

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

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THIS DECLARATION, made this 25th day of January, 1968, by KETTLER BROTHERS, INC., hereinafter called "Developer,"

**W I T N E S S E T H :**

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon an exclusive residential community to be named "FALLSMEAD" with permanent parks, play areas, open spaces, walkways and other facilities for the benefit of the said community through the granting of specific rights, privileges and easements of enjoyment which may be shared and enjoyed by all residents of Fallsmead; and

WHEREAS, Developer desires to insure the attractiveness of the individual lots and community facilities within Fallsmead and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the said property and to provide for the maintenance of said parks, play areas, open spaces, walkways and other community facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in Fallsmead and to insure the residents' enjoyment of the specific rights, privileges and easements in the community properties and facilities, to create an organization to which should be delegated and assigned the powers of owning, 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

WHEREAS, Developer has incorporated under the laws of the State of Maryland, as a non-profit corporation, FALLSMEAD HOMES CORPORATION, for the purpose of exercising the functions aforesaid within Fallsmead;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Fallsmead" shall mean and refer to all such existing properties and additions thereto, as are subject to this Declaration and any Supplemental Declaration under the provisions of Article II hereof.

(b) "Community Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of Fallsmead, including improvements heretofore or hereafter made thereon, designated on the face of said plat or plats as intended to be owned and maintained by the Fallsmead Homes Corporation.

(c) "Private Dwelling Unit" shall mean and refer to all living units within Fallsmead.

(d) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Private Dwelling Unit situated within Fallsmead but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any procedure in lieu of foreclosure.

(e) "Developer" shall mean and refer to Kettler Brothers, Inc. or such other construction company that undertakes to develop real estate in Fallsmead under an agreement with the owners of the land.

(f) "Member" shall mean and refer to members of the Fallsmead Homes Corporation.

(g) "General Plan of Development" shall mean and refer to either the preliminary plan or the recorded plat for a particular area of Fallsmead as specifically designated by Developer.

ARTICLE II

Property Subject To This Declaration:

Additions Thereto

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the city of Rockville in Montgomery County, Maryland, and is more particularly described in metes and bounds description attached hereto as EXHIBIT A and incorporated by reference as fully as if specifically repeated herein and all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions to Existing Property. Additions may be made in any of the following ways:

(a) The Developer, its heirs, successors and assigns, shall have the right to bring within the scheme of this Declaration, and make a part of Fallsmead, additional properties in future stages of the development, provided that such additions substantially comply with a General Plan of Development prepared prior to the sale and settlement of any Private Dwelling Unit within Fallsmead and make known to every purchaser (which may be done by, but not limited to, brochure delivered to each purchaser). Said General Plan of Development shall show the proposed additions to the Existing Property and set forth the general nature of proposed community facilities and improvements and the approximate size and location thereof.

The additions authorized under this and subsection (b) shall be made by filing of record Supplementary Declaration of Covenants and Restrictions with respect to the additional properties which shall extend the scheme of the covenants and restrictions of this Declaration to such properties and thereby subject such additions to assessment for their just share of Fallsmead Homes Corporation expenses. Said Supplementary Declarations may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) Upon approval in writing of the Fallsmead Homes Corporation pursuant to a vote of its Members as provided in its By-laws, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of Fallsmead Homes Corporation may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a) hereof.

(c) Upon a merger or consolidation of the Fallsmead Homes Corporation with another homes corporation (or similar organization) as provided in its By-laws, its properties, rights and obligations may be transferred to another surviving or consolidated homes corporation or, alternatively, the properties, rights and obligations of another homes corporation may, by operation of law, be added to the properties, rights and obligations of the Fallsmead Homes Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated homes corporation may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

### ARTICLE III

#### Membership and Voting Rights in the Fallsmead Homes Corporation

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Private Dwelling Unit located within Fallsmead, shall automatically be a Member of the Fallsmead Homes Corporation, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member and provided further that no voting or other privileges, and no assessments or charges

hereinafter provided for shall be effective for any Private Dwelling Unit until such Unit has first been occupied; thereafter, all voting and other privileges and all assessments and charges shall be fully effective whether such Private Dwelling Unit be occupied or not.

Section 2. Voting Rights. The Fallsmead Homes Corporation shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article III, Section I hereof with the exception of the Developer (Developer may, however, become a Class A Member upon termination of its Class B membership as hereinafter provided). Class A Members shall be entitled to one (1) vote for each Private Dwelling Unit in which they hold the interests required for membership under Section 1. When more than one person holds such interest or interests in any Private Dwelling Unit, all such persons shall be Members, and the vote for such Private Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Private Dwelling Unit.

Class B. The Developer shall be the sole Class B Member. The Class B Member shall be entitled to four hundred (400) votes in the Fallsmead Homes Corporation. The Class B membership shall cease and terminate on January 1, 1977. On and after January 1, 1977, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Private Dwelling Unit (as provided for Class A Members) in which it holds the interests required for membership under Article III, Section 1 hereof.

#### ARTICLE IV

##### Property Rights in the Community Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 below, every Member of the Fallsmead Homes Corporation shall have a right and easement of enjoyment in and to the Community Properties and such easement shall be appurtenant to and shall pass with the title to every Private Dwelling Unit situated within Fallsmead.

Section 2. Title to Community Properties. The Developer may retain the legal title to the Community Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Fallsmead Homes Corporation is able to maintain the same but, notwithstanding any other provision herein, the Developer hereby covenants, for itself, its heirs, successors and assigns, that it shall convey the Community Properties to the Fallsmead Homes Corporation not later than January 1, 1977.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Fallsmead Homes Corporation, in accordance with its By-laws, to borrow money for the purpose of improving the Community Properties and in aid thereof to mortgage or otherwise burden or encumber said properties. In the event of a default upon any such mortgage or other burden or encumbrance, the lender shall have a right, after taking possession of such properties (where such right to possession exists), to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage or other debt is satisfied whereupon the possession of such properties shall be returned to the Fallsmead Homes Corporation and all rights of the Members hereunder shall be fully restored; and

(b) The right of the Fallsmead Homes Corporation to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Fallsmead Homes Corporation, as provided in its By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; and

(d) The right of the Fallsmead Homes Corporation, if it so determines, to permit the use of the Community Properties by non-members and to charge reasonable admission and other fees for the use of the Community Properties to either Members or non-members; and

(e) The right of the Fallsmead Homes Corporation to dedicate or transfer all or any part of the Community Properties to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless the following requirements have first been met: an instrument signed by Members of the Fallsmead Homes Corporation entitled to cast two-thirds (2/3) of the total votes of all classes of Members has been recorded, agreeing to such dedication, transfer, purpose or condition, and written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken.

(f) The right of the Fallsmead Homes Corporation to grant such easements and rights of way to such utility companies or public agencies or authorities as it shall deem necessary.

(g) The right of the Developer to impose reasonable covenants and restrictions in respect to such Community Properties, in addition to those set forth herein, at the time of conveyance of such Properties to the Fallsmead Homes Corporation and such covenants and restrictions are hereby incorporated by reference and made part of this Declaration.

Section 4. Extension of Rights and Benefits. Every Member of the Fallsmead Homes Corporation shall have the right to extend the rights and easements of enjoyment vested in him under this Article to each of his tenants and to each member of his family who resides with him within Fallsmead and to such other persons as may be permitted by the Fallsmead Homes Corporation.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Private Dwelling Unit within Fallsmead by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Fallsmead Homes Corporation: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of Fallsmead and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof and for such other needs as may arise.

Section 3. Basis and Maximum of Annual Assessments. The maximum annual assessment payable to the Fallsmead Homes Corporation shall be \$900 in year 2008, \$1,000 in year 2009, and for each year thereafter shall not increase more than seven and one-half percent (7.5%) of the prior year's annual assessment, not to exceed a maximum annual assessment of \$1,500, per Private Dwelling Unit.

The Board of Directors of the Fallsmead Homes Corporation may, after consideration of current maintenance costs and future needs of the Corporation, fix the actual assessments for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Fallsmead Homes Corporation may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon its Properties, including the necessary fixtures and personal property related thereto, subject, however, to the following: in the case of any special assessment levied by the Fallsmead Homes Corporation, such assessment shall require the assent of two-thirds (2/3) of the total votes of all classes of 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 at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. The basis and maximum of the annual assessments provided for in Section 3 above may be changed by the assent of two-thirds (2/3) of the total votes of all classes

of Members voting in person or by proxy at a meeting duly called for that purpose and written notice of such meeting shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 6. Quorum for Any Action Authorized Under Sections 4 and 5.**  
The quorum for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty (60) percent of the total votes of all classes of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.**  
The annual assessments provided for herein shall commence on the first day of the month designated by the Board of Directors of the Fallsmead Homes Corporation to be the date of commencement. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year and such assessments shall thereafter be on a full calendar year basis. The Board of Directors shall fix the amount of the annual assessments against each Private Dwelling Unit at least thirty (30) days in advance of each such annual assessment period and the due dates for such assessments shall be established by the Board of Directors. Separate due dates may be established by the Board for partial annual assessments as long as made thirty (30) days in advance thereof. Written notice of the annual assessments shall be sent to every Owner subject thereto. The Fallsmead Homes Corporation shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Corporation setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of the Fallsmead Homes Corporation.**  
If an assessment is not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as herein-after provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6) percent per annum, and the Fallsmead Homes Corporation may bring legal action against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the

amount of such assessment the cost of preparing and filing the complaint or bill in equity in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The term mortgage or mortgages shall include deed of trust or deeds of trust.

## ARTICLE VI

### Architectural Control Committee

Section 1. Review of Committee. From and after the completion of construction and first sale and settlement of a Private Dwelling Unit within Fallsmead by the Developer, its heirs, successors or assigns, no building, fence, wall or other structure shall be commenced, erected or maintained within Fallsmead, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Fallsmead Homes Corporation or by an Architectural Control Committee composed of three (3) or more persons appointed by the Board. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The Fallsmead Homes Corporation shall have the right to charge a reasonable fee for reviewing each application in an amount not to exceed \$25.00. Provided that nothing herein contained shall apply to any buildings, fences, walls or other structures commenced, erected, maintained or to be erected upon land within Fallsmead as long as title to such land is held by the Developer. Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at Owner's cost.

## ARTICLE VII

### Exterior Maintenance

Section 1. Exterior Maintenance. In addition to maintenance upon the Community Properties, the Fallsmead Homes Corporation may, upon agreement with the Owner, provide exterior maintenance upon each Private Dwelling Unit which is subject to assessment under Article V hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Private Dwelling Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Private Dwelling Unit is subject under Article V hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof. Provided that the Board of Directors of the Fallsmead Homes Corporation when establishing the annual assessment against each Private Dwelling Unit for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for the year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the cost thereof.

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

## ARTICLE VIII

### General Provisions

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Fallsmead Homes Corporation, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. Said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless otherwise terminated or changed by the same requirements as hereinafter provided for amendments to the covenants and restrictions. The covenants and restrictions may be amended during the first twenty-five (25) years by an instrument signed by not less than three-fourths (3/4) of the Owners of all Private Dwelling Units within Fallsmead, and thereafter by an instrument signed by not less than two-thirds (2/3) of the Owners of all Private Dwelling Units within Fallsmead. For purposes of meeting the aforementioned three-fourths (3/4) and two-thirds (2/3) requirements, an Owner shall be counted once for each Private Dwelling Unit which he owns. Provided, however, that any such amendment of these covenants and restrictions must be in full compliance with all applicable laws and regulations and shall not become effective until the instrument evidencing such change has been duly recorded and unless written notice of the proposed amendment is sent to every Owner of a Private Dwelling Unit at least ninety (90) days in advance of any action taken; and provided further, that prior to January 1, 1978, no amendment of these covenants and restrictions shall become effective until approved in writing by Developer.

Section 2. Use and Other Restrictions. Developer reserves the right to file additional covenants and restrictions pertaining to use and other restrictions prior to the sale and settlement of any land embraced by these covenants and restrictions.

**Section 3. Fallsmead Homes Corporation Use of Community Properties.** The Fallsmead Homes Corporation shall have the right to use all Community Properties within Fallsmead for purposes of providing the services which it performs in Fallsmead.

**Section 4. Easements and Rights of Way.** The Fallsmead Homes Corporation is hereby given the right to grant within the Community Properties such easements and rights of way to such utility companies and public agencies or authorities as it shall deem necessary.

**Section 5. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Fallsmead Homes Corporation at the time of such mailing.

**Section 6. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Fallsmead Homes Corporation or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 7. Assignability.** The Developer, its heirs and successors, notwithstanding any other provision herein to the contrary, shall at all times have the right to fully transfer, convey and assign all of its right, title and interest under this Declaration, provided that such transferee, grantee or assignee shall take such rights subject to all obligations also contained herein

**Section 8. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 25th day of January, 1968.

KETTLER BROTHERS, INC. (Declarant)

By /s/ Clarence E. Kettler  
President

ATTEST:

/s/ J. E. Grigg  
Secretary

(CORPORATE SEAL)