



*Monterey Estates*

*Declaration of*

*Covenants, Conditions, and Restrictions*

*November 1988*

*PREPARED BY:*

*Monterey Estates Community Association (MECA) Board of Directors*  
*Monterey Estates Community Association (MECA) Architectural Control Committee*

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by FAIRAFX DEVELOPMENT CORPORATION, a Maryland corporation (hereinafter referred to as Declarant).

\*\*\*\*WITNESSETH\*\*\*\*

WHEREAS, Declarant is the owner of certain property located in the County of Fairfax, State of Virginia, containing 21.61846 acres, as more particularly described by reference to the notes and bounds description and the plat of subdivision attached to the Deed of Dedication and Subdivision of which this Declaration is a part: and

WHEREAS, Declarant will convey the said properties subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant desires to create on the said property a residential community with permanent open spaces and other common facilities for the benefit of the community, and to provide for the preservation of the values and amenities of said community and such other areas as may be subject to this Declaration by Declarant, its successors or assigns, and for maintenance of said open spaces and other facilities and, to this end, desires to subject the property as hereinabove described to the covenants, restrictions, easements, conditions, charges, and liens hereinafter set forth, it being intended that the easements, covenants, restrictions, and conditions shall run with said property and shall be binding on all person or entities having or acquiring any right, title, or interest in said real property or any part thereof, and shall inure to the benefit of each other thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of said community to create an agency which shall be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

Exhibit B

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Virginia, as a non-stock, not-for-profit corporation, MONTEREY ESTATES COMMUNITY ASSOCIATION, for the purposes of exercising the functions aforesaid.

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

Article I

DEFINITIONS

Section 1. "Association" shall mean and refer to MONTEREY ESTATES COMMUNITY ASSOCIATION, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the members of the Association, and being initially composed of Parcels A, B, and C, Section One, Monterey.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and areas dedicated as public streets.

Section 6. "Declarant" shall mean and refer to FAIRFAX DEVELOPMENT CORPORATION, its successors and assigns, if such successors or assigns should

acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more person or entities, of a fee simple title to and Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of obligation.

## Article II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to limit the number of guests of members at such recreational facilities
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid: and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to dedicate or transfer, at any time or upon dissolution, all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.
- (d) The right of any public utility to acquire, without the payment of damages to the Association, easements for the construction, reconstruction, installation, repair and/or necessary maintenance of utility lines through or over any portion of the Common Areas. The

foregoing shall not be construed, however, to permit any such public utility to acquire or damage any improvements situated upon the Common Areas, or other structures or installations situated thereon which would otherwise be deemed to be part of the realty, without the payment of damages, including severance or resulting damages, if any, to the Association, all in amounts and in a manner now or hereafter governing proceedings for the acquisition of private property for public use by condemnation in this State.

(e) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property and to acquire property encumbered by the lien or liens of the deeds or deeds of trust securing improvements on said property;

(f) The obligation of the Association, unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners have given their prior written approval, to maintain fire and extended coverage issuance on insurable Association common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost) and to use hazard insurance proceeds for losses to any Association common property solely for the repair, replacement or reconstruction of such Association common property.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### Article III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot, which in subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than

one ownership for each lot owned. Ownership of such lot shall be the sole qualification for membership.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Members shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall terminate on the happening of either of the following events, whichever occurs earlier.

(a) When the Declarant no longer owns any Lots in the subdivision

(b) On December 31, 1988

(c) In the event of annexation of additional properties, Class B membership shall be revived with respect to those lots contained in the annexed property; provided, however, that this Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) when the total votes outstanding in the Class A membership in the annexed property equals the total votes outstanding in the Class B membership in such annexed property, or

(ii) Four (4) years from the date of recordation of the Deed of Dedication for such annexed property.

#### Article IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for

capital improvements, such assessments be established and collected as hereinafter provided. Such assessments with respect to any particular lot shall commence to be due upon conveyance of a lot to an "owner" from the Declarant, its successors and assigns. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes, situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be sixty dollars (\$60.00) per Lot,

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, after consideration of the current maintenance costs and further needs of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the

purpose of defraying, in whole or in part, the cost of any construction, reconstruction repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments.

Due Dates. The annual assessment provided for herein shall commence as to lots contained within a section subjected to this Declaration on the first day of the month following the conveyance of the first lot in that section to an Owner from the Declarant, his successors or assigns. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or the association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date



shall bear interest from the due date at the rate of eight percent (8%) per annum. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to first mortgages foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot for liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; (c) all properties owned by charitable or other organizations exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### Article V

#### ARCHITECTURAL CONTROL

No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered in any lot nearer to any street than the minimum building set back line unless similarly approved. The Architectural Committee is composed of Sami Totah, Vartkess Balian and Herschel Blumberg, all of 6525 Belcrest Road, Hyattsville, Maryland. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to the covenants. At any time, the

then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the relative covenants shall be deemed to have been fully complied with.

## Article VI

### PROTECTIVE COVENANTS AND RESTRICTIONS

In order to conserve the natural beauty of the subdivided property to insure the best use and most appropriate development and to prevent the erection of poorly designed or constructed improvements, the entire area shown on the attached plat shall be subject to the following protective covenants and restrictions:

1. The property shall be used for residential purpose only. The Declarant, however, for itself, its successors and assigns, reserves the right prior to sale and transfer of any Lot, pursuant to a recorded subdivision plat to alter, amend, and change any lot lines or subdivision plan. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single-family detached dwelling. No residence or any part thereof shall be used for the conduct of any business, commerce, or profession except that professional uses permitted under applicable ordinances of Fairfax County, Virginia shall be permitted subject to compliance with the provisions and requirements of such ordinances. Except for those related to real estate sales and construction, no sign, advertisement, or message shall be displayed or published which offers or implies commercial or professional services, or which might constitute any other kind of business solicitation in or from any residence or residential property except such as may be permitted by applicable ordinances of Fairfax County, Virginia pursuant to the grant of a special use permit for professional uses. Notwithstanding the foregoing with the prior written consent of Declarant:

(a) During the construction and/or sales period, real estate sales and construction offices, displays, signs, and special lighting may be erected, maintained, and operated by Declarant, or its assigns, on any part of the property and on or in any building or structure now or hereafter erected thereon.

(b) On lots now or hereafter specifically designated for such purposes by Declarant, there may be erected and/operated a noncommercial swimming pool, a recreational area, and appurtenances thereto.

2. No clothing, laundry, or wash shall be aired or dried in any portion of the Lots

3. No tree, hedge, or shrub planting shall be maintained in such a manner as to obstruct sight lines for vehicular traffic

4. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood. Property owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of neat appearance. Except for flower gardens, shrubs, and trees which shall be neatly maintained, all open lot areas shall be maintained as lawns; and all lawn areas shall be kept mowed and shall not be permitted to grow to a height in excess of 3 inches.

5. No sign of any kind that is illuminated and/or larger than two square feet shall be displayed to the public view of any Lot, except temporary real estate signs not more than four square feet in area, advertising the property for sale or rent, except for temporary signs erected in connection with the development, construction, lease, or sale of improved Lots.

6. No domestic or wild animal shall be kept or maintained on any Lot: however, any common household pets may be kept or maintained provided that they are not kept, bred, or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and subject to applicable ordinances of Fairfax County, Virginia.

7. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No accumulation or storage of litter: new or used building materials, or trash of any other kind shall be permitted on any Lot. Trash, refuse, or waste materials shall not be burned:

and incinerators manufactured or designed for the burning of trash, garbage or waste materials shall not be placed or operated on the property.

8. No person shall paint the exterior of any building a color different from the original color of said building without this proposed color having been approved by the Architectural Control Committee appointed by the Board pursuant to Article V hereof.

9. No structure of addition to a structure shall be erected, placed, or altered on any Lot until the plan and specifications including elevation, material, color, texture, and a site plan showing location of improvement with grading modifications shall be filed with and approved in writing as to harmony of external design, color, and location in relation to surrounding structures and topography by the Architectural Control Committee appointed by the Board pursuant to Article V hereof. Structure shall be defined to include any building or portion thereof, antenna, tower, fence, pavement, driveway, or appurtenances to any of the aforementioned, provided however, that in no event shall a fence be permitted to be constructed on any portion of a Lot from the from building line to the front Lot line or with respect to a corner lot from the side building line facing the street to the side lot line,

10. No junk vehicle, or commercial or industrial vehicles such as, but not limited to, moving vans, trucks, tractors, trailers, wreckers, hearses, compressors, concrete mixers, or busses shall be regularly or habitually parked in front of any Lot nor upon any Lot. No storage of boating equipment, travel trailers, camping equipment, or recreational vehicles shall be visible from the street. The location and design of enclosures for boating, camping, traveling (other than automobiles) and related equipment shall be approved by the Architectural Control Committee as required herein.

11. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration of Covenants, Conditions and Restrictions. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12. Invalidation of any one of these covenants or restrictions by judgment or court order shall in now way affect any other provisions which shall remain in full force and effect.

13. No temporary building shall be maintained on any Lot without the approval of the Association or its Architectural Control Committee.

#### Article VII

#### JOINT DRIVEWAY MAINTENANCE COVENANT

There is hereby imposed upon all lots upon which there is located an ingress-egress easement as more particularly shown on the plat of subdivision, (sometimes referred to as Pipestem Lots), a joint driveway maintenance covenant by virtue of which the responsibility for the maintenance of the common driveways serving these lots including all costs and expenses incident thereto, shall be shared jointly by the owners of all lots having an interest in, benefiting from and using such a joint driveway.

#### Article VIII

#### EASEMENTS

Section 1. There is hereby granted a blanket easement to the Association, its directors, officers, agents, and employees, to any Manager employed by or on behalf of the Association, and to all policemen, firemen, ambulance personnel, and all similar persons to enter upon the Properties in the event of emergencies in the performance of governmental functions, and in the exercise of the functions provided by this Declaration and the Articles, By-Laws, and Rules of the Association.

Section 2. The rights accompanying the easements provided by Section 1 of this Article shall be exercised only during reasonable daylight hours and then whenever practicable only after advance notice to, and with the permission of, any Owner or tenant directly affected thereby when not an emergency situation or a governmental function.

Section 3. The Declarant, its agents, and employees shall have a right of ingress and egress over the Common Area as required for construction and development of the Properties.

Section 4. Easement for Utilities, etc. There shall be and hereby is reserved to Declarant a perpetual and nonexclusive easement over any Lot for the purpose of installing, repairing, and/or maintaining utility lines of any sort including, but not limited to, storm drains, sanitary sewers, gas lines, electric lines and/or cables, water lines, telephone lines, and the like.

Section 5. Easements for Landscaping and Related Purposes. There shall be and hereby is reserved to the Declarant a perpetual and nonexclusive easement over all Lots or any Common Area for a distance of fifteen (15) feet behind any Lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, direction signs, temporary promotional signs, entrance features, and/or "theme areas," light, stone, wood, or masonry wall features, and/or related landscaping.

#### Article IX

#### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation of other additional property not provided for herein shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for

this purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. The presence of members of or proxies entitled to cast sixty-seven percent (67%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 5. If within five (5) years of the date of incorporation of this Association the Declarant should develop additional lands within Fairfax County, Virginia, such additional lands may be annexed to said Properties without the assent of the Class A members provided however that the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration, should such agencies be involved. If such agencies are involved, detailed plans for the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that such detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose written notice of which shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. At this meeting the presence of members or of proxies entitled to cast sixty-seven percent (67%) of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 31<sup>st</sup> day of August 1979.

Fairfax Development Corporation

By: /S/ Sami E. Totah

State of Maryland  
District of Columbia

County of Prince George's, to-wit:

I, Leah Wilson, a Notary Public in and for the County and State aforesaid do hereby certify that Sami E. Totah, as Executive Vice President of Fairfax Development Corporation, whose name is signed to the foregoing document, bearing date on the 31<sup>st</sup> day of August, 1979, has acknowledged the same before me in my County and State aforesaid.

/S/ Leah Wilson  
Notary Public

My commission expires: 8/1/82

Recorded with certificate annexed,  
Fairfax Co. Va. Mar 25 1980 at 3:39  
Teste: /S/ James E. Hoghagle, Clerk