

Declaration of Covenants, Conditions and Restrictions  
of Ternberry Homeowner's Association, Inc.

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Amendment to Declaration OF  
Covenants, Conditions and Restrictions  
of Ternberry Homeowner’s Association, Inc.

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Second Amendment to Declaration OF  
Covenants, Conditions and Restrictions  
OF Ternberry Homeowner’s Association, Inc.

1. Article X is hereby revised as follows	55
a. Section 1 revised to read:	
1. Architectural and Environmental Review	55
b. Delete First Section 10 entitled: <u>“New Construction”</u>	56
c. Section 10, entitles: <u>“Prohibited Uses and Nuisances”</u>	
subsection (t) and subsection (w) are hereby revised to read	56
(t) Not more than (1) dwelling will be built per lot	56
(w) These restriction shall not be construed to permit	56

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
TERNBERRY HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made this 10<sup>th</sup> day of January, 1990, by TERNBERRY DEVELOPMENT CORPORATION, a corporation organized and existing under the laws of the State of Maryland and NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, INC., an Illinois corporation (hereinafter, collectively referred to as the "Declarant"):

W I T N E S S E T H

WHEREAS, the Declarant is the owner of the real property located in Prince George's County, Maryland, more particularly described in Article II hereof and desires to create and develop thereon a residential community with common areas and community facilities for the benefit of said community; and

WHEREAS, the Declarant wishes to preserve the ability to enlarge the community, from time to time, and to include in it additional common areas, and community facilities; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and community facilities; and to this end, desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, the property described in the preceding paragraph was previously subject to Covenants and Restrictions for National Research Home Park which was recorded among the Land Records of Prince George's County, Maryland, in Liber 6583 at folio 645 et seq., and which Covenants and Restrictions were terminated and rendered of no further force and effect pursuant to a certificate of Termination recorded among the Land Records of Prince George's County, Maryland in Liber 7543 at folio 355 et seq.

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers and duties of maintaining and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has formed (or intends to form) the Ternberry Homeowner's Association, Inc., as a non-profit corporation without capital stock under the laws of the State of Maryland for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, the Declarant hereby declares that the real property described in Article II hereof is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be in aid of a plan for improvement of said property, and shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an interest in said property and improvements, including, without limitation, any person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation.

#### ARTICLE I

1. Definitions. The following words, when used in this Declaration, shall have the following meanings:

(a) "Association" means the Ternberry Homeowner's Association, Inc., its successors and assigns.

(b) "Board of Directors" means the Board of Directors, from time to time, of the Association.

(c) "Architectural and Environmental Review Committee" means the Architectural and Environmental Review Committee established pursuant to Article X hereof.

(d) "Common Areas" and "Community Facilities" means all real property owned, leased or maintained by the Association or otherwise available to the Association for the benefit, use and enjoyment of its members. Common Area shall not include any property or outlots dedicated for public use.

(e) "Declarant" or "Developer" or "Grantor" means the Declarant hereinabove identified in the preamble to this Declaration, and their successors and assigns who have acquired one or more Lots for the purpose of development; provided, however, that the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant shall not inure to the benefit of or burden the successors and assigns of the Declarant except to the extent that any of the rights, reservations, easements, interests, exemptions, privileges or powers of the Declarant are specifically assigned or transferred to any such successor or assign by an instrument in writing. The rights, reservations, easements, interest, exemptions, privileges and powers of the Declarant shall be exercised jointly and severally by Ternberry



Development Corporation and National Association of Home Builders of the United States Inc.; provided, however, that the obligations and liabilities of each party as a Declarant shall not be joint and each Declarant shall be responsible for any obligation, damage, or liability incurred or caused as a result of any act or omission of such party land shall hold any Co-Declarant harmless from any such obligation, liability or damage.

(f) "Dwelling" means any building or portion of a building situated upon the Property and designed and intended for use and occupancy as a residence.

(g) "Joint Driveway" shall mean and refer to any driveway which is built or installed as part of the original construction upon the Property and which is situated on the dividing line between Lots or partly on one Lot and partly on another Lot or Lots and which is for the equal and common use and benefit of the Owners of any Lots or other portions of the Property which it is reasonably designed to serve.

(h) "Lot" shall mean and refer to all subdivided parcels of property (exclusive of the Common Areas) which are part of the Property upon which a Dwelling may be constructed.

(i) "Member" means every person, group of persons, corporation, trust or other legal entity, or any combination thereof, who holds any class of membership in the Association.

(j) "Mortgagee", as used herein, means the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage", as used herein, shall include deed of trust. "First Mortgage", as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration the terms "holder" and "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

In the event any mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Veterans Administration ("VA"), then as to such mortgage the expressions "Mortgagee" and "Institutional Mortgagee" include the "FHA" or the "VA", as the

circumstances may require, acting, respectively, through the Federal Housing Commissioner and the Commissioner of veterans benefits or through other duly authorized agents.

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or the fee simple title to any Lot situated on the Property, including contract sellers, but excluding those having such interest solely as security for the performance of an obligation, and not including any tenant or guest of an Owner occupying a Dwelling.

(l) "Plat" shall mean and refer to the final Plats of Subdivision pertaining to the Property to be approved by the authorities of and recorded in the Land Records of Prince George's County, Maryland.

(m) "Project" and "Community", as used in this Declaration, means that certain community being developed by the Declarant in Prince George's County, Maryland known as "Ternberry".

(n) "Property" shall mean and refer to all real property described in Article II hereof and such additions thereto as may hereafter be made pursuant to the provisions of Article II.

(o) "Private streets and Roadways" shall mean and refer to all streets, roads, sidewalks, curbs, gutters and parking areas which are part of the Common Areas and serve and benefit the Townhouse Lots (as defined herein) or specified SFD Lots (as defined herein) and are maintained by the Association.

(p) "SFD Lot" shall mean and refer to any Lot upon which is situated, or may be situated, a single-family detached dwelling unit.

(q) "Townhouse Lot" shall mean and refer to any Lot upon which is situated, or may be situated, an attached townhouse dwelling unit.

Whenever in this Declaration any action is required to be taken by a specific percentage of "each class of the then members" of the Association, then such action shall be required to be taken separately by the specific percentage of the then outstanding Class A members of the Association and by the specific percentage of the then outstanding Class B members of the Association. Whenever in this Declaration any action is required to be taken by a specific percentage of the "then members" of the Association, then such action shall be required to be taken by the specific percentage of the then outstanding cumulative membership of the Association.

## ARTICLE II

1. Property Subject to Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Prince George's County, Maryland and is more particularly described on Exhibit "A" attached hereto and by this reference made part hereof.

2. Additions or Deletions. Additional property contiguous to the Property may be annexed to or deleted from the above described property by the Declarant without the assent of the Class A members of the Association, if any, for a period of seven (7) years from the date of recordation of this Declaration. Declarant has the right to subject such additional property to the covenants and restrictions of this Declaration.

Any annexations made pursuant to this Article shall be made by recording a Supplementary Declaration of Covenants, Conditions and Restrictions among the Land Records for Prince George's County, Maryland, which Supplementary Declaration shall extend the scheme of the within Declaration of Covenants, Conditions and Restrictions to such annexed property.

Any Supplementary Declaration of Covenants, Conditions and Restrictions made pursuant to the provisions of this Article may" contain such complementary or supplemental additions and modifications to the covenants and restrictions set forth in the within Declaration as may be considered necessary by the maker of such Supplementary Declaration to reflect the different character or use, if any, of the annexed property and which supplemental or complementary provisions shall only affect such annexed property.

### ARTICLE III

1. Association Membership. The Association shall have two of membership which shall be known as "Class A" and B":

(a) There shall be one hundred sixty-seven (167) Class A memberships in the Association plus an additional Class A membership for each Lot over one hundred sixty-seven (167) within the Property. Every person, group of persons, corporation, partnership, trust or other legal entity, .or any combination thereof, who is a record owner of a fee interest in any Lot which is part of the premises described in Article II of this Declaration subject to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote for each Lot in which such member holds the interest required for Class A membership. In the event any Class A membership is Owned by more than one (1) owner, such Class A membership shall only be entitled to one (1) vote, to be cast in the manner decided by the owners thereof.

(b) There shall be one hundred sixty-seven (167) Class B memberships in the Association. There shall be an additional Class B membership added for each Lot annexed within the Property over one hundred sixty-seven (167) Lots. The Class B member shall be the Declarant, its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain one (1) or more Lots for the purpose of development, which party shall acquire one (1) Class B membership for each Lot it owns. Upon the conveyance of a Lot to a Class A member the Class B member shall lose one (1) Class B membership. Each Class B member shall be entitled to three (3) votes for each Class B membership, which it holds. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) thirty (30) days following the date on which the total authorized, issued and outstanding votes appurtenant to the Class A memberships equals the total authorized, issued and outstanding votes appurtenant to the Class B memberships; or

(ii) seven (7) years from the date of recordation of this Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control then the aforesaid seven (7) year period shall be extended by a period of time equal to the length of the delays or an additional seven (7) years, whichever is less; or

(iii) Upon the surrender of said Class B memberships by then holder thereof for cancellation on the books of the Association.

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

The members of the Association shall not have preemptive rights, as such members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided in this Article.

#### ARTICLE IV

1. Member's Right of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Areas and community Facilities and such easement shall be appurtenant to and shall pass with the fee title to every Lot subject to the following:

(a) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, and with the consent of the members representing two-thirds (2/3) of the votes of each class of the then members of the Association, voting separately, to borrow money for the purpose of improving the Common Areas and Community Facilities in a manner designed to promote the enjoyment and welfare of the members and in aid thereof to mortgage any of the Common Areas and community Facilities; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the Property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration; and

(d) the right of the Association to suspend the voting rights and the rights to use of the Common Areas and Community Facilities for any period during which any assessment remains unpaid and, after reasonable notice and an opportunity for a hearing, for any period not to exceed thirty (30) days for any infraction of any of the published rules and regulations of the Association; and

(e) the right of the Association to dedicate or transfer all or any part of the Common Areas or community Facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless the members representing two-thirds (2/3) of the votes of the then members of the Association consent to such dedication, transfer, purpose and conditions, at any special meeting of the members duly called for such purpose; and, provided further, that any such dedication or transfer shall also be subject to the limitations provided for in Article XIV of this Declaration; and

(f) the right of the Association, acting by and through Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, the installation of cable television lines, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such licenses, rights-of-way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Areas and Community Facilities.

2. Delegation of Right of Use. Any member of the Association may delegate his rights to the use and enjoyment of the Common Areas and Community Facilities to the members of his family who reside permanently with him and to his tenants, contract-purchasers and guests, all

subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

3. Limitations.

(a) Any other provisions of this Declaration to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the Private streets and Roadways for both vehicular and pedestrian ingress and egress to and from his Lot and for parking.

(b) Any other provision of this Declaration .to the contrary notwithstanding, the Association shall have no right to suspend the right of any member of the Association to use the Common Areas and Community Facilities for necessary, ordinary and reasonably pedestrian ingress and egress to and from his Lot or to suspend any easement over the Common Areas and Community Facilities for storm water drainage, electrical energy, water, sanitary sewer, natural gas, CATV service, telephone service or similar utilities and services to the Lots.

ARTICLE V

1. Annual Maintenance Assessments. Except as assessments of the Declarant are limited by the provisions of Article IX of this Declaration, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee owner of a Lot within the Property, (i. e., each Class A member of the Association other than the Declarant), by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, in advance, an annual sum (herein elsewhere sometimes referred to as "maintenance assessments") equal to the member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including but in no way limited to the following:

(a) except as otherwise provided in Article VI, VII and VIII of this Declaration, the cost of all operating expenses of the Common Areas and Community Facilities and the services furnished to or in connection with the Common Areas and Community Facilities, including charges by the Association for any services furnished by it; and

(b) The cost of necessary management and administration of the Common Areas and Community Facilities, including fees paid to any Management Agent; and

(c) The amount of all taxes and assessments levied against the Common Areas and Community Facilities; and

(d) the cost of hazard and liability insurance on the Common Areas and Community Facilities, Directors and Officers insurance, if bought by the Board of Directors, and the cost of such other insurance as the Association may obtain with respect to the Common Areas or the Lots; and

(e) The cost of utilities and other services which may be provided by the Association, whether for the Common Areas and Community Facilities or the Lots; and

(f) except as otherwise provided in Articles VI, VII and VIII of this Declaration, the cost of maintaining, replacing, repairing, and landscaping the Common Areas, including, without limitation; (i) the landscaping and other maintenance of any landscaped (unpaved) area or other property situated within the islands in the cul-de-sacs located in the streets dedicated to the public serving the Lots, and the Private streets and Roadways, (ii) irrigation sprinklers, if any, in or on the Common Area entrance features and Common Area lands, (iii) retaining walls situated on the Common Area, if any, (iv) entrance features, (v) pedestrian or hiker/biker trails and tot lot or play areas (if any) situated upon the Common Areas, (vi) the private parking bays or areas situated along Pennsbury Drive, and (vii) such equipment as the Board of Directors shall determine to be necessary and proper in connection with such maintenance; and

(g) in addition to the maintenance above provided, the annual maintenance assessment shall encompass the cost of providing for grass cutting and lawn maintenance of all Common Areas, including lawn maintenance in all public rights-of-way within the Property which are not maintained by any applicable governmental authority or a Lot Owner pursuant to the terms of this Declaration. Additionally, the Association may elect, but shall not be obligated, to provide trash collection and limited snow removal from the public streets, unless otherwise provided by applicable governmental authorities; and

(h) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements.

The Board of Directors shall determine the amount of the maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a monthly, quarterly, or semi-annual basis rather than on the annual basis hereinabove provided for. Any Class A member may prepay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association which shall provide, without limitation, for the management, operation and maintenance of the Common Areas. A copy of the proposed budget for the upcoming fiscal year shall be provided to the members not less than thirty (30)

days prior to the end of each fiscal year and notice of the meeting at which the Board of Directors shall consider the adoption of such proposed budget shall be provided to the members of the Association not less than fifteen (15) days prior to such meeting. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the annual maintenance assessments shall thereupon be sent to the members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period, but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt himself from liability for maintenance assessments by abandonment of any Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Common Areas and Community Facilities.

Except as may be specifically provided for herein, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of the Dwellings or their appurtenances and the responsibility and duties of the Association for maintenance and repairs shall be limited to the Common Areas and Community Facilities. The owner of any Lot shall, at his own expense, maintain his Lot and Dwelling, and any and all appurtenances thereto, including landscaped public road or utility rights-of-way adjoining the owner's Lot, in good order, condition and repair and in a clean, slightly, and sanitary condition at all times.

2. Annual Maintenance Assessments. The initial maximum annual maintenance assessment for each of the Lots to which Class A membership is appurtenant shall not exceed the sum of Two Hundred Thirty-Six Dollars (\$ 236.00) per annum. The annual maintenance assessment shall be levied at a uniform rate for each Class A membership.

3. Increase to Maximum Annual Maintenance Assessment.

(a) From and after the initial fiscal year of the Association, the maximum annual maintenance assessment for all Class A memberships hereinabove provided for, may be increased by the Board of Directors of the Association, without a vote of the Class A membership, by an amount equal to ten percent (10%) of the maximum annual assessment for



the preceding year plus. (i) the amount by which any ad valorem real estate taxes and casualty and other insurance premiums and utility costs payable by the Association have increased over amounts payable for the same or similar items for the previous year; (ii) the amount operating expenses of the Association have increased or are anticipated to increase by reason of the completion, annexation or addition of facilities within the Common Area and Community Facilities and/or additional Common Area or community Facilities and (iii) the amount by which the Association has incurred or anticipates incurring additional obligations or responsibilities in performing its duties and responsibilities in accordance with this Declaration. In addition to the foregoing, the assessments may be further increased as may be dictated by the results of an annual analysis of reserve requirements conducted by the Board of Directors.

(b) From and after the initial fiscal year of the Association, the maximum annual maintenance assessments for all Class A memberships hereinabove provided for may be increased above that established by the preceding paragraph by a vote of the members, as hereinafter provided, for the next succeeding year and, thereafter, at the end of such year, for each succeeding year. Any increase in assessments made pursuant to this paragraph shall have the assent of the members representing two-thirds (2/3) of the votes of the then Class A members of the Association and two-thirds (2/3) of the votes of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

4. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy in any assessment year a special maintenance assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming a part, of the Common Areas and community Facilities, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate; provided, however, that any such special maintenance assessment shall have the assent of the members representing the votes of a majority of the then Class A members of the Association and two-thirds (2/3) of the then Class B members of the Association.

5. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the capital improvements located within the Common Areas and Community Facilities, if any, by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

The reserve for replacement of the capital improvements located within the Common Areas and Community Facilities, if any, may be expended only for the purpose of affecting the replacement of such capital improvements within the Common Areas and Community Facilities, major repairs, equipment replacement, and operating contingencies of a non-recurring nature relating to the Common Areas and Community Facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

6. Initial Working capital contributions. Each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, to whom a Class A membership in the Association is originally issued, by acceptance of a deed for a Lot from the Declarant and whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, simultaneously with the acceptance of such deed or other conveyance, a sum equal to three (3) times the monthly rate of assessments against a Lot owned by a Class A member as a non-refundable contribution to the initial working capital and reserves of the Association, such contribution to be in addition to, and not in lieu of, any other assessment levied by the Association pursuant to this Declaration. Such contribution to the initial working capital and reserves shall be used as the Board of Directors shall determine, in its sole discretion.

## ARTICLE VI

1. Annual Supplementary Townhouse Maintenance Assessments. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration, in addition to the annual maintenance assessments provided for in Article V of It his, Declaration, and not in lieu thereof, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof" who becomes a fee owner of a Townhouse Lot within the Property, 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 the Association, in advance, a monthly sum (herein elsewhere sometimes referred to as "townhouse maintenance assessments") equal to one-twelfth (1/12th) of the member t s proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses of maintaining the Private streets and Roadways and for performing such maintenance and repairs upon the Townhouse Lots as the Association may from time to time elect to perform, including, but not necessarily limited to, the cost of maintaining, replacing and repairing the

Private streets and Roadways, in whole or in part, and sidewalks; the cost of maintaining all retaining walls (on or primarily serving and benefiting the Townhouse Lots); the cost of trash removal (if not provided for by any municipality or Prince George's County, Maryland); snow removal, parking area striping, sweeping and washing, specialty signing and the like with respect to the Private streets and Roadways or other Common Area primarily or exclusively serving or benefiting the Townhouse Lots as determined by the Board of Directors.

The Board of Directors shall determine the amount of the townhouse maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual townhouse maintenance assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis hereinabove provided for. Any Class A member so obligated may prepay one or more installments on any annual townhouse maintenance assessment levied by the Association, without premium or penalty.

The Board of Directors shall prepare, or cause the preparation of, an annual maintenance budget for the Private streets and Roadways. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual townhouse maintenance assessment against each Townhouse Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Townhouse Lots and the annual townhouse maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the annual townhouse maintenance assessments shall thereupon be sent to the Class A members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual townhouse maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Class A member so obligated from the obligation to pay the annual townhouse maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual townhouse maintenance assessment fixed for the preceding period shall continue until a new annual townhouse maintenance assessment is fixed. No Class A member so obligated may exempt himself from liability for annual townhouse maintenance assessments by abandonment of any Townhouse Lot belonging to him or by the abandonment of his right to the use and enjoyment of the Private streets and Roadways.

2. Maximum Annual Townhouse Maintenance Assessments. The initial maximum annual townhouse maintenance assessment for each of the Townhouse Lots shall not exceed the sum of One Hundred Forty-Seven and NO/100 DOLLARS (\$ 147.00) per annum. Except as assessment

of the Declarant may be limited by the provisions of Article IX of this Declaration, the annual townhouse maintenance assessment shall be levied at a uniform rate for each Townhouse Lot.

3. Increase in Maximum Annual Townhouse Maintenance Assessment.

(a) From and after the initial fiscal year of the Association, the maximum annual townhouse maintenance assessment hereinabove provided for may be increased by the Board of Directors of the Association, without a vote of the Class A membership and without a vote of the then owners of the Townhouse Lots, by an amount equal to ten percent (10%) of the maximum annual townhouse maintenance assessment for the preceding year, plus (i) the amount by which any ad valorem real estate taxes and casualty and other insurance premiums and utility costs payable by the Association and related to the Private streets "and Roadways have increased over amounts payable for the same or similar items for the previous year; (ii) the amount operation expenses of the Association have increased or are anticipated to increase by reason of the completion, annexation or addition of facilities within the Private streets and Roadways and/or additional Private streets and Roadways; and (iii) the amount by which the Association has incurred or anticipates incurring additional obligations or responsibilities in performing its duties and responsibilities in accordance with this Declaration. In addition, the assessments may be further increased as may be dictated by the result t of any analysis of reserve requirements conducted by the Board of Directors.

(b) From and after the initial fiscal year of the Association, the maximum annual townhouse maintenance assessment hereinabove provided for may be increased above that established by the preceding paragraph by vote of the then Owners of the Townhouse Lots, as hereinafter provided, for the next succeeding year and, thereafter, at the end of such year, for each succeeding year. Any change made pursuant to this subparagraph shall have the assent of the Owners of a majority of the Townhouse Lots and the members representing two-thirds (2/3) of the votes of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

4. Special Townhouse Maintenance Assessments. In addition to the regular annual townhouse maintenance assessment authorized by this Article, the Association may levy in any assessment year a special townhouse assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or extraordinary repair or replacement of a described capital improvement located upon, or forming a part of the Private Streets and Roadways; provided, however, that any such special townhouse maintenance assessment shall have the assent of the then Owners of not less than a majority of the Townhouse Lots and the members representing two-thirds (2/3) of the votes of the then Class B members of the Association.

5. Reserve for Repairs and Replacements of the Private streets and Roadways. The Association shall establish and maintain a separate reserve fund for repairs and replacement (in whole or in part) of the Private streets and Roadways by the allocation and payment periodically to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund may be deposited in any banking institution, the accounts of which are insured by any state or by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

The reserve for repairs and replacements of the Private streets and Roadways may be expended only for the purpose of effecting the repairs and replacement (in whole or in part) of the Private streets and Roadways and for operating contingencies of a non-recurring nature relating to the Private streets and Roadways. The Association may establish such other reserves for such other purposes associated with the Private streets and Roadways as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance to his Townhouse Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Townhouse Lot to which it appertains and shall be deemed to be transferred with such Townhouse Lot.

## ARTICLE VII

1. Annual Supplementary SFD Lot Maintenance Assessments. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration, in addition to the annual maintenance assessments provided for in Article V of this Declaration, and not in lieu thereof, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee owner of one (1) or more of the following Lots; Lots 58 through 61, inclusive, Block "c" shall be deemed to covenant and agree to pay the Association, in advance, a monthly sum of an additional assessment for the purpose of defraying the cost of maintenance, repair and replacement of the private road(s) owned and/or maintained by the Association and which primarily or exclusively serve and benefit such Lots or any group of such Lots (the "SFD Lot Private Road Area"). The SFD Lot Private Road Area are more particularly shown on Exhibit "B" attached hereto and made part hereof. Such assessment shall also include the cost of trash removal service for such Lots and the cost of snow removal from the SFD Lot- Private Road Areas (if not provided for by any municipality or Prince George's County, Maryland). In the event the SFD Lot Private Road Area is not constructed or located within the Property, this Article shall not be effective and no supplementary SFD Lot maintenance assessments shall be levied.

The Board of Directors shall determine the amount of this supplementary SFD Lot maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, such assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than monthly. .

The Board of Directors shall prepare a budget for the supplementary SFD Lot maintenance assessment under this Article in conjunction with the preparation of the annual townhouse maintenance assessment budget as provided in Article VI. No Owner of the Lots specified in this Article may exempt himself from liability from such supplementary SFD Lot maintenance assessment by abandonment of his Lot or the right to use and enjoy the SFD Lot Private Road Area serving or benefiting such Lot.

2. Maximum Annual Supplementary SFD Lot Maintenance Assessments. The initial maximum annual supplementary SFD Lot maintenance assessment for each of the Lots specified in this Article shall not exceed the sum of Two Hundred Four and No/100 DOLLARS (\$ 204.00) per annum. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration, the annual supplementary SFD Lot maintenance assessment shall be levied at a uniform rate for each Lot specified in this Article.

3. Increase in Maximum Annual Supplementary SFD Lot Maintenance Assessment.

(a) From and after the initial fiscal year of the Association, the maximum annual supplementary SFD Lot maintenance assessment hereinabove provided for may be increased by the Board of Directors of the Association, without a vote of the Class A membership and without a vote of the then Owners of the Lots specified in this Article, by an amount equal to ten percent (10%) of the maximum annual supplementary SFD Lot maintenance assessment for the preceding year, plus (i) the amount by which any ad valorem real estate taxes and casualty and other insurance premiums and utility costs payable by the Association and related to the SFD Lot Private Road Areas have increased over amounts payable for the same or similar items for the previous year; (ii) the amount operation expenses of the Association have increased or are anticipated to increase by reason of the completion, annexation or addition of facilities within the SFD Lot Private Road Areas; and (iii) the amount by which the Association has incurred or anticipates incurring additional obligations or responsibilities in performing its duties and responsibilities in accordance with this Article of the Declaration. In addition, the assessments may be further increased as may be dictated by the result of any analysis of reserve requirements conducted by the Board of Directors.

(b) From and after the initial fiscal year of the Association, the maximum annual supplementary SFD Lot maintenance assessment hereinabove provided for may be increased above that established by the preceding paragraph by vote of the then Owners of the Lots

specified in this Article, as hereinafter provided, for the next succeeding year and, thereafter, at the end of such year, for each succeeding year. Any change made pursuant to this subparagraph shall have the assent of the Owners of a majority of the Lots specified in this Article and the members representing two-thirds (2/3) of the votes of the then Class B members of the Association. A meeting of such Lot Owners and the Class B member(s) (if any) shall be duly called for this purpose.

4. Special Supplementary SFD Lot Maintenance Assessment. In addition to the regular supplementary SFD Lot maintenance assessment authorized by this Article, the Association may levy in any assessment year a special supplementary SFD Lot maintenance assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, extraordinary repair or replacement of any portion of the SFD Lot Private Road Area. Such special assessment requires the assent of the Owners of a majority of such Lots.

5. Reserves. The Association shall establish and maintain a separate reserve fund for repairs and replacement (in whole or in part) of the SFO Lot Private Road Area which shall be funded through the supplementary SFO Lot maintenance assessment against the Lots specified in this Article. The reserves may be deposited, in accordance with the requirements for the deposit of reserve funds at set forth in section 3 of Article VI of this Declaration.

The reserve for repairs and replacements of the SFD Lot Private Road Area may be expended only for the purpose of affecting the repairs and replacement (in whole or in part) of such property and for operating contingencies of a non-recurring nature relating to such property. The Association may establish such other reserves for such other purposes associated with this property as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of the Owners of the Lots specified in this Article in any such reserves shall be considered an appurtenance to his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## ARTICLE VIII

1. Joint Driveways. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

2. Annual Supplementary Joint Driveway Maintenance Assessments. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration, in addition to the annual maintenance assessments provided for in Article V of this Declaration, and not in lieu thereof, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee owner of one (1) or more of the following Lots;

Lots 50 through 53, inclusive, Block "C"; Lots 1 and 2, Block "C"; Lots 55 through 58, inclusive, Block "B"; Lots 60 through 63, inclusive, Block "B"; and .Lots 3 through 6, inclusive, Block "B", shall be deemed to covenant and agree to pay the Association, in advance, a monthly sum as an additional assessment for the purpose of defraying the cost of maintenance, repair and replacement of the Joint Driveway areas serving and benefiting such Lots (the "Joint Driveway Area"). The Joint Driveway Areas are more particularly shown or described on Exhibit "c" attached hereto and made part hereof. Such cost shall also include the cost of snow removal from the Joint Driveway Areas if such service is provided by the Association.

The Board of Directors shall determine the amount of this supplementary Joint Driveway maintenance assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, such assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than monthly.

The Board of Directors shall prepare a budget for the supplementary Joint Driveway maintenance assessment under this Article in conjunction with the preparation of the annual townhouse maintenance assessment budget as provided in Article VI. No Owner of the Lots specified in this Article may exempt himself from liability from such supplementary Joint Driveway maintenance assessment by abandonment of his Lot or the right to use and enjoy the Joint Driveway Area serving or benefiting such Lot.

3. Special Supplementary Joint Driveway Maintenance Assessment. In addition to the regular supplementary Joint Driveway maintenance assessment authorized by this Article, the Association may levy in any assessment year a special supplementary Joint Driveway maintenance assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, extraordinary repair or replacement of any portion of the Joint Driveway Areas. Such special assessment requires the assent of a majority of the Owners of the Lots served or benefited by the Joint Driveway requiring the maintenance, repair or replacement work.

4. Reserves. The Association shall establish and maintain a separate reserve fund for repairs and replacement (in whole or in part) of the Joint Driveway Area(s) which shall be funded through the supplementary Joint Driveway maintenance assessment against the Lots specified in this Article. The reserves may be deposited in accordance with the requirements for the deposit of reserve funds as set forth in section 3 of Article VI of this Declaration. A separate reserve fund shall be established for each Joint Driveway Area.

The reserve for repairs and replacements of the Joint Driveway Areas may be expended only for the purpose of affecting the repairs and replacement (in whole or in part) of such property and for operating contingencies of a non-recurring nature relating to such property.



The Association may establish such other reserves for such other purposes associated with this property as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of the Owners of the lots specified in this Article in any such reserves shall be considered an appurtenance to his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

5. Annual Supplementary Joint Driveway Maintenance Assessments. The Board of Directors may establish the supplementary Joint Driveway maintenance assessment at different rates for each Lot benefited or served by a Joint Driveway Area based on any reasonable formula determined by the Board of Directors. In the absence of such formula each Lot benefited by any particular Joint Driveway Area shall be assessed at an equal rate subject to the provisions of Article VIII of this Declaration with respect to assessments against the Declarant.

6. Damage and Destruction. In the event any Joint Driveway is destroyed or damaged, any Owner who has used the same may request that the Association restore it. In the event the Association fails to restore, repair or replace the Joint Driveway in a reasonably timely matter, any of the Owners may have such work performed, and if the other Owners thereafter make use of the Joint Driveway, they shall contribute to the cost of restoration thereof in equal proportions; without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Any Owner (or his tenant, guest or invitee) who causes damage to a Joint Driveway through any negligent or intentional act or omission shall be responsible for the costs to restore such Joint Driveway. In the event the Association is maintaining reserves for the repair and replacement of Joint Driveway Areas, an Owner repairing, restoring or replacing a Joint Driveway Area pursuant to this section shall be entitled to use of such funds provided such Owner provides the Association with a written request therefor and adequate proof (i) of the need for repair, replacement or restoration of the Joint Driveway Area and the Association's failure to reasonably perform the same.

7. Easements. There shall be a perpetual and non-exclusive easement in, through and over any such Joint Driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonably been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

## ARTICLE IX

1. Non-Payment of Assessments. Any assessment levied pursuant to this Declaration (including annual maintenance assessments, annual townhouse maintenance assessments, annual supplementary SFD Lot maintenance assessments and joint driveway maintenance

assessments), or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then owners, his heirs, devisees, personal representatives and assigns. The personal obligation of the member to pay such assessment shall, in addition, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the maximum legal rate permitted from time to time in the state of Maryland, and may, by resolution of the Board of Directors, subject the member obligated to pay the same to the payment of such reasonable "late charge" as the Board may establish, and the Association may bring an action at law against the member personally obligated to pay the same, or foreclose on the lien against the Lot or Lots then belonging to said member in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the state of Maryland containing a power of sale and consent to a decree, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, in either of which events interest, costs and reasonable attorneys' fees of not less than fifteen percent (15%) of the sum claimed shall be added to the amount of each assessment.

The Association may establish and enforce a lien for any assessment, annual, special or additional granted herein pursuant to the Maryland contract Lien Act. A lien is imposed upon the Lot against which such assessment is made. A lien may be established and enforced for damages, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of thirty (30) days and in any other case where the owner of -such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days, but any failure to give such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article.

2. Assessment Certificates. The Association shall upon demand at any time furnish to any member liable for any assessment levied pursuant to this Declaration (or any other party

legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

3. Acceleration of Installments. Upon default in the payment of any installment of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

The Association may establish and enforce a lien for any assessment, annual, special or additional granted herein pursuant to the Maryland contract Lien Act. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

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

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

(b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment thereon of the lien provided for in this Declaration or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Notwithstanding any other provisions of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot, as in this Article provided, shall be subordinate to the lien of any deed of trust, mortgage or other encumbrance duly recorded on such Lot and made in good faith and for value received and shall in no way affect the rights of the holder of any such deed of trust, mortgage or other encumbrance; provided, however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to a sale or transfer of the Lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any holder of any deed of trust, mortgage or other encumbrance duly recorded on the Lot and made in good faith and for value received who comes into possession of the Lot pursuant to a foreclosure of such deed of trust, mortgage or other encumbrance, or any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any other purchaser at a foreclosure sale, shall take the Lot free of

any claims for unpaid maintenance assessments levied against the Lot which accrue prior to the time such holder comes into possession of the Lot or prior to the foreclosure sale, except for claims for a proportionate share of such unpaid maintenance assessments resulting from a reallocation of such unpaid maintenance assessments among the Lots upon the Property. Such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not, however, relieve the mortgagee in possession or the purchaser at any foreclosure sale from any liability for any maintenance assessments thereafter becoming due, or from the lien herein created to secure the payment of such maintenance assessments, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

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

5. Additional Default. Any recorded first mortgage secured on a Lot in the Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) : but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of section 4 of this Article shall not be altered, modified or diminished by reason of such failure.

6. Commencement of Annual Assessments. Except as may be otherwise resolved by the Board of Directors of the Association, . the' annual maintenance assessment and annual 'townhouse or supplementary SFD Lot maintenance assessment and joint driveway maintenance assessment, as applicable, for each Class A membership shall commence on the date a deed for the Lot to which such membership is appurtenant is delivered by the Declarant to the member. The first installment of each such annual assessment shall be made for the balance of the year during which a deed for the Lot is delivered to the member and shall become due and payable and a lien on the date a deed for the Lot is delivered to the member. Except as herein elsewhere provided, the annual installments of each such annual assessment for any Lot for any year after the first year shall become due and payable and a lien on the first day of the month following the beginning of the Association's fiscal year.

7. Assessment of Declarant and Its Successors. Anything in this Declaration to the contrary notwithstanding, any regular or special assessment levied by the Association for any Lot held by the Declarant and their successors (which successor(s) are developing one (1) or more Lots), or by the maker of any Supplementary Declaration made pursuant to Section 2 of Article II of this Declaration, shall in an amount equivalent to twenty-five percent (25%) of the assessment levied by the Association against such Lots held by the Class A members; provided, however, that so long as the Declarant and its successors (which successor(s) are developing one (1) or more Lots) shall claim the preference provided for in this section 7, the Declarant and such successors shall fund all current operating deficits of the Association (in an amount not to exceed the full regular rate of assessments against the Lots owned by the Declarant or such successors or the maker of a Supplementary Declaration under Article II hereof); and, provided further, that the exemption in preference provided for in this section 7 shall not apply with respect to any Lot upon which a completed dwelling is situated if that dwelling is occupied by a party other than the Declarant for residential purposes.

8. Exempt Property. No portion of the Common Areas or Community Facilities shall be subject to assessment of any kind by the Association.

#### ARTICLE X

1. Architectural and Environmental Review; Use Restrictions. Except for construction or development from time to time undertaken by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Declarant concurrently with said construction and development, and except for purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the -Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the Community by an Architectural and Environmental Review Committee designated by the Board of Directors.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, address plaques or numerals, patio covers, fences, wall, s Labs , sidewalks, curbs, gutters, patios, balconies, porches, driveways, or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any

improvements constructed upon any Lot or upon any of the Common Areas, or to combine or otherwise join two or more Dwellings, or to partition the same after combination, or to remove or alter any windows or exterior doors of any Dwelling, until the complete plans and specifications, showing the location, nature, shape, height, material color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural and Environmental Review committee designated by the Board of Directors.

In connection with the application to the architectural and Environmental Review Committee to construct, alter, modify, install or erect any improvements situated on a Lot, including, but not limited to, any fence, patio, deck or balcony, the Owner shall include the following material (i) a site plan indicating the size and location of the improvements, (ii) photographs or construction drawings and (iii) in the case of fences, the height of such fence, and with respect to any patio or deck proposals, a landscape plan.

2. Fencing. Any, fencing must be located on one side of the property line and fencing shall not cross property lines except to connect to an adjacent Owner's fence if constructed by the Declarant or approved by the Architectural and Environmental Review committee. Fencing design, paint or stain color must match the standards of fencing, if any, provided by the Declarant or initial builder of improvements on the Lot. No fence shall be more than six (6) feet in height. The design and location of any fence constructed upon the Property shall conform to the Specific Design Plan for the Property as amended from time to time.

3. Patios and Decks. Patios and decks, if approved by the Architectural and Environmental Review Committee, may only be constructed or erected within standard patio zones. In the case of SFD Lots, decks and patios must be a minimum of four feet (4') from any property line. Decks above finished grade levels must be located within standard patio zones and any building restriction line affecting the Lot. Patios and decks at finished grade level shall be limited to standard patio zones and may be located beyond the building restriction line applicable to the Lot. The area of ground covered by any deck or patio may not exceed fifty percent (50%) of the area covered by the parametrical or lateral boundaries of the dwelling situated on a Lot. In the case of a Townhouse Lot any deck or patio is restricted to the location designated on the Specific Design Plan for the Property, as amended from time to time. Decks may only be constructed of pressure treated lumber and must conform to B.O.C.A. standards. Careful attention should be paid to the impact on the external architectural image and appearance, and the compatibility between the detailing of the patio or deck and the dwelling situated on a Lot.

Any deck, patio, or other improvement constructed or erected within a SFD Lot or Townhouse Lot must comply with the requirements of the Specific Design Plan applicable to the Property, as amended from time to time.

4. Approvals and Owner Responsibilities. The Architectural and Environmental Review committee or the Board of Directors may grant exceptions to the above guidelines on a case by case basis; provided, however, each Owner is responsible to obtain the approvals of any applicable governmental authorities and the approval of the Architectural and Environmental Review committee or the Board of Directors pursuant to this Article shall in no event be considered to substitute in lieu of such governmental approvals. Such approvals shall include, but not be limited to, compliance with the Specific Design Plan applicable to the Property, as amended from time to time. The Owner submitting the application, plans and specifications is also responsible for contacting the Washington Suburban Sanitary Commission ("WSSC") concerning planting, fencing and construction restrictions and responsibilities within WSSC easements prior to installation and every Owner shall hold the Architectural and Environmental Review Committee, Board of Directors and Association harmless and indemnify such parties for any liability or damage which is caused by the actions of such Owner in performing any activities under this Article, notwithstanding whether the Association has approved such actions under this Article.

5. Architectural and Environmental Review committee. The Board of Directors shall appoint an Architectural and Environmental Review Committee. The Architectural and Environmental Review Committee shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors. The affirmative vote of a majority of the members of the Architectural and Environmental Review Committee shall be required in-order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article. In the event the Board of Directors does not appoint an Architectural and Environmental Review committee, the Board of Directors shall assume all of the powers and duties thereof.

6. Approvals. Upon approval by the Architectural and Environmental Review Committee of any plans and specifications submitted pursuant to the provisions of this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of such Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove, in writing, any plans and specifications which may be submitted to it pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by the Architectural and Environmental Review

Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with.

7. Limitations. Construction or alterations in accordance with plans and specifications approved by the Architectural and Environmental Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Committee (whether by affirmative action or by forbearance from action, as in section 3 of this Article provided), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviation from the plans and specifications approved by the Committee without the prior consent in writing of the committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

8. Certificate of Compliance. Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural and Environmental Review Committee in accordance with the provisions of this Article, the Architectural and Environmental Review Committee shall, at the request of the owners thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by the Architectural and Environmental Review Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

9. Rules and Regulations - Architectural Control. The Architectural and Environmental Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and record such statements .of policy, standards, guidelines and establish such criteria relative to architectural styles or details, landscaping, fences, decks, patios, colors, setbacks, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Architectural and Environmental Review Committee may charge and collect a reasonable fee for the examination of any plans



and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural and Environmental Review Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the' Committee (or by any policy, standards or guidelines established by the Committee) may appeal the decision of the Architectural and Environmental Review Committee to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association.

10. New Construction. The initial structure(s) or improvement(s) to be constructed on any Lot owned by Ternberry Development Corporation ( "TDC") must be approved by the National Association of Home Builders of the United States, Inc. ("NAHB" ) pursuant to this section 10. Plans for such initial structure(s) or, improvement(s) are to be submitted to NAHB by TOC for review prior to submittal of the same to or for review by the city of Bowie (staff, Councilor Advisory Planning Board) or the Prince George's County Planning Board or Staff. Within ten (10) business days of the submittal to NAHB of all plans and specifications reasonably requested by NAHB, NAHB shall respond, in writing, with an, approval, disapproval or recommendations for modifications". Approval shall not be unreasonably withheld and disapproval shall be specific as to cause. In the event no response is received by TOC within the aforesaid ten (10) business-day period (provided NAHB has received all reasonably requested material), the plans and specifications shall be deemed approved. Once approved by NAHB, plans and specifications shall not be substantially modified without NAHB's prior written consent, which shall not be unreasonably denied. The provisions of this Paragraph shall terminate when the initial structures and improvements on all the Lots owned by TOC have been .completed and the Lots sold to purchasers for use as residences, or to be leased for residential purposes.

The terms and provisions of this section 10 shall be binding upon the successors and assigns of TDC and NAHB who acquire one (1) or more Lots for the purpose of development or which party constructs the initial improvements thereon.

10. Prohibited Uses and Nuisances. Except for the activities of the Declarant and its assignees during the construction or development of the Community, or as may be necessary in connection with reasonable and necessary repairs or maintenance upon the Common Areas:

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

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling, except that this shall not prohibit the keeping of dogs, cats or customary household animals as domestic pets, provided that such animals are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or Owners and do not roam at large. The Board of Directors or, upon resolution of the Board of Directors, the Architectural and Environmental Review Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. Any fecal waste deposited by a pet shall be forthwith removed by the unit owner. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction of any approved Dwelling or other permitted structure. In addition, no clothesline, fuel tanks or incinerators shall be permitted on the Property.

(d) No burning of trash shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made at such place on the Lot so as to provide access to persons making such pickup. At all other time such containers shall be stored in such a manner so that they cannot be seen from any public way or from any other Lot.

(e) No junk vehicle, unlicensed or inoperable motor vehicle, commercial vehicle, trailer, camp truck, house trailer, boat or boat trailer, bus or other similar machinery or equipment of any kind or character, (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept upon the Property unless stored or parked within garages or other permitted structures nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. No motor vehicles of any kind shall be regularly parked upon any of the roadway or streets within the community.

(f) No structure of a temporary character shall be erected, used or maintained on any Lot at any time. No pen, kennel, stable, barn, shed (of any type) or other such structure shall be erected or maintained on any Lot except for sheds constructed by the Declarant as part of the original construction of improvements on a Lot.

(g) No vegetable gardens shall be cultivated or maintained in front yards or in any other areas visible to the public.

(h) No landscaping shall be done with plants or trees having a mature height; in excess of eight (8) feet except with written permission of the Committee.

(i) No structure shall be erected, placed or maintained on any Common Area except:

(i) structures designed exclusively for the common use of Owners, including, but not limited to benches, chairs or seating facilities, fences and walls, walkways, roadways, parking facilities, sanitary facilities, gate houses, recreational facilities and structures; and

(ii) Drainage, storm and utility systems.

The Common Areas may be graded, planted with trees, shrubs or other plants and maintained thereupon for the use, comfort and enjoyment of the Owners, or for the establishment, retention or preservation of the natural growth or topography of the Common Areas, or for the aesthetic reasons; provided, however, that only the Association may undertake any of the activities set forth in this section 10(i) with respect to the Common Area.

( j ) Except for entrance signs, directional signs, signs for traffic control or safety, communitiy "theme areas" and such promotional sign or signs as may be maintained by the Declarant or the Association, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Dwelling, provided, however, that one sign not exceeding two (2) square feet in area and not illuminated may be attached to a Dwelling where a professional office (as herein elsewhere in this Declaration defined) is maintained, and provided further, that one temporary real estate sign not exceeding four (4)1 square feet in area, may be erected upon any Lot or attached to any Dwelling placed upon the market "for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such dwelling. The provisions and limitations of this subsection shall not apply to any institutional first mortgagee of any Lot who comes into possession of the Lot by reason of any remedies provided by law or in such mortgage or as a result; of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(k) No commercial activities shall be conducted on any Lot and no Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(l) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or

maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

(m) No sound hardwood trees measuring in excess of six (6) inches in diameter, two (2) feet above the ground, shall be removed from any Lot without written approval of the Association acting through the Architectural and Environmental Review Committee or duly appointed subcommittee. The Architectural and Environmental Review Committee may, from time to time, adopt and promulgate such additional rules and regulations regarding Lot owners installed landscaping and the preservation of trees and other natural resources and wildlife as it may consider appropriate.

(n) No poles or wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot except for such wires or poles deemed necessary by a utility company or public authority in order to provide utility service to the Lot, including, but not limited to, water, electricity, gas, cable television and telephone.

(o) No outside television aerial or radio antenna, or other aerial or antennae for either reception or transmission (including, but not limited to, satellite "dish" antennae), shall be maintained upon the Property except that such aerials or antennae may be erected and maintained entirely within the Dwellings located upon the Property.

(p) No Lot shall be subdivided; provided, however, that this restriction shall not be construed to prohibit the adjustment or realignment of boundary lines between Lots as long as such adjustment or realignment shall not create an additional Lot.

(q) No excavation shall be made on any Lot except for the purpose of building thereon at the same time when the building operations are commenced, and no earth or sand shall be removed from any Lot except as a part of such operations; provided, however, that this restriction shall not be construed to prohibit the construction of in-ground swimming pools or Jacuzzis or hot tubs provided such improvements are constructed in the rear yard of Lots only, are adequately screened from public view, and are approved by the Architectural and Environmental Review committee pursuant to this Article.

(r) No exterior lighting shall be placed or fixed in such a manner as to cause a concentrated beam to be directed outside the boundaries of any Lot.

(s) No Lot shall be so used as to cause any pollution to waterways, streams or ponds on or adjacent to the Lots or to any adjoining property's water supplies. No Lots shall be so used or maintained as to cause any erosion of soil or sediment into such waterways, streams or ponds. During the grading and construction of any improvements upon any Lot, adequate

arrangements shall be made to insure that no erosion, of soil or sediment into such waterways, streams or ponds shall take place and that no water is diverted or concentrated in any manner which will cause flooding or erosion on any adjacent or downstream Lot or Common Area.

(t) Not more than one (1) Dwelling shall be erected on anyone (1) Lot within the Property, and each Dwelling shall be restricted to a single family Dwelling.

(u) No basement, garage, or other structure erected or maintained on any Lot within the Property shall at any time be used as a separate residence, either temporarily or permanently.

(v) No recreational equipment, including, but not limited to, basketball backboards or hoops shall be attached to the exterior of any improvement or structure situated on any Townhouse Lot. Such equipment may only be erected or installed on an SFD Lot with the prior written approval of the Architectural and Environmental Review committee and must be maintained at all times by the Owner of such SFD Lot.

(w) These restrictions shall not be construed as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any appropriate governmental authority. In the event of any such conflict, the most restrictive provision of such laws, rules, regulations or the restrictions shall be deemed to govern and control. These restrictions shall not be applicable to activities conducted by the Declarant.

11. Residential Use - Leasing. All dwellings shall be used for private residential purposes exclusively, except that a professional office may be maintained in a Dwelling, provided that such maintenance and use is limited to the person actually residing in the Dwelling and, provided further, that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this section the term "professional office" shall mean rooms used, for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not including medical or dental clinics. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any lot or dwelling for promotional or display purposes, or as "model homes", a sales office, or the like. The term of any lease or rental of a Dwelling must not be less than six (6) months and the Owner shall be jointly and severally liable for any acts or omissions of his or her tenant(s). The Owner must provide his or her tenant(s) with copies of this Declaration, the Bylaws, Articles of Incorporation and the rules and regulations of the Association, as amended, which shall be enforceable against such tenant.

12. House Rule, etc. There shall be no violation of any reasonable rules for the use of the Common Areas and Community Facilities or "house rules" or other community rules and

regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules. The Board of Directors must provide (i) copies of any proposed rules to all Owners, either by hand delivery or mailed to the mailing address of such Owners provided to the Association by the Owners, and (ii) notice of the meeting at which the Board of Directors shall consider adoption of such rules.

13. Duty to Maintain. Each member shall, at his own expense, keep each Lot owned by him, together with any and all improvements thereon constructed, in good order, condition and repair, and in a clean and sanitary condition, and shall do and perform all maintenance and the like which may at any time be necessary to maintain the good appearance of his Lot and Dwelling including, without limiting the generality of the foregoing, the seeding, watering and mowing of all lawn areas, the pruning and cutting of all trees and shrubbery, and painting.

14. Enforcement - Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article shall occur or be maintained upon any Lot, or in the event of any other conduct in violation of any of the provisions or requirements of this Declaration, then the same shall be considered to have been undertaken in violation of this Declaration and without the approval of the Architectural and Environmental Review Committee required herein, and, upon written notice from the Architectural and Environmental Review Committee, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, then the Architectural and Environmental Review committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the Lot upon which such violation occurred and when so assessed, a statement for the amount thereof shall be rendered to the Owner of said Lot at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot. Any lien established upon a Lot by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except for: (a) general and special assessments for ad valorem real estate taxes on the Lot and (b) the liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment thereon of the lien or duly recorded on said Lot after receipt of a written statement from the Architectural and Environmental Review committee reflecting that payments on any lien imposed pursuant to this section 15"were current as of the date of recordation of said deed of trust, mortgage instrument or

encumbrance. Upon receipt of a written request, the Architectural and Environmental Review committee shall issue a written statement certifying as to the existence of any liens established pursuant to this Section 15 within fourteen (14) days following receipt of such written request. In the event that the Architectural and Environmental" Review Committee shall fail to issue such a written certification within the aforesaid fourteen (14) day period, a presumption shall be established that no such lien exists and the person or entity requesting the written certification shall be entitled to rely upon such failure to issue a written certification as conclusive evidence of the absence of any such lien. The Architectural and Environmental Review Committee shall have the further right, through its agents or employees, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article or any of the other provisions or requirements of this Declaration exist on such Lot: and neither the Architectural and Environmental Review Committee nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

#### ARTICLE XI

1. Party Walls and Party Fences. The rights and duties of the Owners of Lots with respect to party walls and party fences shall be governed by the following:

(a) General Rules of Law to Apply. Each wall or fence which is constructed as a part of the original construction on the Property and any part of which is placed on the dividing line between separate Lots, shall constitute a party wall or party fence, as applicable, and with respect to such wall or fence, each of the adjoining Owners shall assume the burdens, and be subject to an easement for that portion of the wall or fence on his or her Lot, and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls and fences and of liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

(b) Sharing of Repair and Maintenance and Destruction by Fire or other Casualty. If any such party wall or fence is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, his/her agents, or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the party wall or fence.

(c) Repairs-of Damage Caused by One Owner. If any such party wall or fence is damaged or destroyed through the act of one adjoining Owner or any of his/her agents or guests or members of his/her family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall

or fence, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

(d) Damage by Exposure. If any party wall is damaged by reason of exposure to the elements caused by the negligence or intentional acts of the Owner or occupant(s) of a Lot sharing the use of such party wall, the Owner of such Lot shall be responsible to promptly repair such party wall at such Owner's sole expense.

(e) Encroachments. If any portion of a party wall or fence, shall encroach upon any adjoining Lot, or upon the Common Area by reason of reconstruction, settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the wall or fence, shall exist.

(f) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under shall be appurtenant to the land and shall pass to such Owner's successors in title.

(g) Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or fence, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors who shall decide the dispute, and the decision of such Board of Directors shall be final and conclusive upon the parties.

## ARTICLE XII

1. Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing.

The Management Agent, if any, shall perform such duties and services as the Board of Directors shall authorize in writing, including, without limitation:

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

(b) to provide for the care, upkeep, maintenance and surveillance of the Common Areas and Community Facilities; and



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

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

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

Any management agreement entered into by the Association shall provide, inter alia, that such agreement may be terminated, with cause and without the payment of any termination fee, by either party upon thirty (30) days' written notice thereof to the other party and without cause upon sixty (60) days' notice. The term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

2. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person(s) or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or community Facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or Community Facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Community Facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

### ARTICLE XIII

#### 1. Reservation of Easement Rights by the Declarant.

(a) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the Common Areas and Community Facilities for the purpose of the storage of building supplies and materials, the installation, construction, maintenance, reconstruction and repair of sanitary sewer lines, water lines, cables, "master" antenna

systems, CATV, storm drains and appurtenances to any of the same, grading for surface drainage and for all other purposes reasonably related to the completion of -construction and the provisions of utility services, whether public or private, to the community and to other property adjacent to, or in the vicinity of, the Community. Any and all instruments of conveyancing made by the Declarant to the Association with respect to any of the Common Areas and Community Facilities shall be conclusively deemed to incorporate this reservation, whether or not specifically set forth in such instruments. At the request in writing of the Declaration, the Association shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of this reservation as may be necessary.

(b) The Declarant hereby reserves the absolute right to grant easements and rights-of-way, both temporary and permanent, over the Common Areas and Community Facilities to any and all governmental or quasi-governmental authorities and to any and all public utilities including, without limitation, Prince George's County, Maryland, the City of Bowie, Maryland, the Maryland National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, the Potomac Electric Power Company, the Washington Gas Light Company and the Chesapeake & Potomac Telephone Company of Maryland and their successors and assigns.

(c) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the Common Areas and Community Facilities for any and all purposes reasonably related to the performance by the Declarant of any duties or obligations it may have or assume with respect to the correction of any defects in workmanship or materials performed or used in connection with the development of the Property and the construction of any improvements thereon.

(d) The Declarant hereby reserves a non-exclusive easement and right-of-way in, through, over and across the Common Areas and Community Facilities and in, through, over and across the Lots for any and all purposes reasonably related to the maintenance and correction of conditions associated with the drainage of surface water and in order to maintain reasonable standards of health, safety and appearance, which easement shall include, but not be limited to, the right to cut or remove any trees or shrubs located/upon the property; provided, however, that the Declarant shall make every reasonable effort to restore the property to its original condition as nearly as practicable following the completion of any such work and, provided further, that except in cases involving emergencies or manifest danger to the safety of person or property, no such work shall be undertaken without reasonable written notice to the Owner of the Lot or Lots affected.

Any and all grants made by the Declarant to the Association with respect to any of the Common Areas and community Facilities and any and all grants made by the Declarant to

any Owner shall be conclusively deemed to incorporate these reservations, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, the Association and any Owner shall from time to time execute, acknowledge and deliver to the Declarant such further-assurances of this reservation as may be necessary.

2. Easements' for utilities and Related Purposes. The Association is ,authorized and empowered to grant (and shall from time to time grant) such other licenses, easements and right-of-way over the Common Areas and Community Facilities for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, cables, underground conduits and such other purposes related to the provisions of utility and similar services to the Property as may be considered ,necessary and appropriate by the Board of Directors of the Association or by the Declarant, for the orderly maintenance, preservation and enjoyment of the Common Areas and Community Facilities and for the preservation of the health, safety, convenience and welfare of the Owners of the Lots or the Declarant.

3. Parking and Sidewalk Easements. There is hereby established for the benefit of the Owners of the Lots a perpetual and non-exclusive easement and right-of-way for pedestrian and vehicular ingress, egress and regress and for the parking of motor vehicles, in, through, over and across any Private streets and Roadways and in, through, over and across any sidewalks and leadwalks constructed upon the Common Areas and Community Facilities or the Lots. Any grant of a Lot made by the Declarant shall be conclusively deemed to incorporate this easement and right-of-way, whether or not specifically set forth in such grant. At the request in writing of either the Declarant or the Owner of any Lot, the Association, shall, from time to time, execute, acknowledge and delivery such other and further assurances of this easement and right-of-way as may be reasonably necessary.

#### ARTICLE XIV

1. Amendment. Subject to the other limitations set f6rth in this Declaration, prior to the lapse of all of the Class B memberships in the Association, as in Article III provided, this Declaration may be amended only by the affirmative vote of or an instrument executed and acknowledged by the members representing two-thirds (2/3) of the votes of the Association, or such lesser proportion of the membership as may from time to time be permitted by the State of Maryland, or by regulations promulgated by the Veteran's Administration, FHLMC or FNMA, if any, and by the Declarant, which instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Subject to the other limitations set forth in this Declaration, following the lapse of all of the Class B memberships in the Association, as in Article III provided, this Declaration may be amended by the affirmative vote of or an instrument executed and acknowledged by the Lot Owners representing a majority of the votes appurtenant to the Class A members of the Association, which instrument shall be recorded

among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording, provided, however, that the Declarant may unilaterally accomplish any amendment required by the Veteran' s Administration, Federal Housing Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or similar governmental or quasi-governmental agency provided such amendment does not adversely effect, in a material way, the property interests of any Owner.

2. Duration. Unless amended in accordance with the provisions of section 1 of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, 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 Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each.

3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community. 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 covenants or restriction, either to restrain or enjoin violation or to recover damages or both, and against any Lot to enforce the lien created hereby; and the failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation by the Association, by any Owner or any mortgagee of any Lot which becomes subject to the provisions hereof and by any other person, firm, corporation or other legal entity who has any right to the use of any of the Common Areas and Common Facilities owned by the Association.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. In the event of any claim, suit or action against an Owner or the tenant, guest or invitee of such Owner (an Owner shall be jointly and severally liable for any liability, damages or violation caused by any act or omission of his or her tenant, guest or invitee) to enforce any of the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules adopted by the Association in which the Association is the prevailing party, the Owner shall be responsible for

the attorney's fees, court costs and all other costs incurred by the Association in such enforcement action.

4. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant, with or without notice to the Association.

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

6. 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, by ordinary mail, postpaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

7. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Areas or Community Facility by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Areas or Community Facilities.

8. Severability. Invalidation of anyone of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

9. Consents. Any other provision of this Declaration to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the holders of at least two-thirds (2/3) of the first mortgages of record on the Lots:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas and Community Facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas and Community Facilities by the members of the Association shall not be considered a transfer within the meaning of this Section; or

(b) abandon or terminate this Declaration; or

(c) modify the method of determining and collecting common expense assessments or other assessments as provided for in this Declaration; or

(d) resolve to use the proceeds of casualty insurance for any purpose other than the repair, replacement or reconstruction of the Common Areas and Community Facilities; or

(e) modify or amend any material or substantive provision of this Declaration or the By-laws of the Association.

10. Consent of Veterans Administration. Provided that any Lot in the project is then encumbered by a deed of trust or mortgage which is guaranteed by the Veterans Administration, and, provided further, that there are then Class B memberships of the Association outstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the Veterans Administration:

(a) abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas and Community Facilities; provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas and Community Facilities by the members of the Association shall not be considered a transfer within the meaning of this section; or

(b) modify or amend any material or substantive provision of this Declaration or the By-laws of the Association.

11. Rights of Maryland-National Capital Park & Planning Commission. Any other provision of this Declaration to the contrary notwithstanding, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without the prior written consent and approval of the Maryland-National Capital Park & Planning Commission, which consent shall not be unreasonably withheld or delayed.

(a) abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas and Community Facilities: provided, however, that the granting of rights-of-way, easements and the like for public utilities or for other purposes consistent with the use of the Common Areas and Community Facilities by the members of the Association shall not be considered a transfer within the meaning of this Section: or

(b) abandon or terminate this Declaration; or

(c) modify the method of determining and collecting common expense assessments or other assessments as provided for in this Declaration; or

(d) merge or consolidate the Association with any other entity or sell, lease, exchange or otherwise transfer all or substantially all of the assets of the Association; or

(e) modify or amend any material or substantive provision of this Declaration or the By-Laws of the Association.

The Maryland-National Capital Park & Planning Commission shall have the right to bring an action against the Association for any legal or equitable relief necessary to enforce any of the rights or powers granted to the Maryland-National Capital Park & Planning Commission in this section.

12. Additional Rights of Mortgagees - Notice. No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the first mortgage on the Lot which is the subject matter of such suit or proceeding.

Any institutional first mortgagee of any Lot upon the Property may pay any taxes, utility charges or other charge levied against the Common Areas and Community Facilities which are in default and which may have become a charge or lien against any of the Common Areas and Community Facilities and any such institutional first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage upon the lapse of any policy, with respect to the Common Areas and Community Facilities. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

13. Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas or Community Facilities, the Board of Directors of the Association shall give prompt written notice of such damage or destruction to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas or Community Facilities.

14. Condemnation or Eminent Domain. In the event any part of the Common Areas and Community Facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors of the Association shall give prompt written notice of any such proceeding or proposed acquisition to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the By-Laws of the Association shall entitle any member to any priority over the holder of any first mortgage of record on his Lot with respect to the distribution to such

member of the proceeds of any condemnation or settlement relating to a taking of any of the Common Areas and Community Facilities.

15. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.


[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Declarant, organized and existing under the laws of Maryland has duly executed, sealed and delivered this Declaration as of the year and day first above written.

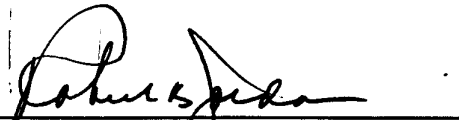
ATTEST:

TERNBERRY DEVELOPMENT  
CORPORATION,  
a Maryland corporation

  
\_\_\_\_\_  
ROBERT A. SMITH

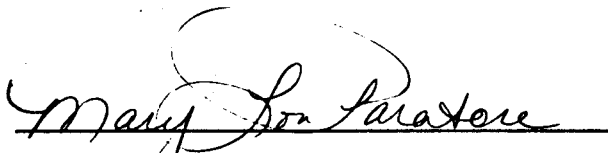
Secretary

By:


  
\_\_\_\_\_  
Robert B. Jordan  
~~Vice President~~  
Executive Vice President

ATTEST:  
HOME  
STATES,  
corporation

NATIONAL ASSOCIATION OF  
BUILDERS OF THE UNITED  
INC., an Illinois

  
\_\_\_\_\_  
(Assistant) Secretary

By:

  
\_\_\_\_\_  
(Vice President)

STATE OF Maryland

\*

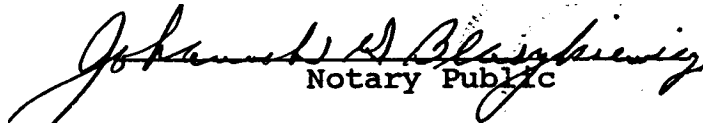
\* to Wit:

COUNTY OF Montgomery

\*

I HEREBY CERTIFY that on this 22 day; of January, 1990, before me, a Notary Public in and for the state and County aforesaid, personally appeared Robert B. Jordan, known to me (or satisfactorily" proven) to be the Vice) President of Ternberry Development Corporation, a Maryland corporation, and that such individual, being authorized to do so, executed the 'foregoing and annexed instrument for the purposes therein contained by signing his name as President of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

My Commission expires: July 1, 1990

\* \* \*

STATE OF

\*

COUNTY OF

I HEREBY CERTIFY that on this 10th day of January 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Kent Colton, known to me (or satisfactorily. proven) to be the (Vice) President of National Association of Home Builders of the United States, Inc., an Illinois corporation, and that such individual, being authorized so to do, executed the foregoing and annexed instrument for the purposes therein contained by signing his name as (Vice) President of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Baljit K. Bajwa 1/10/90  
Notary

My Commission expires: My Commission Expires May 14, 1993

CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was on behalf of TEMPERLEY DEVELOPMENT CORPORATION corporation, one of the parties

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF TERNBERRY HOMEOWNERS ASSOCIATION, Inc.

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TERNBERRY HOMEOWNERS ASSOCIATION, INC. (the "Amendment") is entered into this 24<sup>th</sup> day of October, 1990, by TERNBERRY DEVELOPMENT CORPORATION, a Maryland corporation and NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, INC., an Illinois corporation (hereinafter, collectively referred to as the "Developers").

W I T N E S S E T H

Recital 1. The Declaration of Covenants, Conditions and Restrictions of Ternberry Home Owners Association, Inc. (the "Declaration"), dated January 10<sup>th</sup>, 1990, among the Land Records of Prince George's County, Maryland in Liber 7543 at folio 366 et seq.

Recital 2. The Developers own all the lots subject to the Declaration.

Recital 3. Article XIV, Section 1, of the Declaration provides that prior to the lapse of all of the Class B memberships in the Association (as defined in the Declaration), the Declaration may be amended by the affirmative vote of or an instrument executed and acknowledged by, the members representing two-thirds (2/3) of the votes of the Association.

Recital 4. The Developers, as the holders of all the votes in the Association at the time this Amendment became effective, desire to amend the Declaration pursuant to the terms hereof.

Recital 5. The Maryland-National Capital Park and Planning Commission has consented to the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing, the Developers hereby declare that the Declaration is amended as follows:

1. Article XV is hereby added to the Declaration and provides as follows:

ARTICLE XV

1. Annual Supplementary Z-Lot Maintenance Assessments. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration, in addition to the annual maintenance assessments provided for in Article V of this Declaration, and not in lieu thereof, each person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a fee Owner of any of the following: Lots 11 through

26, inclusive, Block C; Lots 27 through 46, inclusive, block C; and Lots 96 through 103, inclusive, Block B (the "Z-Lots") within the Property, 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 the Association, in advance, a monthly sum (herein elsewhere sometimes referred to as "Z Lot maintenance assessments") equal to one-twelfth (1/12th) of the member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses of maintaining the roof(s) of the dwelling units situated on the Z-Lots, including, but not necessarily limited to, the cost of maintaining, replacing and repairing such roof(s). The maintenance, repair and replacement of the exterior walls of any dwelling situated on the-Z-Lots shall be the responsibility of the owner of the Lot upon which the-subject dwelling is situated subject to the architectural control provisions of Article X of this Declaration. However, with respect to any portion of the exterior wall (s) of adjacent dwelling units in which the boundary between such units is not reasonably discernible or detectable, the Owners of such units shall equally share the maintenance costs associated with the boundary area except for costs related to the negligent or intentional acts of an Owner (or his tenant(s), guest(s) or invitees) in which case such Owner shall be solely responsible for such costs. In the event of any dispute arising over the location of the boundary area, the level of maintenance required or any other related matter, the Board of Directors shall arbitrate and settle the dispute and the decision of the Board shall be final.

The Association is hereby granted a nonexclusive perpetual easement upon the Z-Lots to exercise the Association's maintenance responsibilities under this Article. The exercise of such easement rights shall not be unreasonably limited or obstructed by any Z-Lot Owner or occupant. In the event any damage is caused to a Z-Lot, or any improvements thereon, or injury to any person, as a result of the Association's exercise of such easement rights, the Association shall restore such damaged property to as near its original condition as reasonably possible and indemnify the Z-Lot Owner from any liability. The maintenance responsibilities of the Association and Z-Lot Owner(s) under this Article shall be in addition to the Owner's responsibilities, under Article X, section 13 of this Declaration. The standards of the maintenance, repair or replacement performed by the Association under this Article XV shall be determined by the Board of Directors of the Association.

The Board of Directors shall determine the amount of the Z-Lot maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual Z-Lot maintenance assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis hereinabove provided for. Any Class A member so obligated may prepay one or more installments on any annual Z Lot maintenance assessment levied by the Association, without premium or penalty. In the event any damage is caused to the roof of a

dwelling unit on a Z-Lot by reason of the negligence or abuse of the Lot Owner (or his/her tenant, guest or invitee) the Association may assess the cost of repairing such damage against the Lot and the owner thereof.

The Board of Directors shall prepare, or cause the preparation of, an annual maintenance budget for the roofs of the dwellings situated on the Z-Lots. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual Z-Lot maintenance assessment against each Z-Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Z-Lots and the annual Z-Lot maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the annual Z-Lot maintenance assessments shall thereupon be sent to the Z-Lot Owners. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual Z-Lot maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Class A member so obligated from the obligation to pay the annual Z-Lot maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual Z-Lot maintenance assessment fixed for the preceding period shall continue until a new annual Z-Lot maintenance assessment is fixed. No Class A member so obligated may exempt himself from liability for annual Z-Lot maintenance assessments by abandonment of any Z-Lot belonging to him/her.

2. Maximum Annual Z-Lot Maintenance Assessments. The initial maximum Z-Lot maintenance assessment for each of the Z-Lots shall not exceed the sum of Eighty-five and NO/100 DOLLARS (\$85.00) per annum. Except as assessment of the Declarant may be limited by the provisions of Article IX of this Declaration." and except as otherwise provided in this Article, the annual Z-Lot maintenance assessment shall be levied at a uniform rate for each Z-Lot.

3. Increase in Maximum Annual Z-Lot Maintenance Assessment.

(a) From and after the initial fiscal year of the Association, the maximum annual Z-Lot maintenance assessment hereinabove provided for may be increased by the Board of Directors of the, Association, without a vote of the Class A membership and without a vote of the then owners of the" Z-Lots, by an amount equal to ten percent (10%) of the maximum annual Z-Lot maintenance assessment for the preceding year, plus the amount by which the Association has incurred or anticipates incurring additional obligations or responsibilities in performing its duties and responsibilities in accordance with this Declaration. In addition, the assessments may be further increased as may be dictated by the result of any analysis of reserve requirements conducted by the Board-of-Directors.

(b) From and after the initial fiscal year of the Association, the maximum - annual Z-Lot maintenance assessment hereinabove provided for may be increased above that established by the preceding paragraph by vote of the then Owners of the Z-Lot Lots, as hereinafter provided, for the next succeeding year and, thereafter, at the end of such year, for each succeeding year. Any change made pursuant to this subparagraph shall have the assent of the Owners of a majority of the Z-Lots and the members representing two-thirds (2/3) of the votes of the then Class B members of the Association. A meeting of the members shall be duly called for this purpose.

4. Special Z-Lot Maintenance Assessments. In addition to the regular annual Z-Lot maintenance assessment authorized by this Article, the Association may levy in any assessment year a special Z-Lot assessment or assessments, applicable to that year only, for the purpose of defraying 1 in whole or in part, the cost of any construction or reconstruction, or extraordinary repair or replacement of a described capital improvement located upon, or forming a part of the property and improvements to be maintained, repaired or replaced by the Association under this Article; provided, however, that any such special Z-Lot maintenance assessment shall have the assent of the then owners of not less than a majority of (he Z-Lots and the members representing two-thirds (2/3) of the votes of the then Class B members of the Association.

5. Reserve for Repairs and Replacements. The Association shall establish and maintain a separate reserve fund for repairs and replacement (in whole or in part) of the property and improvements to be maintained, repaired or replaced by the Association under this Article by the allocation and payment periodically to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund may be deposited in any banking institution, the accounts of which are' insured by any-State or by an agency of the united States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United states of America.

The reserve for repair and replacement of property and improvements to be maintained, repaired or replaced by the Association under this Article may be expended only for the purpose of effecting the repair and replacement (in whole or in part) of the property and improvements to be maintained, repaired or replaced by the Association under this Article and for operating contingencies of a nonrecurring nature relating to such property. The Association may establish such other reserves for such other purposes associated with such property as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member in

any such reserves shall be considered an appurtenance to his Z-Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Z-Lot to which it appertains and shall be deemed to be transferred with such Z-Lot.

2. The remaining provisions of the Declaration shall remain in full force and effect.

3. In the event any of the terms or provisions hereof are deemed unenforceable or invalid for any reason the remaining terms and provisions shall not be affected and shall remain in full force and effect.

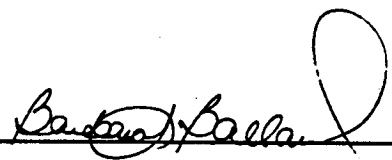
4. This Amendment shall become effective upon recordation among the Land Records of Prince George's County, Maryland, and shall be construed in accordance with the law of the state of Maryland.



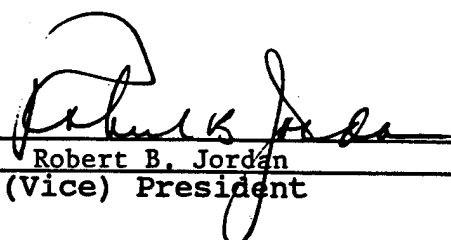
IN WITNESS WHEREOF the Developers, as the holders of all votes in the Association, hereby execute this Amendment as of the date provided above.

ATTEST:

TERNBERRY DEVELOPMENT CORPORATION,  
a Maryland corporation

  
\_\_\_\_\_

(Assistant) Secretary

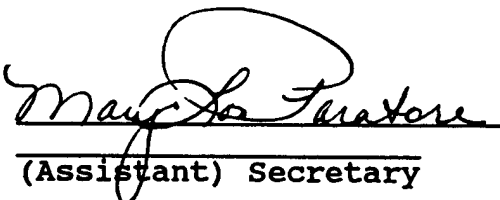
By:   
\_\_\_\_\_

Robert B. Jordan  
(Vice) President

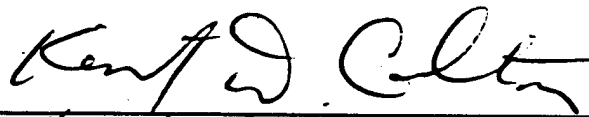
corporation

NATIONAL ASSOCIATION OF HOME BUILDERS  
OF THE UNITED STATES, an Illinois

An Illinois corporation

  
\_\_\_\_\_

(Assistant) Secretary

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

Kent D. Colton  
(Vice) President

\* \* \*

STATE OF Maryland

\*

COUNTY OF Montgomery

● To wit:

\*

I

I HEREBY CERTIFY that on this 8th day of October, 1990, before me, a Notary Public in and for the state and County aforesaid, personally appeared Robert B. Jordan, known to me (or satisfactorily proven) to be the (Vice) President of Ternberry Development Corporation, a Maryland corporation, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: Nov 1, 1991

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

(NOTORIAL SEAL)

\* \* \*

STATE OF District of Columbia

\*

County

I HEREBY CERTIFY that on this 26<sup>TH</sup> day of October, before me, a Notary Public in and for the state and County aforesaid, personally appeared Kent D. Colton, known to me (or satisfactorily proven) to be the (Vice) President of National Association of Home Builders of the United states, Inc., an Illinois corporation, and that such corporate officer, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Baljit K. Raina*  
Notary

My Commission Expires: My' Commission ; My Commission Expires May 11, 1993

(NOTORIAL SEAL)

SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF TERNBERRY HOMEOWNERS ASSOCIATION, INC.

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TERNBERRY HOMEOWNERS ASSOCIATION, INC. (the "Second Amendment") is entered into this 8th day of October, 2001, by THE TERNBERRY HOMEOWNERS ASSOCIATION, INC., a Maryland corporation as successor to TERNBERRY DEVELOPMENT CORPORATION, a Maryland Corporation and NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, INC., an Illinois corporation (hereinafter, collectively referred to as the "Developers").

**WITNESSETH**

Recital 1. The Declaration of Covenants, Conditions and Restrictions of Ternberry Homeowners Association, Inc. (the "Declaration"), dated January 10, 1990, was recorded January 24th, 1990, among the Land Records of Prince George's County, Maryland in Liber 7543 at folio 366 et seq.

Recital 2. WHEREAS, all Class B memberships held by the Developers have lapsed and all lots are now owned by Class A Members subject to the Declaration; and

Recital 3. WHEREAS, ARTICLE XIV, Section I, of the Declaration provides that following the lapse of all class B memberships in the Association, as in Article III provided, this Declaration may be amended by the affirmative vote of or an instrument executed and acknowledged by the Lot Owners representing a majority of the votes appurtenant to the class A members of the Association.

Recital 4. WHEREAS, a majority of the Class A members of the Association, have by their signatures affixed hereto evidenced their consent to amend the Declaration pursuant to the terms hereof; and

Recital 5. WHEREAS, the Class A membership, acting as the Ternberry Homeowners Association, through its duly elected Board of Directors, desires to preserve and protect the property values and amenities in said community; and

Recital 6. WHEREAS, the Class A members also desire to correct certain typographical and non-substantive errors in the Declaration for the sake of clarity; and

Recital 6. WHEREAS, this amendment has been submitted to the Maryland- National Capital Park and Planning Commission for review and consent according to its rules and no

objection having been received from the Commission regarding the terms of this Amendment Second.

NOW, THEREFORE, in consideration of the foregoing, the Ternberry Homeowners Association, Inc. hereby declares that the Declaration is amended and revised as follows:

1. ARTICLE X is hereby revised as follows:

a. Section 1, entitled: "Architectural and Environmental Review; Use Restrictions" first paragraph, is revised to read:

1. Architectural and Environmental Review; Use Restrictions. Except for purposes of proper maintenance and repair, no building, fence wall or other improvements or structures, including new construction by developers, shall be commenced, directed, constructed, erected, placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Review Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, which shall include but not be limited to the following:

a) minimum finished living area 2001 Sq. ft. for SFD and 1,560 Sq. ft for T/H

b) two story dwellings

c) minimum two car garages for SFD

d) minimum one car garage for TIH

e) minimum of 25% brick front

j) 9 ft high ceilings on all first floors in both SFD and TIH

e) full sided chimney flue with foundation in SFD and TIH

j) dental molding on SFD and TIH

g) end wall fenestration-minimum of 2 on SFD and TIH

h) shutters on SFD and TIH

i) no cantilever front facades on either SFD or TIH

j) No split levels in SFD

k) No split foyer in SFD,

color and location in relation to surrounding structures and topography and conformity with the design concept for the Community by an Architectural and Environmental Review Committee designated by the Board of Directors.

The remaining paragraphs shall remain unchanged and in full force and effect.

b. Delete the first Section 10, entitled: "New Construction." Since two section 10's were included in the original Declaration, renumbering is not required.

c. Section 10, entitled: "Prohibited Uses and Nuisances." subsection (t) and subsection (w), are hereby revised to read:

(t) Not more than one (1) Dwelling shall be erected on anyone (1) Lot within the Property, and each dwelling shall be restricted to a single family dwelling. Newly constructed dwellings shall be at least as large as the smallest such dwelling within 250 feet of the planned new construction and consistent in size and value of existing single family dwellings on the Property so as not to diminish community property values.

(w) These restrictions shall not be construed as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any appropriate governmental authority. In the event of any such conflict, the most restrictive provision of such laws, rules, regulations or the restrictions shall be deemed to govern and control.

IN WITNESS WHEREOF, the Ternberry Homeowners Association, organized and existing under the laws of the State of Maryland has duly executed, sealed and delivered this Second Amendment to the Declaration as of the year and day first above written.

Ternberry Homeowners Association, Inc.  
Class A Members

[SIGNATURE PAGES FOLLOW]

2nd Amendment To Declaration Of  
Covenants, Conditions And Restrictions  
Ternberry Homeowners Association



State of Maryland

County of Prince George's

I HEREBY CERTIFY that on this 8<sup>th</sup> day of October, 2001, before me appeared John C. Warren, own to me or proven satisfactorily to be the Secretary of Ternberry Homeowners Association, a Maryland Corporation, and that such individual, being duly authorized to do so, executed or caused to be executed the foregoing and annexed instrument for the purpose therein contained by signing his name as Secretary of such corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Charles F. Kirby  
Notary Public

My Commission expires 11/03/2001

2<sup>nd</sup> Amendment To Declaration  
Covenants, Conditions And Restrictions  
Of Ternberry Homeowners Association