

ASHCROFT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, is made this 1st day of April, 1980, by LIBERTY LAND, LTD., a Virginia corporation (hereinafter referred to as the "Developer"), and ASHCROFT NEIGHBORHOOD ASSOCIATION, a Virginia corporation (hereinafter referred to as the "Association").

Factual Background. The Developer is the owner of real property located in Albemarle County, Virginia, consisting of approximately 525 acres and desires to create thereon a residential subdivision, to be known as Ashcroft. The Developer desires to provide for the preservation and enhancement of the property values and amenities in the subdivision and for the maintenance of the Properties and improvements thereon; and to this end, desires to subject the portion of the real property which is shown on the plat of William S. Roudabush, Jr., dated September 17, 1979, revised January 21, 1980, entitled "Section I, Phase I, Ashcroft", a copy of which is attached hereto as Exhibit A, 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 the property and the owners thereof.

The Developer has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common properties and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments, dues and charges hereinafter created, and promoting the recreation, health, safety, common good and general welfare of the residents. In this regard, the Developer has incorporated under the laws of the State of Virginia the Ashcroft Neighborhood Association as a non-profit corporation for the purpose of exercising such functions.

The Developer declares that the real property shown on the plat attached as Exhibit A, 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 1.01. Ashcroft. The term "Ashcroft" as used herein unless otherwise stated shall mean and refer to all of the Properties and the residential subdivision created or to be created thereon.

Section 1.02. Association. The term "Association" as used herein shall mean and refer to the Ashcroft Neighborhood Association, its successors and assigns.

Section 1.03. Board of Directors. The term "Board of Directors" as used herein shall mean the then duly constituted Board of Directors of the Association.

Section 1.04. Common Areas. The term "Common Areas" as used herein shall mean and refer to those areas of land now or hereafter conveyed to the Association, or designated as "Common Area" on any recorded subdivision map of the Properties, together with all improvements and facilities thereon, which are intended to be devoted to the common use and enjoyment of the Members and others.

Section 1.05. Declaration. The term "Declaration" as used herein shall mean the covenants, conditions and restrictions and all other provisions set forth in this document, as the same may from time to time be amended.

Section 1.06. Developer. The term "Developer" as used herein shall mean and refer to Liberty Land, Ltd., its successors and assigns.

Section 1.07. Lot. The term "Lot" as used herein shall mean and refer to any plot of land designated as a numbered, residential lot upon any recorded subdivision map of the Properties, but excluding any Common Areas and any other specially designated areas.

Section 1.08. Member. The term "Member" as used herein shall mean and refer to every person and entity holding membership in the Association.

Section 1.09. Owner. The term "Owner" as used herein, shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.10. Properties. The term "Properties" as used herein shall mean and refer to all real property shown on the plat attached as Exhibit A attached hereto, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 1.11. Supplementary Declaration. The term "Supplementary Declaration" as used herein shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded, which extended the provisions of this Declaration to additional real estate and contains such complementary or modifying provisions for such real estate as are not inconsistent with the concept of this Declaration.

## ARTICLE II. PROPERTY SUBJECT TO DECLARATION

Section 2.01. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied

subject to this Declaration is located in Albemarle County, Virginia, and is more particularly described in Exhibit A.

Section 2.02. Additions to Existing Property. Additional real property may from time to time become subject to this Declaration in the following manner:

(a) Additions by the Developer. The real property shown on the plat attached as Exhibit A attached hereto is the first section of the residential subdivision known as Ashcroft. The Developer, its successors and assigns shall have the absolute right from time to time and without the consent of the Association to bring within the terms of this Declaration additional properties, including all or any portion of the property described in Exhibit B attached hereto, and any properties which are contiguous to the property described in Exhibit B. Any additional property thus added may at the discretion of the Developer include, but need not be limited to, areas and facilities (including streets, roads, trails, community and recreation areas and facilities, and the like) which are devoted to the common use and enjoyment of the Members.

(b) Other Additions. In addition to the provisions of Section 2.02(a), additional properties also may be annexed to the Properties upon approval of the Association by the affirmative vote of a majority in voting power of the Members present in person or by proxy at a meeting called for that purpose at which a quorum is present.

(c) Procedure for Additions. The additions authorized under subsections (a) and (b) shall be made by recording in the office where the land records for the Properties are located one or more duly executed and acknowledged Supplementary Declarations of covenants, conditions and restrictions with respect to the additional property or alternatively, with respect to areas or facilities devoted to the common use and enjoyment of Members, by deed of conveyance to the Association. The covenants for assessments set forth in Article V of this Declaration shall be deemed to include the maintenance, operation and improvement of that portion of such additional properties devoted to common use and enjoyment of Members from and after the time such properties are thus added.

### ARTICLE III. ASSOCIATION

Section 3.01. General. The Association is a non-profit corporation organized under the Virginia Non-Stock Corporation Act for the purpose of owning, maintaining, and administering the community properties and facilities, administering and enforcing the provisions of this Declaration, and generally promoting the recreation, health, safety, common good and general welfare of the residents of Ashcroft.

Section 3.02. Members. Each Owner shall automatically become a member of the Association in accordance with its Articles of Incorporation and By-laws as in effect from time to time. Membership in the Association shall be appurtenant

to and may not be separated from ownership of the Lots.

Section 3.03. Obligation of Members. Each Owner agrees by accepting conveyance of or interest in any Lot to abide and be bound by the Articles of Incorporation and By-laws of the Association, as in effect from time to time, including the payment of such assessments, dues and charges as may be made by the Association from time to time.

#### ARTICLE IV. COMMON AREAS

Section 4.01. Obligations of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, as it may be amended from time to time, any Supplementary Declaration which may be applicable, or any deed, shall be responsible for the exclusive management, operation, and control of the Common Areas, and all improvements thereon (including furnishing and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall also be responsible for the maintenance of common roads on the Properties as provided for in Section 8.02.

Section 4.02. Owners' Rights of Enjoyment. Subject to the provisions hereof, every Owner shall have a right of enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with the title to every Lot.

Section 4.03. Extent of Owners' Easements. The Owners' easements of enjoyment of the Common Areas created hereby shall be subject to the following:

(a) The right of the Association, or its licensee, to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Areas.

(b) The right of the Association to suspend the right of a Member to use any portion of its facilities for any period in accordance with its Articles of Incorporation and By-laws as in effect from time to time.

(c) The right of the Association to mortgage any or all of the improvements and facilities constructed on the Common Areas for the purposes of improvements or repair to the Association land or facilities.

(d) The right of the Association to dedicate, transfer, or otherwise effect all or any part of the Common Areas by granting rights to any governmental body, public or quasi public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association.

(e) The right of the Association to sell, lease, exchange, encumber, or otherwise dispose of any portion of the Common Areas.

(f) The right of the Association to allow non-residents of Ashcroft to use Common Areas or recreational facilities in accordance with the Articles of Incorporation or By-laws of the Association as in effect from time to time.

(g) The right of the Association to take such action as is reasonably necessary for the preservation of any Common Areas.

(h) The right of the Association to grant easements over the Common Areas to the owners adjoining Lots for the purpose of installing, operating and maintaining septic disposal systems serving improvements constructed on such Lots.

(i) The right of the Association to do such other things and take such other action with respect to any Common Areas as is necessary or convenient for the promotion of the common good or general welfare of Ashcroft, including the right to cause utilities to be extended to and maintained on the Common Areas.

(j) The rights of the Developer as otherwise set forth herein.

(k) No Owner shall place any obstruction of any kind on or store anything in the Common Areas without the prior written consent of the Association.

Section 4.04. Delegation of Use. Any Member may delegate his or her right of enjoyment of the Common Areas and facilities to the members of his or her family and to his or her guests subject to such general regulations as may be established from time to time by the Association.

Section 4.05. Damage or Destruction of Common Areas. In the event any Common Areas or facilities are damaged or destroyed by a Member or his or her tenants or any of their guests, licensees, agents or members of his or her family, the Member does hereby authorize the Association to repair such damaged area at his or her expense. The Association shall repair the damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or in the sole discretion of the Association, as the area may have been modified or altered subsequently by the Association. The costs of such repairs shall be borne by the Member and shall become a Special Assessment upon the Lot of such Member.

section 4.06. Title to Common Areas. The Developer shall convey to the Association legal title to any Common Areas when the Developer in its discretion deems appropriate, but not later than December 31, 1989. Until the Common Areas are conveyed to the Association, the Developer shall have the absolute right to (i) encumber the Common Areas, (ii) to operate and maintain, either itself or through a lessee or licensee, the Common Areas,

and (iii) impose such reasonable charges for the use of the Common Areas as it may determine. The Common Areas may be conveyed to the Association subject to the lien of any deed of trust to which they are subject at the time of the conveyance; however, the Developer shall agree to save the Association harmless from any such lien. Members shall have all the rights and obligations imposed by this or any Supplementary Declaration with respect to portions of the Common Areas from and after the time such portions of property are conveyed to the Association, except that prior to such conveyance the Association shall be liable for payment of taxes, insurance and maintenance costs with respect to such Common Areas. The Association hereby agrees to accept the conveyance of the Common Areas.

#### ARTICLE V. ASSESSMENTS

Section 5.01. General. Assessments, dues and charges of the Association shall be made in accordance with the Articles of Incorporation and By-laws of the Association, and the Owner of Lots against which the assessments, dues or charges are imposed shall be personally obligated for the payment thereof. No Owner may waive or otherwise avoid liability for the payment of any assessments, dues or charges of the Association by nonuse of the Common Areas or abandonment of his or her Lot. Assessments shall not be levied on exempt property as defined in Section 5.06.

Section 5.02. Nonpayment of Assessments. Any assessment, dues or charges of the Association which are not paid within thirty (30) days after the due date established therefor shall be considered delinquent and may, upon resolution of the Board of Directors, bear interest from the due date at the maximum rate allowed by law. The Association shall also be entitled to recover from an Owner the expenses (including a reasonable attorney's fee) of collecting any delinquent assessments, dues or charges. In addition to and not in limitation of all other legal and equitable remedies available to it, including the right to assert the lien provided for in Section 5.03, the Association may bring an action at law against any Owner obligated to pay any assessments, dues or charges (plus interest and expenses) which are delinquent, either in the first instance or for a deficiency following foreclosure or other realization on the lien provided for in Section 5.03.

Section 5.03. Lien for Assessments. In addition to the personal obligation of the Owner of a Lot for the payment of assessments, dues and charges of the Association, there shall be in favor of the Association a continuing lien against each Lot and any improvements thereon to secure the payment of any assessments, dues and charges which may be imposed by the Association, plus interest and expenses. Every lien so created may be foreclosed by equitable foreclosure at any time within ten (10) years after the date on which the assessments, dues

or charges became due. Sale or transfer of any Lot shall not affect any lien provided for hereunder.

Section 5.04. Subordination of Lien to Certain Mortgages.

The lien to secure the payment of assessments, dues and charges provided for in Section 5.03 shall be at all times subject and subordinate to any first or second mortgages or deeds of trust placed on any Lot at any time, provided that, from the time the Association places of record in the office where the land records for the Properties are located an instrument setting forth as to any Lot the fact that assessments, dues or charges of the Association are delinquent, the lien for the delinquent assessments, dues or charges in the amount stated in the instrument shall become a lien prior to any mortgages or deeds of trust placed of record subsequent thereto in the same manner as the lien of a docketed judgment in the State of Virginia.

Section 5.05. Non-Waiver and Evidence of Assessments.

No right or remedy provided for in this Article for the collection of assessments, dues and charges of the Association is exclusive of any other remedies given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission by the Association in exercising any right or remedy provided for herein shall impair any such right or remedy or shall be construed to be a waiver of any delinquency or acquiescence therein. Any right or remedy of the Association provided for herein may be exercised from time to time and as

often as may be deemed expedient by the Association. A statement from the Association showing the balance due on any assessments, dues or charges shall be prima facie proof of the current assessments, dues or charges, if any, due on a particular Lot.

Section 5.06. Exempt Property. The following property shall be exempt from any assessments, dues and charges of the Association and from the lien provided for in Section 5.03:  
(1) all property dedicated to and accepted by any public or quasi public authority or body or any public utility; (2) all Common Areas; and (3) until March 31, 1982, all Lots owned by the Developer and held for sale to the public, provided, such exemption for Lots owned by the Developer shall be applicable only so long as the annual assessment against other Lots does not exceed \$180.00 and the Developer pays the Association such amounts as are necessary to offset any operating deficit of the Association. In no event shall the Developer have any obligation to offset any operating deficit of the Association after the exemption for Lots owned by it expires on March 31, 1982.

#### ARTICLE VI. ARCHITECTURAL CONTROL

Section 6.01. Architectural Review Committee. The Architectural Review Committee shall be organized and operated in accordance with the Articles of Incorporation and By-laws of the Association as in effect from time to time.

Section 6.02. Purpose. The Architectural Review Committee shall regulate the lot areas to be cleared, external design, appearance, size, use, location, and maintenance of the Properties and of improvements thereon in such manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, and to conserve existing natural resources and amenities.

Section 6.03. Conditions. No building, fence, wall, structure, improvement, excavation, change in grade, major landscaping, or other work which in any way alters the exterior of any Lot or the improvements located thereon from their existing state shall be commenced, constructed, erected, made or done without the prior approval of the Environmental Review Committee.

Section 6.04. Procedures. Prior to the commencement of any action required to be approved by Section 6.03, there shall be submitted to the Architectural Review Committee for approval plans and specifications showing the nature, kind, shape, size, height, materials, color and location of the work. In the event the Architectural Review Committee fails to approve, modify or disapprove in writing a request for approval required herein within sixty (60) days after plans, specifications, or other appropriate materials have been submitted to it in writing, in accordance with adopted procedures, approval will be deemed

granted. The applicant may appeal an adverse decision of the Architectural Review Committee to the Board of Directors, who may reverse or modify such decision by a two thirds (2/3) vote of the directors. The Architectural Review Committee may impose a reasonable fee for its review of any request for approval.

#### ARTICLE VII. USE OF PROPERTY

Section 7.01. General Restrictions. All Lots within the Properties shall be developed and maintained in accordance with the provisions of this Declaration, such regulations and restrictions as may be established from time to time by the Architectural Review Committee, and such additional regulations and restrictions as may be imposed by any Supplementary Declaration.

Section 7.02. Residential Use. All Lots shall be used for residential purposes only and not more than one single-family residence shall be placed on any one Lot. No tent, camper, vehicle designated for mobile living or temporary structure of any type shall be used as a residence, temporary or permanent on any Lot. No secondary structure shall be constructed on a Lot before the construction of the primary structure. No profession or home industry shall be conducted in or on any Lot without the prior written approval of the Association. Notwithstanding the foregoing, the Developer or its sales agent may use any portion of the Ashcroft Sports Club within the Properties for its sales and operating offices, for the storage

of materials used in connection therewith, and for the purposes of display, and speculative homes for sale to the public may be constructed on the Lots by the Developer or by contractors.

Section 7.03. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots by any Owner without the written consent of the Association, its successors and assigns, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner; provided, however, this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments. No Lot shall be used as a roadway for access to any property lying outside of the boundaries of the Properties without the written consent of the Association.

Section 7.04. Nuisances. No noxious or unreasonable activities or noises shall be carried on or created upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 7.05. Maintenance of Property. Consistent with the conditions of Section 6.03, each Owner shall keep his or her Lot and improvements free of debris and in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all structures and other improvements, all in a manner and with such frequency as is consistent with good property

management and so as not to detract from the overall beauty of the Properties and the common good and general welfare of Ashcroft residents. Any structure or improvement once commenced on any Lot must be completed within twelve (12) months from the date of commencement of construction. In the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon or to complete any structures as provided herein, the Association, after reasonable notice to the Owner, shall have the right to enter upon the Lot to correct any violation of this section. All costs related to the correction, repair, restoration or completion of construction may become a Special Assessment upon such Lot in the discretion of the Board of Directors, which shall notify the Owner of such Lot in writing in the event of the imposition of any such Special Assessment.

Section 7.06. Sanitation. No individual water wells shall be dug or outside toilet constructed on any Lot. At the discretion of the Developer, sewage disposal from all Lots shall be (i) by proper connection to a central sewage disposal facility, or (ii) by a private septic tank sewage disposal system to be constructed and maintained on each Lot by the Owner thereof in accordance with applicable rules and regulations of the appropriate health and regulatory authorities. In the event central sewage and/or water service is made available to any Lot, the Owner of the Lot agrees, by accepting conveyance of or interest in the Lot, to convert to the use of the central

system even though an individual system previously may have been installed, and to pay all connection and use charges in accordance with rate schedules in effect from time to time.

Section 7.07. Other Restrictions and Regulations. The Architectural Review Committee may from time to time impose additional restrictions and regulations upon the use of Lots located within the Properties as it may deem necessary or convenient for the common good and general welfare of Ashcroft, including the regulation of location and size of structures; erection, maintenance and display of signs, and outdoor radio and television antennae; parking of vehicles; and the keeping and maintenance of animals and household pets. Any restriction of regulations imposed by the Architectural Review Committee may be amended replaced or terminated at any time by the Committee.

#### ARTICLE VIII. UTILITIES AND ROADS

Section 8.01. Utility Easements. The Developer reserves for itself, its successors and assigns, a perpetual and alienable easement and right of way ten feet in width in the proximity of the front and both sidelines of each Lot and fifteen feet in width in the proximity of the rear line of each Lot for the installation, maintenance, inspection, replacement, and repair of underground electrical, telephone, water, sewer, gas, television, and drainage lines, facilities and equipment. The easements provided for in this Section shall include the right

of ingress and egress, the right to cut trees, brush and shrubbery, the right to grade the soil, and the right to take other similar reasonable action necessary to provide economical and safe utility and drainage facilities. Any damage resulting from the use of the easements hereby reserved shall be promptly repaired at the expense of the entity responsible for such use.

Section 8.02. Roads. There shall be a perpetual, non-exclusive easement appurtenant to each Lot in Ashcroft for purposes of ingress and egress over the common roads shown on the plat attached hereto as Exhibit A and over such other roads as may hereafter be construed and shown on subsequent plats of real property made a part of Ashcroft by Supplementary Declaration. The Association shall have the responsibility for the maintenance and repair of all common roads in Ashcroft, and the cost thereof shall be paid by the Owners as part of the general assessments, dues and charges of the Association, except such roads, if any, which have been accepted for maintenance by the Virginia Department of Highways or other public body.

#### ARTICLE IX. GENERAL PROVISIONS

Section 9.01. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date this Declaration is recorded, and thereafter shall be automatically renewed for successive periods of ten (10) years each unless terminated

as provided for in Section 9.02.

Section 9.02. Termination and Amendment. This Declaration may be terminated at the end of the original or any renewal term upon the affirmative vote of two thirds (2/3) in voting power of the Members of the Association who are present in person or by proxy at a meeting called for such purpose at which a quorum is present, which action shall be conclusively evidenced by an instrument recorded in the Clerk's Office where this Declaration is recorded.

Section 9.03. Applicability. The covenants, restrictions, reservations and provisions contained in this Declaration shall apply to the property described in Exhibit A attached hereto, and to such property covered by Supplementary Declarations as may be recorded from time to time in accordance herewith, and shall not apply to any other lots, tracts or parcels of land now owned or hereafter acquired by the Developer.

Section 9.04. Enforcement. The Association, any Owner or the Developer 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 and any Supplementary Declarations. Failure to enforce any covenant or restriction herein contained shall in no event be deemed to waiver of the right to do so thereafter.

Section 9.05. Severability. Invalidation of any one of the provisions of this Declaration or any Supplementary Declaration by judgment, court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.06. Non-Discrimination. Any person, when he becomes an Owner, agrees that neither he or she, nor any one authorized to act for him or her, will refuse to sell or rent, after the making up of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any of the property owned by him or her in Ashcroft to, any person because of race, color, religion, sex or national origin.

IN WITNESS WHEREOF, the parties have caused their names to be signed hereto as of the date first above written.

LIBERTY LAND, LTD.

By

  
President

ASHCROFT NEIGHBORHOOD ASSOCIATION

By

  
President

STATE OF VIRGINIA

COUNTY OF ALBEMARLE, to-wit:

I, SUSAN C. HAGERORN, a Notary Public in and for the County and State aforesaid, do hereby certify that Gary D. Cooper whose name as President of Liberty Land, Ltd., is signed to the foregoing instrument bearing the date of April 1, 1980, has personally acknowledged the same before me in my County and State aforesaid.

My Commission expires: September 15, 1982

Susan C. Hagerorn  
Notary Public

STATE OF VIRGINIA

COUNTY OF ALBEMARLE, to-wit:

I, SUSAN C. HAGERORN, a Notary Public in and for the County and State aforesaid, do hereby certify that Gary D. Cooper whose name as President of Ashcroft Neighborhood Association, is signed to the foregoing instrument bearing the date of April 1, 1980, has personally acknowledged the same before me in my County and State aforesaid.

My Commission expires: September 15, 1982

Susan C. Hagerorn  
Notary Public