

MIDDLETOWN PLANNING COMMISSION

Middletown Municipal Center
31 West Main Street
Middletown, MD 21769

AGENDA
Monday, May 18, 2015
7:00 p.m.

- I. **Public Comment**
- II. Minutes of April 2015 Planning Commission meeting **Approval**
- III. **Plan Review**
Coblentz HOA document **Review/Approval**
- IV. **Zoning**
Sheffler reconsideration letter to BOA **Review/Approval**
- V. **Miscellaneous**
- VI. **Additional Public Comment**

**** All requests to be on the Planning Commission agenda must be received at the Middletown Municipal Center, 31 W. Main Street, Middletown by 4:00pm on the Monday two weeks prior to the monthly meeting held on the third Monday of each month. All plans being submitted for review must be folded, and an electronic plan is required as well.**

MIDDLETOWN PLANNING COMMISSION
31 West Main Street
Middletown, Maryland

Regular Meeting

April 20, 2015

The regular meeting of the Middletown Planning Commission took place on Monday, April 20, 2015 at 7:00 p.m. at the Middletown Municipal Center, 31 West Main Street, Middletown, MD 21769. Those present (quorum) were Commissioners Mark Carney (Chairman), David Lake (Vice Chairman), Bob Smart, Bob Miller, Rich Gallagher, and Dixie Eichelberger. Others present in official capacity: Cindy Unangst (Staff Planner), Ron Forrester (Zoning Administrator) and Annette Alberghini (Recording Secretary).

Commissioner Goodman was not present for the meeting. Commissioner Gallagher (alternate) acted in his place as part of the quorum. Commissioner Smart was late to the meeting. Commissioner Eichelberger (temp alternate) acted in his place as part of the quorum until Commissioner Smart's arrival at 7:01pm. The quorum then consisted of Chairman Carney, Commissioners Lake, Smart, Miller and Gallagher.

- I. **PUBLIC COMMENT** – None.
- II. **Regular Meeting Minutes of March 16, 2015** – Approved as submitted.

III. PLAN Review

Sunroom Demolition Site Plan – (No one spoke for the applicant.) This is a proposal to remove an existing pre-manufactured sunroom at the rear of the dwelling at 202 Lombardy Court and then replace it with a new larger pre-manufactured sunroom. All of the requirements of Section 17.32.160 of the Town Code regarding the demolition site plan have been met. A demolition permit from the County will have to be obtained prior to the demolition. Application to the County can take place concurrent with the site plan approval process by the Planning Commission. The Planning Commission has both an aerial photograph of the sunroom to be demolished and a plot plan that shows the location of the sunroom. Letters were sent to adjacent property owners informing them of the proposed demolition, and the property has been posted. All demolitions and post demolition restoration shall be completed within ninety days of the issuance of the demolition permit unless otherwise approved by the Middletown Planning Commission. A County building permit has already been approved.

The Staff Planner received an email this afternoon from Mr. C. Douglas Remsberg, 214 Lombardy Court, who owns the adjacent lot at 204 Lombardy. The email stated that Mr. Remsberg does not give permission for the construction company to access 202 Lombardy through his lot due to past transgressions and damage to that lot. He has no concerns otherwise.

Action: Commissioner Lake motioned to approve the sunroom demolition site plan as submitted. Seconded by Commissioner Smart. Motion carried (5-0). The approval letter being sent to the applicant will include the information on property access denial provided by Mr. Remsberg.

IV. ZONING

Sheffler Board of Appeals Decision. The Planning Commission members had in their packet a copy of the April 17, 2015 email opinion from the Town Attorney pertaining to the Sheffler Board of Appeals decision regarding the restricted vehicle. The Town Attorney stated that there are two options to possibly pursue in order to appeal that decision. First, the decision could be appealed within thirty days of the Board of Appeals decision. The thirty days has expired. Second, the Board of Appeals could reconsider its decision and reach a different

conclusion if the original decision was the result of fraud, mistake, surprise, inadvertence or some new factual matter comes to light that would justify a different result. If the matter is neither appealed nor reconsidered, then the decision stands. A decision by the Board of Appeals which is not changed – whether correct or not – remains valid until a higher authority, like the courts, decide otherwise. The efficacy of the decision is not diluted simply because others (to include the Town Attorney) feel the opinion may be erroneous. The Town Attorney concluded by stating he sees no requirement for the applicant to obtain site plan approval after the Board has granted his special exception. Instead, he may park his restricted vehicle on his property without the necessity for screening or set-back restrictions.

The Town Attorney was asked to outline the steps for reconsideration. In an email dated April 20, 2015 the Town Attorney stated there is no provision in the Town's Code for reconsideration, so there is no specified procedure to be followed. He recommends that the Planning Commission, as a body, send the Board of Appeals something in writing requesting that the Board of Appeals reconsider its decision and state the reasons for that request. Once the request is received, the Board of Appeals would undertake a 2-step process. The first step is to consider and decide whether to grant the request for reconsideration. If the request for reconsideration is denied it ends there. If the request is granted, the Board of Appeals would hear arguments and consider and decide whether the original decision should be changed or modified. At this second step the Board of Appeals would have to decide whether to have a whole new hearing or just consider the arguments of the Planning Commission based on the facts already on record. In the end it might re-affirm its original decision, or it might revise the original decision in some way. He concluded that any written request by the Planning Commission for reconsideration should also be sent to the applicant as well as any other persons who appeared and spoke at the Board of Appeals hearing since they are considered parties. Notice of the public Board of Appeals hearing should also be provided to all.

- **Letter for Reconsideration** - Since the appeals deadline has passed the Planning Commission must decide whether or not to ask the Board of Appeals to reconsider its decision. Since the commission members believe that there was a mistake made during this process, and since the Board of Appeals decision was made based off of that mistake, the Planning Commission decided to send a letter requesting the Board of Appeals reconsider its decision. The letter should include the Town Attorney's interpretations, outline the process on how the reconsideration process should work, include that no site plan was submitted therefore the Planning Commission recommended denial, and recommend addressing the situation through the process outlined by the Town Ordinance. The Board of Appeals should not refuse the reconsideration when taking into consideration the official position of the Burgess and the Town Attorney. Reconsideration should also occur without further cost to the applicant. The ordinance is clear that site plan approval must come first in this instance. There are other instances when it is not clearly stated, and the Board of Appeals has given conditional approval referencing Planning Commission actions that needed to occur for the decision to stand.
- **Time Consideration** – The question was raised that if a letter was drafted how soon would the Planning Commission be able to meet to review and approve it. Are there any challenges with waiting until May to review and approve the letter? The Zoning Administrator will contact the Chair of the Board of Appeals to get his response. Board of Appeals meetings are scheduled based on a request for special exception or variance. The Planning Commission could include in its letter a request for a special meeting of the Board of Appeals on this issue.

Action: Commissioner Smart motioned that Chairman Carney and the Staff Planner draft a letter requesting that the Board of Appeals reconsider the decision made regarding the Sheffler restricted vehicle and they bring that letter before the Planning Commission for review before it is sent to the Board of Appeals. Seconded by Commissioner Miller.

- **Discussion** - The Zoning Administrator referenced the Town Attorney's April 17, 2015 email comment, "There is no specific time limit for requesting a reconsideration; however the longer this decision remains in effect, the more difficult it will be to reconsider and change the decision – especially if the applicant has begun to act in reliance upon that decision." The Zoning

Administrator stated the applicant is parking in his driveway and is in compliance with the Board of Appeals decision. There are no other active measures that the applicant has had to take to make the Board of Appeals decision operative. This letter is just to request a reconsideration. The Board of Appeals can do whatever it wants with the request. The expectation is that the letter would provide all the details gathered here and include arguments which would support the case for reconsideration. The reconsideration process should be gone through if only to reinforce the process outlined in the Town ordinance.

Motion carried (5-0).

V. MISCELLANEOUS –

Annual Report Draft – There are two (2) revised pages to the 2014 Draft Annual Report; the first and last pages. The first page revisions include changes to the term limit dates for various Commissioners and added information that had not been included previously. The Zoning Administrator asked the page also be revised to show that he is appointed (along with his appointment date) and therefore does not have a term limit. The approved by date statement will be changed to reflect approval by the Middletown Planning Commission and not the Middletown Burgess and Commissioners. The last page revision is the addition of the Comprehensive Plan Review section and statement. That new section was presented to the MDE Planner who stated that it appropriate both as stated, and as part of this document.

Once the Planning Commission approves this document it will be presented to the Town Board as information only, and then forwarded on to the State. A copy of the annual report will also be sent to Frederick County. The deadline for submission to the State is July 1, 2015.

Action: Commissioner Lake motioned to approve the 2014 Annual Report with the revisions and points of discussion to be applied. Seconded by Commissioner Miller. Motion carried (5-0).

The Staff Planner thanked the Planning Commission members for their hard work and dedication. The Planning Commission in turn thanked the Staff Planner for her hard work.

Middletown High School Stadium Concession Stand Expansion Plan – The plan will expire June 18, 2015. Multiple letters have been sent to the applicants reminding them of the deadline. They are aware. The Staff Planner does not think this is a priority at the moment considering the current status of MVAA funds.

Super Cuts – The Town has received the paperwork and zoning certificate application for a Super Cuts salon to go in to the Safeway Shopping Center where Jaley's Ice Cream was located. The address for that location is 811 East Main Street. The applicant submitted the paperwork with an incorrect address. The Zoning Administrator will inform the applicant of the correct address during the approval process. The application includes change of use/tenant and interior renovations.

Political Signs Status – The Zoning Administrator spoke with Mr. Harvey of the County Board of Elections regarding political sign size Town ordinance compliance and requesting permission to include a letter of instruction regarding posting political signs within Town limits in election packets given to candidates. Mr. Harvey stated that these signs, including those of statewide candidates, must comply with the Town municipal code. The Zoning Administrator is waiting for information from the Board of Elections on how to get this information into candidate's packets. The length of time for removal of signs after an election is not addressed within the Town ordinances. It was suggested that candidates, or their representatives, have thirty (30) days after results are published to remove their political signs from properties within Town limits. The Zoning Administrator can make a policy decision on this, or there can be a change in the Town ordinance to reflect this. The Zoning Administrator is willing to create a document including all this information for the Board of Elections to give to future election candidates.

Thompson Funeral Home Parking Lot – The landscaping has been completed. The lines for parking spaces have not been painted.

VI. ADDITIONAL PUBLIC COMMENTS – None.

Meeting adjourned at 7:45pm.

Respectfully submitted,

Annette Alberghini
Recording Secretary

DRAFT

Middletown Planning Office

MEMORANDUM

Date: 5/8/2015

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: **COBLENTZ PROPERTY HOA DOCUMENT REVIEW**
Tax Map Parcel #03-160661
Applicant: Michael A. Faerber, McMillan Metro, P.C.
Property Owner: Hailey Development, L.L.C.
Plan Dated:
Date Received: April 21, 2015

GENERAL INFORMATION

Proposal: Neo-Traditional Residential development on 18.4 acre property adjacent to a 6.4 acre R-3 zoned property with 81 single-family dwellings, a 0.7 acre Village Green amenity and a 3.45 acre public use/library site.

Location: North side of East Green Street and east of North Church Street

Zoning: NTR – Neo-Traditional Residential Overlay District for 18.4 acres and R-3 High Density Residential zoning for 6.4 acres. The NTR district is intended to permit planned development in the R-3 zoning district in order to preserve an aesthetically pleasing appearance in that district, to avoid the creation of nuisance or nuisance-like conditions in that district, to protect the value of other property or investments within that district, and to reduce the impact of its residential uses in surrounding districts.

Present Use: Agricultural land.

COMMENTS

The following issues should be discussed in your review of this HOA document:

1. **Dissolution of HOA** – The Planning Commission and Town Board are concerned with what will happen to the common areas, stormwater management facilities, etc. if the HOA were to cease to exist. The Town is not interested in taking over the management of those areas/facilities. Is there language in the document that relates to this concern at all? If there is, I did not seem to find it.
2. **Parking and storage** – Related to Section 4.04 (page 6), Section 8.02.(m) (page 21) and Section 8.02.(u) (page 22), it would seem that if garages are primarily to be used for parking and not storage of equipment or machinery to be used in connection with the maintenance of any dwelling, and if such equipment is not to be stored in the front, rear or side yard on any Lot, then

many property owners would presumably need a shed to use for storage. Given the lot sizes, easements for stormwater management facilities, and the town's requirements for the location of sheds, staff is concerned about the approval of sheds for the property owners storage needs.

3. **Parking of RV's** – Section 8.02.(d) (page 19) relates to the parking of commercial vehicles, trailers, boats, etc., but doesn't specifically include RV's, tent trailers and campers. Is the listing of 'trailers, camp trucks, house trailers... or other similar machinery or equipment of any kind or character' meant to imply that recreational equipment as such is included in that listing?
4. **Recycling containers** – Section 8.02.(e) (page 19) discusses trash and garbage containers. There is no mention of recycling containers and whether they would be permitted to be kept in the front or side yards as trash containers are not. Just a note.
5. **Child care signs** – Section 8.02.(h) (page 20) mentions that a sign not exceeding two square feet in area may be attached to a dwelling where an office is maintained in relation to the language about permitted uses of "no-impact home-based businesses" and "Family Child Care Homes" (Section 8.01. Permitted Uses). It wasn't clear whether a child care sign could be displayed; a home-based child care business isn't really an 'office.'
6. **Easement interference** - Section 8.02.(j) (page 21) states that "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." Would 'other material' include soil? Should soil be included to be more implicit?
7. **References to 'Middletown'** - All references to the town should be stated as "Town of Middletown" (as shown on the bottom of page 28) instead of just "Middletown" as it is elsewhere.
8. **House and lot sizes and variances** – In the past, there have been more than a dozen variance requests to the Board of Appeals for variances of yard requirements in the Glenbrook and Foxfield subdivisions for location of decks and swimming pools. In looking at the approved preliminary plans which show the conceivable locations of house footprints on the lots, it would seem that there are many instances where property owners might petition to the Board of Appeals for variances for decks. The provisions of the zoning code would not be the hardship; the lot area in relation to the house size would be a self-created hardship by the developer. Staff isn't sure whether any restrictions could be put in place, but feels that there should be a discussion about this issue.

This review will be included in the Middletown Planning Commission materials for the May 18, 2015 public meeting. The applicant is encouraged to attend this meeting and the workshop on the Wednesday prior to the meeting which will be May 13, 2015.

Cc: Mike Fitzgerald, Hailey Development LLC
Rich Thometz, Hailey Development LLC

HOMEOWNERS ASSOCIATION, INC.

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

**After Recording Return To:
Michael A. Faerber
McMillan Metro, P.C.
1901 Research Boulevard, Suite 500
Rockville, Maryland 20850
(301) 251-1180**

HOMEOWNERS ASSOCIATION, INC.

DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS

TABLE OF CONTENTS

ARTICLE I PREAMBLE 1
ARTICLE II DEFINITIONS..... 2
 Section 2.01. "Association"..... 2
 Section 2.02. "Common Areas" 2
 Section 2.03. "Common Expense" 2
 Section 2.04. "Declarant" 2
 Section 2.05. "Design Guidelines" 2
 Section 2.06. "Eligible Mortgage Holder" 2
 Section 2.07. "Lot" 3
 Section 2.08. "Member" 3
 Section 2.09. "Mortgagee" 3
 Section 2.10. "Owner" 3
 Section 2.11. "Plats" 3
 Section 2.12. "Project" 3
 Section 2.14. "Property" 4
ARTICLE III PROPERTY SUBJECT TO DECLARATION..... 4
 Section 3.01. Property Subject to the Declaration. 4
 Section 3.02. Annexations..... 4
 Section 3.03. Deannexations..... 4
ARTICLE IV PROPERTY RIGHTS 5
 Section 4.01. Owners' Easements of Enjoyment. 5
 Section 4.02. Limitations. 5
ARTICLE V MEMBERSHIP AND VOTING RIGHTS 6
 Section 5.01. Membership. 6
 Section 5.02. Voting Rights. 6
ARTICLE VI COVENANTS FOR ASSESSMENTS..... 8
 Section 6.01. General Assessment. 8
 Section 6.02. Purpose of Assessments..... 9
 Section 6.03. Special Assessments..... 10
 Section 6.04. Reserves for Replacements. 10
 Section 6.05. Non-Payment of Assessments. 10
 Section 6.06. Assessment Certificates..... 11
 Section 6.07. Priority of Lien. 12
 Section 6.08. Commencement of General Assessments. 12
 Section 6.09. Assessment of the Declarant. 13
 Section 6.10. Working Capital Fund..... 13

Section 6.11. Exempt Property.....	13
Section 6.12. Association’s Financial Resources	13
Section 6.13. Loans From Declarant	13
<u>ARTICLE VII ARCHITECTURAL CONTROL</u>	14
Section 7.01. Architectural Change Approval.....	14
Section 7.02. Initiation and Completion of Approved Changes.....	15
Section 7.03. Certificate of Compliance.....	15
Section 7.04. Covenants Committee Rules and Regulations; Appeal of Covenants Committee Decision.	15
<u>ARTICLE VIII USE RESTRICTIONS.....</u>	16
Section 8.01. Permitted Uses.....	16
Section 8.02. Prohibited / Regulated Uses and Nuisances.....	18
Section 8.03. Leasing.....	23
Section 8.04. House Rules, Etc.	24
Section 8.05. Exemptions.....	24
Section 8.06. Declaration of Easements and Rights.....	24
Section 8.07. Sidewalk Easements.	26
Section 8.08. Right to Make Improvements Without Expanding Its Implied Warranty.	26
Section 8.09. Prohibited Actions	27
<u>ARTICLE IX MAINTENANCE</u>	27
Section 9.01. Owners’ Rights and Responsibilities.....	27
Section 9.02. Association Rights and Responsibilities.....	28
Section 9.03. Storm Water Management, Storm Drain Facilities Bio-Swales and Grass Swales within easements.	29
<u>ARTICLE X INSURANCE.....</u>	30
Section 10.01. Individual Coverage.....	30
Section 10.02. Required Coverage.....	30
Section 10.03. Repair and Reconstruction of Common Areas after Fire or Other Casualty.....	32
<u>ARTICLE XI MANAGEMENT.....</u>	32
Section 11.01. Management Agent.....	32
Section 11.02. Duration of Management Agreement.....	33
<u>ARTICLE XII RIGHT TO PROHIBIT OR RESTRICT USE OF PESTICIDES, FERTILIZER AND OTHER FORMS OF NITROGEN LOADING</u>	33
<u>ARTICLE XIII GENERAL PROVISIONS</u>	34
Section 13.01. Responsibility for the Common Areas.....	34
Section 13.02. Personal Property and Real Property for Common Use.....	34
Section 13.03. Implied Rights.....	35
Section 13.04. Limitation of Liability.....	35
Section 13.05. Enforcement.....	35
Section 13.06. Fines.....	36
Section 13.07. Severability.....	37
Section 13.08. Duration and Amendment.....	37
Section 13.09. Taxes and Assessments.....	38

Section 13.10. Successors of Declarant..... 38

Section 13.11. No Dedication to Public Use. 38

Section 13.12. Incorporation by Reference on Resale. 38

Section 13.13. Declarant Reserved Rights. 38

Section 13.14. Perpetuities..... 39

Section 13.15. Captions and Gender. 39

Section 13.16. Dispute Resolution/Arbitration..... 39

Section 13.17. Dispute Resolution Procedures. 40

Section 13.18. Initiation of Litigation by Association. 42

Section 13.19. Conflict. 42

ARTICLE XIV COOPERATION WITH ADJOINING PROPERTY OWNER

AND TENANTS..... 42

Exhibit "A" Description of Property

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**

HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS ("Declaration") is made on the date hereinafter set forth by Middletown Commons Holdings, LLC, a Maryland limited liability company (the "Declarant").

The Declarant hereby affirms, adopts and subscribes to the purposes and provisions of this Declaration and declares that the covenants, conditions, restrictions and easements contained herein, as well as any subsequent covenants, conditions, restrictions and easements which are promulgated or adopted in accordance with, or which become a part of, the governing documents shall be binding upon and applicable to all real property subjected to this Declaration (the "Property").

**ARTICLE I
PREAMBLE**

WHEREAS, the Declarant, as the developer and owner of the Property, desires to provide for the preservation of the values and amenities in the community and for the maintenance of the Common Areas and to this end, desires to subject the real property described in Article III hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of the Property and the subsequent owners thereof.

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions contained herein and collecting and disbursing the charges and assessments created herein.

WHEREAS, the Declarant has caused or intends to cause the formation of the _____ **HOMEOWNERS ASSOCIATION, INC.** as a non-profit corporation without capital stock under the laws of the State of Maryland for the purpose of carrying out the powers and duties described herein.

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in Article III hereof 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 the Property described in Article III hereof, which shall run with the real property and be binding on all parties having any right, title or interest in the

Property described in Article III hereof, or any part thereof, and its successors and assigns, and which shall inure to the benefit of each Owner thereof.

ARTICLE II DEFINITIONS

Section 2.01. "Association" shall mean and refer to the _____
HOMEOWNERS ASSOCIATION, INC., a non-stock, non-profit Maryland corporation,
and its successors and assigns.

Section 2.02. "Common Areas" shall mean and refer to all real property owned or leased by the Association, or otherwise available to the Association, for the exclusive benefit, use and enjoyment of its Members and their guests, and includes, as may be applicable, all private streets and roadways, recreational facilities, storm water management, storm drain and other features which are to be constructed on the Common Areas. Notwithstanding the foregoing, in the event the Association maintains all or any portion of any Lot(s), such property shall not be considered part of the Common Areas.

The Declarant reserves the right to seek an amendment to all approved plans for the Property for the purpose of modifying the location or amount of real property comprising the Common Areas and facilities and for the purpose of modifying the improvements to be constructed on the Common Areas. Such amendment shall become effective only if approved by the applicable governmental authorities.

Section 2.03. "Common Expense" shall mean and refer to the actual and estimated expenses of operating the Association and performing its maintenance responsibilities, including a reasonable reserve, all as may be found to be necessary or appropriate by the Board of Directors pursuant to this Declaration, the By-Laws and the Articles of Incorporation of the Association.

Section 2.04. "Declarant" shall mean and refer to Middletown Commons Holdings, LLC, a Maryland limited liability company, and its successors or assigns, 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 by an instrument in writing recorded among the Land Records of Frederick County, Maryland.

Section 2.05. "Design Guidelines" shall mean and refer to _____
Design Standards and Covenants (_____, 201___), as amended from time to time.

Section 2.06. "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a Lot who has requested notice from the Association of amendments to the Association documents or other significant matters which would affect the interests of the Mortgagee.

Section 2.07. "Lot" shall mean and refer to each of Lots 1 through and including 81 as shown on the Plats and to each subdivided residential building lot described in any Supplementary Declaration recorded pursuant to Section 3.02 below.

Section 2.08. "Member" shall mean and refer to every person, group of persons, corporation, trust, or other legal entity, or combination thereof, who holds any class of membership in the Association.

Section 2.09. "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or the beneficiary of any recorded deed of trust, encumbering one or more of the Lots. The term, "Mortgage" as used herein shall include a deed of trust. The term, "First Mortgage" as used in this Declaration 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" 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, or any other organization or entity which has a security interest in any Lot. As used in this Declaration, the term "holder" or "Mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

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

Section 2.10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of 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 2.11. "Plats" shall mean and refer to those subdivision plats recorded among the Land Records of Frederick County, Maryland which describe and contain the Property. The recorded subdivision plats initially constituting the Plats are described on Exhibit "A" attached hereto.

Section 2.12. "Project" shall mean and refer to that certain community being developed by the Declarant in the Town of Middletown, Frederick County, Maryland known as the Coblenz Property Subdivision.

Section 2.14. "Property" shall mean and refer to that certain real property described on Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association pursuant to Article III of this Declaration.

ARTICLE III
PROPERTY SUBJECT TO DECLARATION

Section 3.01. Property Subject to the 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 Middletown, Frederick County, Maryland, and is more particularly described on Exhibit "A" attached hereto and, by this reference, made a part hereof.

Section 3.02. Annexations. Any real property contiguous to, or in the vicinity of, the Property, may be annexed within the jurisdiction of the Association by the Declarant without the consent of the Class A Members of the Association, if any, for a period of twenty (20) years from the date of recordation by the Declarant of this Declaration; *provided, however*, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty (20) year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less. The scheme of this Declaration shall not, however, be extended to include any such additional real property unless and until the same is annexed within the jurisdiction of the Association by the recordation of a Supplementary Declaration as hereinafter provided. Except as otherwise provided hereinabove, annexations of real property within the jurisdiction of the Association shall require the consent of two-thirds (2/3) of each class of Members.

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

Section 3.03. Deannexations. For a period of twenty (20) years from the date of recordation of this Declaration, the Declarant may deannex any property annexed within the jurisdiction of the Association pursuant to Sections 3.01 and 3.02 above. Such deannexed property shall no longer be subject to the covenants and restrictions of the governing documents except for (i) any easements, rights, reservations, exemptions,

powers or privileges reserved to the Declarant, pursuant to the governing documents which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such deannexation. Such deannexation shall be made by recording a written instrument among the Land Records of Frederick County, Maryland, withdrawing the effect of the covenants, conditions, easements and restrictions of the governing documents from the deannexed property.

ARTICLE IV **PROPERTY RIGHTS**

Section 4.01. Owners' Easements of Enjoyment. Every Owner shall have a right to access and make reasonable use of the Common Areas, both before and after such Common Areas are conveyed to the Association. Such right shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to establish uniform rules and regulations pertaining to the use of and/or limitations on the use of and interference with the Common Areas. The foregoing shall include the right to enter upon any of the private streets located within the Common Areas for the purpose of ingress to and egress from the Lots.

The Association shall have the right to dedicate or transfer all or any part of the Common Areas or to grant easements or rights-of-way over portions of the Common Areas to any public agency, authority, or utility to serve necessary public purposes. In addition, provided that funds borrowed are applied for the benefit of the Association, its properties and/or its Members, the Association, through its Board of Directors, shall have the power and authority to borrow money, and, as security for the repayment thereof, mortgage, pledge, deed in trust, or hypothecate any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred.

The U.S. Postal Service, other delivery companies, governmental and quasi-governmental agencies and public and private utility companies shall hereby have an easement to enter upon the private streets at their own risk for access to the Lots, as necessary. Any such party, by entering onto the Property pursuant to the easement granted by this provision, agrees to indemnify and hold harmless the Association from any loss or damage the Association may experience arising from such entry.

Section 4.02. Limitations. Any other provisions of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any Member of the Association to use the Common Areas for necessary, ordinary and reasonable vehicular and pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Areas for storm water drainage, electrical energy, water, sanitary sewer, natural gas, CATV or similar service, telephone service or similar utilities and services to the Lots.

Section 4.03. Delegation of Use. Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot may also delegate all of such rights to the Lot's lessee. Written evidence of such delegation shall be provided to the Association's Board of Directors.

Section 4.04. Parking Rules. In addition to those restrictions set forth in Section 8.02(d) below, parking within the Property shall be subject to the following restrictions:

(a) Except as otherwise expressly provided herein, all Owners and occupants of any dwelling located on a Lot within the Property shall park either in the garage or on the driveway and/or parking pad of such Lot and not within the Common Areas.

(b) Parking is not permitted on the Lots other than in the garage or on the driveway or parking pad.

(c) Parking shall be permitted in the public streets and roadways where permitted.

(d) The Board of Directors of the Association shall have the power and authority to establish supplemental rules concerning parking on any portion of the Property, including, without limitation, reasonable fines and provisions for involuntary removal of any vehicle violating the provisions of this Declaration and/or such rules.

ARTICLE V **MEMBERSHIP AND VOTING RIGHTS**

Section 5.01. Membership. The Declarant and every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject hereto.

Section 5.02. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. With the exception of the Declarant, until the expiration of the Class B membership as provided below, every person, corporation, partnership, trust or other legal entity, or any combination thereof, who is an Owner of any Lot which is part of the Property, or which otherwise becomes subject to the covenants set forth in this Declaration, shall be a Class A Member of the Association; *provided, however*, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A Member solely on account of such interest. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. In such an event,

however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast by a Class A Member or Members with respect to any Lot.

Subject to the limitations set forth in the By-Laws, any Owner who leases his Lot may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Association.

Class B. The Class B Members shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by specific assignment in writing from the Declarant, as applicable.

There shall initially be eight hundred ten (810) Class B memberships. This number corresponds to the number of subdivided lots approved for the Project multiplied by ten (10). This number shall decrease by ten (10) at the time a Lot is conveyed to an Owner other than the Declarant. In the event that Declarant elects to subject additional real property to the lien and effect of this Declaration in accordance with the terms hereof, the number of Class B memberships shall be increased by the number of subdivided lots within such additional real property multiplied by ten (10). Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

- (i) when all of the Lots have been acquired by Class A Members; or
- (ii) twenty (20) years from the date of recordation of this Declaration; *provided, however,* that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid twenty (20) year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less; or
- (iii) upon the surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.

Upon the lapse or surrender of the Class B memberships as provided for in this Article, the Declarant shall thereafter become a Class A Member of the Association as to each and every Lot in which it then holds the interest otherwise required for such Class A membership.

The Members of the Association shall have no preemptive rights, as such Members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided for in the Articles of Incorporation or the By-Laws.

ARTICLE VI
COVENANTS FOR ASSESSMENTS

Section 6.01. General Assessment. Except as the assessments of Declarant are limited by the provisions of Section 6.09 of this Declaration, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who or which becomes an Owner of a Lot within the Property, by acceptance of a deed therefore, 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, in advance, a monthly sum (hereinelsewhere sometimes referred to as a "general assessment") equal to one-twelfth (1/12) of the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses for the purposes listed in Section 6.02 hereof.

The Board of Directors shall determine the amount of the general assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, general assessments may be levied and collected, in installments, on a quarterly, semi-annual or annual basis, rather than on the monthly basis hereinabove provided.

The Board of Directors shall prepare, or cause the preparation of, an annual operating budget for the Association, which shall provide, without limitation, for the items listed in Section 6.02 hereof. Such budget shall indicate the general and special assessments applicable to the Lots. The Board of Directors of the Association shall deliver a copy of the operating budget to the Owners at least thirty (30) days in advance of the meeting of the Board of Directors at which such budget is to be adopted. The budget shall be adopted at an open meeting of the Association. Written notice of the general and supplemental assessments shall, thereupon, be sent to the Members. The omission by the Board of Directors before the expiration of any assessment period to fix the amount of the general assessment hereunder for that or the next period shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any Member from the obligation to pay the general assessments, or any installments thereof, for that or any subsequent assessment period, but the general assessments fixed for the preceding period shall continue until a new general assessment is fixed. No Member may exempt himself from liability for assessments by abandonment of any Lot belonging to him or the abandonment of his right to use and enjoyment of the Common Areas.

Except as may be specifically provided for herein, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the dwellings or their appurtenances, and the responsibility and duties of the Association for maintenance and repairs shall be limited to the Common Areas and those items listed in Section 6.02 hereof. The Owner of any Lot shall, at his own expense, maintain his Lot and dwelling, and any and all appurtenances thereto, in good order,

condition and repair, and in a clean, sightly and sanitary condition at all times.

Section 6.02. Purpose of Assessments. The assessments shall be levied by the Association against the Owners in a fair and equitable manner and used exclusively to promote the recreation, health, safety and welfare of the residents within the Property and for the improvement and maintenance of the Common Areas, the payment of real estate taxes, assessments and utility services for the Common Areas, and management fees, administration expenses, insurance and all other costs and expenses incurred by the Association in proper conduct of its activities, including, without limitation reserves for replacements or contingencies. Expenses for utility service may include lease payments for utility fixtures provided by the utility company in addition to the cost of the actual utility service.

The general assessments shall also be used to pay for any and all other maintenance responsibilities of the Association including, but not limited to, (i) the maintenance of any entrance feature or monument, including related lighting and landscaping, whether located within the Property or outside the Property within Parcel H (which is intended to be conveyed to the Town of Middletown for construction of a library) pursuant to any easement granted or assigned to the Association, (ii) trash and garbage collection and recycling from each of the Lots to the extent the same is not performed by Middletown and billed to the individual Owners, (iii) maintenance of storm water management facilities within the Lots (excluding day to day maintenance of bio-swales and micro bio retention areas, if any, which are the responsibility of the Owners, as further discussed in Sections 9.01 and 9.02 herein), the Common Areas (but including bio-swales and micro bio retention areas within the Common Areas), including the responsibility for landscaping and grass cutting within and around the stormwater management facilities and related maintenance access roads located on the Common Areas, (iv) maintenance of those storm water management areas and facilities located outside the Property and as shown on the Plats for the Property within (a) Parcel H and described as “(Part 1) Private Stormwater Management Easement” and “(Part 2) Private Stormwater Management Easement” and (b) the adjacent property currently owned by Coblenz Family, LLC and described as “(Part 7) Private Stormwater Management Easement” and “(Part 11) Private Stormwater Management Easement”, all pursuant to any easements granted or assigned to the Association, (v) snow removal from the Common Areas, including the private street and the sidewalks located thereon, and from the sidewalk within Parcel H running along Dean Lane (pursuant to a separate sidewalk easement recorded or intended to be recorded among the Land Records of Frederick County, Maryland), and from that of portion of Dean Lane located between Lots 22 and 47, until such time as said portion of Dean Lane is fully improved as a public right-of-way, (vi) repair and maintenance of any private streets, sidewalks, pathways, trails, street lights and street trees bordering and/or within the Common Areas, following installation, maintenance and replacement of any street trees that are located within the Common Areas, including the sidewalk within Parcel H running along Dean Lane), and that portion of Dean Lane located between Lots 22 and 47, until such time as said portion of Dean

Lane is fully improved as a public right-of-way, (viii) repair and maintenance of any and all retaining walls located on the Common Areas or upon any Lots within the Property (including, without limitation, Lots 9-17), including any fencing located along the top of such retaining walls, (ix) maintenance, repair and replacement of the sections of the private storm drain system located within the Common Areas, (x) the maintenance of tot lots, if any, and any other recreational facilities located on the Common Areas, (xi) the maintenance of any open space areas within the Common Areas, (xii) the maintenance of any cluster mailboxes installed within the Property, (xiii) the maintenance, repair and replacement of the common driveway located upon and serving Lots 71 and 72 (pursuant to a separate common driveway easement that is recorded or intended to be recorded among the Land Records of Frederick County, Maryland), but also serving as an access point for Common Area Parcel G (but not including snow and ice removal therefrom, which shall remain the responsibility of the Owners of Lots 71 and 72), and (xiv) any other properties or facilities the Association may determine to maintain pursuant to this Declaration or at the discretion of the Board of Directors.

Section 6.03. Special Assessments. In addition to the general assessments authorized by this Article, the Association may levy, in any assessment year, a special assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of (i) any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming a part of, the Common Areas, including the necessary fixtures and personal property related thereto, (ii) extraordinary snow removal from the Common Areas, and (iii) such other purpose as the Board of Directors may consider appropriate.

Section 6.04. Reserves for Replacements. The Association shall establish and maintain a reserve fund for major repairs, replacements and renovations of the Common Areas, the Property's entrance features, active and passive recreational facilities, private storm drain and storm water management facilities, retaining walls, as well as any other improvements within the Common Areas, by the allocation, and payment 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 with any banking institution, the accounts of which are insured by any State or by an agency of the United States of America, or may, in the discretion of the Board of Directors, be invested. 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.

Section 6.05. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots owned by the then Owner(s), 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. Additionally, the entire balance of the unpaid general assessments for the remainder of the fiscal year shall also become due, payable and collectible in the same manner as the delinquent portion of such general assessment.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within fifteen (15) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the State of Maryland, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of a penalty or "late charge" equal to the greater of fifteen dollars (\$15.00) or one-tenth (1/10) of the total amount of any assessment (provided the charge may not be imposed more than once for the same delinquent payment), and the Association may bring an action at law against the Member personally obligated to pay the same, or foreclose on the lien against the Lot or Lots then belonging to said Member in the manner now or hereafter provided for in the Maryland Contract Lien Act, or as may otherwise, from time to time, be provided by law, in which event interest, costs and reasonable attorneys' fees, shall be added to the amount of each assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

In the event any proceeding to foreclose the lien for any assessment due the Association pursuant to this Article is commenced with respect to any Lot in the Property, then the Owner of such Lot, upon resolution of the Board of Directors, may be required to pay a reasonable rental for the dwelling unit located thereon, and the Association shall be entitled to the appointment of a receiver to collect the same.

The Board of Directors may post, in the Common Areas or on the Associations website, or may disseminate to the Members a list of Members who are delinquent in the payment of any assessments or other fees which may be due the Association, including any installment thereof which becomes delinquent.

Section 6.06. Assessment Certificates. The Association shall, upon request, at any time furnish to any Member liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate, in writing, signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Fifty Dollars (\$50.00) may be levied in advance by the Association for each certificate so delivered.

Section 6.07. Priority of Lien. The lien established by this Declaration shall have preference over any other assessments, liens, judgments or charges, of whatever nature, except the following:

(a) General and special assessments for ad valorem real estate taxes on the Lot; and

(b) The liens of any deeds of trust, mortgage instruments 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 the lien established by this Declaration 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, except as may otherwise be provided by law, 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, or 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. Such sale, 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 liability for any assessments thereafter becoming due, or from the lien of any such subsequent assessments, which lien, if any is 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 any Eligible Mortgage Holder unless the Eligible Mortgage Holder consents to such amendment. The foregoing notwithstanding, such consent shall not be unreasonably withheld, conditioned or delayed and such consent shall be deemed given if no objection or response is received from such Eligible Mortgage Holder within fifteen (15) days after delivery of a copy of the proposed amendment together with a request for such consent.

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

Section 6.08. Commencement of General Assessments. The general assessments for each Lot shall commence on the date a deed for the Lot is delivered by the Declarant to the Class A Member. The monthly installment of the general assessment shall be made for the balance of the month during which a deed for the Lot is delivered to

the Member and shall become due and payable and a lien on the date a deed for the Lot is delivered to the Member. Except as hereinelsewhere provided, the monthly installment of the general assessment for any Lot for any month after the first month shall become due and payable and a lien on the first day of each successive month, pursuant to the budget procedure set forth in this Article VI.

Section 6.09. Assessment of the Declarant. The Declarant shall pay no assessments, general or special, for Lots owned by the Declarant.

Section 6.10. Working Capital Fund. At the time of the first conveyance of each Lot by the Declarant to a Class A Member, and at the time of each conveyance thereafter by a Class A Member to another Class A Member, each such Class A Member shall pay a non-refundable contribution to the Association's Working Capital Fund in an amount equal to Three Hundred Dollars (\$300). This payment shall be in addition to, and shall not be credited toward, the general assessment due from each Class A Member. The Working Capital Fund shall be used by the Association to assist in defraying its initial and ongoing operating expenses.

Section 6.11. Exempt Property. No portion of the Common Areas shall be subject to assessment of any kind by the Association.

Section 6.12. Association's Financial Resources. Until the surrender, lapse or termination of Class B membership and the Declarant has been released from all bonds and sureties posted in connection with the development of the Property, and notwithstanding any other provision within this Declaration, the Association shall be prohibited from using its financial resources, either directly or indirectly, to defray the costs of opposing any development activities of the Declarant that are reasonably consistent with the general intention of the community's site plans, subdivision plats, or County approvals, as may be amended, in the sole discretion of the Declarant, including bond releases that the Declarant may be required to obtain. Nothing in this Section shall be construed to limit the rights of the Members to act as individuals, or in affiliation with other Members.

Section 6.13. Loans From Declarant. Subject to the provisions in this Section 6.13, Declarant shall not at any time be subject to nor have any obligation to pay any assessments or other charges levied by the Association. However, until the Initial Member Election Meeting (as such term is defined in the By-Laws), Declarant shall have the right, but not the obligation, to loan or otherwise advance funds, to cover operating costs for the Common Areas and/or deficits of the Association, which funds shall be reimbursed by the Association to Declarant. In order to pay the amounts due under Section 6.01 above, unless Declarant determines otherwise in its sole discretion, the Association shall be responsible for reimbursing in full Declarant for any costs advanced by Declarant for the operation of the Common Areas and/or the funding of the Association expenses which result in operating deficits of the Association. Such

reimbursements shall be included as part of the assessments of the Association payable by the Owners. Any such loans shall be on such terms and at such rates as are commercially reasonable to enable the Association to comply with its obligations under this Declaration. Such loan or loans may be in lieu of, or in addition to, loans obtained by the Association from other parties. These loans shall be represented and secured by one (1) or more promissory notes of the Association and may be listed and disclosed as "Loans from Declarant" or similar designation on all annual budgets and year-end financial statements of the Association. Declarant shall have the express right, but not the obligation, to forgive, extend the term or reduce in whole or in part, any amounts due and payable by the Association to Declarant.

ARTICLE VII **ARCHITECTURAL CONTROL**

Section 7.01. Architectural Change Approval. No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes in color, changes or additions to driveway or walkway surfaces, and landscaping modifications) until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the Design Guidelines then applicable to the Property by a Covenants Committee composed of three (3) or more representatives appointed by either the Declarant (if the Declarant is still the owner of any Lot subject to this Declaration) or the Board of Directors of the Association ("Covenants Committee"), as set forth in the By-Laws. In the event the Covenants Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, such submitted plans and specifications shall be deemed disapproved. Design approval by the Covenants Committee shall in no way be construed as to pass judgment on the correctness of the location, structural design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed, nor shall it in any way relieve the Owner of the Owner's obligation to secure necessary approvals or permits from relevant governmental authorities. It shall remain the Owner's responsibility to ensure that the Declarant has completed grading on the Lot or any adjacent Common Areas prior to the installation of a fence, deck, patio, or other improvement. In the event Declarant, or its successors or assigns, is required to enter upon a Lot to complete any such grading, such Owner shall be responsible for the removal of such improvement, at such Owner's sole cost and expense.

The Covenants Committee shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed Fifty Dollars (\$50.00). Any exterior addition to or change or alteration made without application having first been made and approval obtained as provided above shall be deemed to be in violation of these covenants and the addition, change or alteration may be required to be restored to the

original condition at the Owner's cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits therefor having first been obtained by the Owner from the applicable public authorities or agencies.

Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article VII shall not be applicable to the Declarant, or successors or assigns of Declarant which are not consumer purchasers of completed dwelling units, or any part of the Property owned by the Declarant.

Section 7.02. Initiation and Completion of Approved Changes. Unless otherwise expressly provided in any approval issued by the Covenants Committee, construction or alterations in accordance with plans and specifications approved by the Covenants Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Covenants Committee, and shall be substantially completed within twelve (12) months following the date of commencement, or within such longer period as the Covenants Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Covenants Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the Covenants Committee without the prior consent in writing of the Covenants Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Covenants Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications in substantially the same form are submitted for use in any other instance.

Section 7.03. Certificate of Compliance. Upon completion of any construction or alterations or other improvements or structures in accordance with plans and specifications approved by the Covenants Committee in accordance with the provisions of this Article, the Covenants Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Covenants Committee and construction or installation in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable has occurred.

Section 7.04. Covenants Committee Rules and Regulations; Appeal of Covenants Committee Decision. The Covenants Committee may from time to time, with final approval by the Board of Directors, 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/or establish such criteria relative to architectural styles or details, or other matters, as it may

consider necessary or appropriate, provided that the same are in compliance with the Design Guidelines. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decisions of the Covenants Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Covenants Committee may appeal the decision of the Covenants Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors. Two thirds (2/3) of the Board of Directors shall be required to reverse the decision of the Covenants Committee.

ARTICLE VIII **USE RESTRICTIONS**

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

Section 8.01. Permitted Uses. The Lots shall be used for residential purposes exclusively, and, except as expressly permitted herein, no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a dwelling. The use of a dwelling unit as a “no-impact home-based business” as defined in §11B-111.1 of the Real Property Article, Annotated Code of Maryland (as amended from time to time) shall be permitted, provided that: (i) before any dwelling unit may be used as a no-impact home-based business the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the no-impact home-based business; and (ii) in no event shall the Common Areas be used in connection with any permitted no-impact home-based business. The notice to the Association shall include, at a minimum: a description of the no-impact home-based business to be conducted; and in a certification to the Association that all applicable licenses and governmental approvals for the no-impact home-based business will be obtained prior to commencement of the no-impact home-based business.

(a) All applicable licenses and governmental approvals for the no-impact home-based business shall have been obtained prior to commencement of the no-impact home-based business.

(b) No employees or staff other than persons actually residing in the dwelling are utilized in connection with such no-impact home-based business.

(c) Such no-impact home-based business shall be operated in strict conformity with the provisions of any applicable zoning law, ordinance or regulation.

(d) Such no-impact home-based business shall not involve any visitation of the Lot or dwelling unit whatsoever by clients, customers or suppliers, or door-to-door solicitation of the residents of the Property.

(e) Such no-impact home-based business shall be consistent with the residential character of the Property and shall not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents of the Property, as determined by the Board of Directors, in its sole discretion.

(f) Such no-impact home-based business shall not create excessive vehicular or pedestrian traffic to and from the Lot, including, without limitation, more than an ordinary and reasonable number of deliveries, as determined by the Board of Directors, in its sole discretion.

(g) In no event shall the Common Areas be used by or in connection with any permitted no-impact home-based business.

Nothing contained in this Article or elsewhere in this Declaration shall be construed to prohibit the Declarant from the use of any Lot or dwelling, or improvements thereon, for promotional or display purposes, or as "model homes", a sales and/or construction office, or the like.

The use of any dwelling as a "Family Child Care Home" as defined in §11B-111.1 of the Real Property Article, Annotated Code of Maryland (as amended from time to time) is permitted, provided that it meets all of the necessary approvals under the law, and provided that: (i) before any dwelling unit may be used as a Family Child Care Home, the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the Family Child Care Home through the filing of an application for approval; and further, provided (ii) that the Board of Directors, or its designee, is provided at least annually with evidence to its satisfaction that any such dwelling continues to be in compliance with all of the necessary approvals under the law, including, without limitation, any local ordinances. Notwithstanding the above, the Board of Directors may order that any such Family Child Care Home cease its operations or otherwise modify its operations, including reducing the number of children, on the grounds that the activity is creating a nuisance. The Board of Directors shall include in any such order a reasonable time in which to comply, as determined by the Board of Directors. In situations where, in the judgment of the Board of Directors, there does not appear the immediate threat of injury to persons or property, the Board of Directors shall provide notice to the Members of the opportunity to speak at a hearing convened to consider what action should be taken with regard to the Family Child Care Home under consideration.

In addition to the foregoing, an application filed with Board of Directors for use of a dwelling unit as a Family Child Care Home, is subject to the following conditions:

(a) each "day care provider", as defined in §11B-111.1 of the Real Property Article, Annotated Code of Maryland (as amended from time to time), operating a Family Child Care Home within the Property shall pay, on a pro-rata basis (based on the total

number of Family Child Care Homes operating within the Property) any increase in insurance costs incurred by the Association that is solely and directly attributable to the operation of Family Child Care Homes within the Property;

(b) the Association may impose a reasonable fee, not to exceed Fifty Dollars (\$50.00) per year, on each Family Child Care Home for use of the Common Areas;

(c) before any dwelling unit may be operated as a Family Child Care Home the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the Family Child Care Home;

(d) each day care provider operating a Family Child Care Home within the Property shall obtain the liability insurance described in §19-106 and 19-203 of the Insurance Article, Annotated Code of Maryland (as amended from time to time), in at least the minimum amount described under that statute, and shall not operate unless such minimum liability insurance is in effect at all times; and

(e) each Family Child Care Home must be registered under Title 5, Subtitle 5 of the Family Law Article, Annotated Code of Maryland (as amended from time to time), and shall not operate unless such registration remains current.

Allowing a Family Child Care Home or a no-impact home-based business does not constitute an endorsement or recommendation of any such business on the part of the Association.

Section 8.02. Prohibited / Regulated Uses and Nuisances. Except for the activities of the Declarant during the construction, sales, development or the completion of any warranty work within the Property, or except with the prior written approval of the Covenants Committee, or as may be temporarily necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Areas:

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

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling, or other part of the Property, except that this shall not prohibit the keeping of dogs, cats, caged birds or other small domestic pets provided: (i) they are not

kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Members; (iii) no more than three (3) such domestic pets may be maintained upon a Lot or the dwelling erected thereon; and (iv) such pets are maintained in strict conformance to all laws and ordinances. The Board of Directors or, upon resolution of the Board of Directors, the Covenants Committee, shall have the authority, after a hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, 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 accompanied by a responsible person and unless they are carried or leashed. Each Member who walks a permitted pet within the Property, including the Common Areas, is required to clean up any and all solid waste deposited by the Member's pet. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

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

(d) Except for parking within garages, and except as herein elsewhere provided, no junk vehicles, commercial vehicles (including vans used for commercial use), trucks (over 3/4 ton capacity) (as defined by the Maryland Department of Motor Vehicles and/or by common usage and practice), unlicensed or inoperable motor vehicles (which shall include, without limitation, any vehicle which would not pass applicable state inspection criteria), trailers, camp trucks, house trailers, boats or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas) 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. If space is available, the Association may, in the discretion of the Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.

(e) Trash and garbage containers shall not be permitted to remain in public view except on the evenings prior to and the days of trash collection. No garbage or trash containers shall be kept on the front or side yard of any Lot and garbage and trash containers kept or maintained in the rear yards of any Lots or under or upon decks shall be screened from public view at all times. No incinerator shall be kept or maintained upon any Lot.

(f) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this

subsection shall not apply to Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to the Declarant, the Association, any municipality, political subdivision, public utility or other public body or authority, or any other person for any purpose.

(g) No tree, hedge, fencing or other landscape feature shall be planted, installed or maintained in a location which obstructs sight-lines for vehicular traffic on public or private streets or drainage patterns. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any Lot which would be inharmonious with the aesthetics of the Property. For the purposes of the immediately preceding sentence, wire lawn edging shall be deemed inharmonious.

(h) Except for entrance signs, directional signs, private security system signage affixed to the exterior of a dwelling and not exceeding eight and one-half inches by eleven inches (8 ½" x 11"), signs for traffic control or safety and such promotional sign or signs as may be maintained by the Declarant or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or dwelling, *provided, however*, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a dwelling where an office is maintained, and provided, further, that one (1) temporary real estate sign, the size and form of which shall be determined by the Association's Board of Directors, may be erected upon any Lot or attached to any dwelling placed upon the market for sale or rent. Any such temporary sign shall be removed promptly following the sale or rental of such dwelling.

Except as set forth above, and except as the provisions hereof may be prohibited by law (as set forth below), no sign or other advertising device of any nature shall be placed upon any Lot except as provided herein. The Covenants Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs that may be employed. Declarant shall have the right to erect and use signs during the course of development, marketing and sales of the Property.

The foregoing notwithstanding, the display of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters, as such terms are defined and set forth in §11B-111.2 of the Real Property Article, Annotated Code of Maryland (as amended from time to time), is restricted:

- (1) In accordance with provisions of Federal, State and local law; and
- (2) Unless otherwise specified by the laws of Middletown, Frederick County or other applicable law, for a time period which is in excess of (a) thirty (30) days before the primary election, general election, or vote on the proposition; and (b) seven (7) days after the primary election, general election or vote on the proposition.

(i) No water pipe, sewer pipe, gas pipe (except as may be used for outdoor gas grills or barbecues), drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any Lot or above the surface of the ground other than as customarily required for routine installation of such transmission lines by cable television, telephone or other similar companies, governmental or quasi-governmental agencies. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.

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

(k) Planting of vegetable gardens shall be subject to any rules and regulations adopted by the Board of Directors and shall not be placed in an easement area.

(l) Placement and use of lawn furniture shall be subject to any rules and regulations that may be adopted by the Board of Directors.

(m) No equipment or machinery (including, without limitation, equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard on any Lot.

(n) No Member shall make any private or exclusive or proprietary use of any of the Common Areas, except with the specific approval of the Covenants Committee and then only on a temporary basis, and no Member shall engage or direct any employee or contractor engaged by the Association on any private business of the Member during the hours such employee or contractor is employed or engaged by the Association, nor shall any Member direct, supervise or in any manner attempt to assert control over any employee of or contractor engaged by the Association.

(o) Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot.

(p) No exterior lighting emanating from a Lot, shall be directed outside the boundaries of the Lot without the prior written approval of the Covenants Committee.

(q) No outbuilding properly erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

(r) An Owner must receive approval from the Covenants Committee before the installation of any fence. Owners of Lots upon which stormwater management and storm drain facilities, bio-swales, micro bio retention areas and grass swales are located which are subject to the provisions of Sections 9.02 and 9.03 herein, shall only be permitted to install split-rail style or 3 board fencing, which fencing may include screen or wire mesh fencing on the inside for protection of pets, subject to the foregoing approval of the Covenants Committee, in order to minimize the potential damages resulting from permitted access by the Association under Sections 9.02 and 9.03.

(s) Installation of all television aerial or radio antenna and other devices intended to receive telecommunications signals such as direct broadcast satellite (DBS), television broadcast, and multipoint distribution service (MDS) (collectively referred to herein as "Antennae") shall require prior approval of the Covenants Committee. Installation of Antennae shall be governed by rules and regulations adopted by the Federal Communications Commission ("FCC"). The Board of Directors may adopt rules and regulations, consistent with the FCC rules and regulations, regarding such criteria as size, location, color and screening of antenna and satellite dishes. Aerials and antennas situated entirely within a dwelling unit, and not visible from the exterior, are permitted.

(t) Installation of all solar collection systems shall require prior approval of the Covenants Committee. Installation of solar collection systems shall be governed by rules and regulations adopted by Federal, State and/or local agencies which govern such solar collection systems. The Board of Directors may adopt rules and regulations, consistent with Federal, State and/or local agencies' rules and regulations, regarding such criteria as size, location and screening of solar collection systems, provided the same do not (i) significantly increase the cost of the solar collection system, or (ii) significantly decrease the efficiency of the solar collection system.

(u) Notwithstanding anything to the contrary contained in this Declaration, no garage located within the Property may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles. Additionally, no alterations to the garage area shall be permitted which would facilitate the use of the garage for habitation. Except as hereinafter provided, all garages shall be used primarily for parking and not for storage or other uses. This shall in no way prohibit the Declarant from utilizing a garage as a sales office during its sales activities within the Property.

(v) Clotheslines shall be permitted on Lots provided that they are located in rear yards only, do not extend past the side plane of the dwelling unit, are only of the retractable type and are retracted when not in use.

(y) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted within the rear yard of a Front Load Lot; provided that prior written approval of the Board of Directors or Covenant Committee is obtained and

that such equipment, playhouse and/or apparatus is properly maintained at all times.

Section 8.03. Leasing. Owners may lease their dwelling units subject to the following requirements, as such requirements may be amended from time to time by the Association's Board of Directors:

(a) No portion of a dwelling unit, other than an entire dwelling unit, may be leased or rented. No dwelling unit may be leased to more than one tenant or one tenant family. No dwelling unit shall be rented for any period of less than six (6) months. No dwelling unit or any portion thereof shall be rented except pursuant to a written lease duly executed by the Owner and lessee.

(b) Owners may use any lease form as long as the lease provides (i) the names of all persons who are authorized to occupy the improvements as lessee, together with a description of all vehicles owned by such persons and the tag numbers of such vehicles, (ii) for a prohibition against any further leasing or subleasing of the improvements by the parties named in such lease, and (iii) that the right of the lessee to use and occupy the Lot and dwelling unit is subject and subordinate in all respects to the provisions of the Articles of Incorporation, Declaration, Bylaws, and any rules and regulations 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.

(c) Any Owner leasing a Lot shall deliver to the lessee a complete set of the Association's Articles of Incorporation, Declaration, Bylaws, and Rules and Regulations. A lessee's violation of the Association's Declaration, Bylaws, and/or Rules and Regulations shall constitute a default under the lease for which the Association, acting on behalf of the Owner, may seek any remedies available at law or equity, including the eviction of the tenant on behalf of and as agent for the Owner, after ten (10) days written notice to the Owner and his or her failure to take action to evict said tenant

(d) An Owner of a dwelling unit who leases such Owner's unit shall, promptly following the execution of any such lease, forward a conformed copy thereof to the management company or Board of Directors, together with a rental fee in an amount determined by the Board of Directors, not to exceed One Hundred Dollars (\$100.00), at least ten (10) days prior to occupancy by the lessee. The management company or Board of Directors must be notified of any continuation, extension, renewal or termination of the lease at least fifteen (15) days prior thereto.

(e) Any sale or lease of any Lot and dwelling unit must conform fully to applicable local laws and ordinances.

The Board of Directors of the Association shall have the right, in its sole discretion, to grant variances to the foregoing requirements, as amended, upon written request made and for good cause shown.

Section 8.04. House Rules, Etc. There will be no violation of any reasonable rules for the use of the Common Areas or “house rules” or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

Section 8.05. Exemptions. None of the foregoing restrictions in Sections 8.02 and 8.03 shall be applicable to the activities of:

(a) Declarant, its officers, employees, or agents, in its development, marketing, construction, leasing, sale of Lots or other parcels within the Property or the conduct of any warranty work related thereto; 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 8.06. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved to the Declarant or the Association, as applicable:

(a) An easement to Declarant to store building supplies, construction equipment, portable toilets, construction trailers and/or sales trailers and similar items on any Lot it owns.

(b) An easement to Declarant to enter upon any Lot to grade a portion of the Lot adjacent to any street if the grading does not materially interfere with the use or occupancy of a residence built or to be built on such Lot; however, Declarant shall be under no obligation to perform such grading or to maintain any slope.

(c) An easement to Declarant to enter upon any Lot or the Common Areas, for the purpose of undertaking any construction, roadwork, or other improvements deemed desirable or necessary for the Property, or required by any approved plans for the Property, applicable law or governmental authority.

(d) An easement to the Association and its agents and contractors for the purpose of inspecting any Lot and the improvements thereon if the Association has reason to believe that a default of the covenants and restrictions set forth herein or any rule adopted pursuant hereto and/or the Design Guidelines has occurred, and for the purpose of curing any default of the covenants and restrictions set forth herein or any rule adopted pursuant hereto and/or the Design Guidelines, subject to provisions requiring notice to the defaulting owner and an opportunity to cure as provided herein except in the case of an emergency, and for the further purpose of (i) maintaining any bio-swales and micro bio

retention areas located on the Lots where the Owner of the Lot has not properly maintained the same, (ii) performing major repairs to bio-swales and micro bio retention areas located on the Lots such as removal and replacement of soil, replacement of materials, and structural items such as pipes and inlets (In the event that maintenance is required by the Association, the Association shall have no responsibility to replace any damaged landscaping or fencing that may have been installed within an easement area), (iii) maintaining and repairing retention walls and appurtenant fencing located thereon, (iv) maintaining and repairing any entrance monuments and appurtenant features that may be located on any Lot, and (v) maintaining street lights located on Lots.

(e) An easement to the Declarant to conduct marketing and sales activities, and to use any Lot or dwelling unit located within the Property as a model home, a sales and/or construction office, for purpose of marketing the improved lots within the Property and, unless otherwise prohibited by law, other communities within the vicinity of the Property, built by, or on behalf of, the Declarant, its successors and assigns. This right does not expire until the Declarant has been released from all bonds and sureties issued in connection with the Property.

(f) A right to amend any approved plans for the Property or subdivision plat relating to the Property in such manner as Declarant deems advisable, including relocation of the easements or rights-of-way granted, if any such amendment is acceptable to or required by public authorities, including without limitation Middletown or Frederick County, having the right to approve plans or subdivision plats and to make any dedications or grant any easements or rights-of-way necessary or desirable in connection with an amendment of any approved plans or subdivision plat for the Property; however, no amendment shall materially alter the boundaries of any Lot without the prior written consent of the Owner of that Lot, nor shall any amendment deprive any Lot of necessary, ordinary and reasonable vehicular and pedestrian ingress to and egress from the Lot to a public street or of storm water drainage, electrical energy, water, sanitary sewer, natural gas, telephone service or similar utilities and services to the Lot.

Each Owner, by accepting title to his Lot, agrees to sign all plans for the Property or amendments thereto, subdivision plats, resubdivision plats, or record plats that Declarant may request in furtherance of Declarant's intention to develop the Property, if the amendment is acceptable to or required by public authorities, including without limitation, Middletown and Frederick County. To confirm more fully Declarant's rights and powers reserved, and to secure each Owner's obligation under the first sentence of this subparagraph, each Owner, for himself and his heirs, personal representatives, successors and assigns, including the Mortgagee of any Mortgage, hereby appoints Declarant as Owner's true and lawful attorney in fact to execute such subsequent approved plans for the Property or amendments thereto, subdivision plats or resubdivision plats in the Owner's place and stead.

Such power is coupled with an interest and is given to secure each

Owner's obligation to Declarant, and therefore, is irrevocable. The Association, by accepting title to the Common Areas, as the same may be increased or decreased in accordance with this Declaration, hereby agrees to sign all deeds, other conveyances, plans for the Property, amendments to such approved plans, subdivision plats or resubdivision plats that Declarant may request in furtherance of Declarant's intentions concerning the development of the Property, if the above is acceptable to or required by public authorities, including without limitation, Middletown and Frederick County.

Each Owner's obligation, the Association's obligation and the Declarant's power of attorney, under this subparagraph is subject to the limitations that no subdivision or resubdivision plat shall alter the boundaries of any Lot without the prior written consent of the Owner of that Lot, nor shall any subdivision or resubdivision deprive any Lot of necessary, ordinary and reasonable vehicular and pedestrian ingress and egress (either directly or via easements) from the Lot to a public street or of storm water drainage, electric, water, sanitary sewer, natural gas, telephone service or similar utilities or sewer to the Lot.

(g) For a period of twenty (20) years from the recordation of this Declaration, to the Declarant, the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Lots or Common Areas.

(h) To the Declarant, an easement across all of the Property for any and all purposes necessary or incidental to its development and building operations, including, but not limited to development, construction, marketing, and the completion of any required warranty work, until such time as the Declarant no longer owns any Lots, has any Lots under contract or has any outstanding warranty or bond obligations within or with respect to the Property.

Section 8.07. Sidewalk Easements. The sidewalks within the Association's Common Areas shall be subject to a non-exclusive easement in favor of the public, subject to the following: Any such members of the public enter onto these areas at their own risk and expressly conditioned on their acceptance of the following provisions. By the granting of these easements the Declarant, for itself and the Association is not: (a) extending any assurances that the sidewalks are safe for any purpose, (b) conferring on any person the legal status of an invitee or licensee to whom a duty of care is owed, and (c) assuming responsibility for or incurring liability as a result of any injury to any person or property caused by an act of omission of any person. The Declarant and the Association owe no duty of care: (i) to keep the sidewalks safe for entry or use by others, or (ii) to give warning of any dangerous condition, use, structure or activity on the sidewalks to any member of the public who enters on the sidewalks.

Section 8.08. Right to Make Improvements Without Expanding Its Implied Warranty. The Declarant reserves the right, but not the obligation, to take such steps to install, erect, replace or maintain the land and improvements located or to be located on

the Common Areas. Declarant reserves such right so that the Declarant is not required to obtain the consent of the Association. To the extent that the Declarant makes any such improvements to the Common Areas, the Declarant is subject to the implied warranties made to the Association as provided under Title 11B of the Real Property Article, Annotated Code of Maryland (as amended from time to time), and accordingly, the Declarant makes an implied warranty to the Association that the improvements constructed on the Common Areas by the Declarant, its agents, servants, employees, contractors or subcontractors, are: (i) free from faulty materials; (ii) constructed in accordance with sound engineering standards; (iii) constructed in a workmanlike manner. With regard to such improvements, the Declarant does not make any other warranties, whether express or implied.

Section 8.09. Prohibited Actions. Despite any assumption of control of the Board by Owners other than the Declarant, until the Declarant has sold every Lot in the Property, the Board is prohibited from taking any action which would discriminate against the Declarant, or which would be detrimental to the sale or leasing of Lots owned by the Declarant, in the Declarant's sole discretion. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to the assumption of control of the Association by Owners other than the Declarant until the Declarant sells the last Lot owned by it in the ordinary course of business.

Section 8.10. Administration. The administration of the Common Area by the Association shall be in accordance with the provisions of Maryland law and the Governing Documents and rules and regulations of the Association, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional lender designated by the Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

Section 8.11. Distribution of Written Information and Materials. Until the Owners elect officers or a Board of Directors in accordance with §11B-111.3 of the Act, no Owner may distribute any written information or materials regarding the operation of or matters relating to the operation of the Association in any manner or place which the Board of Directors uses to distribute written information or materials, excluding, however, door-to-door distribution. From and after the date that the Owners elect officers or a Board of Directors, the Board of Directors may regulate the time of distribution and impose any other restrictions which are permissible under §11B-111.3 of the Act.

ARTICLE IX **MAINTENANCE**

Section 9.01. Owners' Rights and Responsibilities. Except as otherwise

specifically provided in this Declaration, each Owner shall keep each Lot owned by him, and all improvements and landscaping therein or thereon, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management, and as otherwise provided for in a separately recorded easement agreement. In the event an Owner of a Lot shall fail to maintain the Lot and the improvements and landscaping situated thereon, the Board of Directors or its agent shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and any and all improvements or landscaping thereon.

Except as set forth herein, Owners shall also be responsible to inspect, repair, maintain and replace, as necessary, any bio-swales and micro bio retention areas located within their Lots, except for major repairs to bio-swales and micro bio retention areas located on the Lots such as removal and replacement of soil, replacement of materials, and structural items such as pipes and inlets which shall remain the responsibility of the Association as provided in Section 9.02 herein.

Owners of Lots which are served by fencing, which may include screen or wire mesh fencing, that is located solely on their Lot and not also on any other Lot or any portion of the Common Areas, shall be responsible for the maintenance, repair and replacement of such fencing.

Owners or occupants of a Lot shall be responsible for snow and ice removal from the sidewalks located on or in the front of their Lots, if any. The removal of the snow and ice shall be completed within, and no later than, twenty-four (24) hours from the time of the cessation of the weather event causing the snow and/or ice, or such other time-frame that may otherwise be established by law. In the event that the Owner or occupant of the Lot shall have failed to comply with the requirements of law within forty-eight (48) hours of the cessation of the weather event causing the snow and/or ice, then the Town may remove or have removed the snow and/or ice and the Owner(s) of the Lot shall be jointly and severally liable for the cost of doing so. The cost of the removal shall constitute a lien on the Lot of the Owner(s) and may be collected in the same manner as taxes on the Lot. The burgess and commissioners of the Town have the right to waive the twenty-four (24) hour requirement in certain circumstances.

In addition, as required by the laws of the Town of Middletown, Owners shall be responsible for repairing and maintaining sidewalks that abut, adjoin or are adjacent to their Lot, including replacing or repairing any such sidewalk which is determined to constitute a hazardous condition, as described in the Middletown Code of Ordinances.

Section 9.02. Association Rights and Responsibilities. The Association shall maintain and keep in good order the Common Areas, and shall expend such funds as necessary (including the payment of property taxes) to assume maintenance in accordance with this Declaration. Such maintenance shall include, but not be limited to the maintenance items listed in Section 6.02 herein and any other properties or facilities the

Association may determine to maintain pursuant to this Declaration or at the discretion of the Board of Directors.

The Association may, in the discretion of the Board of Directors, assume additional maintenance responsibilities upon all or any portion of the Property. In such event, all costs of such maintenance shall be assessed only against those Owners receiving or benefiting or being served by the additional services. This assumption of responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with good property management within the Property. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall have the right to enter any Lot for the purpose of (i) maintaining any bio-swales and micro bio retention areas located on the Lots where the Owner of the Lot has not properly maintained or damaged the same, (ii) performing major repairs to bio-swales and micro bio retention areas located on the Lots such as removal and replacement of soil, replacement of materials, and structural items such as pipes and inlets. In the event that maintenance is required by the Association, the Association shall have no responsibility to replace any damaged landscaping or fencing that may have been installed within an easement area. (iii) maintaining and repairing retention and retaining walls, including any fencing located along the top of such retaining walls (including, without limitation, Lots 9-17), (iv) maintaining and repairing any entrance monuments and appurtenant features that may be located on any Lot, and (v) maintaining any street lights located on Lots.

The Association shall also have the right to enter any Lot, without the consent of the Owner and/or occupant thereof, to conduct any emergency repairs as are necessary for the maintenance and protection of the Common Areas. Notice shall be provided to the Owner and/or occupant to the extent feasible. In the event that such emergency repairs are due to a breach of the Owner's maintenance responsibilities as provided herein, the costs of such emergency repairs shall be chargeable to and collectible from the Owner of such Lot in the same manner as assessments as provided in Article VI herein.

Section 9.03. Storm Water Management, Storm Drain Facilities Bio-Swales and Grass Swales within easements. The Declarant, the Association, Middletown or Frederick County, or other public agency, and their respective agents and employees as applicable, shall have an irrevocable right and easement to enter upon the Property for the purpose of gaining access to sections of the community's storm water management or storm drain system and any stormwater management or storm drain device located within the Property in order to perform construction, inspections, maintenance, repairs, or replacement of said storm water management and storm drain facilities and devices to the extent that the Owners or the Association do not. Owners may not change, remove or otherwise alter any part of the storm water management or storm drain system located on their Lots. Owners are hereby notified that any landscaping and/or fencing that may be

planted or installed on, over or near any such required storm water management or storm drain system shall be subject to being removed and replanted or reinstalled in the event that the Declarant, the Association, Middletown, Frederick County, or other public agency shall so require. The Declarant, the Association, Middletown, Frederick County, or other public agency, and their respective agents and employees, shall not be liable or responsible for any damage caused to such landscaping, fencing or to any improvements that the Owners construct that obstruct the storm water management or storm drain system. The Association shall establish a reserve fund for costs anticipated for maintenance, inspection and repair of the referenced storm water management or storm drain system, if such maintenance and repair is not otherwise performed by Middletown.

ARTICLE X INSURANCE

Section 10.01. Individual Coverage. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all risk casualty insurance on the dwelling and all structures located upon the Lot. At a minimum, such coverage shall provide coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. The Board of Directors of the Association, or its duly authorized agent, shall have the authority to obtain insurance for all or any of the dwellings located on the Property, unless, within ten (10) days of a request by the Board of Directors, the Owners thereof have supplied proof of adequate coverage to the Board of Directors' reasonable satisfaction. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the dwelling and other structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the dwelling and other damaged structures in a manner consistent with the original construction. The Board of Directors may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 10.02. Required Coverage. The Board of Directors of the Association, or its duly authorized agent, shall be required to obtain, to the extent reasonably available, maintain and pay the premiums, as a Common Expense, upon a policy of property insurance covering all the Common Areas (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Areas of the Association, as well as common personal property and supplies. The insurance policy shall afford, at a minimum, protection against loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, as well as all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such

is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of the Common Areas (less a deductible deemed reasonable by the Board of Directors) and shall name the Association as the named insured.

Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by Best's Key Rating Guide of "A-/VII" or better (or its equivalent). Each insurer must be specifically licensed or authorized by law to transact business within the State of Maryland. The policy contract shall provide that no assessment may be made against the mortgagees, and that any assessment made against others may not become a lien on the mortgaged premises superior to the First Mortgage. Additionally, if applicable, the Association shall obtain a steam boiler and machinery coverage endorsement which provides that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the building(s) housing the boiler or machinery. Finally, the deductible on any hazard policy should be Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face value of the policy, unless the State of Maryland permits a higher amount.

All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly acceded by private institutions as mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that all property insurance policies must provide an Agreed Amount and Inflation Guard Endorsement, if available, and a Construction Code Endorsement if the Common Areas in the Association are subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the project by an insured peril.

If any portion of the Common Areas are in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Board of Directors of the Association, or its duly authorized agent, shall be required to obtain, maintain and pay, as a Common Expense, the premiums upon a "master" or "blanket" policy of flood insurance on Common Areas buildings and any other Common Areas property. The policy shall be in an amount deemed appropriate, but not less than the maximum coverage available under the NFIP for all buildings and other insurable property within any Common Areas located within a designated flood hazard area or one hundred percent (100%) of current replacement cost of all such buildings and other insurable property. Unless a higher maximum amount is permitted under the laws of Maryland, the maximum deductible for flood insurance shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Areas, public ways of the project, and other areas that are under its supervision. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for

bodily injury and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation and maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such policies must provide that they may not be canceled or substantially modified by any party without at least ten (10) days' prior written notice to the Association.

Blanket fidelity bonds shall be required to be maintained by the Association as required in the By-Laws.

Section 10.03. Repair and Reconstruction of Common Areas after Fire or Other Casualty. In the event of damage or destruction to the Common Areas by fire or other casualty, the same shall be promptly repaired, replaced or reconstructed in substantial conformity with the original plans and specifications for the Common Areas with the proceeds of insurance available for that purpose, if any. The Association shall not use the proceeds of casualty insurance received as a result of damage or destruction of the Common Areas for purposes other than the repair, replacement or reconstruction of the Common Areas without the prior written consent and approval of the holders of all First Mortgages of record on the Lots.

In the event that the proceeds of insurance are not sufficient to repair damage or destruction of the Common Areas caused by fire or other casualty, or in the event such damage or destruction is caused by any casualty not insured against, then and in either of those events, upon resolution of the Board of Directors, the repair, replacement or reconstruction of the damage shall be accomplished promptly by the Association at its Common Expense.

ARTICLE XI MANAGEMENT

Section 11.01. Management Agent. The Board of Directors may employ for the Association a professional management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing. Such duties and services may include, but are not limited to, some or all of the following:

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

(b) to provide for the care, upkeep, maintenance and surveillance of the Common Areas and any other area for which the Association performs the maintenance and upkeep;

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

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

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

Section 11.02. 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.

Any Contract entered into by the officers or the Board of Directors of the Association prior to the Initial Member Election Meeting (as defined in the By-Laws) may be terminated, at the discretion of the Board of Directors and without liability for the termination upon not less than thirty (30) days' notice. For purposes of this Section, "Contract" shall mean an agreement with a company or individual to handle the financial matters, maintenance or services for the Association. "Contract" does not include an agreement related to the provision of utility services or communication systems.

ARTICLE XII
RIGHT TO PROHIBIT OR RESTRICT USE OF PESTICIDES, FERTILIZER
AND OTHER FORMS OF NITROGEN LOADING

Declarant hereby reserves unto itself, for so long as it has an interest of any sort in the Property and hereby grants unto the Association from and after Declarant's interest in the Property ends the right to prohibit and/or restrict the use of pesticides, fertilizers and other ground based sources of nitrogen loading and/or phosphorus loading within the Property under the following conditions and in the manner hereinafter set forth.

Declarant shall have the right, in its sole discretion, to prohibit or restrict, as it deems necessary or advisable, any further use of pesticides, lawn and/or garden fertilizers and any other sources of nitrogen loading and/or phosphorus loading. This right may be

exercised for any reason determined by Declarant in its sole discretion, including in the event that any governmental or quasi-governmental agency enacts, or indicates an intention to enact a moratorium which would affect the Property, or any portion thereof, based upon non-point source nitrogen loading and/or phosphorus loading of local storm water, local storm water management or water quality facilities and/or local waterways. The Declarant shall notify the Association and each Owner of its decision to impose such a prohibition or such restrictions in a written notice sent to the Association at the address indicated on the State Department of Assessments and Taxation website and sent to each Owner at such Owner's address within the Property, regardless of any other address such Owner may use. Such written notice shall indicate the class or classes of sources of pesticides, nitrogen loading and/or phosphorus loading being prohibited and/or restricted and, if such class of source of loading is being restricted and not strictly prohibited, the parameters of such restriction.

Upon the Declarant's delivery of such notice to the Association and the Owners in the manner aforesaid, the Association and each Owner and all occupants of any improvements on the Property shall immediately comply with such notice. Any failure to so comply shall be deemed a default of this Declaration, and the Declarant shall thereupon be entitled to exercise all rights and remedies available to the Declarant or to the Association hereunder in the event of a default of this Declaration, including but not limited to the right to levy fines.

The Declarant shall have the right at any time, but shall not be required to rescind its election of prohibition or restriction. Notice of such a rescission shall be delivered in the same manner.

At such time as the Declarant has no further interest in the Property, the Declarant shall notify the Association thereof, whereupon the Association shall have the right to exercise the foregoing rights with respect to the prohibition and/or restriction of sources of pesticides, nitrogen loading and/or phosphorus loading within the Property.

ARTICLE XIII **GENERAL PROVISIONS**

Section 13.01. Responsibility for the Common Areas. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas, and all improvements thereon (including, without limitation, furnishings and equipment related thereto), and common landscaped areas and shall keep the Common Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 13.02. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property

and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

Section 13.03. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 13.04. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft of otherwise, of articles that may be stored upon the Common Areas. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas, or 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.

Section 13.05. 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, easements, 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 or any rule or regulation promulgated by the Association pursuant to its authority as provided in the Declaration, Articles of Incorporation or By-Laws. Failure by the Association or by any Owner or by any Mortgagee of any Lot to enforce any covenants or restrictions herein contained or any provision of the By-Laws, Articles of Incorporation or rules and regulations of the Association 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 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. If the Association, or any Owner or Mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner, provided that the requirements of the Maryland Contract Lien Act are substantially fulfilled.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable notice of not less than ten (10) days, in writing, provided to the Owner, may, but shall not be required to enter any Lot and remedy any violation of the provisions of this Declaration, the By-Laws, Articles of Incorporation or rules and regulations of the Association *provided, however*, that the Association may not enter the interior of any dwelling unit except in an emergency. All of the expenses of taking such action, together with the costs of collection, including, without limitation, court costs and reasonable attorney's fees shall become a binding, personal obligation of the Owner otherwise responsible for such violation and shall also be a lien upon the Lot of such Owner.

Section 13.06. Fines. In addition to the powers of enforcement provided elsewhere herein, the Association shall have the right to levy fines against an Owner or his guests, relatives, lessees or invitees, in the manner set forth herein, and such fines shall be collectible as any other assessment such that the Association shall have a lien against the Lot of such Owner as provided in this Declaration, the By-Laws and the Articles of Incorporation and such fine(s) shall also become the binding personal obligation of such Owner.

(a) The Board of Directors, or a duly appointed Covenants Committee, shall be charged with determining where there is probable cause that any of the provisions of this Declaration, the By-Laws, Articles of Incorporation or the rules and regulations of the Association, regarding the use of the dwelling units, Lots, Common Areas or other Association property, are being or have been violated. In the event that the Board of Directors or the Covenants Committee determines an instance of such probable cause it shall cause the Board of Directors to provide written notice to the person alleged to be in violation, and the Owner of the Lot which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board of Directors upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed Twenty-Five Dollars (\$25.00) for each offense. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that it will henceforth cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

(b) If a hearing is timely requested, the Board of Directors shall hold the same, and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner or the Board of Directors or Covenants Committee may produce. Any party at the hearing may be represented by counsel.

(c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board of Directors shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board of Directors determines that there is sufficient evidence, it may levy a fine for each violation, from the date on which such violation is found to have commenced, in the amount provided herein.

(d) A fine pursuant to this Section 13.06 shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot, and shall be collectible in the same manner as any other assessment, including by the Association's lien rights as provided in this Declaration and By-Laws. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting his Lot, payment of the amount of any fine(s) assessed against that Lot.

(e) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the By-Laws, Articles of Incorporation or rules and regulations, including, but not limited to, legal action for damages or injunctive relief.

Section 13.07. 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 13.08. Duration and Amendment.

(a) 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. Except as provided in Section 13.08(b) below, this Declaration may be amended only with the consent of a majority of the Members of the Association voting at a duly noticed and held meeting at which a quorum is present. Such approval may be obtained at a duly noticed and held meeting of the Association (in which event, the votes of a majority of the members present shall be required) or such approval may be obtained in writing from a majority of the Owners (in which event, the votes of a majority of all of the members of the Association shall be required). If Class B membership has not lapsed, Declarant must also consent to any amendment. The execution of the minutes of a meeting of the Association providing for the approval of any proposed amendment(s) by the requisite percentage of Owners shall also fulfill the requirements of this Section 13.08. Any amendment must be recorded among the Land Records of Frederick County, Maryland. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

(b) Notwithstanding anything in this Declaration to the contrary, the Declarant shall have the right, until the lapse of the Class B memberships, to amend this Declaration, without the consent or approval of the Class A Members. Such amendment may not abrogate the rights of any Eligible Mortgage Holder without such Eligible Mortgage Holder's consent, which consent shall not be unreasonably withheld, conditioned or delayed and which consent shall be deemed given if no objection is received from such Eligible Mortgage Holder within fifteen (15) days after delivery of the Declarant's request for such consent.

Section 13.09. Taxes and Assessments. It is the intent of this Declaration that insomuch as the interests of each Owner to use and enjoy the Common Areas is an interest in real property appurtenant to each Lot, the value of the interest of each Owner in such Common Areas shall be included in the assessment for each such Lot and as a result, any assessment directly against such Common Areas should be of a nominal nature reflecting that the full value of the same should be included in the several assessments of the various Lots.

Section 13.10. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant, without notice to the Association, by an instrument, in writing, recorded among the Land Records of Frederick County, Maryland executed by both the Declarant and the assignee.

Section 13.11. 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 by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas. However, if the same is authorized and permitted, the Declarant and/or the Association will apply to Middletown for its acceptance of maintenance of the stormwater management facilities located on the Common Areas. If Middletown accepts maintenance of the stormwater management facilities, it shall be for the purpose of maintenance only, and this shall not be construed as a dedication of such facilities.

Section 13.12. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to affect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 13.13. Declarant Reserved Rights. No amendment to this Declaration may remove, revoke, or modify any right, reservation or privilege of the Declarant

without the prior written consent of the Declarant or any successors or assignees (pursuant to Section 13.10) of the Declarant.

Section 13.14. Perpetuities. If any of the covenants, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 13.15. 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 13.16. Dispute Resolution/Arbitration.

(a) Declarant, the Association and its officers, directors and committee members, all Owners and all other parties subject to this Declaration (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a "Claim" described in Section 13.16(b) hereof, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.17 in a good faith effort to resolve such Claim.

(b) As used in this Section, the term "Claim" will refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application or enforcement of the governing documents and/or the rules and regulations of the Association; or

(ii) the rights, obligations, and duties of any Bound Party under the governing documents and/or the rules and regulations of the Association; or

(iii) the design or construction of improvements within the Property, but not including any claim, grievance or dispute involving (i) determinations made by the Board of Directors or Covenants Committee under Section 7.01 above, or (ii) determinations made by the Board of Directors or the Covenants Committee under Section 7.04 above. No such determination by the Board of Directors or the Covenants Committee shall be subject to review.

(c) The following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.17:

(i) any suit by the Association to collect assessments or other

amounts due from any Owner; and

(ii) any suit by the Declarant or the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of this Declaration; and

(iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the governing documents and/or the rules and regulations of the Association; and

(iv) any suit in which any indispensable party is not a Bound Party;

and

(v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the notice required by Section 13.17(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

(d) Any provision of this Section to the contrary notwithstanding, the term "Claim" shall not be deemed to include any claim, grievance or dispute of any kind or nature whatsoever, including, without limitation, claims regarding the design, construction and/or warranty of any dwelling unit or other improvements constructed within the Property, arising (i) in connection with any agreement of sale entered by a Bound Party for the purchase of a Lot ("Agreement of Sale"), or (ii) with respect to matters covered by a "new home warranty security plan" provided to a Bound Party in accordance with Title 10, Section 10-601, et seq., Real Property Article, Annotated Code of Maryland (2010), as amended (a "Warranty Plan"). Any and all such claims, grievances and disputes shall be resolved in accordance with the provisions of such Agreement of Sale and/or Warranty Plan, as applicable.

Section 13.17. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") will give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the parties involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim

(b) Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Declarant, during the time prior to the lapse of Class B Membership, and thereafter the Association, may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 16.17(a) (or within such other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Declarant, during the time prior to the lapse of Class B Membership, and thereafter by the Association (if the Association is not a party to the Claim), or to an independent agency providing dispute resolution services in the County.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each party will bear its own costs of the mediation, including attorney's fees, and each party will share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 13.17. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Date for Action. If any date upon which action is required under Sections 13.16 or 13.17 of this Article shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday,

Sunday or legal holiday.

Section 13.18. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast seventy-five percent (75%) of the total authorized votes of all Owners, excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

- (a) initiated while the Declarant owns any portion of the Property;
- (b) initiated to enforce the provisions of the governing documents and/or the rules and regulations of the Association, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 13.18 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings, except that any such amendment must also be approved by Declarant for so long as Declarant owns any portion of the Property.

Section 13.19. Conflict. The By-Laws and Articles of Incorporation of the Association are subordinate and subject to all provisions of this Declaration. In the event of any conflict between the By-Laws and this Declaration, the provisions of this Declaration shall control; and in the event of any conflict between the Articles of Incorporation of the Association and this Declaration, the provisions of this Declaration shall control.

ARTICLE XIV

COOPERATION WITH ADJOINING PROPERTY OWNER AND TENANTS

The Association and all Owners are hereby provided notice that one of the properties adjoining the Property is used for agricultural and farming uses. The Association and the Owners are hereby obligated to allow the owner of the adjoining property and any farm tenant of that property to make use of the roadways located within the Property (both public and private) as access to and from the adjoining property for purposes of planting, maintenance and harvesting. The adjoining owner and any farm tenant shall remain responsible for any damages caused within the Property as a result of such ingress and egress through the Property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the party constituting the Declarant herein, has executed this instrument this _____ day of _____, 201__.

DECLARANT:

MIDDLETOWN COMMONS
HOLDINGS, LLC
a Maryland limited liability company

By: _____
Name:
Title:

State of Maryland, County of _____) ss:

I, the undersigned, a Notary Public, do hereby certify that _____ as _____ of Middletown Commons Holdings, LLC, a Maryland limited liability company, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction as a duly authorized principal of the limited liability company.

GIVEN under my hand and seal on _____, 201__.

My commission expires: _____

Exhibit "A"

Description of the Property:

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS
_____ HOMEOWNERS ASSOCIATION, INC.

That real property located in Frederick County, Maryland described as

Lots:

Lots 34 through 38 in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 34-38 & Parcel H COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, pages ____.

Lots 1 through 12 and 27 through 29 in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 1-12, 27-29, Parcel A, Parcel D, Gaver Way & Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, pages ____.

Lots 13 through 26, 30 through 33, 47 and 48 in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 13-26, 30-33, 47, 48, Parcels B, C, E, Dean Lane & Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, pages ____.

Lots 39 through 46, 49 through 56 and 78 through 81 in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 39-46, 49-56, 78-81, Ingalls Drive and Dean Lane COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, pages ____.

Lots 57 through 77 in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 57-77, Parcels F & G, and Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, page ____.

Common Area:

Parcel A and Parcel D in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 1-12, 27-29, Parcel A, Parcel D, Gaver Way & Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book ____, pages ____.

Parcels B, C and E in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 13-26, 30-33, 47, 48, Parcels B, C, E, Dean Lane & Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book _____, pages _____.

Parcels F and G in a subdivision known as "Coblentz Property", as per plat thereof entitled "Lots 57-77, Parcels F & G, and Ingalls Drive COBLENTZ PROPERTY", recorded among the Land Records of Frederick County, Maryland in Plat Book _____, pages _____.

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DRAFT FOR CONSIDERATION

May 18, 2015

Via email & registered mail

Mr. Fred Rudy, Chairman
Middletown Board of Appeals
Middletown Municipal Center
Middletown, MD 21769

**RE: Brian C. Sheffler II 9 Linden Blvd.
March 17, 2015 Restricted Vehicle Special Exception Approval
Reconsideration Request under
Sections 17.32.060.J.3; 17.32.150 & 17.48.320**

Dear Mr. Rudy:

I am writing to you on behalf of the Middletown Planning Commission regarding the above referenced Middletown Board of Appeals (BOA) special exception approval. The Planning Commission feels that the decision may have been erroneous given the evidence and facts of the matter. We are asking you to reconsider your recent decision for the Sheffler - 9 Linden Blvd Restricted Vehicle Special Exception request. This reconsideration request was approved by a quorum of the Planning Commission on May 18, 2015.

As you are aware and was noted in the Zoning Administrator's (Ron Forrester) monthly report "...the BOA was aware in approving this special exception that the Planning Commission at their March 16, 2015 meeting recommended denial of the special exception appeal. The denial recommendation was based on there being no approved site plan for 9 Linden Blvd that addresses screening and yard setback for parking a restricted vehicle in the driveway of this residential property."

As noted in the Middletown Municipal Code Section 17.48.320 [Restricted vehicles in residential districts]:

Restricted vehicles parking in the residential districts are subject to the requirements of those districts except as herein modified and provided:

A. Subject to site plan approval by the Middletown planning commission for the purpose of obtaining a special exception from the Middletown board of appeals as provided in Section 17.32.150, which at a minimum shall address screening and setbacks; (emphasis added)

B. Special exception approval is granted for specific property owners for specific properties and shall not run with the land.

Due to the fact that there was no site plan approval by the Planning Commission prior to the Board of Appeals hearing (i.e. the requirements of Section 17.48.320 of the Town Code were not met) the Planning Commission feels that the Board of Appeals decision should be reconsidered as granting the special exception without the site plan approval was an error or mistake of law.

Town Attorney John Clapp has asserted that the Board of Appeals may reconsider its decision if the original decision was the result of fraud, mistake, surprise, inadvertence or some new factual matter comes to light that would justify a different result. An earlier decision may not be reconsidered simply because the body had a change of mind. As noted in an email to Town Planner Cindy Unangst (March 27, 2015; attached) the Town Attorney asserts:

[Paragraph 3] “...The specific conditions required to be met for individually identified uses are set out in Chapter 17.48. At the outset, Section 17.48.010 provides that in addition to the general conditions outlined in Section 17.44.060, the specific standards set out in Chapter 17.48 "must be met prior to the granting of a special exception." When the Board of Appeals convenes to consider a special exception application, the specific standards are to have been met before that meeting. Otherwise, the conditions to grant the request have not been met.” (emphasis added)

[Paragraph 4] “...In this case, the planning commission must approve a site plan. Site plan approval is for the purpose of obtaining a special exception from the Board of Appeals. Since this is one of the specific conditions, and since the specific standards must be met "prior to granting the special exception", site plan approval must precede the granting of the special exception. If the planning commission has not approved a site plan, the specific condition has not been met, and the special exception should be denied.” (emphasis added)

[Paragraph 5] “...I see nothing in the Code, however, that permits the Board of Appeals to grant a special exception under 17.48.320 without prior site plan approval by the planning commission. If there is nothing in the Code to permit that, there is equally nothing in the Code which would authorize the BOA to grant a special exception without the prior site plan approval and THEN refer the matter back to the planning commission for such approval.” (emphasis added)

The Town Attorney also noted in another email [April 16, 2015; attached] to Cindy Unangst that:

[Paragraph 4] “...It may be possible, though, for the Board to reconsider this decision based upon an error or mistake of law. If it were to do that, I would think that the Board could vacate its current decision and suggest to the applicant that it obtain site plan approval from the PC and then, once it is approved, return to the Board for the special exception.”

We would request that the Board of Appeals vacate its current decision and suggest to the applicant that it obtain site plan approval from the Planning Commission prior to requesting a Restricted Vehicle special exception.

The Town Attorney also outlined the 2-step process the Board of Appeals would undertake in another email [April 20, 2015; attached] to Cindy Unangst:

[Paragraph 3] “...Once it receives that request, the BOA would then undertake a 2-step process, and I would suggest that this be done at the next public meeting of the BOA - or at a specially called meeting for this purpose. At that meeting, the first step would be to consider and decide whether to grant the request for reconsideration (not the relief requested - just whether to engage in a reconsideration). If it denies the request for reconsideration, then it ends there. However, if

it grants the request, the second step would be to hear the arguments and consider and decide whether the original decision of the BOA should be changed or modified. In engaging in this second step, the BOA would have to decide whether to have a whole new hearing or just consider the arguments of the PC based on the facts already in the record. At the end, it might re-affirm its original decision, or it might revise the original decision in some way."

I would suggest that you contact Ron Forrester, Zoning Administrator to discuss the next steps. Please feel free to call me (301-452-6036) or Cindy (301-371-6171 x 13) if you have any questions.

Again we would request that the Board of Appeals vacate its current decision and suggest to the applicant that it obtain site plan approval from the Planning Commission prior to requesting a Restricted Vehicle special exception. We thank you for your consideration of this request and look forward to your decision.

Sincerely,

Mark V. Carney, Chairman
Middletown Planning Commission

CC: Members, Middletown Planning Commission
Members, Middletown Board of Appeals
Ron Forrester, Town of Middletown Zoning Administrator
Cindy Unangst, Town of Middletown Staff Planner
Brian Sheffler via registered mail
Vincent Simmel via registered mail
Myron Ahalt via registered mail
Sarah Remsberg Weitzel via registered mail

Attachments

March 27, 2015 email from Town Attorney J. Clapp to Town Planner C. Unangst
April 16, 2015 email from Town Attorney J. Clapp to Town Planner C. Unangst
April 20, 2015 email from Town Attorney J. Clapp to Town Planner C. Unangst

Cindy Unangst

From: John R. Clapp <johnrclapp@verizon.net>
Sent: Friday, March 27, 2015 11:15 AM
To: Cindy Unangst
Cc: Ron Forrester; John Miller
Subject: RE: Sheffler PC recommendation to BOA.doc

Cindy:

I have reviewed the e-mails below and acknowledge our telephone discussion regarding the issues raised.

Uses permitted by special exception are, in essence, uses permitted as a matter of right if the conditions which are placed on them are met. The Code provides for general conditions applicable to all special exceptions and specific conditions which are applicable to the various specified uses. Special exceptions are, of course, granted by the Board of Appeals, and Section 17.44.060 states the general conditions applicable to every request for a special exception. Among those general conditions is the requirement that each application for a special exception be referred to the planning commission for a recommendation. Since it is the Board of Appeals which considers and grants (or denies) a special exception request, that recommendation is to be submitted to the Board of Appeals, and in order to do so, the planning commission would have to consider the application prior to consideration by the BOA. Otherwise, there would be no recommendation before the BOA when it considers the request, and this would be contrary to the Code requirement.

The specific conditions required to be met for individually identified uses are set out in Chapter 17.48. At the outset, Section 17.48.010 provides that in addition to the general conditions outlined in Section 17.44.060, the specific standards set out in Chapter 17.48 "must be met prior to the granting of a special exception." When the Board of Appeals convenes to consider a special exception application, the specific standards are to have been met before that meeting. Otherwise, the conditions to grant the request have not been met.

The issue at hand relates to the parking of restricted vehicles in residential zones, and the specific conditions are set out in Section 17.48.320. One of the specific conditions is that the request is "subject to site plan approval by the Middletown planning commission". Obviously, this is more restrictive than the general condition that the planning commission make a recommendation. In this case, the planning commission must approve a site plan. Site plan approval is for the purpose of obtaining a special exception from the Board of Appeals. Since this is one of the specific conditions, and since the specific standards must be met "prior to granting the special exception", site plan approval must precede the granting of the special exception. If the planning commission has not approved a site plan, the specific condition has not been met, and the special exception should be denied.

Once the Board of Appeals makes its decision to either grant or deny the special exception, the party aggrieved may appeal that to the Circuit Court. Section 17.44.040. I see nothing in the Code, however, that permits the Board of Appeals to grant a special exception under 17.48.320 without prior site plan approval by the planning commission. If there is nothing in the Code to permit that, there is equally nothing in the Code

which would authorize the BOA to grant a special exception without the prior site plan approval and THEN refer the matter back to the planning commission for such approval.

If you have further questions or comments regarding this, please let me know.

John

John R. Clapp
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-----Original Message-----

From: [Cindy Unangst](#)
Date: 03/26/15 12:05:09
To: '[John R. Clapp](#)'
Cc: [Ron Forrester](#); [John Miller](#)
Subject: RE: Sheffler PC recommendation to BOA.doc

John – Please respond all to this e-mail with your interpretation of 17.48.320 in relation to what the BOA should consider when making their decision. As stated during our phone conversation, we recently had a case of a special exception appeal for a restricted vehicle go to the BOA after the Planning Commission gave a recommendation of denial since there was no site plan that addressed screening and setbacks. The BOA ultimately gave approval to the parking of the restricted vehicle in the applicant's driveway.

Thanks!

Cindy

From: John Miller
Sent: Thursday, March 26, 2015 3:24 AM
To: Cindy Unangst
Cc: Ron Forrester
Subject: Re: Sheffler PC recommendation to BOA.doc

From: John R. Clapp [<mailto:johnrclapp@verizon.net>]

Sent: Thursday, April 16, 2015 11:36 AM

To: Cindy Unangst

Subject: RE: Board of Appeals decision

Cindy:

When the Board of Appeals renders a decisions - whether right or wrong - any person who is aggrieved by that decision may appeal it to the Circuit Court. The person appealing must do so within 30 days of the date of the decision. In the circumstances of this case, I believe that both or either the planning commission or the Burgess and Commissioners may also, as a body, appeal the Board of Appeals decision. It is my understanding that the 30 day time period for appealing is about to expire, if it has not already expired. I also understand that neither the Planning Commission nor the Burgess and Commissioner wish to appeal.

Although the Middletown Ordinances do not provide specific authority for the Board of Appeals to reconsider its decisions, the Maryland courts have recognized that administrative agencies acting in a quasi-judicial capacity have the inherent authority to reconsider their decisions. The agency may reconsider its decisions and reach a different conclusion if the original decision was the result of fraud, mistake, surprise, inadvertence or some new factual matter comes to light that would justify a different result. It may not reconsider and change an earlier decision simply because it had a change of mind.

As for the Sheffler case, from what I have been told, the Planning Commission had not approved a site plan for the applicant when the case was heard by the Board of Appeals. As we have discussed previously, Section 17.48.320 provides that one of the specific standards which must be met in order to obtain a special exception under that section is that the granting of the special exception is "subject to site plan approval by the Middletown planning commission for the purpose of obtaining a special exception." Additionally, Section 17.48.010 provides that these specific standards "must be met prior to the granting of the special exception." Since site plan approval by the planning commission is "for the purpose of obtaining a special exception", and since the specific standards must be met "prior to the granting of the special exception", the special exception should not have been granted if there had been no prior site plan approval by the planning commission. In my opinion, granting the special exception without the site plan approval was an error of law.

It may be too late to appeal the case to the Circuit Court. There is no specific time limit for requesting a reconsideration; however the longer this decision remains in effect, the more difficult it will be to reconsider and change the decision - especially if the applicant has begun to act in reliance upon that decision. It may be possible, though, for the Board to reconsider this decision based upon an error or mistake of law. If it were to do that, I would think that the Board could vacate its current decision and suggest to the applicant that it obtain site plan approval from the PC and then, once it is approved, return to the Board for the special exception.

If the matter is neither appealed nor reconsidered, then the decision stands. As we discussed, a decision by the Board which is not changed - whether correct or not - remains valid until a higher authority, like the courts, decide otherwise. The efficacy of the decision is not diluted simply because others (including me as Town counsel) feel the opinion may have be erroneous. At this point, I see no requirement for the applicant to obtain site plan approval after the Board has granted his special exception. Instead, he may park his restricted vehicle on his property without the necessity for screening or set-back restrictions.

John

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Cindy Unangst

From: John R. Clapp <johnrclapp@verizon.net>
Sent: Monday, April 20, 2015 11:05 AM
To: Cindy Unangst
Subject: RE: Board of Appeals decisions

Cindy:

There is no provision in the Town's Code for reconsideration, so there is no specified procedure to be followed. As I mentioned before, agencies like the BOA have the inherent authority to reconsider their decisions based on the reasons I mentioned. (Just a "change of mind" is not enough).

I think it would suffice for the PC to send something in writing, such as a letter, to the BOA requesting that the BOA reconsider its decision and state the reasons for that request. Of course, the PC would have to reach this decision (to make the request) as a body.

Once it receives that request, the BOA would then undertake a 2-step process, and I would suggest that this be done at the next public meeting of the BOA - or at a specially called meeting for this purpose. At that meeting, the first step would be to consider and decide whether to grant the request for reconsideration (not the relief requested - just whether to engage in a reconsideration). If it denies the request for reconsideration, then it ends there. However, if it grants the request, the second step would be to hear the arguments and consider and decide whether the original decision of the BOA should be changed or modified. In engaging in this second step, the BOA would have to decide whether to have a whole new hearing or just consider the arguments of the PC based on the facts already in the record. At the end, it might re-affirm its original decision, or it might revise the original decision in some way.

The applicant obviously has an interest in this process. Therefore, any written request by the PC for a reconsideration should also be sent to the applicant as well as any other persons who appeared and spoke at the BOA since they are considered parties. Notice of the public BOA hearing should also be provided to all.

John

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-----Original Message-----

From: [Cindy Unangst](#)
Date: 04/20/15 09:10:27
To: '[John R. Clapp](#)'
Subject: RE: Board of Appeals decisions

Town of Middletown Planning Department

To: Burgess & Commissioners and Middletown Planning Commission

From: Cindy Unangst, Staff Planner

Date: 5/4/2015

RE: Monthly Planning Update

Major Subdivisions:

Coblentz on Green - Master Plan Amendment approved - March 11, 2013
Planning Commission conditionally approved preliminary plan - March 18, 2013
Improvement plans conditionally approved - October 16, 2013 (Plans expire 10/16/2016)
Final FRO Plan approved - April 21, 2014
Final Plans conditionally approved - November 17, 2014
HOA documents submitted to PC for review - April 21, 2015

Foxfield Section 4- 6 homes still to be built.

Site Plans and Minor Subdivisions:

AMVETS Expansion Plans - Revised Site Plan approved - May 19, 2014 (Plans expire 5/19/2017)

Chesterbrook Apts/Middletown Valley Apts - Site Plan approved - July 17, 2006
Improvement Plans approved and signed - September 16, 2008
Phase 2 Site Plan conditionally approved - January 19, 2015 (Plans expire 1/19/2018)
Phase 2 FRO plan conditionally approved - January 19, 2015

Fire Station - Concept plan submitted to PC for comments - April 22, 2013
Fire Station plat conditionally approved - October 16, 2013
Fire Station Site Plan conditionally approved - November 18, 2013 (Plans expire 11/18/2016)

Horman Apartments- Site Plan approved - April 21, 2008
Improvement Plans conditionally approved - May 17, 2010
Recently learned that the currently approved SWM plans remain valid until May 4, 2017

Jiffas - Site Improvement Plan conditionally approved - October 20, 2008
Forest Conservation Plan approved - October 20, 2008
Revised Architectural Plans submitted and reviewed - June 16, 2014
BOA hearing for variance requests (approval received) - December 16, 2014
Architectural plans approved by PC - March 16, 2015

Middletown H.S. Stadium Concession Stand Expansion Plan - approved June 18, 2012
(Plans expire June 18, 2015)

Miller (Ingalls) – Concept and Phase I & II Plan approved & signed – September 27, 2010
Revised Concept Plan reviewed by PC – September 16, 2013
SHA comment letter received February 18, 2014

Morrissey – demolition plan for sunroom approved – April 20, 2015 (demolition done 5/5/2015)

Newton Property (Cross Stone Commons) – BOA Special Exception Use Hearing – May 8, 2013
Revised architectural plans approved by PC – March 17, 2014
Final FRO Plan approved – May 19, 2014
Revised Site Plan conditionally approved – October 20, 2014 (Plans expire Oct. 20, 2017)
Phase 1 Improvement Plans conditionally approved – October 20, 2014
(Plans expire October 20, 2017)
Addition Plat recorded – November 10, 2014
Dedication Plat conditionally approved – March 16, 2015
Phase 2 Improvement Plans conditionally approved – March 16, 2015

Nicholson - Final Plat submitted for review – March 2, 2015

Putman – Site Plan conditionally approved- November 17, 2008
Forest Conservation Plan approved – June 16, 2009
Improvement Plans approved and signed by all agencies – July 2010
Revised Site Plan approved – April 16, 2012; (Plans expire April 16, 2015)
Revised Site Plan Extension request approved for 6-months – March 16, 2015 (Oct. 2015)
Revised Improvement Plans conditionally approved – March 16, 2015 (Plans expire March 2018)

Sheffler–Special Exception request - Restricted Vehicle – PC recommended denial–March 16, 2014

Thompson Funeral Home Parking Lot – revised site plan conditionally approved April 22, 2013
SWM Plans conditionally approved by Frederick County – October 29, 2013

Annexations:

A.C. Jets Property- PC approval of annexation petition of 35.96 acres – December 21, 2009
Public hearing date - Monday, October 11, 2010
Annexation petition denied – October 11, 2010

Text Amendments:

Zoning Code review – town board to be holding public hearings first half of 2015

Subdivision regulations review – Planning Commission began review – January 2015

Reports: 2014 Annual Report approved by Planning Commission – April 20, 2015

Meetings: Middletown Green Team Meeting – April 28, 2015

Next Joint town board/planning commission workshop – July 6, 2015