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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
THE TOWNES AT OLD STONE CROSSING AT CALDWELL CREEK**

THIS DECLARATION is made this 6th day of JUNE, ~~2001~~ ²⁰⁰², 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 Mecklenberg 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 to be named **The Townes at Old Stone Crossing at Caldwell Creek**; 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 exterior of all residential units and the Common Area, 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 the exterior of all residential units and the Common Area, 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 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, The Townes at Old Stone Crossing Homeowners Association, Inc., 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 The Townes at Old Stone Crossing Homeowners Association, Inc., 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 plot of land shown upon the site plan,* as reasonably amended by Declarant from time to time, with the exception of the Common Area, and shall

include all improvements thereon. Each plot of land is the area for one (1) residential unit, designed for single-family ownership.

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 The Townes at Old Stone Crossing at Caldwell Creek recorded or to be recorded in the County Public Registry and designated thereon as "Common Areas," but shall exclude all Lots as herein defined and all public streets shown thereon. "Common Area" shall include, but not limited to, the (i) completed permanent detention or retention pond(s); and (ii) all private streets shown on said plats as now recorded or shall be hereinafter recorded in the County Public Registry. 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 Mecklenberg 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 purpose 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. Ownership of each Lot 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 Lot. The two automobile parking spaces for Lots having garages shall be the garage and the appurtenant driveway.

Section Four. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision and the cost of these may be included in annual or special 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.

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

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) 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 the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever 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.

Section Three. Until the Class B Members are converted to Class A 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 and care for to repair and restore the exterior of the Lots; (iii) establish, levy and collect assessments; (iv) engage contractors, vendors, employees or agents as it deems necessary to carry out all rights, duties and responsibilities; (v) make payment to contractors, vendors, employees or agents for services provided in caring out the purposes of

the Association; (vi) enforce this Declaration; (vii) pay the monthly fees of the Caldwell Creek Property Owners Association, Inc. (CCPOA) collected from the Owners to CCPOA; 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) annual assessments or charges; (2) special assessments, such assessments to be established and collected as hereinafter provided; and (3) monthly fees and assessments of Caldwell Creek Property Owners Association, Inc. which are currently Five Dollars (\$5.00) per month. The annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the 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 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 and of the exterior of the residential units, including landscaping; (2) the maintenance, repair, and reconstruction of (a) private water and/or sewer lines (and any meters or lift stations associated therewith), (b) any pond (detention or retention), (c) pool and pool house, (d) private streets, (e) street lights, driveways, walks, and parking areas and such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance; (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 of insurance in accordance with this Declaration; (7) the employment of attorneys to represent the Association when necessary; (8) the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, and any other major expense for which the Association is responsible; and (9) such other needs as may arise.

Section Three. Reserves. The Association shall establish and maintain an adequate reserve fund 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, and for unusual and unforeseen expenses of the Association. Such reserve fund is to be established, insofar as is practicable, out of annual assessments for common expense. Further, the reserve fund may be applied to operational deficits provided adequate reserves are maintained.

Section Four. 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 One Thousand Six Hundred Dollars (\$1,600.00) per Lot (except that pursuant to Section Seven of this Article, the maximum annual assessment for Lots owned by Declarant which are not occupied as a residence shall be Four Hundred Dollars (\$400.00) per Lot).

(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 annual 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 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 nonrecurring expenses of the Association, provided that any such assessment shall have the assent of the Board of Directors.

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. Both annual and special 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. Provided, however, that the assessment for 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 Lots.

Section Eight. Date of Commencement of Annual Assessments: Due Dates. The development consists of two hundred thirty four (234) proposed Lots, subject to replatting and additions under Article I. The annual assessments provided for herein shall commence as to each building 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, except Declarant shall have the following option: (i) Declarant shall commence paying twenty five (25%) percent of the regular assessments for all Lots it owns upon such conveyance or (ii) Declarant may elect not to pay any assessments whatsoever provided it funds any deficiency in the operational budget of the Association until it commences payment of the assessments in (i) above. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors 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, 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 each 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. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot as follows: paint and/or stain the exterior of the residential unit on the 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), and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the Owner of any Lot may, at his or her election, plant flowers in the front and rear beds established by Declarant in developing the 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 Lots may require more maintenance than others and that it is in the best interest of the entire Association that all 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.)

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 repairs or maintenance, the responsibility of which is the Association's hereunder.

Subject to the provisions of this Declaration as expressly set forth in the obligations of the Association, all maintenance, repair or replacement of the Lot and all structures, and other improvements located within the Lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the community and the applicable provisions of this Declaration.

Section Two. Party Walls.

(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 landscaping, 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 the Board of Directors of the Association, or 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"). Absent such approval, the proposed improvement may not be commenced.

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 Board of Directors or the Architectural Control Committee, said 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 said Board of Directors or 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 on the Property 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. Owners 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) Coverage. All buildings and improvements upon the Properties 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.

(c) 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.

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

(e) 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.

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 within the restricted property 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. 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.

Section Eight. Livestock and Poultry. 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, provided they are not kept, bred or maintained for any commercial purposes and provided the facilities for such pets and pets themselves do not create a nuisance as determined by the Board of Directors or its designated committee, in which case the nuisance will immediately be abated upon request of said Board of Directors or its designated committee.

Section Nine. Control of Dogs. Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his or her own Lot; provided, however, that such dog may be off the Lot if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

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. All Owners shall utilize the scavenger service designated 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 Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent 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 Lots that comprise a building for access to and from each other Lot comprising the building and the Common Area adjacent to the 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 (i) amend the Declaration and all attachments, to the extent necessary to confirm 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, or (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. 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.

- (1) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
- (2) This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

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. Any litigation by the Association (i) other than the "Exempt Claims" set out in Section Two or (ii) 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.

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. Invalidation 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.

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: [Signature]
Vice President

ATTEST:

By: Anthony J. Lammone
Asst. Secretary

(CORPORATE SEAL)

STATE OF ILLINOIS

SS:

COUNTY OF Cook

I, Paloma Y.G. Riordan, a Notary Public in and for said City and State do hereby certify that John J. Giampoli 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 Asst. Secretary.

WITNESS my hand and official seal, this 21st day of December 2001.

Paloma Y.G. Riordan
Notary Public

My Commission Expires: 5-19-03

(NOTARIAL SEAL)

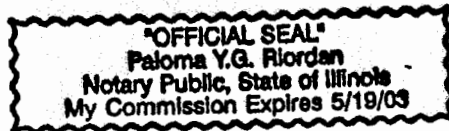


EXHIBIT A

TRACT 1 (A PORTION OF TAX PIN # 051-181-06)
 BEING ALL OF THAT 13.088 ACRE TRACT OF LAND SITUATED IN CRAB ORCHARD TOWNSHIP, MECKLENBURG COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A FOUND CITY OF CHARLOTTE GPS CONTROL MONUMENT #1083 WITH NORTH CAROLINA GRID COORDINATES (NAD 83) NORTHING: 564,315.0918 FEET AND EASTING: 1,496,067.5720 FEET, A #4 REBAR WITH AN ALUMINUM CAP STAMPED "CITY OF CHARLOTTE GPS CONTROL POINT #1083", THENCE N 19°51'21" E, 3,212.17 FEET TO A FOUND IRON ROD. THENCE N 53°10'03" W 1877.74 FEET TO A FOUND STEEL ROD. SAID STEEL ROD BEING THE COMMON CORNER OF MARVIN E. ASHLEY (DB. 2686 PG. 277) AND FC CALDWELL, LLC (DB. 11357 PG. 32). THENCE WITH THE LINE OF ASHLEY AND FC CALDWELL, LLC N 18°34'11" E 297.70 FEET TO AN EXISTING 1 1/4" PIPE. SAID PIPE BEING THE NORTHWESTERN CORNER OF ASHLEY, IN THE LINE OF CALDWELL, LLC, AND THE POINT AND PLACE OF BEGINNING. THENCE FROM SAID BEGINNING POINT AND WITH THE LINE OF ASHLEY THE FOLLOWING TWO (2) CALLS: (1) N 71°11'40" W 810.39 FEET TO A FOUND 1 1/4" AXLE; (2) THENCE N 71°14'20" W 177.23 FEET TO A FOUND 5/8" REBAR. SAID REBAR BEING THE NORTHEASTERN CORNER OF ASHLEY AND BEING LOCATED N 40°08'30" E 135.28 FEET FROM AN EXISTING IRON ROD. THENCE WITH A NEW LINE THROUGH THE LANDS OF FC CALDWELL, LLC (DB. 11182 PG. 147) THE FOLLOWING TEN (10) CALLS: (1) N 71°14'20" W 53.01 FEET TO A SET #4 REBAR; (2) N 18°45'40" E 335.95 FEET TO A SET #4 REBAR; (3) S 74°33'55" E 50.16 FEET TO A SET #4 REBAR; (4) N 15°26'05" E 90.41 FEET TO A SET #4 REBAR; (5) S 76°15'08" E 320.43 FEET TO A SET #4 REBAR; (6) N 74°32'16" E 255.40 FEET TO A SET #4 REBAR; (7) S 78°16'04" E 190.52 FEET TO A SET #4 REBAR; (8) N 85°30'25" E 239.01 FEET TO A SET #4 REBAR; (9) S 21°05'25" E 76.35 FEET TO A SET #4 REBAR; (10) S 52°36'57" E 7.55 FEET TO A SET #4 REBAR; THENCE WITH THE LINE OF CALDWELL, LLC (DB. 11357 PG. 32) S 18°42'18" W 658.04 FEET TO AN EXISTING 1 1/4" PIPE. SAID PIPE BEING THE POINT AND PLACE OF BEGINNING. CONTAINING WITHIN THESE METES AND BOUNDS, 13.088 ACRES, MORE OR LESS, AS SHOWN ON THAT SURVEY MAP TITLED "ALTA/ACSM BOUNDARY SURVEY OF: TAX PARCEL # 05-118-106 AND A PORTION OF PARCEL # 05-121-107" DATED JANUARY 25, 2001, AND PREPARED BY STANTEC CONSULTING, INC. SIGNED AND SEALED BY THOMAS M. BEER, L-3029, TO WHICH REFERENCE IS MADE.

TRACT 2 (A PORTION OF TAX PIN # 051-211-07)
 BEING ALL OF THAT 11.983 ACRE TRACT OF LAND SITUATED IN CRAB ORCHARD TOWNSHIP, MECKLENBURG COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A FOUND CITY OF CHARLOTTE BEING A GPS CONTROL MONUMENT #1083 WITH NORTH CAROLINA GRID COORDINATES (NAD 83) NORTHING: 564,315.0918 FEET AND EASTING: 1,496,067.5720 FEET, A #4 REBAR WITH AN ALUMINUM CAP STAMPED "CITY OF CHARLOTTE GPS CONTROL POINT #1083", THENCE N 19°51'21" E, 3,212.17 FEET TO A FOUND IRON ROD. THENCE N 53°10'03" W, 1319.25 FEET, TO A SET #4 REBAR. SAID POINT THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID LINE N 53°10'03" W, 458.49 FEET TO A FOUND STEEL ROD; THENCE, IN A NORTHEASTERLY DIRECTION ALONG THE COMMON LINE OF THE SUBJECT TRACT AND THE EASTERLY LINE OF MARVIN E. ASHLEY (NOW OR FORMERLY) AS DESCRIBED IN DEED BOOK 2686 PAGE 277, MECKLENBURG COUNTY REGISTRY, N 18°34'11" E, 297.69 FEET TO A FOUND 1 1/4" PIPE; THENCE, CONTINUING IN A NORTHEASTERLY DIRECTION ALONG THE COMMON LINE OF THE SUBJECT TRACT AND THAT FC CALDWELL, LLC TRACT (NOW OR FORMERLY), AS DESCRIBED IN DEED BOOK 11182 PAGE 147, MECKLENBURG COUNTY REGISTRY, THENCE N 18°42'18" E, 658.04 FEET, TO A #4 REBAR; THENCE WITH A NEW LINE S 52°36'57" E 63.57 FEET TO A #4 REBAR, THENCE S 18°23'20" E 42.59 FEET TO A NEW IRON PIPE, THENCE S 36°36'50" E 139.56 FEET TO A SET #4 REBAR, THENCE S 54°44'28" E 385.09 FEET TO A SET IRON PIPE IN THE NEW LINE OF THE SAID F.C. CALDWELL LANDS, THENCE ALONG SAID NEW LINE THE FOLLOWING 4 COURSES AND DISTANCES: (1) S 00°53'40" W 190.79 FEET TO A SET #4 REBAR, (3) S 31°14'41" W 203.05 FEET (2) S 18°16'55" W 207.88 TO A SET #4 REBAR, TO A SET #4 REBAR TO A SET #4 REBAR, AND (4) S 47°52'46" W 306.02 FEET BEING THE POINT AND PLACE OF BEGINNING. CONTAINING WITHIN THESE METES AND BOUNDS, 11.983 ACRES, MORE OR LESS, AS SHOWN ON THAT SURVEY MAP TITLED "ALTA/ACSM BOUNDARY SURVEY OF: TAX PARCEL # 05-118-106 AND A PORTION OF PARCEL # 05-121-107" DATED JANUARY 25, 2001, AND PREPARED BY STANTEC CONSULTING, INC. SIGNED AND SEALED BY THOMAS M. BEER, L-3029, TO WHICH REFERENCE IS MADE.

Together with that certain Easement Agreement appurtenant to the above land between FC Caldwell, LLC, and Portrait Homes Construction Co., dated September 26, 2001, recorded in Book 12703, page 622

EXHIBIT B

Arbitration Rules for the Real Estate Industry (including a mediation alternative) as amended and effective September 1, 200 as published by the American Arbitration Association©.

(Incorporated herein as if fully set forth.)

(available on internet and published on the American Arbitration Association's website, www.adr.org)

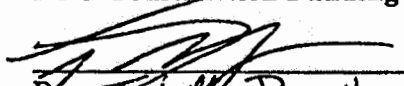
Consent of Mortgage Holder

The undersigned Lender ("Lender") is the owner and holder of a Promissory Note (the "Note") dated December 3, 1999 in the original principal amount of \$25,000,000, which Note is secured by a lien upon the herein described Existing Property pursuant to that certain Deed of Trust or Mortgage (the "Deed of Trust"), dated October 5, 2001, recorded in Book 12779, Page 206 of the Real Property Records of Mecklenburg County, North Carolina.

Lender hereby consents to the execution and recording of this Declaration, consents to the creation of the covenants, conditions and restrictions herein established against the Properties pursuant to the Declaration and agrees that the Deed of Trust and the lien and security interests thereof (together with any and all other liens and security interests in favor of Lender against the Properties given to secure the payment and performance by Declarant of the indebtedness and the other obligations of Declarant under the Note, the Deed of Trust and any and all other instruments and agreements given to secure payment of the Note) are hereby subordinated to this Declaration and to the covenants, conditions and restrictions contained herein; provided, however, that no lien or assessment created by or arising under this Declaration (including, specifically, but without limitation, the lien for assessments created in Section 1 of Article V of this Declaration) shall be prior or superior to the Deed of Trust, and as to any which liens or assessments created by or arising under this Declaration the lien and security interests of the Deed of Trust shall remain prior and superior at all times. It is the intention of Lender and Declarant that in the event of any foreclosure of the Deed of Trust or in the event of any conveyance in lieu of such Deed of Trust this Declaration and all covenants, conditions, restrictions and other rights and duties created herein will remain in place and in full force and effect against the Properties and all parties bound by the Declaration as if no such foreclosure or transfer in lieu of foreclosure had occurred.

LENDER:

RFC Construction Funding Corp.


By: Tad McDonnell
Title: Asst. Vice President