

19738

BOOK 1391 PAGE 153

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by TERRY CORPORATION of Virginia, a Virginia corporation, referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the City of Virginia Beach in the State of Virginia which is more particularly described as follows:

All those certain lots, pieces or parcels of land, together with the appurtenances thereunto belonging, lying, situate and being in the Kempsville Borough, City of Virginia Beach, Virginia, and known, designated and described as Lots Numbered ONE (1) through NINETY (90), both inclusive; "Pool Site 1.942 Acres"; and those areas shown as "Common Area"; all as shown on a certain plat entitled "Subdivision of Timberlake, Section One" made by Marsh and Basgier, dated May, 1972 and recorded in the Office of the Clerk of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 93, at page 23.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Timberlake Community Association, its successors and assigns.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners and more particularly described as all of the property shown as "Common Area" and "Pool Site 1.942 Acres" as shown on plat entitled "Subdivision of Timberlake, Section One" made by Marsh and Basgier, dated May, 1972,

and recorded in the Office of the Clerk of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 93, at page 23.

Section 3. "Declarant" shall mean and refer to the Terry Corporation of Virginia, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 4. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this entire Document, as same may from time to time be amended.

Section 5. "General Plan of Development" shall mean that plan encompassing the whole of the intended community which sets forth the general uses of the land including types of dwellings, general locations of dwellings, number of dwelling units, recreational areas and any and all such other uses as the Declarant may determine in such plan as ultimately may be approved by Virginia Beach, Virginia, FHA and VA together with any and all Tract Declarations which may be recorded by Declarant, as said Tract Declarations may be amended from time to time relating to all or part of the Community of Timberlake.

Section 6. "Timberlake" shall mean all real property located in the City of Virginia Beach, State of Virginia which becomes subject to the Declaration, together with such other real property as may from time to time be annexed thereto.

Section 7. "Living Unit" shall mean and refer to any portion of a Multi-family Structure situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

Section 8. "Lot" shall mean any parcel of real property designated as a Lot on any recorded Subdivision Plat within Timberlake, with the exception of the Common Area. The term Lot shall include a condominium where such may occur (a condominium, for this purpose, being herein defined as an apartment and all general and limited common elements in a Horizontal Property Regime established pursuant to Virginia law).

Section 9. "Multi-family Structure" shall refer to a structure with two or more Living Units under one roof except when such Living Unit is situated upon its own individual Lot as defined herein.

Section 10. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase any property or a lessee or tenant, of any apartment, condominium, or a Single Family Residence. The term "Owner" shall not include a Developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity who purchases a Lot in Timberlake for the purpose of resale thereof to a Public Purchaser, or for the purpose of constructing improvements thereon for resale to a Public Purchaser.

Section 11. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any Lot within Timberlake.

Section 13. "Section" shall mean all that land area containing lots recorded by subdivision plat for residential purposes encompassed in a specific stage of development as set forth more particularly in the General Plan of Development as approved by Virginia Beach and as amended from time to time.

Section 14. "Tract" means any parcel of land representing a portion of the entire community and which represents a subdivision of one or more Lots.

Section 15. "Tract Declarations" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant, relating to all or part of Timberlake.

Section 16. "Subdivision Plat" shall mean a recorded plat covering any or all the property referred to in this Declaration or annexed thereto.

Section 17. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible

to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 18. "Single Family Residence" shall refer to a structure containing one dwelling unit only and not occupied by more than one family.

Section 19. "FHA" and "VA" shall mean the Federal Housing Administration and the Veterans Administration, respectively.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association 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 give a mortgage or deed of trust when financing any improvements located on the "Common Area", but no such mortgage or deed of trust shall be effective unless an instrument has been signed by more than two-thirds (2/3) of each class of members, agreeing to such mortgage or deed of trust.

(c) The right, hereby reserved, of the Declarant, whether or not such right is expressly reserved in any deed of conveyance of any part of the common Area to the Association, to grant easements over, along, under and through the Common Area to the City of Virginia Beach or any utility company for drainage or utility purposes. This right of the Declarant shall terminate upon conveyance of the common area to the Timberlake Community Association.

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot or Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration or the Timberlake Rules;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, 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 made unless an instrument signed by more than two-thirds of each class of Members agreeing to such dedication or transfer has been recorded.

Nothing herein contained shall limit the right of the Association to provide in its by-laws or elsewhere a limitation on the number of guests that a member may have (on the Common Area).

(f) The right of individual Owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or his guests or invitees.

Section 3. Parking Rights. Ownership of each townhouse site shall entitle the Owner or Owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said site as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two vehicle parking spaces for each said dwelling.

ARTICLE III

PROPERTY SUBJECT TO THE TIMBERLAKE RESTRICTIONS

Section 1. General Declaration Creating Timberlake. Declarant shall develop Timberlake by subdivision into various Lots and Tracts. As each is developed, Declarant intends, with respect to particular property, to record one or more Tract Declarations which will incorporate his Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the FEA and VA. Thereafter, Declarant intends to sell and convey, to Public Purchasers, Lots in the property so developed subject to both this Declaration and the Tract Declarations, if any, for that Tract. Declarant hereby declares

that all of the real property within Timberlake is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration and any recorded Tract Declarations, as amended or modified from time to time. This Declaration and said Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

Section 2. Staged Developments. Additional land without the area heretofore described may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this Declaration provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them. Such annexed land may, but shall not necessarily include, additional land for Single Family Residential Use, Common Area, Commercial Area, and Multifamily Residential Use (including apartments and condominiums).

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications. As each Tract or portion thereof within Timberlake is developed and annexed, the use classifications, restrictions, easements, rights of way, and other matters including new or different uses and restrictions therefor, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in any Tract Declaration which may be recorded for that Tract, subject to the approval of FHA and VA. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which are not generally in consonance with existing uses and restrictions applicable to Timberlake. When property is annexed

to Timberlake the use classifications thereof shall be established by the Tract Declaration covering said property.

Section 2. Permitted Uses and Restrictions - Single Family and Multi-family Living Units. The permitted uses, easements and restrictions for all property in this classification within Timberlake covered by this Declaration, except for Common Area, shall be as follows:

A. Single Family Residential Use. All property in this classification shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, professions, trade or other non-residential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the leasing of all such property to a single family from time to time by the Owner thereof, subject to all of the provisions of The Declaration. No structure whatever, other than one private, Single Family Residence, together with a private garage for not more than three (3) cars, a guest house or servant quarters, shall be erected, placed or permitted to remain on any lot and no facilities for the preparation of food shall be provided or permitted in any guest house or servants' quarters to be erected on said premises.

B. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property within Timberlake and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner, the Board which is hereinafter defined, shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house or yard pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

C. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property within Timberlake, whether attached to a building or structure or otherwise, unless approved by the Architectural Control Committee.

D. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property within Timberlake unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Control Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Control Committee. The provisions of this paragraph shall not apply to the Declarant.

E. Improvements and Alterations. No improvements, alterations, repairs, change of paint colors, excavations or other work which in any way alters the exterior appearance of any property within Timberlake or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a Public Purchaser or annexed to Timberlake, whichever is later, shall be made or done without the prior approval of the Architectural Control Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Control Committee or any committee established by the Architectural Control Committee for the purpose. Pursuant to its rule-making power, the Architectural Control Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement, subject to the Board's approval. The Architectural Control Committee shall have the right to refuse to approve any plans or specifications or grading plan,

which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior approval of the Architectural Control Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final except for appeals from their decisions upheld by a two-thirds vote of the Board and no Lot Owner or other parties shall have recourse against the Architectural Control Committee or the Board for their refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

Should the Architectural Control Committee fail to either approve or disapprove of any plans submitted to it within thirty (30) days from the date an applicant has submitted such plans, then it shall be deemed that said plans have been approved and applicant may proceed with the same.

F. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any property within Timberlake either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

G. Trailers and Motor Vehicles. Except with approval of the Architectural Control Committee, no mobil home, trailer of any kind,

truck, camper, boat, or permanent tent or similar structure shall be kept or placed for a period of more than forty-eight hours, or maintained, constructed, reconstructed, or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired, upon any property or street (public or private) within Timberlake in such a manner as will be Visible from Neighboring Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicles repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvements approved by the Architectural Control Committee.

H. Maintenance of Lawns and Plantings.

(1) By Owner. Each Owner of a Lot within Timberlake shall, unless exterior maintenance is otherwise provided for in supplemental Tract Declarations or Master Deeds, keep all shrubs, trees, grass and plantings of every kind on his property, including set back areas, planted areas between adjacent sidewalks and the street curb, if any, and any other area located between the boundary line of his property and the street or other property (public or private) on which such Owner's property abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any other Area as to which Declarant or the Association has assumed the responsibility. Should any Owner fail to perform the acts required by this subsection, Declarant or the Association or its authorized agents shall have the right at any reasonable time to enter upon the Lot of such Owner to plant, replace, maintain, and cultivate shrubs, trees, grass or other plantings located thereon at cost to the Owner upon approval of such action by a two-thirds (2/3) vote of a quorum of the Board.

(2) By Declarant or the Association. Declarant or the Association shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property within Timberlake other than on a Lot, and on such easements over an Owner's Lot as may

have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property by Declarant or the Association without the written consent of the Association having first been obtained. The Association or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing. Anything herein to the contrary notwithstanding, the Association or its authorized agents shall enter upon any Owner's Lot for the purposes set forth in this subsection only when Owner has failed to maintain the shrubs, trees, grass and plantings as required by this Declaration.

I. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within Timberlake, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereon unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

J. Repair of Buildings. No building or structure upon any property within Timberlake shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

K. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within Timberlake except in covered

containers of a type, size and style which are approved by the Architectural Control Committee. In no event shall such containers be maintained in the front or side yard of any Lot so as to be Visible from Neighboring Property except to make the same available for collection and then, only the shortest time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a specific location for trash service. All rubbish, trash and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

L. Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained in front of the rear foundation line on any property within Timberlake unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible from Neighboring Property. On corner Lots they shall not be located closer to the side street than the line of the foundation facing said side street.

M. Encroachments. No tree, shrub, or planting of any kind on any property devoted to Single Family Residential Use within Timberlake shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Control Committee.

N. Right of Way. During reasonable daylight hours, Declarant, any member of the Architectural Control Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any property within Timberlake and the improvements thereon, except for the interior portions of any residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry. However, reasonable written notice of the time of such on-site inspection shall be given to Owner.

O. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within Timberlake except such machinery or equipment as is usual and customary in connection of a residence, appurtenant structures, or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Common Area.

P. Restriction on Further Subdivision. No Lot within Timberlake shall be further subdivided or separated into smaller lots or parcels by any Owner. This provision shall not, in any way, limit Declarant from subdividing or separating into smaller lots or parcels any property not yet platted or subdivided into Lots owned by Declarant. Declarant shall have the right to re-subdivide Lots to accomplish minor adjustments as long as the size of the Lot is not substantially changed. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented, and only to a single family.

Q. Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot or parcel of Property within Timberlake except as approved by the Architectural Control Committee.

R. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, identification, or sale of property within Timberlake.

S. Utility Easements. There is hereby created in favor of Declarant a blanket easement upon, across, over and under the above-described premises for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and

to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by the said builder or the Board. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the residence is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any encroachment shall not exceed two (2) feet.

T. Party Walls. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:

(1) The Owners of contiguous lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(2) In the event that any Party Wall or Party Fence is damaged or destroyed through the intentional or negligent act of an Owner or any person for whom he is legally responsible, it shall be the obligation of such Owner to rebuild and repair the Party Wall or Fence without cost to the other adjoining Lot Owner or Owners.

(3) In the event any such Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense, unless otherwise provided for in supplemental Tract Declarations or Master Deeds.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board of Directors of the Association, the decision of which shall be binding.

Section 3. Permitted Uses and Restrictions - Common Area.

The permitted uses and restrictions for Common Areas shall be as follows:

A. Maintenance by Association. The Association may, at any time, as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) Reconstruct, repair, replace or refinish any improvements or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board of Directors, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, parking area, and waterfront facilities.

(3) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(4) Place and maintain upon any such area such signs as the Board of Directors may deem appropriate for the proper identification, use and regulation thereof.

(5) Do all such other and further acts which the Board of Directors deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(6) The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area.

B. Damage or Restriction of Common Area by Owners. In the event any Common Area is damaged or destroyed through the intentional or negligent act of an Owner or any person for whom he is legally responsible, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner and subject to the same conditions as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE V

TIMBERLAKE COMMUNITY ASSOCIATION

Section 1. Organization.

A. The Association. The Association is a nonprofit Virginia corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-laws, and this Declaration. Neither the Articles nor By-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Subsidiary Associations. The Association shall have the right to form one or more subsidiary associations, for any purpose or purposes deemed appropriate by the unanimous vote of the Board. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area located within Timberlake such as for the operation of a swim and tennis club, and for such other specific purposes as deemed appropriate by the Board. However, such subsidiary associations shall be subject to this Declaration and may not take any action to lessen or abate the rights of the homeowners herein.

C. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the By-laws, as same may be amended from time to time.

D. Association Manager. There shall be a professionally qualified full-time manager of the Association. The manager shall be the chief administrative officer of the Association, subject to actions adopted by the Board of Directors. The manager shall annually prepare a proposed budget for the Association, and, upon its approval by the Board of Directors, shall have authority to spend the sums appropriated subject to Board approved procedures. The manager shall be responsible for any funds of the Association received, for the keeping of the accounting records and the preparation of financial statements in accordance with forms and procedures prescribed by the secretary-treasurer and approved by the Board of Directors. The manager shall furnish the secretary-treasurer with financial statements as may be requested by the secretary-treasurer. The manager shall appoint and discharge employees of the Association and shall fix their respective compensation within the limits required by the budget. The manager may enter into agreements on behalf of the Association subject to policies established by the Board of Directors and shall perform other duties conferred upon him by the Board of Directors.

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in the Articles and By-laws, as same may be amended from time to time.

Section 3. The Timberlake Rules and the Book of Resolutions. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Timberlake Rules". The Timberlake Rules may restrict and govern the use of any Common Area by any Owner, by the Family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Timberlake Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-laws. A copy of the Timberlake Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said Rules shall have the same force and effect as if they were set forth in and were part of the Declaration. The Timberlake Rules shall be kept at the Association office in the Book of Resolutions which identify the time, place, resolution and Board members involved in such action. The Book of Resolutions shall contain all the actions of the Board relating to governing, operating and managing policies of a general enabling and requirement nature. The Association shall upon request by any Member and for a reasonable cost, make available copies of the Book of Resolutions.

Section 4. Personal Liability. No member of the Board of Directors or any Committee of the Association, or any officers of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or the Architectural Control Committee, or any other Committee, or any officer of the Association, provided that such a person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct, and further provided

that the act or omission complained of involves the official duties of such person in connection with his responsibilities to the Association.

Nothing herein contained is intended to relieve the Manager of the Association, or other paid employees of the Association from personal liability for his or her intentional or negligent acts or omissions.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have three classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and Owners of rental Multi-family Structures, and shall be entitled to one vote for each Lot 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(s) shall be Owners of Lots upon which are built rental Multi-family Structures and shall be entitled to one vote for each Living Unit constructed thereupon. Method of calculation of total valid votes shall be according to the provisions of Article VII, Section 3, Paragraph (b). The Owner may transfer his full voting rights to the residents of such units providing his proxy is executed in a single statement, is unconditional and extends to all such residents without exception on a one Living Unit one vote basis. Such a transfer of voting rights does not obviate the Owner's liability for assessment payments to be made by him directly to the Association.

Notwithstanding the foregoing, the total vote of all Multi-Family Living Units shall not exceed 49% of the actual vote cast on any particular matter pending before the Association.

Class D. The Class D member(s) shall be the Declarant and shall be entitled to three votes for each Lot owned and each Living Unit represented by recorded plat of a rental Multi-family Structure(s), provided that such living units are completed or are actually under construction. When a building permit has been issued, it shall be deemed that construction has been commenced. In no event shall the Class D member be entitled to both three votes for a lot and three votes for living units located on that lot. The Class D membership shall cease and be converted to Class A or Class B membership as the case may be, on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in both the Class A and B memberships equal the total votes outstanding in the Class D membership, or (b) at the expiration of three (3) years after the date of the Declaration, provided that if a Tract Declaration is filed annexing additional land pursuant to Article III of the Declaration at any time or times prior to expiration of said three (3) year period (as same may have been extended by the filing of any Tract Declaration), such period shall be extended each time until the expiration of three (3) years from the date of filing of the last such Supplemental Declaration.

Notwithstanding the foregoing, the Class D membership shall permanently terminate eight years from the date of the recording of this Declaration and shall not thereafter be re-activated.

Upon the conversion of Class D to Class A or B membership, no action may be taken by the Association which would serve to impede the installation of Common Area facilities substantially represented in plans of public record particularly as they may have been required and/or approved by public agencies except with the assent of such principal parties including the Declarant, the Federal Housing Administration, the Veterans Administration and Virginia Beach, Virginia and others as may have been party to a common understanding of Common Area development commitments. In the event of such conversion the Association may not in any manner impede the implementation

of the master plan nor exercise control over proposed changes in the master plan nor in any other way interfere with the development activities of Declarant. These same provisions as set forth in this paragraph apply fully to any and all such development activities including construction of residential properties and Multi-family Units as generally set forth in the General Plan of Development, (c) when the Class D membership has ceased to exist or has been converted to Class A or Class B membership, nothing contained in the Declaration shall prevent the reactivation of Class D membership as a result of annexation of additional areas for development, except that under no circumstances shall the Class D membership be in existence after eight years.

Section 3. The corporation shall have one (1) additional class of members:

a. Class E. Class E members shall be all those Owners of Lots within a Section as heretofore defined which encompasses street and parking areas owned by the Association and for the primary use by such members. This class shall as to voting vote as Class A members, except as provided for in Article VII, Section 3(h). The Association shall collect such assessments as more particularly described in Article VII and shall be the entity responsible for the maintaining of all the heretofore mentioned Association owned streets and parking, including related sidewalks, curb and gutter, street lights, landscaping and similar improvements relating specifically to such a Section. Such funds as derived from the Class E members are not intended for such purposes as program activities, social activities or recreation facilities. The Association may collect a reasonable fee not to exceed 10% of gross revenues collected under the provisions of this paragraph to offset administrative costs.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.
The Declarant, for each Lot owned within Timberlake, hereby covenants, and each Owner of any Lot 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be as follows for each class as designated:

(a) Class A - One Hundred Forty-Four and No/100 Dollars (\$144.00)

(b) Class B - an amount equal to Class A Assessment less the per Residential Lot cost of trash collection, providing trash collection services are provided Lot Owners from assessment revenues. Class B membership for a Lot upon which is constructed a Multi-family Structure for rental purposes shall be deemed in effect for that Lot upon the occupation of the first Living Unit. The number of votes and the basis for Class B assessments upon such Lot shall be determined by the number of units occupied during a period of 30 days following the City's final inspection of the first building on said Lot. Thereafter the total number of Living Units which have been occupied during the preceding month shall be the determining factor. Upon the occupation by residents of seventy-five percent (75%) of such units upon such Lot, the number of votes and basis for assessment shall be determined by the total number of living units built upon such Lot irrespective of such living units being unoccupied from time to time.

(c) Class D - twenty-five percent (25%) of the assessments levied per Lot on Class A or B membership, as the case may be, for each recorded Lot or Living Unit where the house or Living Unit is not complete or is not occupied. The Declarant shall always be subject to this rate until construction has been completed on the last Lot or Living Unit. The Declarant shall pay the regular Class A or Class B membership, as the case may be, in those instances where the house or the Living Unit has been completed and occupied. The Declarant shall pay both Class A and Class E assessments where applicable. Assessments for each stage or phase of the development shall begin on the first of the month following conveyance of the Common Area to the Community Association.

(d) Class E - such amount as is determined by the proportionate share for each Owner of a Lot within a Section (as heretofore defined) for the proper maintenance of the areas and items described in Article IV, Section 3. Each Section shall be computed individually, funds collected from the respective Sections shall be deposited in separate accounts within thirty (30) days of collection and thereafter not co-mingled with any other funds. The Association shall submit a financial report annually setting forth all revenues and expenditures in addition to a budget projecting estimated costs in the next year for all maintenance operations as apply.

The amount of the Class E assessments must be both reasonable and adequate and must be supported by an estimated budget of income and expenses for the particular section. In addition, the initial and maximum assessment for Class E members shall be approved by the Veterans Administration or the Federal Housing Administration.

(e) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(f) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment

may be increased above five (5%) percent 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. For the purposes of this section only and consistent with the provisions of Section 2 of this Article only, only the Declarant and Owners who are bona fide residents may vote on this matter, except that such lessees or tenants of Multi-family units who hold unqualified voting rights consistent with the provisions of Article VI, Section 2 (Class B) may vote, providing their votes are counted as though they were cast as Class A votes.

(g) The Board may fix the annual assessment at an amount not in excess of the maximum.

(h) As regards Class E Assessments, subject to the same voting and quorum requirements as set forth for the Association's general assessments, only those Class E Owners within a given Class E Section shall vote as to Assessment changes above the five percent permitted by the Board.

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

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same

notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots within each class of membership and on each Section encompassing Class E membership and may be collected on a monthly, or quarterly, or annual basis. However, the amount of the assessment in any one year and from year to year may vary between developed and improved Lots, between a Single Family Area and a Multiple Family Area (including apartments and condominiums) and between Class E Sections.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots within the first Section on the first day of the month following the conveyance of Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot 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 due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, promptly furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. As between the Association and a third party this certificate shall be deemed to be correct.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance

with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of six percent (6%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudged against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a lien, with power of sale, on each and every Lot within Timberlake to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under the Timberlake Restrictions, together with interest thereon at the rate of six percent (6%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental

assessing unit, and the liens which are specifically described in Section 9 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Virginia, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in Timberlake hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became 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.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Control Committee, organized as follows:

A. Committee Composition. The Architectural Control Committee shall consist of three regular members and two alternate members. None

of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board of Directors or an officer of the Association.

B. Alternate Members. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. Initial Members. The following persons are hereby designated as the initial members of the Architectural Control Committee:

Office No. 1 - Thomas H. B. Morrisette

Office No. 2 - Joseph J. Basgier

Office No. 3 - Robert B. Givens, Jr.

Office No. 4 - Lewis Berton Reavis

Office No. 5 - Nancy McClees

D. Terms of Office. Unless the initial members of the Architectural Control Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, and until the appointment of their respective successors:

1. The term of Office No. 1 shall expire One (1) year from the date of the recording of this Declaration.

2. The term of Office No. 2 shall expire One (1) year from the date of the recording of this Declaration.

3. The term of Office No. 3 shall expire One (1) year from the date of the recording of this Declaration.

4. The term of Office No. 4 and Office No. 5 shall both expire Two (2) years from the date of the recording of this Declaration.

Thereafter the term of each Architectural Control Committee member appointed shall be for the period of three years and until the appointment of his successors. Any new member appointed to replace a member who

has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Control Committee at any time, shall be and is hereby vested solely in the Board of Directors, provided, however, that no regular or alternate member may be removed from the Architectural Control Committee by the Board of Directors except by the vote or written consent of two-thirds of all of the members of the Board of Directors. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the Recordation of a Declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

F. Resignations. Any regular or alternate member of the Architectural Control Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board of Directors, whichever then has the right to appoint Committee members.

G. Vacancies. Vacancies on the Architectural Control Committee however caused, shall be filled by the Declarant or the Board of Directors, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Control Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

Section 2. Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Control Committee Rules, to perform other duties delegated to it by the Board of Directors, and to carry out all other duties imposed upon it by the Timberlake Restrictions. Declarant shall not be subject to the Committee's decisions.

Section 3. Meetings and Compensation. The Architectural Control Committee shall meet from time to time as necessary to perform its duties

hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two regular members, at a meeting, or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of the Timberlake Restrictions. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Control Committee shall not be entitled to compensation for their services.

Section 4. Architectural Control Committee Rules. The Architectural Control Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Control Committee Rules". Said Rules shall interpret and implement the Timberlake Restrictions by setting forth the standards and procedures for Architectural Control Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in Timberlake. The rules shall in no way affect original construction and development by Declarant.

Section 5. Waiver. The approval of the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under the Timberlake Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether, or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings

and specifications, (c) the development of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Control Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Control Committee.

Section 7. Time for Approval. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, and date receipt for same provided the applicant, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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. 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 judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Class A membership and ninety percent (90%) of the Class B membership and thereafter by instrument signed by not less than seventy-five percent (75%) of such membership.

Section 4. Annexation. Additional residential property (both single family and multiple family including apartments and condominiums), Common Area and Commercial Area may be annexed to Timberlake with the consent of two-thirds (2/3) of each class of members eligible to vote. This limitation is subject to the right of Declarant set forth in Article III, Section 2, above.

The additions authorized under this section and Article III Section 2 shall be made by filing of record a supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional real property which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to the real property described in said Supplementary Declaration. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or desirable to reflect the different character, if any, of the additional real property and as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants, conditions or restrictions established by this Declaration within the Existing Property.

Prior approval of the Federal Housing Administration or the Veterans Administration must be obtained before the Developer may bring additional real property within the terms and conditions of this Declaration pursuant to this Article.

Section 5. FHA/VA Approval. As long as there is a Class D Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, mergers and consolidations, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of Lots within Timberlake.

Section 7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within Timberlake is hereby declared to be a violation of the Timberlake Restrictions and subject to any or all of the enforcement procedures set forth in said Restrictions.

Section 8. Remedies Cumulative. Each remedy provided by the Timberlake Restrictions is cumulative and not exclusive.

Section 9. Delivery of Notices and Documents. Any written notice or other documents relating to or required by the Timberlake Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, 281 Independence Boulevard, Suite 626, Virginia Beach, Virginia 23462; if to an Owner, to the address of any Lot within Timberlake owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at 281 Independence Boulevard, Suite 626, Virginia Beach, Virginia 23462; provided, however, that any such address may be changed at any time by the party concerned by Recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferees and assigns, covenants, agrees and understands that the title is subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter

imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

IN WITNESS WHEREOF, the said TERRY CORPORATION OF VIRGINIA, has caused these presents to be executed in its corporate name by its officers duly authorized, and its corporate name by its officers duly authorized, and its corporate seal to be hereunto affixed and attested by its Secretary, this 27th day of September, 1973.

TERRY CORPORATION OF VIRGINIA

By *Louis Lucente*
Vice President

ATTEST:

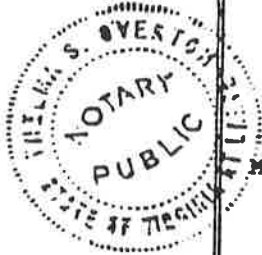
Horace A. Cistola
Senior Vice President and Secretary

STATE OF VIRGINIA,
CITY OF VIRGINIA BEACH, to-wit:

I, Thelma S. Overton, a Notary Public in and for the City of Virginia Beach and in the State of Virginia at large, do hereby certify that Louis Lucente, Vice President, and Horace A. Cistola, Senior Vice President and Secretary, respectively of Terry Corporation of Virginia whose names are signed to the writing above bearing date on the 27th day of September, 1973, have acknowledged the same before me in my City and State aforesaid.

BOOK 1391 PAGE 187

GIVEN under my hand this 27th day of September, 1973.



Thelma S. Overton
Notary Public

My Commission Expires: July 18, 1976

VIRGINIA In the Clerk's Office of the Circuit Court of Virginia Beach: 4th day
of December, 19 73 at 10:56. This instrument was reviewed and upon the
certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by Prov. 32-54.1 of the Code,
has been paid, in the amount of \$ _____.
TESTE: JOHN V. JENTRESS, Clerk By Mary E. Cuperlo

SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

1-101

THIS SUPPLEMENTAL DECLARATION is made on July 1, 1977 by TERRY CORPORATION OF VIRGINIA, a Virginia corporation, hereinafter referred to as "Terry" and POWELL & HUNTLEY, INC., a Virginia corporation, hereinafter referred to as "Powell";

WITNESSETH:

THAT WHEREAS, by Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration") dated September 27, 1973 and recorded in the Office of the Clerk of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 1391, at Page 153, Terry subjected certain real property more particularly described therein to the easements, restrictions, covenants and conditions set forth therein for the purpose of enhancing and protecting the value, desirability and attractiveness of the aforesaid real property; and

WHEREAS, Article III, Section 2 and Article IX, Section 4 provide that the Declarant as defined therein, may annex additional real property, and subject said additional real property to the Declaration providing that all of the requirements of said annexation have been complied with; and

WHEREAS, Terry conveyed to Powell by deed dated May 31, 1976 and recorded in the Clerk's Office aforesaid in Deed Book 1584 at page 469 certain real property more particularly described therein, which real property has since been platted into numbered lots on numbered blocks and dedicated as areas for streets and easements and designated as areas for subsequent conveyance to the Timberlake

Community Association as shown on a certain subdivision plat entitled "Subdivision of Willow Wood" recorded in the Clerk's Office aforesaid in Map Book 119 at pages 9 and 10; and

WHEREAS, all of the requirements of said Declaration with regard to annexation of the aforesaid real property have been complied with; and

WHEREAS, Terry and Powell desire to subject said additional real property in accordance with said Articles to the easements, restrictions, covenants and conditions of the Declaration, as modified herein,

NOW, THEREFORE, the Corporation hereby declares that all of the following described property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions prescribed in the Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall, to the same extent and for the same time period as set forth in the Declaration, run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described property or any part thereof and shall inure to the benefit of each owner thereof:

ALL THOSE certain lots, pieces, or parcels of land, together with the appurtenances thereunto belonging, lying, being, and situate in the Kempsville Borough, City of Virginia Beach, Virginia and known designated, described and defined on a certain plat entitled "Subdivision of Willow Wood" dated September 1976 and recorded in Map Book 119 at pages 9 and 10 as all of the common areas and Lots 1 through 4 on Blocks 1 through 39.

This Supplemental Declaration shall contain the following complementary additions and modifications to the covenants and conditions contained in the Declaration which are necessary to reflect the addition of the above described property:

(1) Article I, Section 3, is modified by the addition of the following sentence: Subsequent to the acquisition of more than one undeveloped lot by said successors and assigns for the purpose of development and the annexation of same to the Declaration, declarant shall mean, exclusively, said successors and assigns.

(2) Article I, is modified by the addition of the following section: Section 20, "Quadplex Site" shall mean and refer to any numbered lot upon which a single-family dwelling attached to one or more other single-family dwellings and generally known as a "Quadplex" shall be erected. Such lots shall be subject to restrictions and party-wall easements hereinafter set forth.

(3) Article II, Section 1, is modified by the addition of the following provision:

(f) Notwithstanding any provision in this Declaration to the contrary, no Owner or Public Purchaser shall have a right or easement of enjoyment in and to any area defined or designated on said subdivision plat as common area on the real property described herein (except for that portion designated "60' Drainage Easement" along the Southwestern boundary of said real property, afterwards referred to as the "excepted common area") other than Owners or Public Purchasers of lots located on the real property described herein. The common area on the real property described herein

(except for the excepted common area) is for the exclusive use of the Owners and Public Purchasers of lots located on the real property described herein, who shall, as Class E members, provide the funds for the maintenance of said common areas. The dedications, designations, and definitions on said subdivision plat are incorporated herein and made a part hereof. However, nothing contained in this paragraph shall be interpreted so as to relieve such owners and public purchasers, and all other Class E members who are owners of property subject to the Declaration, from payment of the regular Class A membership dues as the same are established from time to time.

(4) Article IV, Section 2, Subsection T is modified by the addition of the following subsection: (7) Each wall that is built as a part of the original construction of any Quadplex on the property and placed on the dividing line between two sites shall constitute a party wall and an easement two feet (2') in width on both sides of said walls for access from the outside only of the buildings for maintenance and construction purposes is reserved for the benefit of the Owner of each such dwelling.

(5) Article IV, Section 3, is modified by the deletion of the words "street and parking", and the substitution in place thereof, of the words "street, parking and other".

IN WITNESS WHEREOF, Terry Corporation of Virginia and Powell & Huntley, Inc. have caused this Supplemental Declaration to be signed in their names and behalf by their respective duly authorized officers.

TERRY CORPORATION OF VIRGINIA, a
Virginia corporationBY: *James Lucente*POWELL & HUNTLEY, INC., a
Virginia corporationBY: *George R. Powell*STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this day
of July 25, 1977, by LOUIS LUCENTE, President of TERRY CORPORATION
OF VIRGINIA, on behalf of the Corporation.

Ann M. K. Diani
Notary Public

My commission expires: 12/10/79STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me this day
of August, 1977, by GEORGE R. POWELL, President of POWELL & HUNTLEY,
INC., on behalf of the Corporation.

Ann M. K. Diani
Notary Public

My commission expires: June 26, 1981

-5-

VIRGINIA:

In the Clerk's Office of the Circuit Court of Virginia Beach 27th day
of August, 1977 at 10:31, this instrument was received and upon the
certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §§8-54.1 of the Code,
has been paid, in the amount of \$.....

TESTE JOHN V. FENTRESS, Clerk

By: *Meady E. Campbell* D. C.

8-12-77

23514

Audman, 1600 Va. Nat'l. Bank Bldg. 7th. Va.