

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
OAKBROOKE

THIS DECLARATION is made this 11 day of February, 2004, by **PORTRAIT HOMES CONSTRUCTION CO.**, an Illinois corporation, (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property in Mecklenburg County, North Carolina, more particularly described in Exhibit A attached hereto, and Declarant desires to create thereon an exclusive residential community of single-family attached residential units and detached residential units to be named **Oakbrooke**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the community and to provide for the maintenance and upkeep of the lawns and landscaping of all attached residential units, the exterior of all attached residential units and the Common Area, including the improvements, as hereinafter defined; and to this end, desires to subject the real property shown upon the attached Exhibit A, to the coverage of the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property described below, and each Owner and occupant thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the community and to provide for the maintenance and upkeep of lawns and landscaping of all attached residential units, the exterior of all attached residential units and the Common Area, including the improvements, to create an organization to which will be delegated and assigned the powers of (i) owning, maintaining and administering the Common Area; (ii) maintaining the exterior of the attached residential units and all other improvements which are the responsibility of the Association; (iii) administering and enforcing the covenants, conditions, and restrictions herein; (iv) collecting and disbursing the assessments and charges hereinafter created; and (v) performing all other activities as required or permitted hereunder.

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law, Oakbrooke Homeowners Association, as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the Properties, described in Article I, Section 1 below, and such additions thereto as may be hereafter made pursuant to Article I, Section 2 hereof, 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 Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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| JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC | |

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

Section One. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference ("Properties").

Section Two. Additions to Existing Property. Additional land may be brought within the scheme of this Declaration in the following manner:

(a) Additional land may be annexed to the existing property by Declarant, in future stages or development, without the consent of any other Owner or any mortgagee, provided that said annexations must occur within six (6) years after the date of this Declaration. Declarant may remove all or any property from the Exhibit A description by filing a written declaration of removal in the County Public Registry;

(b) The additions authorized under Subsection (a) above shall be made by filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land, which shall extend the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein.

Section Three. Replatting. Declarant shall have and hereby reserves the right, at any time or from time to time, to file a replat of all or any part of the Properties owned by Declarant to affect a reconfiguration of any Lots or Common Area in the Properties, subject to any necessary approval, joinder or consent of the appropriate county and/or municipal authorities.

ARTICLE II

DEFINITIONS

Section One. "Association" shall mean and refer to Oakbrooke Homeowners Association, its successors and assigns.

Section Two. "Owner" 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 Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation.

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

Section Four. "Lot" shall mean and refer to any lot of record shown upon a plat of subdivision of the Properties recorded from time to time, as reasonably amended by Declarant from time to time, with the exception of the Common Area, and shall include all improvements thereon. Each Lot is the area for one (1) residential unit, including a detached residential unit and attached residential unit.

Section Five. "Declarant" shall mean and refer to Portrait Homes Construction Co., its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section Six. "Common Area" shall mean all fixtures, real property and personal property owned by the Association for the common use and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats of Oakbrooke recorded or to be recorded in the County Public Registry and designated thereon as "Common Areas," but shall exclude all Lots and all public streets shown thereon. "Common Area" shall include, but is not limited to, (i) all private streets shown on said plats as now recorded or shall be hereinafter recorded in the County Public Registry, (ii) walking trails within the Properties, (iii) the common open space in Oakbrooke, (iv) the BMP detention pond (v) the pool house and pool facility (vi) the entry monument (vii) street lighting (viii) irrigation system and well and (ix) retaining walls and related fences. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is more particularly shown on the plat(s) of the Properties to be recorded in the County Public Registry.

Section Seven. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section Eight. "Member" shall mean and refer to an Owner who holds membership in the Association pursuant to Article IV of this Declaration.

Section Nine. "County Public Registry" shall mean and refer to the office of the Register of Deeds of Mecklenburg County, North Carolina.

Section Ten. "Act" shall mean and refer to "The "North Carolina Planned Community Act", Chapter 47F, North Carolina General Statutes.

Section Eleven. "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs, advertising the Properties; and to elect, appoint, or remove any officer or Board Member of the Association during any period of Declarant control.

ARTICLE III

PROPERTY RIGHTS

Section One. 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 suspend the voting rights and right of use of the recreational facilities by an Owner: (1) during any period for which the Owner is delinquent in the payment of applicable assessments; (2) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and (3) during any period that an Owner is otherwise in default of the Owner's obligations under this Declaration, including but not limited to the obligation to comply with the architectural control provisions and protective covenants and restrictions contained herein.

(c) The right of the Association to mortgage, 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 by the Members. No such mortgage, dedication, or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;

(d) The right of Owners to the exclusive use of parking spaces as provided in this Article;

(e) The right of the Association to limit the number of guests of Members;

(f) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder;

(g) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article IX;

(h) The right of the Association to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purposes, including the interior of the attached residential units at reasonable times and with reasonable advance notice;

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate and shall not require prior notice; and

(j) The rights of the Declarant reserved in Article X and Article XI of this Declaration and the Special Declarant Rights.

Section Two. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area depicted on maps of the Properties to the Association, free and clear of all encumbrances and liens, except those encumbrances and liens set forth in this Declaration, utility easements, and storm drainage easements, prior to the conveyance of the first Lot on that particular map. Following conveyance of Common Area to the Association, Declarant

shall be entitled to a proration credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes), which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant.

Section Three. Parking Rights for Lots with attached residential units. Ownership of each Lot with an attached residential unit shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association may assign vehicle parking spaces for each such Lot. The two automobile parking spaces for Lots with attached residential units having garages shall be the garage and the appurtenant driveway.

Section Four. TV Antennas and Cablevision. The Association may provide to Lots with attached residential units one or more central television antennas and cablevision and the cost of these may be included in the townhome assessments.

ARTICLE IV

MEMBERSHIP, VOTING RIGHTS, AND PURPOSES

Section One. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Further, every Owner shall be a Member of the Community Association.

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

Class A. Class A Members shall be all Owners of a Lot with an attached residential unit ("Class A Lot") with the exception of the Declarant and shall be entitled to one (1) vote for each such Lot owned. When more than one person holds an interest in any such 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 such Lot.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned (Class B Lot). The Class B membership shall cease and be converted to Class A membership or Class C membership, whichever is applicable, on the happening of either of the following events, whichever occurs earlier:

(a) when seventy five percent (75%) of the Lots on the Properties are deeded to persons other than Declarant or Declarant's affiliate; or

(b) five (5) years after the later of the following: the date this Declaration is recorded in the County Public Registry or the date any amendment adding additional real estate is recorded.

Class C. Class C Members shall be all Owners of a Lot with a detached residential unit ("Class C Lot") with the exception of the Declarant and shall be entitled to one (1) vote for each such Lot owned. When more than one person holds an interest in any such 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 such Lot.

Section Three. Until the Class B Members are converted to Class A Members and Class C Members, Declarant is entitled to appoint all Board of Directors members, and the Association need not hold a meeting to elect directors until conversion of the Class B Members.

Section Four. The Association shall have the right, duty and responsibility to: (i) acquire, administer, maintain and care for the Common Area; (ii) administer, maintain, care for, insure, repair and restore the Class A Lots, attached residential units, including the exterior thereof; (iii) administer, maintain, care for, repair and restore all lawns and landscaping of Class A Lots; (iv) establish, levy and collect assessments; (v) engage contractors, vendors, employees or agents as it deems necessary to carry out all rights, duties and responsibilities; (vi) make payment to contractors, vendors, employees or agents for services provided in carrying out the purposes of the Association; (vii) enforce this Declaration; and (viii) perform all rights, duties and responsibilities set forth in the Declaration, Articles and Bylaws of the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation of Assessments. 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) community assessments; (2) townhome assessments for Class A Lots, and (3) special assessments, such assessments to be established and collected as hereinafter provided. The community, townhome and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the applicable Lots and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with interest, late charges, 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 the delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. If the Association should be dissolved or cease to exist, then in that event, every Owner of a Lot at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

Section Two. Purpose of Assessments. The community assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for: (1) the improvement, maintenance, repair, and reconstruction of the Common Areas; (2) the maintenance, repair, and reconstruction of (a) private water and/or sewer lines (and any meters or lift stations associated therewith within the Properties), excluding the service pipe for each Lot; (b) private streets within the Properties, (c) walks and parking areas within the Properties; (3) the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions; (4) the cost of labor, equipment, materials, management, and supervision; (5) the payment

of taxes and public assessments assessed against the Common Area; (6) the procurement and maintenance for the Common Areas; (7) the employment of attorneys to represent the Association when necessary; (8) the provision of adequate reserves for the replacement of capital improvements of the Common Area, and any other major expense for which the Association is responsible on a community wide basis; and (9) such other needs on a community wide basis as may arise. The townhome assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of Class A Lots and in particular for: (i) the improvement, maintenance, repair, and reconstruction of Class A Lots including the driveways thereon leading to the public right of ways; (ii) insurance for the improvements on the Class A Lots; (iii) any other expense of the Association which benefits only the Class A Lots; and (iv) such other needs as may arise as relating to the Class A Lots.

Section Three. Reserves. The Association shall establish and maintain adequate reserve funds for the periodic maintenance, repair, and replacement of improvements to the Common Areas, and those other portions of the Properties which the Association may be obligated to maintain including Class A Lots, and for unusual and unforeseen expenses of the Association. Such reserve funds are to be established, insofar as is practicable, out of community and townhome assessments for common expense, but reserves for community wide matters shall only be derived from community assessments and reserves for Class A Lots shall only be derived from townhome assessments and such reserves shall not be commingled. Further, the reserve funds may be applied to applicable operational deficits provided adequate reserves are maintained.

Section Four. Apportionment and Maximum Annual Assessment. The Association through the Board of Directors shall determine a yearly budget for the Association which estimates the costs (and reserves) of all of the duties, obligations and requirements under this Declaration. The costs that benefit each Class of Lot shall be recovered by community assessments applicable to each Class of Lot equally. The costs that benefit only Class A Lots shall be recovered by townhome assessments applicable to Class A Lots only. For instance, townhome assessments shall include but are not limited to the costs of roof reserves; insurance; landscaping and lawn maintenance; and exterior maintenance obligations. The community assessments shall include but are not limited to the costs of private roads; street lights; street signs; utilities within private roads; entry monument; walking trails; landscape buffer areas; the BMP Detention Pond and the pool house and pool facility.

Until January 1 of the year immediately following the conveyance of the first Class A Lot to an Owner, the maximum annual assessment shall be One Thousand Six Hundred Dollars (\$1,600.00) per Class A Lot, including the community and townhome assessment (except that pursuant to Section Seven of this Article, the maximum annual assessment for Class A Lots owned by Declarant which are not occupied as a residence shall be Four Hundred Dollars (\$400.00) per Lot). For the same period of time, the maximum annual assessment shall be Four Hundred Dollars (\$400.00) per Class C Lot (except that pursuant to Section 7 of this Article, the maximum annual assessment for Class C Lots owned by Declarant which are not occupied as a residence shall be zero (0)).

(a) 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 by the Board of Directors effective January 1 of each year without a vote of Membership, but subject to the limitation that any such increase shall not exceed the greater of twenty percent (20%) or the percentage increase in the Consumer Price

Index (published by the Department of Labor, Washington, D.C.) for all cities over preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, or until increased as provided for in (b) or (c) below, whichever last occurs, the maximum annual assessment may be increased above the increase permitted in Section 4(a) 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.

(c) The Board of Directors may fix the monthly assessment at an amount which shall not exceed one twelfth (1/12) of the maximum annual assessment.

Section Five. Special Assessments. In addition to the community and townhome assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year for the purpose of supplying adequate reserve funds for the replacement of capital improvements; for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or upon a Class A Lot, and in connection with exterior maintenance, including fixtures and personal property related thereto; for insurance costs of the Association; or for unusual, unforeseen and nonreoccurring expenses of the Association, provided that any such assessment shall have the assent of the Board of Directors and such assessment shall be equitably apportioned among the Class of Lots benefited and equally among the Lots within such Class or Classes.

Section Six. Notice and Quorum for any Action Authorized Under Section Four. Written notice of any meeting called for the purpose of taking any action authorized under Section Four shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) 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 sixty (60) days following the proceeding meeting.

Section Seven. Uniform Rate of Assessment. Community assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, and townhome assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Class A Lots and shall be collected on a monthly basis. Provided, however, that the assessment for Class A Lots owned by Declarant which are not occupied as a residence, shall at all times be twenty-five percent (25%) of the assessments for other Class A Lots and that the assessment for Class C Lots owned by Declarant which are not occupied as a residence, shall at all times be zero (0).

Section Eight. Date of Commencement of Annual Assessments; Due Dates. The community assessments provided for herein shall commence as to each Class C Lot when the Lot is conveyed by Declarant to a non-related entity. The townhome assessments provided for herein shall commence as to each building consisting of Class A Lot on the day of the month on which the first Lot in such building is conveyed by Declarant, to a non-related entity for occupancy. The Board of Directors shall fix the amount of the assessments against each Lot at least thirty (30) days in advance of each annual

assessment period. Written notice of the annual assessments 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, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Non-related entity means an entity, which is not owned, managed, or operated by any common individuals.

Section Nine. Effect of Nonpayment of Assessments: Remedies of the Association. A late charge of Twenty Five and No/100 Dollars (\$25.00) shall be added to any assessment not paid within fifteen (15) days after the due date, together with interest from the due date at eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and in either event: interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. 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 or her Lot.

Section Ten. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section Eleven. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to at least two months' assessment for that respective Lot shall be collected and transferred to the Association for use as working capital. The purpose of said fund is to insure that the Association will have adequate cash available to satisfy expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of monthly installments of annual assessments.

Section Twelve. Default By Association: Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots in the Properties. If the sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the Owner, his or her heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the Owner.

ARTICLE VI

EXTERIOR MAINTENANCE AND PARTY WALLS

Section One.

(a) The Association shall provide exterior maintenance upon each Class A Lot as follows: paint and/or stain the exterior of the residential unit on such Lot; repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs (excluding those planted by an Owner), grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), driveways and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the Owner of any Class A Lot may, at his or her election, plant flowers in the front and rear beds established by Declarant in developing such Lot, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the residential unit and the remaining yard spaces. No maintenance by an Owner shall reduce the assessment payable by him or her to the Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future Members of the Association, the Declarant desires to make it known that due to differing amounts of exposure to the elements and other factors, some Class A Lots may require more maintenance than others and that it is in the best interest of the entire Association that all residential units be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each Lot.)

(b) All exterior maintenance and repair of Class C Lots, including lawns and landscaping, shall be the responsibility of the Owner of such Class C Lot. Each Owner of a Class C Lot shall be responsible for maintaining his or her Lot in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements, and the Owner shall maintain all lawns, trees, shrubs, hedges, grass and other landscaping.

(c) In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his or her family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, which is not subject to any maximum. The Association is hereby granted an easement right of access to go upon any Lot for performance of such repairs or maintenance.

Section Two. Party Walls on Class A Lots. This Section applies only to Class A Lots.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residential units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(f) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, signs, wall, antenna, satellite dish, or other structure or improvement shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including but not limited to, color or painting or the exterior and type of exterior finish, any existing or builder-installed construction material, plant material or ground cover) be made, except in exceptional cases, when in such case, three copies of 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 relation to surrounding structures and topography by an architectural committee composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"). While the Board members are appointed by the Declarant, the Architectural Control Committee can be any person whether or not a member of the Association, but after the period of the Declarant control has ceased, an Architectural Control Committee of all Class A members shall determine all matters pertaining to Class A Lots and an Architectural Control Committee of all Class C members shall determine all matters pertaining to Class C Lots. Absent such approval, the proposed improvement may not be commenced. Declarant is exempt from the architectural controls imposed by this Declaration. No landscaping shall be commenced, erected or maintained upon Lots unless approved by the Architectural Control Committee.

In the event an Owner of any Lot in the Properties shall make unauthorized changes to the premises and the improvements situated thereon in a manner unsatisfactory to the said Architectural Control Committee, the Board of Directors or the Architectural Control Committee shall have the right,

through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such restoration and exterior maintenance and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be added to and become a part of the assessments to which such Lot is subject. Any approval by the Architectural Control Committee shall be in accordance with the requirements set forth hereafter, and must be in writing.

ARTICLE VIII

INSURANCE

Section One. Insurance coverage shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the Properties shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners, if applicable. Owners of all Lots may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage, as they may desire.

(b) Common Area Coverage. All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against: (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and (iii) Such policies shall contain clauses providing for waiver of subrogation. The cost of such coverage shall be included in the community assessments.

(c) Lot Coverage. All buildings and improvements upon Class A Lots shall be insured in an amount equal to One Hundred Percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide coverage against: (i) loss or damage by fire or other hazards covered by standard extended coverage endorsements; (ii) such other risks as from time to time shall be customarily covered with respect to buildings on the land; and (iii) such policy shall contain clauses providing for waiver of subrogation. Owners of Class C Lots shall be responsible for all insurance coverage on Class C Lots, including coverage for building and improvements and liability. The cost of insurance for Class A Lots shall be included in the townhome assessment.

(d) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage, as the Association shall determine from time to time to be desirable and necessary. The cost of such coverage shall be included in the community assessments and townhome assessments on an equitable basis.

(e) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the community or townhome assessment described in Article V above.

(f) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and facilities held for the Association.

(ii) Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(g) Deductibles. The Owners suffering any loss shall be responsible to bear the cost of any deductibles among themselves and if the deductible applies to multiple losses, the deductible shall be prorated among the Owners based upon the amount of loss incurred individually to the aggregate losses.

Section Two. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section Three. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

ARTICLE IX

USE RESTRICTIONS

Section One. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Lots and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section Two. Antennas and Satellite Dishes. No outside radio transmission tower, receiving antenna, or satellite dish shall be erected by an Owner without the prior written approval of the Architectural Control Committee.

Section Three. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section Four. Dwelling Size. The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages shall not be less than 900 square feet.

Section Five. Nuisances. No activity deemed noxious or offensive by the Architectural Control Committee shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee. Examples of such offensive activities shall include, but to be limited to, the origination or emission of any loud or disturbing noise or vibrations; the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards; or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Architectural Control Committee, with the approval of the Board of Directors, may establish reasonable rules and regulations for enforcing the provisions of this Section Five.

Section Six. Parking of Vehicles and Use of Property. No commercial vehicle, house trailer, boat, boat trailer, camper, tent, shed, or any other such vehicle, trailer, vessel or temporary structure shall be permitted to be parked or placed within the Properties except within area(s) which may be specifically designated for such purposes by the Association; provided, however, commercial vehicles, temporary buildings and other structures shall be permitted during the construction period by Declarant or as a temporary real estate sales office or construction office of Declarant. The Lot shall be used for residential purposes. No garage, outbuilding, or other appurtenant structure shall be used for residential purposes, either temporarily or permanently, nor shall any portion of the Property (except as expressly stated in the preceding sentence) be used except for residential purposes and for purposes incidental or necessary thereto. Home offices shall be allowed provided it does not create any traffic other than

Owners and Occupants within the Properties. "Residential purposes" means residing in a Lot for any period of time.

Section Seven. Signs and Visible Areas. With the exception of signs erected by Declarant pursuant to Article XII hereof, no sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon without the prior written consent of the Board of Directors of the Association. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes or curtains) or placed on the outside walls of a Lot or otherwise outside of a Lot, or any part thereof, and no sign (except those of the Declarant), awning, canopy, shutter, or television or citizen's band or other radio antenna or transmitter, satellite dish or any other device or ornament shall be affixed to or placed on the exterior walls or roof or any part thereof, or in or on a patio or balcony unless authorized by the Board, and subject to the rules and regulations as the Board may adopt from time to time.

Section Eight. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, dogs, cats or other household pets may be kept, not to exceed a total of two (2) such animals, provided they are not kept, bred or maintained for any commercial purposes. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet to prior to the time that the animals in such litter are three (3) months old. If any animal may, in the sole discretion of the Board of Directors or its designated committee, make an objectionable amount of noise, endanger the health of the occupants of other Lots, or otherwise constitute a nuisance or inconvenience to the Owner of other Lots, such animal shall be removed upon the request of the Board of Directors or its designated committee. If the Owner of such animal fails or refuses to honor such request, the animal may be removed at the direction of the Board of Directors. An Owner's failure to remove fecal matter or other solid waste left in any Common Area by an animal owned by an occupant of such Owner's Lot (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above. The cost and expense of any removal of an animal under this Section Eight shall be the sole responsibility of the Owner of the Lot where the animal was kept (or was brought by a guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become part of the annual assessment against such Lot, and the amount of such cost or expense assessed against such Lot shall not be counted or considered in determining whether a maximum assessment has been made against such assessed Lot under Article V, Section Four of this Declaration.

Section Nine. Control of Pets. Every person owning or having possession, charge, care, custody or control of any dog, cat or other uncaged pet shall keep such pet exclusively inside his own residential unit; provided, however, that such pet may be off the Owner's Lot if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently, (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees, or (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) of any

other Lot; all of the foregoing as determined by the Association. Any pet identified by the Association as a potentially dangerous animal constituting an unreasonable risk or threat to any other Owner or as to other Owners generally, whether or not such risk or threat is deemed immediate or imminent, or as to the family, guests or invitees of any Owner or other Owners generally, whether due to the type, kind or species of such animal, or its size, natural proclivities or inherent nature, or as a result, whether in whole or in part, of the known tendencies, habits, disposition or history of such animal, or as a result of the manner in which such animal generally is supervised and controlled by its owner, or for any combination of any of the foregoing reasons, shall be subject to such further restrictions or control as the Association may in its absolute discretion deem appropriate, which further restrictions or control may include, without limitation, any one or more of the following additional requirements: (a) constant restraint of the animal by means of a cage, chain, leash or other means deemed appropriate and approved by the Association at all times while such animal is outside an Owner's residential unit, even while such animal is in the area of such Owner's Lot; (b) limitations on the time periods or durations that such animal is permitted to be outside of its Owner's residential unit; (c) prohibiting the animal to be outside at any time without its Owner present; or (d) permanent removal of the animal from the Property.

Section Ten. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of any health or public safety authority having jurisdiction over the property. The sanitary containers shall only be placed outside at the earliest the evening before garbage pickup day and shall be immediately returned inside an enclosed area after garbage has been picked up. All incinerators or other equipment shall be kept in a clean and sanitary condition. No trash, garbage, or other waste may be placed within the Common Area, except in containers approved by the Board of Directors.

Section Eleven. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot or within the Common Area. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or within the Common Area.

Section Twelve. Storage. No household furnishings, equipment, lawn furniture or related personal property, including childrens' play objects, grills, bicycles, and lawn ornaments of the Owner shall remain outside the residential unit or garage overnight, meaning it must all be removed from the front yards, front porches and placed out of the view of the public. Reasonable arrangements of seasonal flower pots and hanging baskets are permitted.

Section Thirteen. Fines and Penalties. The Association, by the Board of Directors, may impose fines and penalties for any violation of this Declaration or this Article, pursuant to the Act.

Section Fourteen. Rules and Regulations Concerning the Use of the Lot. Rules and Regulation concerning the use of the Lots may be promulgated by the Association acting by and through its Board of Directors, each of which shall be deemed to be incorporated herein by reference and made a part thereof, as amended from time to time. The Association shall deliver such rules and regulations to Owners prior to the time that they become effective. The rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the

safety, health, happiness and enjoyment of the Owners, and in furtherance of a plan to provide for the congenial occupation of the Lots, to promote and protect the cooperative aspects of ownership, the value of the Lots and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community. The board of directors of the Association is hereby granted specific power and authority to enforce said rules and regulations.

ARTICLE X

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone, and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title; further, the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties, including the right of temporary storage of construction materials on said Common Areas.

So long as Declarant owns any property described on Exhibit "A, Declarant reserves blanket easements and the right to grant such specific easements over all the Properties, including Lots and Common Areas, as may be necessary in conjunction with the orderly development of the property described on Exhibit "A" or any adjacent property (including without limitation the planning, construction, marketing, leasing, management and maintenance of improvements) for use, enjoyment, access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface). No such easements may be located within the area beneath any building located thereon.

All Class A Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Class A Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls.

Declarant reserves access easements over all Lots for construction, either for that Lot or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface).

There are reserved cross-easements in favor of Owners of Class A Lots that comprise a building for access to and from each other Lot comprising the building and the Common Area adjacent to the Class A Lots comprising the building, including, but not limited to the transportation of roll-out garbage containers; however, this does not include access to approved decks, patios or areas with approved fences.

ARTICLE XI

DECLARANT'S RIGHTS

The right is reserved by Declarant, or its agents, to place and maintain on the Properties all model homes, sales offices, advertising signs and banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant. There is also reserved unto Declarant, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Properties for such sales purposes. Declarant also reserves the right to maintain on the Properties without charge (a) a general construction office for Declarant's contractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Notwithstanding any other provision to the contrary, no annual or special assessment shall be due for any models of the Declarant. Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the Properties, which in the Declarant's opinion, are required to implement any right of Declarant set forth in this Declaration (including the making of any dedications or conveyances to public use) provided any such document or act is not inconsistent with the then existing property rights of any Owner.

Notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), without the consent, approval or signature of each Owner, to amend the Declaration and all attachments, to the extent necessary (i) to conform to the requirements then governing the purchases or insurance of mortgages by The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lot ownership, (iii) to correct typographical errors, surveyor errors in descriptions or otherwise, or obvious factual errors or omissions, the correction of which would not impair the interest of any Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) to amend any Exhibits, (vi) to exercise any Special Declarant Rights or development rights; and further provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant or (vii) to amend this Declaration in any manner that does not materially affect an Owner's right to use and enjoy his or her Lot. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Lot and the right of Declarant to add the Additional Property has expired.

ARTICLE XII

DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

Section One. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section Two, shall be resolved using the procedures set forth in Section Three in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section Two. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section Three;

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article V (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VII (Architectural Control) and Article IX (Use Restrictions);

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) Any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, By-Laws, and Articles of the Association; and

(e) Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section Three, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section Three shall require the approval of the Association.

Section Three. Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim ("Claimant") against any other Bound Party ("respondent"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

- (1) The nature of the Claim, including date, time, location, persons involved and respondent's role in Claim;
- (2) The basis of the Claim ("Claimant") (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the claim arises);
- (3) What Claimant wants Respondent to do or not to do to resolve the Claim;
- (4) The Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

- (1) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.
- (2) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

- (1) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.
- (2) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
- (3) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.

- (4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a formal written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration. Any and all claims, disputes and controversies by and between the Association, a Unit Owner, Developer, Declarant, Managing Agent or any other party connected in any way to the Association, or any combination of the foregoing, arising from or related to the Property, the Association, any improvements to the Property, the sale of any Unit on the Property, including, without limitation, any claim of breach of contract, negligence, negligent or intentional misrepresentation or non disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter CAS) in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

Section Four. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section Three (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section Three (c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section Three (c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection Section Four (c).

(c) Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

Section Five. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section Three and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section Three, in such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Section Six. Commencement of Litigation. (i) Any litigation by the Association other than the "Exempt Claims" set out in Section Two or (ii) arbitration against the Declarant shall both require an affirmative vote of seventy five percent (75%) of the Members of the Association prior to the institution of such litigation or arbitration. No lawsuit shall be permitted against Declarant in any circumstance.

ARTICLE XIII

GENERAL PROVISIONS

Section One. Enforcement. The Declarant, Association, or any Owner shall have the right to enforce, by 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 Declarant, Association or 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 Two. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section Three. Amendment. 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. Except as provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty seven percent (67%) of the Lot Owners. No amendment in any circumstance may alter, amend, or eliminate any right, privilege, or benefit of Declarant.

Section Four. Management and Contract Rights of Association. Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Properties. Declarant contemplates that the initial manager may be the Declarant or a firm affiliated with the Declarant. The initial Board of Directors of the Association shall ratify and approve the management contract, which will provide for such manager or management company to act as a managing agent for the Association with respect to the Properties at a rate equal to the greater of: (i) Fourteen Dollars (\$14.00) per month for each lot that has become subject to an assessment by the Association under Article V, Section Eight of this Declaration, or (ii) Four Hundred Dollars (\$400.00) per month. Any such contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract, without justification or penalty, upon sixty (60) days notice.

Section Five. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties not included in this Declaration, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

Section Six. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot ("Mortgage Holder") will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section Seven. Notices. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the last known Mortgage Holder or other party entitled to notice, at the last known address for each such party, all as shown on the books and records of the Association at the time such notice is given.

Section Eight. Exculpation. It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly,

against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively the Declarant Related Parties) for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against the Declarant or any related parties.

Section Nine. Conflict with the Act: Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section Ten. Disclaimer of All Warranties. Declarant and Developer hereby disclaim and exclude any and all warranties, expressed or implied (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for particular purpose), with respect to the Property, Common Area and the Lots. The Association and any Lot Owner knowingly agree to waive any and all rights that they may have pursuant to the implied warranty of habitability. The Association and Lot Owners acknowledge and agree that the sole warranties that apply to the Property, Common Area and the Lots are solely contained within the purchase agreement for the acquisition of the Lot.

Section Eleven. Disclaimer of Other Entities. Owners and the Association acknowledge and understand that their relationship is with the Declarant pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owners and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, and Owners and the Association waive and release any such claims, if any.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its corporate name and its corporate seal to be hereunto affixed, by authority of its Board of Directors, the day and year first above written.

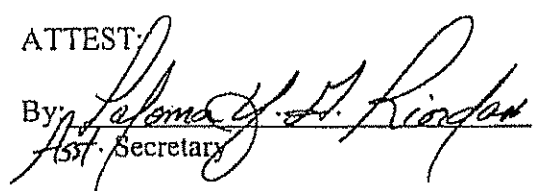
PORTRAIT HOMES CONSTRUCTION CO.

By: _____


President

ATTEST:

By: _____


Asst. Secretary

(CORPORATE SEAL)

STATE OF ILLINOIS

SS:

COUNTY OF WILL

I, MARY E POBY, a Notary Public in and for said City and State do hereby certify that personally appeared before me this day and acknowledged and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by its Secretary.

WITNESS my hand and official seal, this 11th day of FEBRUARY, 2004.

Mary E. Poby
Notary Public

My Commission Expires: 02-11-07

(NOTARIAL SEAL)

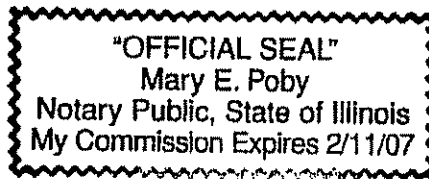


EXHIBIT A

Tract One

Commencing at NCGS monument "Bare" having NAD 83 grid coordinates; N 471,599.61 E 1,445,191.64 and having a combined factor of 0.999855184; thence N 5-31-53 E 511.49 feet ground distance (511.42 feet grid distance) to a found 1' pipe on the Southeastern line of D.G. Kaperonis (et al) as recorded in Deed Book 3483 page 515 and the Southwestern corner of Portrait Homes Construction Co. as recorded in Deed Book 15025 Page 199 of the Mecklenburg County Public Registry, said pipe having grid coordinates N 472,108.89 E 1,445,145.01, thence with the common line of the aforementioned D.G. Kaperonis (et al) and Portrait Homes Construction Co. N 19-21-11 W 279.57 feet to a set #5 rebar. The Point and Place of Beginning, thence departing the aforementioned common line and within the property of the aforementioned D.G. Kaperonis (et al) the following five (5) courses: 1) N 65-26-37 W 28.26 feet; 2) S 89-21-00 W 142.63 feet to a set #5 rebar; 3) N 23-09-18 W 124.38 feet to a set #5 rebar; 4) N 06-22-26 E 243.61 feet to a set #5 rebar; 5) N 36-32-49 E 70.00 feet to a found axel on the aforementioned common line; thence with the aforementioned common line S 19-21-11 E 448.15 feet to the Point and Place of Beginning being 1.136 acres total.

Tract Two

Commencing at NCGS monument "Bare" having NAD 83 grid coordinates; N 471,599.61 E 1,445,191.64 and having a combined factor of 0.999855184; thence N 5-31-53 E 511.49 feet ground distance (511.42 feet grid distance) to a found 1' pipe on the Southeastern line of D.G. Kaperonis (et al) as recorded in Deed Book 3483 page 515 and the Southwestern corner of Portrait Homes Construction Co. as recorded in Deed Book 15025 Page 199 of the Mecklenburg County Public Registry, said pipe having grid coordinates N 472,108.89 E 1,445,145.01, thence with the common line of the aforementioned D.G. Kaperonis (et al) and Portrait Homes Construction Co. the following two(2) courses: 1) N 19-21-11 W 727.72 feet to a found axel; 2) S 87-24-12 E 9.60 feet to a found stone, The Point and Place of Beginning, thence departing the aforementioned common line and within the property of the aforementioned D.G. Kaperonis (et al) the following five (5) courses: 1) N 05-24-17 E 571.26 feet to a sanitary sewer manhole; 2) N 24-48-14 E 255.19 feet to a sanitary sewer manhole; 3) N 16-58-26 E 214.72 feet to a sanitary sewer manhole; 4) N 40-29-16 E 130.17 feet to a sanitary sewer manhole; 5) N 57-12-03 E 38.63 feet to a point in Marvin Rd. (SR # 3635); thence within the limits of the aforementioned Marvin Rd. S 45-12-25 E 27.20 feet; thence S 50-22-31 E 57.74 feet; thence S 50-22-31 E 1.02 feet; thence departing the aforementioned Marvin Rd. and with the aforementioned common line S 20-45-15 W passing a found 1" pipe at 413.94 feet - total distance of 1.136 acres total.

Tract Three

Commencing at NCGS monument "Bare" having NAD 83 grid coordinates; N 471,599.61 E 1,445,191.64 and a combined factor of 0.999855184; thence N 5°13'53" E 511.49 feet ground distance (511.42 feet grid distance) to a found 1" pipe on the southeastern line of D.G. Kaperonis (et al) as recorded in Deed Book 3483 Page 515 of the Mecklenburg County Public Registry, said 1" pipe having grid Coordinates N 472,108.89 E 1,445,145.01 and being the Point and Place of Beginning of the herein described parcel; thence with the aforementioned Kaperonis common property line N 19°21'11" W 727.72 feet to a found axle; thence with the common line described in Deed Book 6084 Page 430 the following two (2) calls: (1) S 87°24'12" E 9.60 feet to a found stone; (2) N 20°45'15" E 1122.45 feet, passing a found 1" pipe at 729.27 feet and a found, disturbed 2" pipe 2.85 feet offline, at 1089.90 feet, to a set PK nail in the southern margin of Marvin Road (SA# 3635) thence with said road; S 57°38'16" E 404.71 feet, to a set PK nail at, or near, the center of said road; thence with the common line of Crosland Kingstey, LLC described in Deed Book 12042 Page 803, the following two (2) calls: (1) S 5°57'36" W 1388.87 feet, passing a found #5 rebar at 34.10 feet, to a found #4 rebar; (2) S 80°44'46" W 277.99 feet to a found 1" pipe, passing a 1" pipe at 254.16 feet, 2.53 feet offline; thence; S 43°51'13" W 129.10 feet to the Point and Place of Beginning, containing 18.514 acres total.