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FILED  
MOLLY Q. RUHL  
CLERKS OFFICE  
MONTGOMERY CO. MD.

**DECLARATION OF ANNEXATION FOR  
THE KENTLANDS COMMUNITY CHARTER**

THIS DECLARATION OF ANNEXATION is made on the date hereinafter set forth by EL AD KENTLANDS, LLC, a Delaware limited liability company ("El Ad") and KENTLANDS CITIZENS ASSEMBLY, INC., a Maryland corporation ("KCA") with the consent of GREAT SENECA DEVELOPMENT CORPORATION, a Maryland corporation ("GSDC" or "Developer").

**WITNESSETH:**

WHEREAS, Great Seneca Limited Partnership, a Maryland limited partnership ("GSLP") recorded the Kentlands Community Charter among the Land Records of Montgomery County, Maryland ("Land Records") in Liber 9580 at folio 400 *et seq.*, as amended and supplemented from time to time ("Community Charter"); and

WHEREAS, GSDC is the successor Developer pursuant to an Assignment Agreement dated December 19, 1991 between GSLP as assignor and GSDC as assignee, recorded among the Land Records on January 9, 1992 in Liber 10118 at folio 761 *et seq.*; and

WHEREAS, pursuant to Article I, § 1-102 and Appendix Two of the Community Charter, all or any portion of the Metes and Bounds of Kentlands, as well as any real property which is neighboring or contiguous to the Metes and Bounds of Kentlands, may be subjected to the Community Charter upon the recordation of one or more Declarations of Annexation; and

WHEREAS, pursuant to Article I, § 1-102 and Appendix Two of the Community Charter, during the Developer's Rights and Obligations period, such property may be annexed unilaterally by the Developer or may be annexed by others with the Developer's approval; and

WHEREAS, pursuant to §2-105 of the Community Charter, owners of multi-family condominium units in which less than seventy-five percent of the units are offered on a rental basis shall be subject to assessments equal to seventy-five percent of the Class I General Assessment rate for so long as the assessments for the units within the condominium are remitted to the Assembly by a single entity such as a council of unit owners and are Class II Members unless otherwise provided in an amendment or Supplementary Declaration; and

75.00  
20.00  
95.00  
RES # 5477  
MOR DEN Bld # 5356  
Jul 25, 2006 01:00 PM

WHEREAS, Ameriton Properties Incorporated, a Maryland corporation, predecessor in title to El Ad, and KCA entered into a Memorandum of Understanding ("MOU") dated March 25, 2003 in which, among other things, they agreed to modify the voting rights and assessment obligations to be imposed on the Real Property (hereinafter defined); and

WHEREAS, pursuant to Article I, § 1-102 and Appendix Two of the Community Charter, the Declarations of Annexation may contain such complementary or additional covenants, conditions or restrictions as are deemed appropriate, given the nature of the real property being annexed; and

WHEREAS, pursuant to Article II, § 2-105(b) of the Community Charter, KCA may increase or decrease the General Assessment rate applicable to specific Lots or Living Units

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BA



annexed into Kentlands in relation to the level of services or benefits that may be available to such Lots or Living Units; and

WHEREAS, El Ad is the owner of that certain parcel of land containing approximately 5.85 acres located in the City of Gaithersburg and also known as Parcel "H" in Block "Q" in a subdivision known as "Plat 93, KENTLANDS RETAIL AREA 2" as per plat thereof recorded in Plat Book 174 at Plat N. 19500 among the Land Records of Montgomery County, Maryland (the "Land Records"), together with access easement rights as set forth in Easement Agreement dated January 30, 1995 and recorded February 9, 1995 among the Land Records in Liber 13245, folio 3, and described on Exhibit A hereto ("Real Property"); and

WHEREAS, pursuant to the Schematic Development Plan for the Real Property approved by the City of Gaithersburg City Council Resolution R-77-02 and the Final Site Plan for the Real Property conditionally approved by the Planning Commission of the City of Gaithersburg (City) on November 6, 2002, as "SP-02-0012 Kentlands Village (Archstone), MXD Zone, 909 Quince Orchard Road, Multi-Family Residential," for which final approval granted by the City of Gaithersburg upon the fulfillment of the conditions on May 24, 2003, as indicated by stamp on the application, the Real Property is being redeveloped by the construction of a mixed-use complex with approximately 307 residential units (each of which shall be considered a "Living Unit" as such term is defined in the Community Charter) and 13,193 square feet of Non-Residential Units (each of which shall be considered a "unit"), plus a parking structure, clubhouse, and related amenities (collectively, the "Project"); and

WHEREAS, Ameriton Properties Incorporated has sold the Kentlands Village Multi-Family Residential Project to El Ad and El Ad has converted the Project into several multi-family condominium regimes, subject to The Colonnade Land Condominium and with a master association, The Colonnade Community Association, Inc., and is selling the residential dwelling units and portions of the non-residential space as condominium units; and

WHEREAS, El Ad and KCA desire to extend the scheme of the covenants and restrictions of the Community Charter to the Real Property (Exhibit A) in accordance with the provisions of Article I, § 1-102, Appendix Two and Article II, § 2-105(b) of the Community Charter subject to the terms and conditions set forth herein; and

WHEREAS, El Ad has requested that KCA annex the Project and subject it to the Community Charter on the terms described herein, and KCA has found that the differences in services to be provided to the residents of the Project justify such terms; and

WHEREAS, GSDC has consented to this Declaration of Annexation and has evidenced such consent by signing this Declaration of Annexation.

NOW, THEREFORE, El Ad and KCA, with the consent of GSDC, hereby declare that all of the Real Property shall be and is hereby made subject to the effect and operation of the Community Charter in accordance with and subject to the terms of this Declaration of Annexation.

1. El Ad shall cause to be made a one-time Participating Builder's Multi-Family Rental Structure Financial Support Obligation payment to KCA at the time of the recordation of this Declaration of Annexation in the amount of \$50.00 per Unit within the Project in accordance with



the requirements of § A-104(e) of Appendix Two of the Community Charter; and such payment is in lieu of a Participating Builder's Financial Support Obligation payment to KCA.

2. El Ad shall also cause to be made a one-time payment to KCA for the Titleholders Initial Contribution Fund at the time of the recordation of this Declaration of Annexation in the amount of \$40.00 per Unit within the Project in accordance with Article II, § 2-105(d) of the Community Charter. In consideration for the payment described in this paragraph 2, KCA acknowledges that it has no additional right to collect such Titleholders Initial Contribution Fund fees from any initial third party purchasers of Units within the Project from El Ad, except that any future purchaser of a Unit within the Project who purchases from an initial third party purchaser or a successor purchaser will be subject to the requirement for the Titleholders Initial Contribution Fund fee payments in accordance with Article II, § 2-105(d) of the Community Charter.
3. No other payments or assessments of the Real Property shall be due from El Ad to KCA at the time of the recordation of this Declaration of Annexation. However, within thirty days after the date on which the final use and occupancy permit for the Project is issued, but in no event later than April 30, 2006, El Ad shall cause to be made a one-time lump sum payment to KCA in the amount of Two Hundred Thousand Dollars (\$200,000.00).
4. Because the Project includes its own clubhouse, recreational, athletic, meeting and swimming facilities ("Project Facilities") sufficient for the approved number of Living Units, the Project Facilities will be limited to use by the residents of the Project and shall not be available for use by residents of Kentlands that are not residents of the Project ("Other KCA Residents"), except as may be agreed to by El Ad and KCA. However, any open areas and amenity space that are part of the remaining non-residential space (but not the Non-Residential Units) of the Project shall generally be available to all KCA Residents in accordance with such reasonable rules adopted by the owner of such non-residential properties, including without limitation, any reasonable rules or charges to accommodate insurance and liability concerns and to offset expenses, as may be determined by the owner of such non-residential properties.
5. Likewise, the Kentlands Club recreational, athletic, meeting and swimming facilities of KCA (and other such facilities as may be developed in the future) shall not be available to the residents of the Project except as may be agreed to by El Ad and KCA. However, the residents of the Project may participate in KCA programs and use other open space facilities owned and maintained by KCA, in accordance with rules adopted by KCA, including without limitation any reasonable rules or charges to accommodate insurance and liability concerns and to offset expenses, as may be determined by KCA.
6. In light of the reduced level of services and benefits to the residents of the Project, pursuant to Article II, § 2-105(b) of the Community Charter, the General Assessment applicable to the Real Property and Project shall be as follows:
  - (a) Residential Living Units. Each Living Unit within the Project shall be assessed Ten Dollars (\$10.00) per month.
  - (b) Non-Residential Units. The owners of the non-residential portions of the Project shall be responsible for any assessments payable under § 2-105 of the Charter. Each Non-Residential



Unit within the Project shall pay an assessment equal to the same amount per square foot as the average assessment per square foot being paid by the residential Living Units.

(c) Payment of Assessments. All assessments due from Units within the Project shall be payable by The Colonnade Community Association, Inc. on behalf of each owner of a Unit within the Project to KCA commencing as to each Unit on the first day of the calendar month following the first month in which the Unit is conveyed to a unit owner other than El Ad or rented by El Ad to a tenant. This General Assessment shall be adjusted annually for inflation based on the U.S. Consumer Price Index - All Urban Consumers (1987=100) published by the Bureau of Labor Statistics, U.S. Department of Labor. If that index is no longer published, then such other index as may be published by the U.S. Department of Labor or other reliable governmental or other nonpartisan index intended to reflect general increases in the cost of living in the Washington, D.C. Metropolitan area and designated by the Board of Trustees shall be used.

(d) Exception. Notwithstanding anything contained herein to the contrary, units not used for residential or commercial purposes, whether or not designated as a Unit, or any similar areas or amenities, shall not be subject to any charges or assessments by KCA, whether General Assessments or otherwise.

7. All charges and General Assessments outlined herein shall be levied against the Real Property and collectible by KCA as assessments in accordance with the Community Charter and the Bylaws for KCA. Except for the charges and General Assessments outlined herein, no other payments, assessments (whether general, local or special or otherwise) or charges shall be due to KCA or levied against the Real Property unless specifically agreed to in writing by El Ad and KCA.

8. The residents of the Project will not vote in KCA elections or on other community matters, unless the status of a condominium and its titleholders changes in accordance with the provisions of Paragraph 9 below, but otherwise may participate freely and fully in the affairs of the community.

9. When any portion of the Project is subjected to a condominium regime, then the individual unit owners within such condominium regime shall succeed to the rights and obligations of El Ad under this Declaration and each Living Unit and each Non-Residential Unit shall be subject to a lien to secure payment of the amounts due to KCA in accordance with Article II of the Community Charter. In the absence of this modification to the Community Charter, upon any multifamily residential rental units being converted to condominium ownership, the owners of such units would be Class I Members unless the assessments for the units within the condominium were remitted to the Assembly by a single entity such as a council of unit owners, in which event such owners would be Class II Members. This Declaration supersedes the Community Charter where it is inconsistent therewith solely with respect to the Project and the terms of the Community Charter shall remain in full force and effect with respect to any other property subsequently converting to the condominium form of ownership.

Any condominium created on the Real Property, by a majority vote of its unit owners and the Board of Trustees of KCA, may together modify this Declaration by converting the residents and unit owners of the Project into full voting members of KCA, whereupon each unit would be assessed like other condominium units in accordance with the Charter at such time and the



Titleholders and residents of the converted units will have the same rights, privileges and obligations as other Kentlands condominium Titleholders and residents.

10. If any portion of the Project is converted to any use other than multi-family residential use (including either rental apartments or condominium units), parking facilities, recreational facilities and up to 13,193 square feet of accessory retail use, then the provisions of Paragraph 6 will expire as to the Property and, to the extent inconsistent herewith, the Property will be assessed like other such projects in accordance with the Charter.

11. KCA has advised El Ad that the City of Gaithersburg, Montgomery County or the State, as applicable, may seek to construct a transitway at some point in the future and that such transitway would be in the Kentlands community's interest. El Ad shall not erect any building or permanent building structure within the 15-foot wide strip of land that is located on the Real Property adjacent to and parallel to the right of way for Quince Orchard Road (Maryland State Route 124) and running the length of the northern boundary of the Real Property, in case the applicable governmental body desires to effectuate a taking of that portion of the Real Property for a future transit right-of-way. Notwithstanding the foregoing, nothing in this Declaration of Annexation shall be deemed to be a dedication of such land, a consent to such taking, or a waiver of any consideration payable to the owner of the Real Property in connection therewith. Moreover, in no event will El Ad or any future owner of the Project be responsible for any necessary utility relocations or other changes, including the cost thereof, nor will utilities servicing the Project be interrupted.

12. KCA shall perform all obligations of the "Grantor" and The Colonnade Community Association, Inc. shall perform all obligations of the "Grantee" as set forth in the Easement Agreement dated March 25, 2003 and recorded in Liber 23515 at folio 005.

13. Notwithstanding anything to the contrary in the Governing Documents, neither KCA nor any Citizens or Titleholders shall have the right to grant any easement over all or any portion of the Real Property, and as such, the provisions of Article V of the Community Charter shall not apply to the Real Property.

14. The Project includes non-residential space. Such Non-Residential Units shall be permitted to be used and operated in a commercially reasonable manner without undue interference by the Assembly. By way of example and not limitation, no restrictions may be imposed which restrict the hours of operation of any businesses operating in such Non-Residential Units, the types of businesses permitted to operate in such Non-Residential Units nor shall KCA impose other similar restrictions or constraints except to the extent dictated and governed by applicable law. Businesses which operate within the Non-Residential Units of the Project shall not be subject to the non-conforming use permit requirement of Article 3, § 3-105 of the Community Charter and any other restrictions applicable to such businesses shall be commercially reasonable. Notwithstanding, businesses which operate within the Non-Residential Units of the Project shall be subject to and comply with all applicable laws, including obtaining any required business and professional licenses and permits, and such other requirements as may be imposed by the City or other governmental entity or other authority. Other than as provided herein, the provisions of the Community Charter and other Governing Documents of KCA shall apply to the Project, including, without limitation, those provisions regarding architectural control, visual changes and the procedural requirements applicable to the same; provided, however, that no such provisions may be



imposed in a manner that interferes with the operation of the non-residential property in a commercially reasonable manner.

15. The Kentlands Community Architect has reviewed the site plan for the Project prepared by Gutschick, Little & Weber, P.A. dated October, 2002 (signed October 11, 2002), together with the architectural elevations prepared by Duany Plater-Zyberk & Company and John Reagan Architects dated October 11, 2002 and the landscape and hardscape plans prepared by The Preston Partnership dated October 11, 2002, and they comply with the architectural guidelines and requirements under the Governing Documents. KCA has received formal approval from the Kentlands Community Architect that the Project complies with the architectural guidelines and requirements under the Governing Documents.

16. In the event of any conflict between this Declaration of Annexation and the Community Charter or other Governing Documents, the terms and provisions of this Declaration of Annexation shall control. Except as expressly modified or supplemented by this Declaration of Annexation, the remaining terms and provisions of the Community Charter and other Governing Documents shall not be affected and shall remain in full force and effect. This Declaration of Annexation shall be interpreted and construed in accordance with the laws of the State of Maryland.

17. This Declaration of Annexation shall be recorded among the Land Records of Montgomery County, Maryland and shall bind the parties, their successors and assigns and the Real Property and shall run with the land.

18. If any term or provision of this Declaration of Annexation is deemed to be invalid or unenforceable for any reason, the remaining terms and provisions hereof shall be unaffected and shall remain in full force and effect.

19. This Declaration of Annexation may not be amended without the written agreement of the Board of Directors of the council of unit owners of each condominium regime (except for The Colonnade Land Condominium) governing the Project and the Board of Trustees of KCA; provided, however, that until such time as El Ad has conveyed seventy-five percent of the Living Units in the Project to third parties, this Declaration may not be amended without the prior written consent of El Ad.

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

21. This Declaration of Annexation may be signed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. Capitalized words or phrases not otherwise defined herein shall have the same meaning in this Declaration of Annexation as provided for in Community Charter Appendix One, which was incorporated as part of the Community Charter pursuant to the provisions thereof.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Annexation to be signed and sealed on their behalf by their duly authorized representatives, with the intention of making this Declaration of Annexation a sealed instrument on July 5<sup>th</sup>, 2006.

WITNESS/ATTEST:

EL AD KENTLANDS, LLC  
a Delaware limited liability company

Sherry L. Weiss  
Secretary

By: [Signature]  
Title: RAMI ROSEN - VICE PRESIDENT

[CORPORATE SEAL]

WITNESS/ATTEST:

KENTLANDS CITIZENS ASSEMBLY, INC.  
a Maryland corporation

\_\_\_\_\_  
Richard Arkin, Chairman

By: \_\_\_\_\_  
Title: Robert Turner, President

[CORPORATE SEAL]

WITNESS/ATTEST:

GREAT SENECA DEVELOPMENT  
CORPORATION  
a Maryland corporation

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Annexation to be signed and sealed on their behalf by their duly authorized representatives, with the intention of making this Declaration of Annexation a sealed instrument on \_\_\_\_\_, 2006.

WITNESS/ATTEST:

EL AD KENTLANDS, LLC  
a Delaware limited liability company

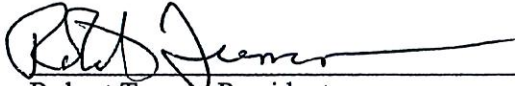
\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]

WITNESS/ATTEST:

KENTLANDS CITIZENS ASSEMBLY, INC.  
a Maryland corporation

By:   
Title: Robert Turner, President

[CORPORATE SEAL]

and

By:   
Richard Arkin, Chairman, Board of Trustees

WITNESS/ATTEST:

GREAT SENECA DEVELOPMENT  
CORPORATION  
a Maryland corporation

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]



IN WITNESS WHEREOF, the undersigned have caused this Declaration of Annexation to be signed and sealed on their behalf by their duly authorized representatives, with the intention of making this Declaration of Annexation a sealed instrument on \_\_\_\_\_, 2006.

WITNESS/ATTEST:

EL AD KENTLANDS, LLC  
a Delaware limited liability company

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]

WITNESS/ATTEST:

KENTLANDS CITIZENS ASSEMBLY, INC.  
a Maryland corporation

\_\_\_\_\_  
Richard Arkin, Chairman

By: \_\_\_\_\_  
Title: Robert Turner, President

[CORPORATE SEAL]

WITNESS/ATTEST:

GREAT SENECA DEVELOPMENT  
CORPORATION  
a Maryland corporation

*Lisa Maxwell*  
\_\_\_\_\_  
Secretary

By: *M.F.O. Kelly*  
\_\_\_\_\_  
Title: *President*

[CORPORATE SEAL]



\* \* \*

STATE OF MARYLAND \*

to wit:

COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY that on July 5, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Rami Rosen, known to me (or satisfactorily proven) to be the Vice President of El Ad Kentlands, LLC, a Delaware limited liability company, and that such corporate officer, being authorized to do so, signed the foregoing instrument on behalf of the corporation for the purposes therein contained.

WITNESS my hand and notarial seal on the date first above written.

Walter H. Johnson  
Notary Public

My commission expires: 7-1-08

[NOTARIAL SEAL]

STATE OF MARYLAND \*

to wit:

COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY that on \_\_\_\_\_, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Robert Turner, known to me (or satisfactorily proven) to be the President of Kentlands Citizens Assembly, Inc., a Maryland corporation, and that such corporate officer, being authorized to do so, signed the foregoing instrument on behalf of the corporation for the purposes therein contained.

WITNESS my hand and notarial seal on the date first above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARIAL SEAL]



\* \* \*  
STATE OF MARYLAND \*  
\* to wit:  
COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY that on \_\_\_\_\_, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the \_\_\_\_\_ of El Ad Kentlands, LLC, a Delaware limited liability company, and that such corporate officer, being authorized to do so, signed the foregoing instrument on behalf of the corporation for the purposes therein contained.

WITNESS my hand and notarial seal on the date first above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARIAL SEAL]

STATE OF MARYLAND \*  
\* to wit:  
COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY that on JUNE 30, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Robert Turner and Richard Arkin, known to me (or satisfactorily proven) to be the President and Chairman of the Board of Trustees, respectively, of Kentlands Citizens Assembly, Inc., a Maryland corporation, and that such corporate officers, being authorized to do so, signed the foregoing instrument on behalf of the corporation for the purposes therein contained.

WITNESS my hand and notarial seal on the date first above written.

*Eileen B. Love*  
Notary Public

My commission expires: *Aug 1, 2009*

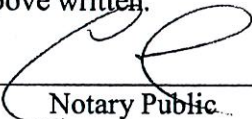
[NOTARIAL SEAL]



STATE OF MARYLAND \*  
\* to wit:  
COUNTY OF MONTGOMERY \*

I HEREBY CERTIFY that on July 30, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Guy F. Campbell, III, known to me (or satisfactorily proven) to be the President of Great Seneca Development Corporation, a Maryland corporation, and that such corporate officer, being authorized to do so, signed the foregoing instrument on behalf of the corporation for the purposes therein contained.

WITNESS my hand and notarial seal on the date first above written.

  
\_\_\_\_\_  
Notary Public

My commission expires: COURTNEY A. RUGE  
Notary Public, State of Maryland  
Qualified in Montgomery County  
Commission Expires June 1, 2008

[NOTARIAL SEAL]  
\* \* \*

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.


  
\_\_\_\_\_  
Robert M. Diamond



EXHIBIT A

DESCRIPTION OF REAL PROPERTY

KENTLANDS  
City of Gaithersburg  
Montgomery County, Maryland

All of those lots or parcels of land located in Montgomery County, Maryland and more particularly described as follows:

BEING KNOWN AND DESIGNATED AS Parcel "H" in Block lettered "Q" in a subdivision known as "Plat 93, Kentlands Retail Area 2" as per plat thereof recorded in Plat Book 174 at Plat No. 19500 which plat is recorded among the Land Records of Montgomery County, Maryland.

TOGETHER WITH access easement rights as set forth in Easement Agreement dated January 30, 1995 and recorded February 9, 1995 among the Land Records of Montgomery County, Maryland in Liber 13245, folio 3

CLERK'S INDEX SHEET  
(For the purpose of proper indexing only)

Parcel	Block	Tax ID No.
H	Q	See Exhibit B (attached).

Grantor: El Ad Kentlands, LLC  
7975 NW 154th St. #200  
Miami Lakes, FL 33016

Grantee: Kentlands Citizens Assembly, Inc.  
485 Tschiffely Square Road  
Gaithersburg, Maryland 20878

Consideration: None

Title Insurance Company: N/A

Return to: Kentlands Citizens Assembly, Inc.  
485 Tschiffely Square Road  
Gaithersburg, Maryland 20878  
Attn: \_\_\_\_\_