the right, after taking possession of such property, to charge admission and other fees as a condition to continued enjoyment by the members and their guests; and

(b) The right of the Association to levy reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas by the Members of the Association and their guests; and

(c) The right of the Association to take such steps as are reasonably necessary to protect the above-described property against mortgage default and/or foreclosures, provided, always, however, that the same are in conformity with the other provisions of this Declaration; and

(d) The right of the Association to limit the number of guests of Members; and

(e) The right of the Association to suspend the voting rights and the rights to use of the Common Areas and Community Facilities for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(f) The right of the Association to dedicate or transfer all or any part of the Common Areas or Community Facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members, provided, however, that any such dedication shall be determined to be in the public interest and shall have the prior written approval of the Montgomery County Planning Board and, provided further, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds (2/3) of the then members of the Association has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to each member at least ninety (90) days prior to the taking of any action; and

(g) The right of any public utility to acquire, without the payment of damages to the Association, easements for the construction, reconstruction, installation, repair and/or necessary maintenance of utility lines through or over any portion of the Common Areas. The foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situate upon the Common Areas, or other structures or installations situate thereon which would otherwise be deemed to be part of the realty, without the payment of damages, including severance or resulting damages, if any, to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this State.

(h) The rights of the fee owners of Lots to a perpetual easement over any Common Area or Community Facility for such portions of their Dwellings or appurtenant thereto, that may overhang or otherwise encroach upon said Common Areas or Community Facilities, [including, but in no way limited to, the encroachment of fireplace and chimney structures, the encroachment of walls built as part

of the original construction upon the Property, and/or the encroachment of air conditioning compressors and pads] upon the Common Areas and for necessary and pedestrian and vehicular ingress and egress to and from any such Dwelling over said Common Areas and Community Facilities.

(i) The rights of the Members of the Association, and their guests, to the use of such parking spaces as may be maintained by the Association upon the Common Areas.

Section 2. Rights Not Subject to Suspension. Notwithstanding anything herein contained to the contrary, the rights and easements created in paragraphs (h) and (i) of Section I of this Article IV, or Section I through and including Section 5 of Article VII hereof, or Section I through and including Section 5 of Article XI hereof shall not be suspended by the Association for any reason.

ARTICLE V

Section 1. Covenant for Maintenance Assessments. Each person, group of persons or entity who becomes an Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1.) initial membership assessments, if any; (2.) annual assessments or charges; (3.) special assessments for capital improvements, or maintenance provided by the Association, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property and Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, group of persons or entity who was the Owner of such property and Lot at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, scenic enjoyment and welfare of the residents on the Property and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Community Facilities and, to the extent herein provided, of the Dwellings situated upon the Property, including, but not limited to, the payment of taxes and insurance for said Common Areas and Community Facilities and repair, replacement, and additions thereto, and for the cost of labor, equipment, and materials, management and supervision thereof.

Section 3. Initial Membership Assessments. The initial assessment for the various series of Class A memberships shall not exceed One Hundred Forty-Four and * * * No/100 Dollars [\$144.00].

The initial assessment for each membership shall be paid on the date a deed for a Lot is delivered by the Developer to the member. No Lot held by the Developer shall be subject to the initial assessment provided for in this Section.

Section 4. Annual Assessments. Except as herein elsewhere provided, the maximum annual assessment for any Class A Membership shall be the same as the maximum initial membership assessment for such membership as provided in Section 3 of this Article.

Section 5. Increase in Maximum Assessment.

(a) From and after January 1, 1972, in any event, the maximum annual assessment and the maximum initial assessment for all Class A memberships ~~shall be increased~~ may be increased by the Board of Directors of the Association, without a vote of the membership, by the percentage of increase, if any, of the United States Department of Labor Cost of Living Index for the Washington, D. C., Metropolitan Area during the preceding year, provided, however, that the maximum assessments shall not be decreased by any decrease in the aforementioned Index. For the year beginning January 1, 2004, and for each year thereafter, the maximum annual assessment for all Class A memberships may be increased by the Board of Directors of the Association, without a vote of the membership, to an amount equal to one hundred five percent (105%) of the immediately prior year's annual assessment.
[*]

(b) From and after January 1, 1973, the maximum annual assessment and the maximum initial assessment for all Class A Memberships may be increased above that established by the preceding paragraph by a vote of members, as hereinafter provided, for the next succeeding year and at the end of such year for each succeeding year. Any change made pursuant to this paragraph shall have the assent of two-thirds (2/3) of the then Class A Members of the Association. A meeting of the Members shall be duly called for this purpose, written notice of which shall be sent to all Members at least twenty (20) days in advance of such meeting, which notice shall set forth the purpose of such meeting.

Section 6. Special Assessments. In addition to the annual assessment authorized by this Article, 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 or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the then Class A Members of the Association. A meeting of the members shall be duly called for this purpose, written notice of which shall be sent to all Members at least twenty (20) days in advance of such meeting, which notice shall set

* See Note 2 regarding effective date.

forth the purpose of the meeting. Any special assessment levied by the Association pursuant to the provisions of this Section shall be fixed at a uniform rate of each Lot.

Section 7. Commencement of Annual Assessments. The annual assessment for each Class A Membership shall commence on the date a Deed for the Lot to which such membership is appurtenant is delivered by the Developer to the Member. The first annual assessment for any such membership shall be made for the balance of the calendar year and shall become due and payable and a lien on the date a deed for the Lot is delivered to the Member. Except as hereinafter provided, the assessment for any Lot for any year, after the first year, shall become due and payable and a lien on the first day of said year.

It shall be the duty of the Board of Directors of the Association to periodically fix the amount of the annual assessment against each lot for each assessment period in such amount that the aggregate of the annual assessments against all lots for such period shall be adequate to provide for the improvement and maintenance of the Common Areas, as hereinelsewhere set forth, and the Board of Directors shall make reasonable efforts to fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto.

Section 8. Assessment Certificates. The Association shall upon demand at any reasonable time furnish to any Owner liable for such assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificates shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Five Dollars (\$5.00) may be levied in advance by the Association for each certificate so delivered.

ARTICLE VI

~~Section 1. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the property which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.~~

~~————— If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest at the rate of eight percentum (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in either of which events interest, costs and reasonable attorney's fees shall be~~

added to the amount of each assessment. ~~No Owner may waive or otherwise escape liability for the assessments herein provided for by non-use of the Common Areas or Community Facilities or abandonment of his Lot or Dwelling. [*]~~

Section 1. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and, together with such interest and late charges as may be provided in the By-Laws of the Association, and together with costs of collection as hereinafter provided, shall thereupon become a continuing lien upon the property which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.

The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment, or foreclose the lien against the property, in either of which events costs including reasonable attorneys' fees shall be added to the amount of each assessment. No Owner may waive or otherwise escape liability for the assessments therein provided for by non-use of the Common Areas or Community Facilities or abandonment of his Lot or Dwelling. [*]

Section 2. Subordination Provision. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the Lot subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

ARTICLE VII

Section 1. Party Walls. Each wall which is built as part of the original construction upon the Property subject to this Declaration 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.

* See Note 2 regarding effective date.

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 the 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 VIII

Section 1. Exterior Maintenance of Dwellings. In addition to maintenance upon the Common Areas and Community Facilities, as aforesaid, the Association may, in the interest of the general welfare of all the Owners of the Property, provide periodic exterior maintenance upon other Lots or Dwellings subject to annual assessment as provided herein, as follows [but in no way limited to the following]: periodic painting of exterior building surfaces and trim, repair and maintenance of gutters, downspouts, roofs, shrubs, lawns, walks, driveways and other exterior improvements, all as and when it deems necessary for the purposes aforesaid but not without resolution by the Board of Directors of the Association or by an architectural control committee composed of three (3) or more members appointed by the Board, and not without reasonable notice to the Owner of any Lot proposed to be so maintained.

Section 2. Assessment of Cost. The cost of any exterior maintenance performed pursuant to Section 1. of this Article shall be assessed against the Lot upon which such maintenance is done 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 and obligation of the Owner in all respects as provided in Article V of this Declaration.

Section 3. Access at Reasonable Times. For the purpose solely of performing the exterior maintenance required or authorized by this Article, the Association through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day except Sunday.

ARTICLE IX

Section 1. Architectural Control Committee. Except for original construction or as otherwise in these covenants provided, no building, fence, wall or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change [including any change in color] or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same 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 by the Board of Directors of the Association, or by an architectural control committee composed of three (3) members appointed by the Board of Directors. In the event the Board of Directors, or its designated 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.

Section 2. Prohibited Uses and Nuisances. Except for the activities of the Developer during original construction:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling situate upon the Property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners of the Property.

(b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number shall be and is hereby prohibited on any Lot or within any Dwelling situate upon the Property, except that this shall not prohibit the keeping of dogs, cats and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes.

(c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash or any other kind shall be permitted on any Lot.

(d) Except as hereinelsewhere provided, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat or the like, shall be kept upon the Property nor [except for bona fide emergencies] shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.

* See Note 2 regarding effective date.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.

~~(f) In order to facilitate the free movement of passing vehicles, no automobiles belonging to residents shall be parked on the paved portion of any joint driveway or streets, [*] public or private, except during bona fide temporary emergencies or except in areas specifically designated for parking. [*]~~

(f) In order to facilitate the free movement of vehicles, no automobiles shall be parked on the paved portion of any joint driveway or street, public or private, except during bona fide temporary emergencies or except in areas specifically designated for parking. The use of community paths, roadways, and common areas by motorcycles, mini-bikes, go-carts, snowmobiles, and other similar motorized recreational vehicles is prohibited. [*]

(g) No sound hardwood trees shall be removed from any Lot without written approval of the Association acting through its Board of Directors or duly appointed committee.

(h) No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any Lot at any time. Temporary play-houses or the like may be so maintained provided that their primary purpose is the maintenance and/or promotion of juvenile recreation.

(i) No signs or any character shall be erected, posted or displayed upon, in or about any Lot or Dwelling situate upon the Property, provided, however, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a Dwelling where a professional office (as herein defined) is maintained, and provided further that one temporary real estate sign not exceeding six (6) square feet in area, may be erected upon any Lot or attached to any Dwelling placed upon the market for sale or rent.

(j) No structure, planting or other material other than driveways or sidewalks 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 change, obstruct or retard direction or flow of any drainage channels.

(k) Garage doors and the doors of any other storage room or the like shall be maintained in a closed position whenever possible.

* See Note 2 regarding effective date.

Section 3. Right of Association to Remove or Correct Violations of This Article. The Association may, in the interest of the general welfare of all the Owners of the Property and after reasonable notice to the Owner, enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day except Sunday for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association or by an architectural control committee composed of three (3) or more members appointed by the Board.

ARTICLE X

Section 1. Residential Use. 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 one other professional associate, and, provided further, that such maintenance and use is in strict conformity with the provisions of any relevant zoning law or ordinance.

Section 2. Context. As used herein, the term “professional office” shall mean rooms used for office purposes not by more than two members of any recognized profession, including doctors, dentists, lawyers, accountants, engineers, architects, but not including medical or dental clinics.

ARTICLE XI

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

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

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

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

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

Section 6. Easement for Utilities, Etc. There shall be and is hereby reserved to the Developer a perpetual and nonexclusive easement over any Lot for the purpose of installing, repairing and/or maintaining utility lines of any sort including, but not limited to, storm drains, sanitary sewers, freon gas lines, condensate lines, electric lines and/or cables, water lines, natural gas lines, telephone lines and the like.

Section 7. Easement for Installation of Post Lamps. There shall be and is hereby reserved to the Developer a perpetual and nonexclusive easement to install a post lamp on any Lot at any time, such easement to include, but not be limited to, the right to install, relocate and maintain all necessary underground pipes, wire and/or leads or the like into any Dwelling situate upon the Property. In the event a post lamp or the like is installed on any Lot or attached to any Dwelling, the Owner of such Lot or Dwelling shall maintain it and light it from dusk to dawn and bear all costs incident thereto.

Section 8. Easement for Landscaping and Related Purposes. There shall be and is hereby reserved to the Developer a perpetual and nonexclusive easement over all Lots, or any Common Area or Community Facility, for a distance of fifteen (15) feet behind any lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, entrance features and/or "theme areas," lights, stone, wood or masonry wall features and/or related landscaping.

ARTICLE XII

Section 1. Recreation Association. Every person, group of persons or entity who is a record owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association and who is a Class A Member of the Association shall have the right, but not the obligation, to subscribe for membership in the East Gate Recreation Association, Inc., a corporation formed or intended to be formed for the purpose of acquiring and/or operating certain recreational facilities not situate upon the Property, provided, however, that any such person, group of persons or entity who hold such interest solely as security for the performance of an obligation shall have no such right and provided, further, that such right shall be exercisable only upon terms satisfactory to the said East Gate Recreation Association, Inc., or its equivalent, and shall not be separated from the interest to which it appertains.

ARTICLE XIII

Section 1. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land 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, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots and approved by Montgomery County, Maryland, and by the Montgomery County Planning Board, has been recorded, agreeing to change said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken and no such agreement to change shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created: [*]

Section I. Binding Effect; Amendments.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

(b) Except as to permanent easements or other permanent rights or interests created herein, this Declaration may be amended from time to time by the then Owners of at least at two-thirds (2/3) of the Lots, acting at a meeting called for that purpose after at least ninety (90) days' written notice to the Owners setting forth the proposed amendment. The amendment shall not be effective until an instrument, setting forth the amendment and containing a certification that the amendment was adopted in accordance with the foregoing procedure, shall have been executed by the Association, approved by the Montgomery County Planning Board, and recorded among the Montgomery County, Maryland land records. [*]

Section 2. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers his Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, easements, charges and liens set forth in this Declaration.

* See Note 2 regarding effective date.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. 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, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or by recovery of damages. These covenants and restrictions may be enforced by Montgomery County, Maryland.

Section 5. 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 facilities by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any said common areas or community facilities, and the Association, its successors and assigns, shall indemnify and save harmless Montgomery County, Maryland, or any public or municipal agency, authority, or utility from any and all claims, suits, costs, expenses, demands or damages that may result from surface water drainage and/or the maintenance or other operation of said common areas or community facilities.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 7. Fair Housing and Non-Discrimination. The Association shall comply with all federal, state and local fair housing and non-discrimination laws applicable to the Association. The Association shall not discriminate against any person on the basis of race, color, religion, sex, familial status, national origin, handicap, marital status, ancestry, presence of children, source of income, sexual orientation, or age. [*]

* See Note 2 regarding effective date.

IN WITNESS WHEREOF, the said CIMBCO, a Limited Partnership, has on the 2nd day of February, 1971, caused these presents to be signed by Croyder, Irvin of Maryland, Inc., a Maryland corporation, its general partner, which said general partner has, in turn, caused these presents to be executed by David S. Croyder, its President, attested by Robert L. Mitchell, its Assistant Secretary, and its corporate seal to be hereunto affixed; and does hereby appoint David S. Croyder as its true and lawful attorney in fact to acknowledge and deliver these presents as the act and deed of CIMBCO, a Limited Partnership.

C
O
S R
E P
A O
L R
A
T
E

CIMBCO, a Limited Partnership
By: CROYDER, IRVIN OF MARYLAND, INC.
general partner

By: /s/ David S. Croyder
David S. Croyder, President

Attest:

/s/ Robert L. Mitchell
Robert L. Mitchell, Assistant Secretary

STATE OF MARYLAND)
) ss.
COUNTY OF MONTGOMERY)

I HEREBY CERTIFY, that on the 2nd day of February, 1971, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared David S. Croyder, who is personally well known to me as the person named as attorney in fact on the foregoing Declaration, and by virtue of the authority vested in him by said instrument, acknowledged the same to be the act and deed of CROYDER, IRVIN of Maryland, Inc., as general partner of CIMBCO, a Limited Partnership.

WITNESS my hand and notarial seal the year and day first above written.

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

My Commission Expires: 7-1-74

The undersigned, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

/s/ Barry M. Fitzpatrick

Barry M. Fitzpatrick

"EXHIBIT A"

Lot 1 through and including Lot 22, and Parcel "H" in block [H], in a subdivision known as "EAST GATE OF POTOMAC" per plat of said subdivision recorded in Plat Book 89 at plat 9557 among the Land Records for Montgomery County, Maryland.

Lot 23 through and including Lot 42, and Parcel "G" in block [H] in a subdivision known as "EAST GATE OF POTOMAC" per plat of said subdivision recorded in Plat Book 89 at plat 9556 among the Land Records for Montgomery County, Maryland.

Lot 43 through and including Lot 60, and Parcel "F" in block [H] in a subdivision known as "EAST GATE OF POTOMAC" per plat of said subdivision recorded in Plat Book 89 at plat 9555 among the Land Records for Montgomery County, Maryland.

Lot 61 through and including Lot 71, and Parcel "E" in block [H] in a subdivision known as "EAST GATE OF POTOMAC" per plat of said subdivision recorded in Plat Book 90 at plat 9654 among the Land Records for Montgomery County, Maryland.

Lot 72 through and including Lot 92, and Parcel "D" in block [H] in a subdivision known as "EAST GATE OF POTOMAC" per plat of said subdivision recorded in Plat Book 90 at plat 9653 among the Land Records for Montgomery County, Maryland.

Notes

[Not part of official Declaration]

1. Original Declaration adopted February 2, 1971 and recorded February 8, 1971, at Book 4041, page 349.

2. June 4, 2000 amendments. Amendment to Declaration dated June 4, 2000 and recorded June 27, 2001, at Book 19351, page 642, effective three years after recordation (June 27, 2004):

Section 5 of Article V amended to change “shall be increased” to “may be increased”.

Section 5 of Article V further amended to allow Board to increase annual assessment to 105% of prior year’s annual assessment without vote of membership.

Section 1 of Article VI amended to delete schedule of penalties for late payment of assessments and to authorize By-Laws provision for imposition of interest and late charges.

Subsection (f) of Section 2 of Article IX amended to prohibit parking of any automobiles, not just automobiles belonging to residents, on joint driveways and streets; and to prohibit use of motorcycles, mini-bikes, go-carts, snowmobiles and other similar motorized recreational vehicles on community paths, roadways and common areas.

Section 1 of Article XIII amended to delete reference to automatic renewal of the Declaration, to delete requirement that amendments to Declaration be approved by Montgomery County, to delete three-year delay in effectiveness of amendments, and to allow amendments to be recorded with certification of Association.

Article XIII amended to add new Section 7 covering fair housing and non-discrimination.

3. Article IX, Section 2, subsection (i) prohibits all signs except certain signs where a professional office is maintained and temporary real estate signs. But see Md. Code, Real Property § 11B-111.2, which provides that a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws of a homeowners association may not restrict or prohibit the display of certain political signs so long as the sign is not in common area, is posted no earlier than 30 days before election and no later than seven days after election, and meets certain other requirements. See also Mont. Cnty. Code, § 59-F-6.1, exempting from County permitting requirements a sign on private property that is two square feet or less and that is customarily associated with residential living or decoration.