

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**APPLGATE NORTH HOMEOWNERS ASSOCIATION, INC.**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration"), made this 26th day of January, 2001, by Ft. Smallwood Properties, L.L.C., a Maryland limited liability company (hereinafter referred to as "Declarant").

**WHEREAS**, the Declarant is the owner and developer of certain property (hereinafter referred to as the "Property") situate in the Third Election District, Anne Arundel County, State of Maryland, which Property is more particularly described in Exhibit A, attached hereto and made a part hereof.

**WHEREAS**, the Declarant desires to subject the Property and the improvements located thereon, to the covenants, conditions and restrictions set forth herein which are for the purpose of protecting the value and desirability of the Property and the improvements thereon and are for the purpose of distributing among the owners of the improvements the cost of maintaining and operating the common areas (as hereinafter defined), and any improvements constructed thereon.

**WHEREAS**, the Declarant has caused or will cause a Maryland nonprofit membership corporation known or to be known as "Applegate North Homeowners Association, Inc." (the "Association") to be formed in order to perform certain functions on behalf of the owners of lots within the Property, including, but not limited to, the enforcement of the covenants, conditions, and restrictions herein set forth, management of the common areas to be owned by the Association, and collection and disbursement of the assessments and charges hereinafter created.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described in Exhibit A shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitude, 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 Property, 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.

**ARTICLE I**  
**Definitions**

**Section 1.** "Association" shall mean and refer to Applegate North Homeowners Association, Inc., a Maryland non-profit corporation, its successors and assigns.

**Section 2.** "Owner" or "Member" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation. Each lot owner is entitled to automatic membership and voting

rights in the Association and each lot owner is empowered to enforce the covenants referred to herein.

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

Section 3. "Property" shall mean and refer to that certain real property described in Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as hereinafter provided.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association. The Common Area to be owned by the Association at the time of Conveyance for Residential Use of the first Lot shall be the Property, saving and excepting the Lots and any public roads or utilities dedicated or to be dedicated to Anne Arundel County, Maryland, if any. The Common Area includes but is not limited to, private roads and parking areas, storm water management facilities, any recreation areas, open space, entrance monuments and signs, street signs landscaping and community areas as depicted on the Plat.

Section 5. "Lot" shall mean and refer to all numbered subdivided parcels, shown on the Plat as an area for a single family townhouse dwelling or similar building but shall not include public streets or Common Areas.

Section 6. "Dwelling" shall mean and refer to a structure now or hereafter erected upon and attached to a Lot, which structure is to be used solely for single-family residential occupancy.

Section 7. "Conveyance for Residential Use" shall mean and refer to a conveyance of a Lot improved by a Dwelling to a person, other than to a Declarant or builder, for residential use.

Section 8. "Declarant" shall mean and refer to Ft. Smallwood Properties, L.L.C., a Maryland limited liability company, its successors and assigns, if such successors or assigns should acquire more than one unimproved Lot from the Declarant for the purpose of improving such Lot by erecting a Dwelling thereon, and if such successor or assign shall be designated by an instrument recorded among the Land Records of Anne Arundel County as a Declarant of Record by the Declarant herein identified.

Section 9. "Plat" shall mean and refer to the plats entitled "Applegate North, Plat 1 through 6" recorded among the Land Records of Anne Arundel County, Maryland in Plat Book

226, pages 27 through 32, as Plat Nos. 11853 through 11858, all as such plats may be from time to time amended.

Section 10. "Mortgagee" shall mean 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 Association 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.

Section 11. The "Project" and the "Community," as used in this Declaration, mean that certain community being developed by Declarant in Pasadena known as "Applegate North".

Section 12. "Structure" shall mean any thing or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, deck, shed, greenhouse, bath house, coop or cage, covered or uncovered patios, swimming pool, clothesline, radio, television or other antenna, fence, sign, curbing, paving, wall roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard, or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (1) any excavation, fill, ditch, diversion dam, or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (2) any change in the grade of the Property (or any part thereof) of more than six (6) inches from that existing at the time of purchase by each Owner (other than Declarant.)

## ARTICLE II Property Rights

Section 1. Owners. Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and

shall pass with the title to every Lot and every member of the Association shall have a right of enjoyment in the Common Area, subject to the following provisions:

- (a) The right of the Association to levy annual and special assessments as provided in Article IV, and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common area.
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public authority, agency, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an appropriate instrument signed by two-thirds (2/3) of the Lot Owners (excluding the Declarant) agreeing to such dedication or transfer shall have been recorded.
- (c) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving or increasing the Common area and in aid thereof, to mortgage the Common Area, but only upon the assent of two-thirds (2/3) of the Lot Owners (excluding the Declarant) voting in person or by proxy, to mortgage said Common Area. Such Mortgage shall be subordinated to the members' rights as provided hereinafter. In the event of a default upon any such Mortgage, the Lender's rights as provided shall be limited to a right, after taking possession of such area, to charge admission and other fees as a condition to continued enjoyment by the members, and if necessary, to open the enjoyment of such area to a wider public until the Mortgage debt is satisfied, whereupon the possession of such area shall be returned to the Association and all rights of the members hereunder shall be fully restored; provided, that, under no circumstances, shall the rights of the members of ingress, egress, utilities and parking be affected.
- (d) The right of the Association to take such steps reasonably necessary to protect the Common Area against an attempted foreclosure.
- (e) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the facilities thereon.
- (f) The right of the Association, its agents and employees to enter upon any Lot for the purpose of improving, maintaining and/or repairing any Common Area. Promptly after completion of such improvement, maintenance and/or repair, the Association shall restore the Lot to its prior condition.
- (g) The rights of Declarant as set forth in this Declaration as set forth in this Declaration, which rights Declarant hereby reserves.
- (h) The right of the Association to exercise all other powers conferred to it by this Declaration and its Articles of Incorporation and By-Laws.

Section 2. Delegation of Use. Any Owner may delegate his/her right of enjoyment to the Common Area to the members of his/her family, and to his/her guests, subject to such rules and regulations as the Board of Directors may from time to time adopt, provided, however, that

there shall be no abrogation of the duty of any member to pay assessments as provided in Article IV of this Declaration.

Section 3. Title to Common Area. Title to the Common Area shall be conveyed from time to time to the Association free and clear of all liens and encumbrances, except those liens and encumbrances, except those liens and encumbrances required by any ordinances and regulations of Anne Arundel County, Maryland, or required by other governmental authority or public utility company. All of the Common Areas which are part of the land described in Exhibit A shall have been conveyed to the Association by no later than the date of the Conveyance for Residential Use of the first lot by Declarant or by a builder. Notwithstanding anything to the contrary in this Declaration, the Common Area owned by the Association shall not be mortgaged or conveyed by the Association without the consent of at least two-thirds (2/3) of the Lot Owners (excluding the Declarant).

Section 4. Leases. The Owner of any Lot may lease his/her respective property subject to the following terms and conditions:

(a) Any lease between an Owner and a lessee must be in writing and the Owner must file a confirmed copy of any lease with the Association upon request by the Association;

(b) The lease shall state that it is subject in all respects to, and that the lessee shall comply with all of the provisions of the Declaration, Articles of Incorporation, By-Laws, and Rules and Regulation, if any; failure of the lessee to comply with any of the terms of the aforementioned documents shall be a default under the lease;

(c) No portion of any Lot (other than the entire Lot) may be leased by any Owner; no Lot may be leased for a period of thirty (30) days or less, nor for an initial lease term of less than six (6) months; and

(d) The lease shall in no way relieve the Owner of any duty or obligation imposed by this Declaration.

Section 5. Encroachments. In the event that any portion of any Dwelling or Improvement encroaches upon the Common Areas and facilities, or in the event that any Common Area encroaches upon any Lot, as a result of the initial construction, reconstruction or repair of such Dwelling after casualty, shifting, settlement or movement of any portion of the aforesaid, an easement for the maintenance of same shall exist so long as such encroachment exists.

### ARTICLE III Membership and Voting Rights

Section 1. Members. Every Owner of a Lot shall automatically be a member of, and have voting rights in, the Association as designated in Section 2 of this Article III, subject to all rights and duties of Owners under this Declaration. Membership and voting rights shall be

appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Membership Classes and Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners (except the Declarant during such time as there shall be a Class B membership) of Lots which are subject to assessment by the Association under the terms of this Declaration, and shall be entitled to one vote for each such Lot so owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(a) When the total votes outstanding in the Class A membership are equal to the total votes outstanding in the Class B membership (i.e. when 75% of the Lots have been conveyed to residential homeowners); or

(b) Five years after the conveyance for residential use of the first Lot from within the area described in Exhibit A.

#### ARTICLE IV

##### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot, with the specific exclusion of the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. If a delinquency occurs in the payment of annual and/or special assessments, which delinquency is not cured within thirty (30) days after the due date, said assessments, together with interest at the rate of eighteen percent (18%) per annum, plus costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his/her successors in title, unless expressly assumed by them by written agreement. Nothing herein contained shall be construed to affect the validity of the lien or the remedies available to the Association as set forth in Sections 8 and 9 hereof.

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

maintenance, repair and/or replacement of utilities in the Common Area which serve more than one Lot, and for such reserves and for such purposes as shall be determined by the Association. Without limiting the generality of the foregoing, assessments may be used for defraying the following expenses:

- (a) 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 any 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 liability insurance on the Common Areas and community facilities and the cost of such other insurance as the Association may effect with respect to the Common Areas or as otherwise determined by the Board of Directors; 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 for the Lots, or both, including the cost of providing any additional services approved pursuant to Section 2(b) of Article VI; and
- (f) the cost of maintaining, replacing, repairing, and landscaping the Common Areas, including, without limitation, maintenance of any stormwater detention basins or the like located upon the Common Areas and the cost of the maintenance of all private roads and pathways upon the Property, together with such equipment as the Board of Directors shall determined to be necessary and proper in connection therewith; and
- (g) 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 quarterly, semi-annual or annual basis rather than on the monthly basis provided for herein. Any Class A member may prepay one or more installments on any annual maintenance assessment levied by the Association, without premium or penalty.

### Section 3. Maximum Annual Assessments.

- (a) Until January 1 of the year immediately following the conveyance for residential use of the first Lot by the Declarant, the initial and maximum annual assessment shall be Four Hundred Twenty Dollars (\$420.00) per Lot, payable monthly on the first day of each

month in installments of Thirty Five Dollars (\$35.00) per month (or payable in such other periodic installments as the Board by resolution may determine).

(b) From and after January 1 of the year immediately following the conveyance for residential use of the first Lot by the Declarant, by vote of the Board of Directors, the maximum annual assessments may be increased each year above the maximum assessments for the previous year by an amount equal to the greater of (I) ten percent (10%) of the maximum annual assessment for the preceding year or (II) the percentage increase in the cost of living over the preceding year as determined from indices selected by the Association's accountant; plus the amount by which any ad valorem real estate taxes and casualty and other insurance premiums payable by the Association have increased over the amounts payable for the same or similar items for the previous year.

(c) From and after January 1 of the year immediately following the conveyance for residential use of the first Lot by the Declarant, the maximum annual assessments may be increased above that set forth in paragraph (b) above, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, as provided in Article V herein.

(d) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum as hereinabove set forth.

(e) If any Lot is security for any Mortgage insured by the Federal Housing Administration (FHA) or the Veterans Administration (VA), as long as there is a Class B member, the Declarant shall:

(i) Fund any operating deficit, and (ii) maintain the Common Area of any subsection under construction until Declarant shall have sold at least 75% of the units in the development.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in an assessment year, a special assessment applicable to any one year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly call for this purpose as provided in Section 5 of this Article IV.

Section 5. Notice for any Action Authorized under Sections 3 and 4 above. Written Notice of any meeting called, in accordance with the By-Laws of the Association, for the purpose of taking any action authorized under Sections 3 and 4 above shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting.



Section 6. Uniform Rate of Assessment. Both annual and special assessment must be fixed at a uniform rate for all Lots in the community and may be collected on a monthly or other basis and at such dates as the Board of Directors shall determine.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein with respect to the Property described in Exhibit A shall commence as to all members on the first day of the month following the conveyance for residential use of the first Lot in the Property. The first annual assessment as to a Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall prepare or cause to be prepared an annual operating budget for the Association and the Board of Directors shall attempt to fix the amount of the annual assessment against each member at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The failure of the Board of Directors to act within the times specified shall not, however, relieve any Owner of his obligation to pay assessments hereunder. Assessments shall be paid monthly, in advance, on the first day of each month unless otherwise resolved by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid and any such property executed certificate shall be binding upon the Association.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not received within ten (10) days of the due date shall automatically be subject to a late payment charge of Twenty-Five Dollars (\$25.00) and shall bear interest from the due date at the rate of eighteen percent (18%) per annum and shall be further subject to collection costs and reasonable attorney's fees, all of which sums shall be a continuing lien upon such Lot. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or the Association may foreclose the lien against the Lot. The lien may be enforced and foreclosed by the Association in the same manner and subject to the same requirements, as the foreclosure of Mortgages on real property in Maryland containing a power of sale, or an assent to a decree. Suit for any deficiency following foreclosure may be maintained in the same proceeding and suit to recover a money judgment for unpaid charges may be maintained without waiving the lien during the same period. No action may be brought to foreclose the lien except after twenty (20) days written notice to the current owner of the Lot given by registered mail, return receipt requested; notice shall be deemed given on the date of mailing. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

To the extent requested in writing so to do by any Mortgagee, the Association shall 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 sixty (60) 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 sixty (60) days, but any failure to give 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 by this Article.

In any proceeding brought by the Association to recover unpaid assessments, there shall be added to such unpaid amount interest, costs, late fees (if any) and reasonable attorney's fees (but not less than twenty-five percent of the sum claimed).

Section 9. Subordination of the Lien to Taxes and Mortgage(s). The lien of the assessments provided for herein shall be subordinate to the lien for taxes imposed by any lawful authority and to the lien or equivalent security interest of any existing First Mortgage on the Lot. Sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Acceleration of Installments. Upon default in the payment of any one or more monthly installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be declared due and payable in full.

Section 11. Reserves for Replacements. The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Areas and community facilities by the allocation and payment monthly to such reserve funds of an amount to be designated from time to time by the Board of Directors. Such funds 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 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 Common Areas and community facilities may be expended only for the purpose of affecting the replacement of the Common Areas and community facilities, major repairs, equipment replacement, covering insurance deductible amounts, and for start-up expenses and operating contingencies of a non-recurring nature relating to the Property for which the Association may have the obligation for maintenance, repair or replacement. 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 on any owner 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 with such Lot.

Section 12. Working Capital Funds. The Association shall establish and maintain a working capital fund for the initial months of operation of the project, equal to One Hundred Twenty Five Dollars (\$125.00) per Lot. The contributions to the working capital fund shall be made by the acquiring Owner at the settlement of the initial conveyance for residential use of a Lot improved by a Dwelling and shall be given to the Association for deposit in an initially segregated fund (which may later be included with the general funds of the Association), and shall not be deemed a prepayment of such Owner's regular assessment.

Section 13. Mortgages and Non-Payment of Assessments. Nothing herein shall be deemed to require that any mortgagee collect assessments from the Owner of a Lot. Failure to pay any assessments shall not constitute a default under a mortgage insured by the FHA or the VA.

## ARTICLE V Environmental Protection

### Section 1. Architectural Review.

(a) Formation; Composition. The Architectural Review Committee for the Association referred to herein and in the succeeding sections of this Declaration (the "Architectural Review Committee") is hereby created and shall have all the rights and powers and duties granted to it by the Declarant pursuant to this Declaration. The Architectural Review Committee is composed of the following members: John H. Minzer, John X. Lucente and Frank J. Lucente, each of whom shall act and serve for a term of five (5) years accounting from the date hereof, and thereafter until his successor shall be duly appointed. At any time after the expiration of the aforesaid five (5) year period, the then members of the Association shall have the power upon a majority vote of the members present of a duly constituted meeting of the Association, the minutes of which shall be maintained among the records of the Association, to elect new members to, or otherwise change the membership of the Architectural Review Committee, so long as the Architectural Review Committee shall at all times be comprised of three (3) members. After the expiration of the aforesaid five (5) year period, newly elected members of the Committee shall serve a term of office of one (1) year. In the event of the death or resignation of a Committee member during his tenure, the Board of Directors shall select a replacement member to serve during the balance of the tenure. In the event of death or resignation of any members of the Architectural Review Committee during said five (5) year period, the Declarant shall have the sole right and authority to appoint a successor by a duly executed instrument, a copy of which shall be maintained in the records of the Association, designating the name and address of each successor. At any time, or from time to time, during said five (5) year period, the initial members of the Architectural Review Committee may be replaced for any reason with other individuals selected by the Declarant in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee, now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration.

(b) General. Except for the initial construction of a Dwelling or structures by the Declarant, no Dwelling, improvement, building, fence, wall, sidewalk, pathway or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration, landscaping or planting of any kind thereof be made (such proposed construction, alteration or improvement to a Lot hereinafter referred to as an "Improvement") until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relationship to surrounding structures and topography by the Architectural Review Committee of the Association. In the event said Architectural

Review Committee fails to approve or disapprove such design and location within thirty (30) days after receipt of said plans and specifications, approval will not be required and this Article will be deemed to have been fully complied with. Nothing in this Article V shall be construed to permit any review of architectural and building decisions made by the Declarant with respect to any Lot.

(c) Administration. For any proposed Improvement to a Lot, there shall be submitted in writing to the Architectural Review Committee, in duplicate plans and specifications (hereinafter the "Plans") showing the nature, kind, shape, dimension, material floor plans, color scheme, location, exterior plans and details, driveway plans and locations, sidewalk plans and location, proposed topographical changes, together with a designation of the party or parties to perform the work in said proposed Improvements, alterations or other changes. No work shall begin on such proposed Improvements or alterations until the Architectural Review Committee has approved, in writing, the Plans.

The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration and shall be guided by the extent to which such proposal will ensure reasonable conformity and harmony in exterior design and appearance based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the proposed Improvements, alterations and/or other changes proposed in accordance with this Declaration including, without limiting the foregoing, such factors as background experience, skill, quality of workmanship, financial ability, etc.; factors of public health and safety; the effect of the proposed Improvements, alterations and/or other changes on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed Improvements, alterations and/or other change with the general aesthetic values of the surrounding area.

The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person in which case a written receipt shall be obtained. The Architectural Review Committee shall have the right to charge a processing fee in the amount of \$75.00 or such other amount as the Board of Directors may by resolution determine for such requests.

After construction, all Improvements, alterations and/or changes continuously shall be maintained in strict conformity with the plans and specifications so approved.

(d) Specific Approval Required. Without limiting the generality of subsection (a) of this Section and except for actions of the Declarant, none of the following actions may be

taken upon any Lot unless the Architectural Review Committee has approved such action, in the manner hereinabove set forth:

- (1) any installation, enlargement, alteration, regaining or repainting (other than in the same stain or color therefore immediately before such regaining or repainting), of any patio or deck in the rear, side or front of any Dwelling, or the addition of any steps thereto;
- (2) the construction of any storage shed or any other Structure anywhere on a Lot;
- (3) any alteration in the color or type of the roof of any Dwelling;
- (4) any alteration in the color or type of exterior of any Dwelling;
- (5) any alteration in the color or type of any exterior trim of any Dwelling;
- (6) any change in the shape, size or color of any window of any Dwelling;
- (7) any change in the design or color of any exterior door of any Dwelling;
- (8) any alteration in the size, shape or material of any exterior sidewalk;
- (9) any change in the color of any privacy screen located upon a Lot;
- (10) any change in the color of the existing rooftop flue and chase;
- (11) the construction or installation of any fireplace requiring the use of an exterior flue or chase upon any Dwelling;
- (12) the construction or installation of any awning of any type over the front, side or rear porch, doors or windows of any Dwelling;
- (13) the construction or installation of any in-ground or above-ground swimming pool of any type on any Lot;
- (14) the construction or installation of any fencing on the Property; and
- (15) the installation of, or change of color, type, shape, style or any stormdoor or screen door on any Dwelling.

(e) Authority of Committee. The Architectural Review Committee shall have the authority to promulgate rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and establish such criteria relative to architectural styles and details, fences, colors, set-backs, 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 decisions of the Architectural 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 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.

Section 2. Right of Entry. In carrying out the provisions of this Article V, Article VI or Article VII, or any other Article of this Declaration and of any of the rules and regulations adopted and promulgated pursuant to the provisions hereof, the Architectural Review Committee, the Board of Directors and/or the Declarant during the period of development, or their respective agents, employees, successors and assigns, may come upon any Lot during reasonable hours for the purpose of enforcing and administering those provisions or rules and regulations; provided, however, that except in the case of an emergency, no entry shall be made except upon five (5) days written notice to the member or members affected thereby. No one entering any such Lot for these purposes shall be deemed to have committed a trespass or wrongful or illegal act by reason of any such entry or inspection. Wherever any approval of the Board of Directors of the Architectural Review Committee is required under the terms of this Declaration, such approval must be in writing.

Section 3. Wetlands Protection. Notwithstanding any provision of this Declaration to the contrary, there shall be no removal or disturbance of any vegetation in areas designated on the Plat as "Wetlands" or "Wetlands Buffer" except upon the approval of all governmental agencies having jurisdiction over such areas.

## **ARTICLE VI**

### **Maintenance**

Section 1. Common Areas. The Association shall be responsible for the care and maintenance of the Common Areas, including both interiors and exteriors of the structures erected thereon, and shall also be responsible for the care, maintenance and replacement of any Common Area property, including utilities which serve more than one Lot and including rights-of-way dedicated to an appropriate governmental or quasi-governmental group or utility company where such group or company has not agreed to care for and maintain said property.

Section 2. Individual Lots. Except as otherwise provided herein, the Owner of each Lot shall be responsible for the care, maintenance and repair of his Lot, the premises and all improvements situate thereon, therein, and thereunder. In the event that any Owner shall fail to maintain any Lot or the premises and the improvements situate thereon in a manner satisfactory to the Board, the Association, after approval by a two-thirds (2/3) vote of the Board of Directors,

shall have the right, through its agents and employees to enter upon said Lot and to repair, maintain and/or restore the Lot, the premises and any improvements erected thereon. Such right of entry and repair shall be exercisable only upon fifteen (15) days' written notice given to the Owner thereof, unless, in the discretion of the Board, a genuine emergency necessitates a shorter period of time. The costs of any such repairs, maintenance and/or restoration shall be added to and become part of the lien for assessment to which such Lot and Lot Owner is subject. Enforcement of the right to recover these assessments may be had pursuant to Article IV, Section 8, or Article VII-A hereof.

The Association shall have the authority, but not the obligations, to arrange for and provide various services to the Owners, which services the Owners would otherwise be required to provide for themselves (e.g. lawn cutting, mulching, landscaping and/or beautification for the various Lots), upon the approval of two-thirds (2/3) of the Owners present at any duly constituted meeting. The costs of any such approved services shall be included in the annual budget and annual maintenance assessments.

Section 3. 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 shall perform such duties and services as the Board of Directors shall authorize in writing including, without limitation, the following:

(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 therefore in a manner consistent with law and the provisions of this Declaration;

(b) to provide for the care, upkeep, and maintenance of the Common Areas and community facilities;

(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;

(d) to promulgate (with the approval of the Board of Directors of the Association) and enforce such rules and regulations and such restrictions of requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas and community facilities; and

(e) to provide such other services (including legal and 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 or without cause and without payment of any termination fee, by either party upon sixty (60) days' written notice thereof to the other party.

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.

Section 4. Limitation of Liability. The Association shall not be liable for any failure of any service to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person 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 Owner 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. Absolute liability for any damages to the Common Areas or lots in this development shall not be imposed on any of the individual lot owner(s).

## ARTICLE VII Use Restrictions

Section 1. Use of Lots. The following restrictions shall run with and bind the Property. Except for the activities of the Declarant during the construction or development of the community, or except with prior written approval of the Board of Directors or the Architectural Review Committee, and as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the Common Areas:

- (a) No Lot shall be used for any purpose other than for residential use.
- (b) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which reasonably may be or become an annoyance or nuisance to any other occupant of a Lot. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot.
- (c) There shall not be erected on the Property any Improvement of a temporary character including, by way of example rather than of limitation, any trailer, tent, shack, garage, barn or other out-building except as may be approved by the Architectural Review Committee pursuant to Article V hereof.
- (d) No tractor-trailer truck, or any house trailer, boat or boat trailer, camper or other recreational vehicle, shall be placed or kept on the Property, either temporarily or permanently. No motorized vehicle of any kind shall be parked on the Property except in the driveways of Lots or in curb-side parking areas.



(e) No livestock or other animals or poultry of any kind shall be raised, bred or kept upon any Lot, either temporarily or permanently; except, however, two (2) or fewer dogs or cats may be kept on a Lot so long as such pet(s) are not kept, bred or maintained thereon for any commercial purpose. Pets shall not be permitted on the Common Areas unless accompanied by an adult, and unless they are leashed at all times. Any Owner who keeps or maintains any pet on any portion of the Property shall be deemed to have indemnified and agreed to hold harmless the Association, each of the Owners and the Declarant from any loss, claim or liability of any kind or character whatsoever arising by reason of keeping such pet. All pets shall be registered with the Board of Directors upon request by the Board, and shall otherwise be registered and inoculated as required by law. The Board of Directors shall have the right to order any person whose pet is a nuisance to remove such pet from the Property, and the Board of Directors will have the exclusive authority to declare any pet a nuisance. Pets shall not be permitted to roam free on the Property but at all times pets shall be attended and accompanied by a responsible person and shall be either carried or leashed. The Owner of any pet shall immediately remove from the Property any excrement deposited on the Property by such Owner's pet. Violation of any provision of this subsection shall subject the Owner of such pet to a daily fine of not more than Twenty-Five Dollars (\$25.00) for each such violation, which fine may be included in the Pet Owner's monthly assessment or Enforcement Assessment; each day that a violation occurs or has not been corrected by the owner shall be deemed a separate violation.

(f) No lumber, materials, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot or Common Areas except building materials during the course of construction, maintenance or repair of or on Common Areas by the Declarant. Trash, garbage or other waste shall be kept only in sanitary containers, not in plastic bags except for recycling, and such shall not be visible from the streets. Containers for trash collection may not be placed curbside before the night before trash collection and must be removed from the curb by the evening that the trash is collected. Containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Grass and lawn clippings shall not be disposed of on the Common Areas. Dumpsters on the site during the development and construction stage may not be used by Owners for household trash, furniture disposal or any other use. The dumpsters are required to contain-only construction refuse.

(g) No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground. Easements through and over Lots have been reserved for water, sewers, drainage and utility installations and maintenance for such purposes and uses as are shown on the Development Plan and/or the Plat for the Property. Within these easements, no structure, planting or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant, its agents, successors and assigns, shall have the right to enter upon all parts of the easement area of each Lot for any of the purposes for which said easements and rights-of-way are reserved. Declarant shall also have the right at the time of, or after, grading any street, driveway or parking area, or any part thereof, to enter upon any abutting Lot and grade the portion of such Lot adjacent to such street, driveway or parking area, but there shall be no obligation on Declarant to do such grading, unless otherwise properly required to do so by an appropriate governmental authority.

Declarant shall further have the right to establish contiguous five (5) foot drainage easements on any two adjacent lots if it is deemed necessary in the sole discretion of Declaration.

(h) All Common Areas may be used for, and only for, parks and recreational purposes, parking, trash storage and collection, ingress and egress, and for Common Utilities including, but not limited to, storm water and sanitary sewers, telephone, water, gas, electricity and cable T.V., and for such other purposes authorized by the Association or its Board of Directors, subject to the provisions of this Declaration.

(i) The rights and duties with respect to sanitary and water, cable T.V., electricity, gas and telephone lines and other Common Utilities shall be governed by the following:

(1) Whenever water, sanitary sewer, electricity, gas, cable T.V. or telephone connections, lines, cables or any portion thereof, are or have been installed with the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary therefore, to enter upon or have a utility company enter upon any portion of the Property in which said installations lie, to repair, replace and generally maintain said installations.

(2) The right granted in subparagraph (A) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to its full reasonable use and enjoyment, and provides further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(3) In the event of a dispute between Owners with respect to the repair or rebuilding of said installations, or with respect to sharing of the costs thereof, 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 the Board shall be final and conclusive on the parties.

(j) Easements over the Property for the installation and maintenance of electric, telephone, cable T.V., water, gas drainage and sanitary sewer lines and facilities and the like are hereby reserved by Declarant, together with the right to grant and transfer the same during such time that Declarant is the Owner of any part or all of the Property. Declarant also reserves the right to enter upon the Common Areas and Lots for the purpose of completing the improvements thereon, and for the purpose of carrying out any obligations which it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property or the improvements thereof or to correct any condition which adversely affects the Property or any portion thereof.

(k) No clothing or any other household fabric shall be hung in the open on or about the Property, on clotheslines or otherwise.

(l) No unlawful use shall be made of any portion of the Property, and all laws, zoning and other ordinances and regulations of governmental and other municipal bodies and the like shall be observed at all times.

(m) Nothing contained in this Article VII shall be construed to limit in any way the rights and powers of the Board of Directors to approve or disapprove of the erection of buildings, fences, walls or other structures or of changes or alterations to the Property, as more fully provided in Article V hereof.

(n) Nothing contained in this Declaration shall be construed to in any way limit the right of the Declarant to use any Lot owned by Declarant for the purposes of a construction office, sales office, executive and/or management office and/or for model and display purposes and for carrying out of the above activities.

(o) Declarant reserves the right to place electric and/or utility meters on the exterior of any Dwelling or Improvement which may be located on any Lot. Said meters may serve the Improvements to which they are attached, and may serve other Improvements located within the Property. A perpetual easement running with each Lot shall exist for the placement of such electric and other utility meters on the exterior of the Improvements located on said Lots.

(p) No sign of any kind other than those of the Declarant, its builder or designated agent, shall be displayed to the public view on any Lot, except one sign of not more than four (4) square feet advertising the Lot for sale or rent will be permitted.

(q) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

(r) No trees having a diameter of six (6) inches or more (measured at a point two feet above ground level) except during initial construction shall be removed from any Lot without the express written authorization of the Board of Directors or the Architectural Review Committee or unless properly authorized by an appropriate governmental authority. The Board, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the Board may mark certain trees, regardless of size, as not removable without written authorization.

(s) The Board of Directors or the Architectural Review Committee or their authorized agents shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which in the opinion of the Board, by reason of its location upon the Lot or the height to adjoining property or obscures the view of the street traffic or is unattractive in appearance, provided, however, that the Owner shall be given fifteen (15) days prior written notice to correct the problem. The costs of such entry, trimming or pruning shall be levied against the Owner of such Lot and added to such Owner's monthly assessment or Enforcement Assessment.

(t) No fence may be approved by the Board of Directors unless said fence meets all of the following characteristics: it shall be constructed with the same or substantially similar material and be of the same color, height and type as any type of fence which may be initially approved by Declarant. Fences shall be within the property lines of the Lot on which it is proposed to be located, and be entirely to the rear of the rearmost portion of the house located on said Lot, and comply in all respects with otherwise applicable regulations of Anne Arundel County, Maryland. Nothing herein shall require the Board of Directors to approve any fences even if such proposed fences meet the characteristics herein set forth.

(u) Roof top television and other antennas (including satellite dishes – whether rooftop or otherwise) shall not be permitted without prior approval of the Architectural Review Committee.

(v) No amateur radio transmission antenna shall be constructed anywhere on the Property.

(w) No junk vehicle, unlicensed or inoperable motor vehicle, trailer, camper, camp truck, house trailer, boat, boat trailer, commercial vehicle or other similar machinery or equipment of any kind or character (except such equipment and machinery as may be reasonably customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas and community facilities) shall be kept upon the Property nor (except for bona fide emergencies) shall the repair and extraordinary maintenance of automobiles or other vehicles be carried out thereon.

(x) No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement of right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, the Declarant or any other person for any purpose.

#### ARTICLE VII-A Enforcement Assessments

Section 1. Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in Articles V, VI and VII 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 such Articles, then the same shall be considered to have been undertaken in violation of such Articles and without the of the Architectural Review Committee or the Board of Directors (as the case may be), and upon written notice from the Architectural Review Committee or the Board of Directors (as the case may be), such violation shall be promptly removed. If the violation is not 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 sent to the Owner of the Lot upon which such violation exists, or to the member responsible for such

violation if the same shall be committed or attempted on premises other than the Lot owned by such member, then the Association shall have the right, through its agents and employees (but only after a resolution of the Architectural Review Committee or the Board of Directors) 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 shall 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 together with interest at the rate of eighteen percent (18%) per annum and attorney's fees incurred by the Association in enforcement proceedings (the "Enforcement Assessment") shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot. Notwithstanding anything to the contrary contained in this Section, so long as the Association reserves the right to use summary abatement and restrictions of this Declaration or similar means to enforce the covenants and conditions and provided that the Federal Home Loan Mortgage Association (FNMA) or its successors or assigns shall hold a Mortgage encumbering a Lot, then, if requested by FNMA, the Association shall institute judicial proceedings before any items of construction can be altered or demolished; in the event that FNMA shall cease to require such judicial proceedings, this entire sentence shall automatically become void and of no force or effect.

Section 2. Creation of Lien and Personal Obligation of Enforcement Assessment. Each Owner of a Lot, with the specific exclusion of the Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any Enforcement Assessment levied against such Owner or his Lot. The Enforcement Assessment shall be due when rendered, together with interest at the rate of eighteen percent (18%) per annum, plus costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such Enforcement Assessment is made. Each such Enforcement Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Enforcement Assessment fell due. The personal obligation for delinquent Enforcement Assessments shall not pass to his/her successors in title, unless expressly assumed by them by written agreement.

Section 3. Effect of Non-Payment of Enforcement Assessments: Remedies of the Association. Any Enforcement Assessment not received within ten days of the due date shall automatically be subject to a late payment charge of Twenty-Five Dollars (\$25.00) and shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or the Association may foreclose the lien against the Lot. The lien may be enforced and foreclosed by the Association in the same manner and subject to the same requirements, as the foreclosure of Mortgages on real property in Maryland containing a power of sale, or an assent to a decree. Suit for any deficiency following foreclosure may be maintained in the same proceeding and suit to recover a money judgment for unpaid charges may be maintained without waiving the lien during the same period. No action may be brought to foreclose the lien, except after twenty (20) days written notice to the current owner of the Lot given by registered mail, return receipt requested; notice shall be deemed given on the date of mailing.

To the extent requested in writing so to do by any Mortgagee, the Association shall notify the holder of the First Mortgage on any Lot for which any Enforcement Assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) 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 sixty (60) 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 by this Article.

In addition to, and not in lieu of, other remedies which may be available to the Association to collect unpaid Enforcement Assessments, the Association may assert a lien against the Lot for which Enforcement Assessments have not been paid, and may foreclose upon such lien in accordance with the Maryland Contract Lien Act, as amended.

In any proceeding brought by the Association to recover unpaid Enforcement Assessments, there shall be added to such unpaid amount interest, costs, late fees (if any) and reasonable attorney's fees (but not less than twenty-five percent of the sum claimed).

Section 4. Subordination of the Lien to Taxes and Mortgage(s). The lien of the Enforcement Assessments provided for herein shall be subordinate to the lien for taxes imposed by any lawful authority and to the lien or equivalent security interest of any existing First Mortgage on the Lot. Sale or transfer of any Lot pursuant to Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Enforcement Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Enforcement Assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII Duties and Powers of the Association

In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain and otherwise manage all of the Common Areas and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Areas.
- (c) have the authority to obtain, for the benefit of the Common Areas, all water, gas, sewer and electric service and refuse collection and to pay for such services.
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Areas to serve the Common Areas and the Lots.

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association.

(f) Contract for and pay fire, casualty, liability and other insurance insuring the Association, Board of Directors and Owners with respect to the Common Areas.

(g) Contract and pay for maintenance, gardening, utilities, materials and supplies, and services relating to the Common Areas and to employ personnel necessary for the operation of the project including legal and accounting services and including, without limitation, trash collection, snow removal and road maintenance, repair or replacement.

(h) Delegate its powers to its committees, officers and employees.

(i) At the request of the public body authorized to accept such, dedicate those portions of the Common Areas which are used for vehicular ingress and egress as public streets.

## ARTICLE IX

### Easements

Section 1. 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 rights-of-way over the Common Areas and community facilities for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm water detention ponds and similar facilities, storm drains, cables, underground conduits and such other purposes related to the provision of utility and similar services to the Project 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 members of the Association or the Declarant.

Section 2. Easement to Anne Arundel County, Maryland. The Declarant hereby grants to Anne Arundel County, Maryland, a body corporate and politic of the State of Maryland, its agents and contractors, a non-exclusive easement and right-of-way in and over Property for all purposes reasonably associated with the inspection, operation, installation, construction, reconstruction, maintenance or repair of any storm water management facilities constructed upon the Property and for maintenance with respect to any storm water management facility not dedicated to and accepted by Anne Arundel County, Maryland. In the event that after reasonable notice to the Association by Anne Arundel County, Maryland, the Association shall fail to fulfill any obligation imposed upon it to maintain any storm water management facility constructed upon the Property in accordance with applicable law and regulations, then Anne Arundel County, Maryland may do and perform all necessary repair and/or maintenance work and may assess the Association for the cost of the work and any applicable penalties.

Section 3. Encroachment Easement. Each Lot is hereby declared to have an easement, not exceeding five (5) feet in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. There shall be no easement for any encroachment which may occur as a result of an Owner making improvements or alterations to such Owner's Lot or Dwelling, and the Association or any Owner affected by such encroachment may take action to have such encroachment removed. In the event, however, that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments resulting from such repair or rebuilding over adjoining Lots shall be permitted and there shall be a valid easement for the maintenance of said encroachments so long as they exist.

## ARTICLE X

### Mortgagees

Section 1. Definitions. As used in this Article, the term "Mortgagee" shall mean any mortgage or any trustee under a deed of trust which is a lien upon a Lot or the party secured or limited to institutional mortgagees; and the term "Mortgage" shall include a deed of trust. As used generally in this Article, the term "Institutional Holder" or "Institutional Mortgagee" shall include banks, mortgage insurance companies, mortgage companies, credit unions, saving and loan associations, pension funds, FNMA, GNMA, FHLMC, and any corporation, including a corporation of, or affiliated with, the United States Government, or any agency thereof. "First Mortgage" shall mean a Mortgage with a priority over all other Mortgages.

Section 2. Notice of Board of Directors. An Owner who mortgages his Lot shall, in writing, notify the Board of Directors of the name and address of his Mortgagee, and shall upon request, file a confirmed copy of the note and Mortgage with the Board of Directors. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Units".

Section 3. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any such Mortgage holder, insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a Mortgage held, insured or guaranteed by such Mortgage holder, insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such holder, insurer or guarantor, or any other default by such Owner in performance of an obligation under this Declaration or the By-Laws, which deficiency remains uncured for a period of 60 days;



(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Mortgage holders as herein specified.

Section 4. Distributional Priority. No provision of this Declaration or the By-Laws of the Association shall entitle any Owner to any priority over the holder of any first Mortgage of record on his Lot with respect to the distribution to such Owner of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas or community facilities. No provision of this Declaration or the By-Laws of the Association shall entitle any owner to any priority over the holder of any First Mortgage of record on his Lot with respect to the distribution to such Owner of the proceeds of any condemnation or settlement relating to a taking of any of the Common Areas and community facilities.

Section 5. Notice of Meetings. Any Institutional Mortgagee of any Lot within the Property who desires notice of the annual and special meetings of the Association and/or meetings of the Board of Directors shall notify the Board of Directors to that effect by registered mail, return receipt requested. Any such notice shall contain the name and post office address of such Institutional Mortgagee and the name of the person to whom notice of the annual and special meeting should be addressed. The Secretary of the Association shall maintain a roster of all Institutional Mortgagees from whom such notices are received and it shall be the duty of the Secretary to mail or otherwise cause delivery of a notice of each annual or special meeting of the Association and/or each Board of Directors' meeting, as aforesaid, to each such Institutional Mortgagee, in the same manner and subject to the same requirements and limitations as are provided in this Declaration or in the By-Laws with respect to notice of such meetings to the Owners or the Board of Directors, as the case may be. Any such Institutional Mortgagee shall be entitled to designate a representative to attend any such annual or special meeting of the Association and such representative may participate in the discussion at any such meeting and may, upon his request made to the chairman of the meeting in advance of the meeting, address at any such meeting. Such representative shall have no voting rights at any such meeting. Such representative shall be entitled to a copy of the minutes of all meetings of the Association and the Board of Directors upon request made in writing to the Secretary.

Section 6. Right to Pay Charges. First Mortgagees of any Lots may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property and First Mortgagees making such payments shall be entitled to immediate reimbursement therefore from the Association.

Section 7. Right to Inspect Records. Any First Mortgagee may examine the books and records of the Association during reasonable business hours and may require submission of annual reports and other financial data compiled by the Association in the ordinary course of business.

Section 8. Actions Requiring Approval. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each first mortgage owned) of individual Lots in the Association have given their written approval, the Board of Directors and/or the Association shall not be entitled to:

(a) change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

(b) by act or omission charge, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of the Common Areas, or the upkeep of lawns and plantings in the Property;

(c) fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon current replacement cost);

(d) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such property;

(e) Abandon or terminate this Declaration, or modify or amend any material or substantive provision of this Declaration or the By-Laws of the Association; except, however, such approval shall not be necessary in the event of expansion of the project, by the filing of a Supplemental Declaration of Covenants, Conditions and Restrictions;

(f) Assume self-management by the Association when professional management has been previously employed or required by any Mortgage holder, guarantor or insurer;

(g) Fail to make any restoration or repair the project, after a partial condemnation or damage due to an insurable hazard, substantially in accordance with the Declaration and original plans and specifications; and

(h) by act or omission seek to abandon, partition, encumber, sell or transfer the Common Areas owned, directly or indirectly, by the Association; except, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Areas by the Association shall be not be deemed a transfer within the meaning of this clause.

## **ARTICLE XI**

### **General Provisions**

Section 1. Enforcement. The Association, and/or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration,

and all decisions of the Association, and if such enforcing party shall prevail, it shall be entitled to an amount of all costs and reasonable attorney's fees incurred in connection with such enforcement action. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Subject to such approvals as may be required by other provisions of this Declaration, this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded and takes effect immediately upon recordation.

(b) It is intended that the project satisfy applicable project approval requirements of the Federal National Mortgage Association ("FNMA") such that mortgages for Lots within the Property will be acceptable to FNMA. Accordingly, except as otherwise specifically provided for to the contrary in this Declaration: if, and only to the extent necessary to satisfy applicable requirements of FNMA, FNMA requires that a specific percentage of mortgage holders (or their insurers or guarantors) approve any material amendment to the Declaration or By-Laws, then no such material amendment shall be made to the Declaration or By-Laws without the approval of that percentage of mortgage holders (or the insurers or guarantors) then specified by FNMA.

Section 4. Federal Housing Administration ("FHA") and Veterans Administration ("VA") Approval. As long as there is a Class B member, the following actions will require the prior approval of the FHA and/or VA, as the case may be:

- (a) dedication of Common Areas; or
- (b) annexation of additional properties; or
- (c) abandonment or termination of this Declaration; or
- (d) amendment of this Declaration.

Section 5. Limitation on obligations. This Declaration shall not impose upon the Declarant any obligation to construct any improvement referred to herein.

Section 6. Limitation on Liability. The liability of an Owner to perform or observe the covenants, conditions and restrictions of this Declaration, including without limiting the generality of the foregoing, the liability for the payment of an assessment, shall be limited to

those accruing during the period of such Owner's ownership of the Lot or other portion of the Property. The Declarant is specifically exempted from assessments.

Section 7. Conflicts. In case of any conflict between this Declaration, the Articles of Incorporation and the By-Laws of the Association, the Declaration shall control.

## ARTICLE XI

### Additional Rights of Declarant

In view of the fact that the construction of the Applegate North project is one which will take Declarant several years to complete, Declarant, in addition to all rights reserved to it under this Declaration, and notwithstanding any other provision of the Declaration, specifically reserves the right to use any and all portions of the Property, excluding Common Area which may have previously been conveyed to the Association, for all reasonable purposes necessary or appropriate to the full and final completion of construction of the Applegate North project. Specifically, none of the provisions concerning architectural review and/or use restrictions shall in any way apply to any aspect of the Declarant's activities or construction, and notwithstanding any provisions of this Declaration, none of the aforesaid or hereinafter listed development or construction activities or any other activities associated with construction, sales management or administration of the Applegate North development shall be deemed noxious, offensive or a nuisance. The Association shall hold the Common Areas conveyed to it by Declarant subject to the following:

Section 1. The reservation to Declarant, its successors and assigns, of an easement over any road in the Common Areas, such easement for the purpose of ingress and egress and the installation and maintenance of public and private utilities to serve the Property and any part thereof, including any Lot.

Section 2. INTENTIONALLY DELETED.

Section 3. Grading. Declarant further reserves unto itself, its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and any Lots which are conveyed from the Declarant to the Owner, and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use and/or occupancy of a resident built or to be built on such Lot, but said Declarant shall not be under any obligation or duty to do such grading or to maintain any slope. No right shall be conferred upon any Owner or Member by the recording of any Plat relating to the development of the Property in accordance with such Plat. Declarant expressly reserves unto itself the right to make such amendments to any such Plat or Plats as shall be advisable in its best judgment as shall be acceptable to public authorities having the right to approval thereof.

Section 4. INTENTIONALLY DELETED

Section 5. Easement for Utilities. Declarant, for itself, its successors and assigns, reserves an easement on, over or under the Common Areas for the purpose of ingress and egress and the installation and maintenance of public and private utilities to serve the Property and the

Lots therein including, but not limited to, the right to lay, install, construct and maintain pipes, drains, mains, conduits, lines and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television and other public or private services or utilities deemed by Declarant necessary or advisable to provide adequate service to any Lot, now or hereafter laid out or established on the Property, or in the area or on the area in which the same is located together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time.

IN WITNESS WHEREOF, the undersigned being the Declarant has set its hand and seal as of the day and year first above written.

DECLARANT:

WITNESS:

FT. SMALLWOOD PROPERTIES, L.L.C.,  
a Maryland limited liability company

[Signature]

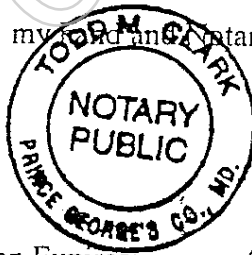
By: [Signature] (SEAL)  
John H. Minzer, General Manager

STATE OF MARYLAND

COUNTY OF PRINCE GEORGE'S, TO WIT:

I HEREBY CERTIFY that on this 26th day of January, 2001, before me, the subscriber, a Notary Public of the State and County. aforesaid, personally appeared John H. Minzer, the person whose name is subscribed to the foregoing instrument, and acknowledged that he is General Manager of Ft. Smallwood Properties, LLC, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of the said entity, by himself as such officer.

AS WITNESS my hand and Notarial Seal.



[Signature]  
Notary Public

My Commission Expires:

6/1/04

ATTORNEY CERTIFICATION

I hereby certify that the foregoing was prepared under the supervision of the undersigned attorney admitted to practice before the Court of Appeals of Maryland.

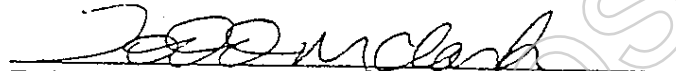
  
Todd M. Clark

EXHIBIT A  
LEGAL DESCRIPTION

**BEING KNOWN AND DESIGNATED** as all that property shown on Plats of the Applegate North Subdivision which Plats are entitled "APPLEGATE NORTH, PLATS 1 - 6", which Plats are recorded among the Land Records of Anne Arundel County, Maryland in Plat Book 226, pages 27 - 32, as Plat Nos. 11853 - 11858 including, but not limited to, all lots, roads, ways, courts, Local Open Spaces, Forest Buffer and Forest Conservation Easements, 100 Year Floodplain and Drainage and Utility Easements and Highway Widening Areas.