

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE TOWNES OF FLORIBUNDA

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**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE TOWNES OF FLORIBUNDA**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, is made this 30<sup>th</sup> day of January, 1997, by FLORIBUNDA ASSOCIATES LIMITED PARTNERSHIP, a Pennsylvania limited partnership ("Developer").

**W I T N E S S E T H:**

WHEREAS, Developer is the developer of a certain parcel of real estate located in East Pennsboro Township, Cumberland County, Pennsylvania, identified as Phase III of Floribunda Heights known as The Townes of Floribunda (the "Property"), the legal description of which is attached hereto as Exhibit A and is incorporated herein; and

WHEREAS, Developer has obtained final subdivision approval for Section A of the Property as recorded in Cumberland County Plan Book 72, Page 36. Section A contains 23 residential lots numbered Q1 to Q23 inclusive; and

WHEREAS, Developer anticipates receiving final subdivision plan approval for Section B of the Property which will contain 37 townhouse lots and a parcel of open space located in the cul-de-sac proposed for Section B of the Property (the "Common Area"). The subdivision plans for Sections A and B of the Property are together hereafter referred to as the Plan; and

WHEREAS, Developer desires to subject the Property to the protective covenants and restrictions set forth herein which will enhance and preserve the value of the townhouses to be constructed within the Property; and

WHEREAS, Developer has concurrently created The Townes of Floribunda Homeowners Association (the "Association") as a Pennsylvania nonprofit corporation for the purpose of maintaining and administering the Common Area; administering and enforcing the covenants and restrictions; and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the easements, covenants, restrictions, charges and liens (sometimes referred to as "Covenants and Restrictions") set forth herein.

**ARTICLE I  
DEFINITIONS**

**Section 1.** The following words when used in this Declaration shall have the following meanings:

- A. "**Board**" shall mean the Board of Directors of the Association, the members of which shall be designated by the Developer until 75% of the Lots within the Property are sold to third party residential purchasers.

- B. “**Lot**” shall mean a residential building lot, together with all improvements constructed thereon, within the Property as shown on the Plan.
- C. “**Owner**” shall mean the record owner, whether one or more persons or entities of the fee simple title to any Lot and shall not mean any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure, thereby excluding those having such interest merely as security for the performance of an obligation.
- D. “**Member**” shall mean the Owner of a Lot who shall be a member of the Association.
- E. “**Townhouse**” shall mean the residential structure located on a Lot having one or more party walls in common with another Townhouse. The term Townhouse shall include any porches, decks, patios or other improvements which are appurtenant thereto.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. The Property.** The Lots shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. Upon the recordation of the final subdivision plan for Section B of the Property, the provisions of this Declaration shall automatically apply to the Lots and the Common Area contained therein.

**Section 2. Restrictions for Use and Development.** The Lots shall be subject to the following restrictions which are imposed as a common scheme for the Property:

- A. Only Townhouses shall be designed, erected, maintained and occupied on the Lots.
- B. No building or any part thereof shall be erected or maintained that does not comply with the Plan or this Declaration.
- C. The owner of a Lot shall not commence any landscaping improvement, including but not limited to the planting of shrubs or trees, until the Architectural Control Committee has reviewed and approved the proposed plan showing the type of landscaping to be placed on the Lot. The provisions of this section shall not apply to the Developer during original construction.
- D. Trailers, tents, shacks, garages, unfinished basements or any structures of a temporary character may not be used as a temporary or permanent residence on a Lot.
- E. No Lot shall be used for the storage of anything that appears unclean or untidy, or that will be obnoxious to the eye, nor shall anything be done within the Property which may be or may become an annoyance, nuisance, or of aesthetic damage to the neighborhood.

Firewood, bicycles, lawn mowers, garden tools, furniture, and all other such articles shall be stored in areas appropriately located on the Lot to the rear of the Townhouse or in the garage, within the building set back lines shown on the Plan, and screened from all streets, side and rear Lot lines, with a structure, shrubs or hedge, in a location and manner approved by the Architectural Control Committee.

- F. Fences, hedges, and shrubs shall not be erected, planted or maintained outside of the building setback lines as set forth on the Plan or extend beyond the side building line for Lots containing end Townhouses; and shall require prior written approval by the Architectural Control Committee.
- G. No trees may be planted within ten (10) feet of the line of any street, without the consent of the Architectural Control Committee, said area being reserved for street planning, and the Developer or Architectural Control Committee reserves the right to plant trees up to five (5) feet inside of any Lot line which is in the line of the street.
- H. All trees, shrubs and structures shall be located and maintained so that the sight distance from vehicles is not obstructed at all street and driveway intersections, the location of which shall be approved by the Architectural Control Committee.
- I. No commercial vehicles or other non passenger vehicles, trucks (in excess of  $\frac{3}{4}$  ton), trailers, boats, boat trailers, snowmobiles, travel trailers, motor homes, mobile homes and only operable passenger vehicles as defined by the Pennsylvania Vehicle Code, Act of June 17, 1976, P.L. 162, Number 81, as amended, having current Pennsylvania inspection stickers may be parked or maintained on any street or Lot within the Property, other than as may be used by the Developer, its contractors and employees, in conjunction with building and maintenance operations.
- J. No trash, garbage, refuse, rubbish, cuttings or other waste or demolition debris shall be deposited on any Lot, street, sidewalk or parking area, except in containers, which containers shall be kept in a clean and sanitary condition. The containers provided by the Lot Owners shall not be placed on any street, sidewalk or parking area except when necessary for collection and shall regularly be kept inside of the garage or in a location on the Lot which shall be unobtrusive and screened from the view of the neighbors. The containers may be put out for collection no earlier than 24 hours prior to regularly scheduled pick-up and shall be returned to their regular storage location promptly thereafter.
- K. No Lot shall be used in the raising, breeding or keeping of animals of any kind, except dogs and cats, or other domesticated household pets. A maximum of three (3) pets may be kept on any Lot, and may not be kept, bred, or maintained for any commercial purpose. No domesticated household pet shall be kept in outside pens, chains, stakes or runs. No barking dogs, upon notice to the dog's owner by the Board, shall be permitted outside the home between 10:00 PM and 6:00 AM.
- L. Only tanks for storage of fewer than ten (10) gallons of gas or liquids may be maintained on any Lot, which tanks shall not be visible from any street.

- M. No statues, sculptures, bird baths, replicas of animals or other lawn ornaments may be placed on any Lot.
- N. All mail shall be received at designated locations. No newspaper delivery boxes or similarly related boxes shall be erected on any Lot.
- O. Owners shall make a reasonable effort not to park their vehicles on the streets within the Property.
- P. No device for receiving or transmitting of television or radio signals greater than eighteen (18) inches in diameter shall be installed on any Lot. Any such device shall be mounted or located so that it is not visible from the street.
- Q. No sign of any kind shall be displayed to public view on any Lot except a one family name sign of not more than 144 square inches or one sign of not more than five (5) square feet advertising the Lot for sale or rent or signs used by a builder to advertise the Lot during construction and/or the original sale period.
- R. Outdoor “pole” lights of a uniform design shall be located and installed throughout the Property by the Developer. Any other outdoor lighting must be approved by the Architectural Control Committee.
- S. All utility service lines shall be installed underground to the extent feasible.
- T. All Lot Owners are subject to all covenants, restrictions, right-of-way and easements of record, as well as subject to all present and future zoning ordinances or building regulations of the Township of East Pennsboro, Cumberland County, Pennsylvania and the Article of Incorporation, By-Laws and Rules and Regulations of the Association.
- U. In connection with the construction of the Townhouses, the eaves of the roof of a Townhouse may overhang or encroach upon the Townhouses constructed on adjoining Lots. Accordingly, each Lot shall be subject, to the extent necessary, to a perpetual easement for the encroachment for the overhang of said roof over each Lot.
- V. All clotheslines, equipment, garbage cans, woodpiles, and storage piles shall be kept at the rear of the Townhouses screened by adequate planting or fencing so as to reasonable conceal them from view of neighboring Lots and streets. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.
- W. No swing sets, jungle gyms, ponds or pools of any kind may be placed on any Lot except that hot tubs or whirlpools may be permitted if approved in writing by the Architectural Control Committee as to proper screening, size and location.

- X. After construction of an approved privacy fence upon a Lot, the Owner shall be responsible for all maintenance of the fence and the enclosed area, including grass cutting. The Owner shall not be entitled to any reduction in Assessments.
- Y. Developer shall have right to transact on the Property any business necessary to complete the construction of the Townhouses within the Property, and to consummate the sale of the Townhouses, including but not limited to the right to maintain models, display signs, sales offices and management offices; the right to use any portion of the Property which Developer owns for such purposes as Developer may deem appropriate; the right to maintain construction equipment, including construction trailers; and the right to conduct construction activities on the Property.

### **ARTICLE III**

#### **THE ASSOCIATION**

**Section 1. Membership.** Every person or entity who is a record owner of a fee interest in any Lot shall be a Member of the Association, provided that any such person or entity which holds such interest merely as a security for the performance of an obligation shall not be a Member.

**Section 2. Voting.** Each Member of the Association will be entitled to one (1) vote per Lot. Where a Lot is owned by more than one (1) person or entity, all parties having an interest shall be Members of the Association, and their one vote shall be cast as the majority of them shall determine among themselves. No Lot vote shall be counted where the respective Lot Owners fail to agree on how it shall be cast.

**Section 3. Rules and Regulations.** The Association shall have the power to promulgate reasonable rules and regulations regarding the use and occupancy of the Property. All rules and regulations shall be issued in accordance with the By-Laws of the Association. The Board shall have the power to enforce all such rules and regulations by appropriate means.

### **ARTICLE IV**

#### **RIGHTS IN THE COMMON AREA**

**Section 1. Easement of Enjoyment.** Every Owner of a Lot, and his immediate family, guests, tenants and invitees, to the extent permitted by the By-Laws of the Association shall have a nonexclusive easement of enjoyment in the Common Area, including any improvements erected thereon. This easement shall be an appurtenance to and shall pass with the title or lease to every Lot. No Lot Owner shall be permitted to obstruct the Common Area in any way.

**Section 2. Use of Common Area During Period of Construction and Sale.** Easements of pedestrian and vehicular access, ingress and egress, including construction vehicles, over the Property, are hereby reserved in favor of the Developer, its successors and assigns. The Developer also reserves easements throughout the Property on behalf of itself and such others for (i) the storage of construction materials, construction equipment and machinery; (ii) for the purpose of installation, maintenance, use, repair and replacement of all sewer, water, power, telephone, gas and drainage pipes, lines, mains, conduits, wires, poles, transformers, pumps and any and all other equipment or

machinery necessary or incidental to the proper functioning of any utility or sewage or drainage systems; and (iii) for the installation, maintenance, repair and use of roads, paths and lighting, to facilitate completion and sale of the Lots.

**Section 3. Title to the Common Area.** At any time after recording of the subdivision plan for Section B of the Property, but in no event later than 9 days following the conveyance of the last Lot owned by it to a third party residential purchaser, Developer shall transfer legal title of the Common Area to the Association. Developer or the Association, as title holder, shall have the following authority with respect to the Common Area.

- (a) It may dedicate or transfer all or any part of the Common Area, together with improvements constructed thereon, to any public agency, authority or utility, provided that no such dedication and transfer by the Association shall be effective unless the approval of 67% of the Lot Owners shall have been obtained at an Association meeting held for such purpose.
- (b) It may grant easements for electricity, telephone, television and other utility services to the respective utilities or operating companies.

## **ARTICLE V**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Developer for each Lot owned by it within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, are hereby deemed to covenant and agree to pay to the Association: (1) annual assessments or charges ("Annual Assessment"); (2) special assessment ("Special Assessments") for purposes described in Section 4 below, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively, the "Assessments") shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Assessments shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due and shall not pass to his successor in title unless expressly assumed by the successor in title.

**Section 2. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the property and in particular for the improvement, maintenance and insurance of the Common Area and all services and facilities devoted to this purpose and related to the use and enjoyment thereof, for the restoration, repair and maintenance of the Townhouses within the Property, to the extent contemplated under Article X hereof, and for the payment of taxes on the Common Area.

**Section 3. Basis of Annual Assessments.** The Association, through its Board, shall uniformly fix the Annual Assessment per Lot based upon the estimated cost of carrying out the responsibilities of the Association. The Association shall prepare and submit to its members



for approval an annual budget at least thirty (30) days in advance of each calendar year. The Annual Assessments shall be applicable to all Lots and shall be assessable for the following purposes only:

1. The installation and maintenance of lawns, shrubbery, landscaping, plantings and related improvements upon the Common Area and the Lots, including grass cutting, fertilization and weed control, which are part of the comprehensive plan for the Property.
2. Liability and property damage insurance related to the Common Area and officers' and directors' liability insurance for the Association, each with limits as the Association deems advisable.
3. Capital reserves as deemed necessary for construction, repair or replacement of any improvements located within the Property which is the responsibility of the Association.
4. Snow removal from driveways, the Common Area and public sidewalks.
5. Management, accounting and legal services.
6. Real estate taxes on the Common Area.
7. Any other purpose which the Association shall deem proper by majority vote of the Members.

In the event of an Assessment which is not part of the comprehensive plan for the Property which pertains to one or more, but fewer than all, Lots, such Assessment shall be levied only against the benefited Lots.

The types and standards of maintenance provided by the Association for the Lots may be changed by the Association by the affirmative vote of the Owners at a meeting for such purpose as set forth in Sections 4 and 5 below.

**Section 4. Special Assessments.** In addition to the Annual Assessments, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, or to make up any shortfall in the current or prior year's budget caused by unexpected increases in budgeted items, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 5. Change in Annual Assessments.** Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may increase the Annual Assessments prospectively for any such period, provided that any such change that will increase the Annual Assessment to an amount greater than 10% of the current assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy, at a meeting duly

called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 6. Quorum for Any Action Authorized Under Sections 4 and 5.** The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (70) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments; Due Dates.** The Annual Assessments provided for herein shall commence on the date (which shall be the first day of any month) fixed by the Board of the Association to be the date of commencement.

The due date of any Special Assessment shall be fixed in the resolution authorizing such assessment.

**Section 8. Uniform Rate of Assessment.** Except as set forth in Section 3 above, both the Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots and shall be collected in such installments as the Board deems advisable.

**Section 9. Initiation Fee.** There shall be collected from the purchaser of every Lot a one-time Association initiation fee in the amount of One Hundred Fifty Dollars (\$150.00) which shall be collected at the time of settlement on every Lot, including all re-sales subsequent to the initial conveyance of a Lot from the Developer or builder to a third party residential purchaser. This shall be nonrefundable and nontransferable and shall not be credited toward any Annual or Special Assessments.

**Section 10. Duties of the Board.** The Board of the Association shall adopt a budget which shall fix the date of commencement and the amount of the Annual Assessment against each Lot for each year of at least thirty (30) days in advance of such date or period and shall, at the time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open for inspection by any Owner.

Written notice of the Assessments shall be sent to every Owner subject thereto at least thirty (30) days prior to commencement of such Assessments. Unless a majority of the Members vote to reject the proposed budget approved by the Board within 30 days of its submission to the Members, the budget is deemed ratified. In the event that the budget is not ratified, the budget last ratified shall be continued until such time as a subsequent budget is proposed by the Board and ratified by the Members.

The Association shall upon demand at any time furnish to any Owner liable for Assessments a certificate in writing signed by an officer of the Association, setting forth whether said

Assessments(s) has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**Section 11. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association.** If the Assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such Assessments shall become delinquent and shall become a continuing lien on the Lot and shall bind such Lot of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area, abandonment of his Lot, or for any other reason.

If any Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum to be compounded daily, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Owner personally obligated to pay the same or to foreclose the lien against the Lot, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

**Section 12. Subordination of the Lien to Mortgages.** The lien of Assessments shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon a Lot, Sale or transfer of any Lot will not affect the Assessment lien, provided, however, that the sale or transfer of any Lot to a mortgagee pursuant to mortgage foreclosure or any other proceeding in lieu of foreclosure shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

## **ARTICLE VI** **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as part of the original construction of the Townhouses and placed on the dividing line between the Lots shall constitute a party wall, and to the extent inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful arts or omissions shall apply thereto.

**Section 2. 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.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, either Owner who has shared the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution

from the other under any rules of law regarding liability for negligent or willful acts or omissions. All Owners shall obtain and maintain insurance coverage in an amount sufficient to protect against destruction or damage of the Owner's respective party walls by fire or other casualty and shall provide evidence of such coverage of the Association upon request.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL COMMITTEE**

**Section 1.**     Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to, change or alteration be made, including landscaping, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved topography by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. The Architectural Control Committee, as provided herein, shall have the right to approve or disapprove any such plans that, in its opinion, do not satisfy the criteria of this Article VII or the provisions of the Declaration. Until such time as the Architectural Control Committee is established by the Board, the Developer shall have the authority to approve such plans and specifications and shall be exempt from review by the Architectural Control Committee during original construction. After the conveyance of a minimum of fifty (50%) percent of the Lots, Developer may assign the right to appoint the members of the Architectural Control Committee to the Board of the Association.

**Section 2.**     Waiver. Failure of the Architectural Control Committee to act within thirty (30) days after it has acknowledged in writing the receipt of any design plans submitted for approval as required herein, shall be deemed a waiver of the right reserved herein to disapprove such plans, and the plans shall be deemed approved.

**Section 3.**     Landscape Maintenance. The Architectural Control Committee shall have right to cause each Owner: (a) to trim, prune, remove or replace any hedge, shrub, tree or other planting which, in the opinion of the Architectural Control Committee is unreasonably detrimental to adjoining Lots, obscures the view or is unattractive in appearance; (b) to care for vacant or unimproved portions of his Lot; (c) to remove grass, weeds, underbrush and rubbish therefrom; and (d) to do all things necessary or desirable to keep the Lot in neat and good order. In the event an Owner refuses to trim, prune, remove or replace such planting, or care for vacant or unimproved portions of his Lot, the Architectural Control Committee shall have the right to enter upon the Lot and to do such trimming, pruning, removal, replacement or care, as, in its opinion, is necessary, and the Owner shall be liable for the cost thereof. Such costs may be collected in the same manner as Assessments set forth in Section 11 and 12 of Article VI above.

## **ARTICLE VIII**

### **EXTERIOR MAINTENANCE**

**Section 1.**     Exterior Maintenance. Snow removal on the service walks on each Lot shall be the responsibility of the Lot Owners, and snow removal in driveways, the Common Area, and the public sidewalks along the streets within the Property shall be the responsibility of the Association,

provided that nothing herein shall be construed to prohibit the Association from removing snow on service walks located on the Lots.

**Section 2.**     Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the Annual Assessment to which such Lot is subject under Article V hereof and, as part of such Annual Assessment, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof. Provided that the Board of the Association, when establishing the Annual Assessment against each Lot for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

**Section 3.**     Access at Reasonable Hours. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day.

**Section 4.**     Maintenance by the Owner. No maintenance performed by the Owner which involves a change in exterior trim, color, building surfaces or other exterior improvements shall be inconsistent with the overall scheme and aesthetics of the Property, nor shall any such changes be made without the approval of the Architectural Control Committee.

**Section 5.**     Owner's Failure to Maintain. In the event an Owner of a Lot shall fail to maintaining the Townhouse or any other portion of the Lot in a manner satisfactory to the Architectural Control Committee, the Association, after approval by two-thirds vote of the Board, shall have the right, through its agents and employees, to enter onto the Lot and to repair, maintain, and restore the exterior of the Townhouse and any other portion of the Lot. The cost of the exterior maintenance shall be added to and become part of the Assessment to which the Lot is subject.

## **ARTICLE IX**

### **PERPETUAL ACCESS AND UTILITY EASEMENTS**

**Section 1.** In order to insure the maintenance and upkeep of the Lots, as well as the overall enjoyment of the Lots by the Owners, all Owners within the Property shall, and they do hereby grant, a perpetual easement to the other Owners for ingress, egress and regress over the Lots for the sole purpose of transferring lawn and garden equipment and tools, lawn furniture, patio or backyard equipment and other large items that given the nature of the Townhouse is otherwise not practical to carry through the Townhouse. Such ingress, egress, and regress over and through said Lots shall be used at reasonable times for the purposes herein stated and shall be exercised in such a way as to minimize disruption to the burdened Lots. In addition, an easement for ingress, egress, and regress is granted by the Owners to the Developer, its successors or assigns, and to the adjoining Lot Owners and their contractors, for the purpose of building and maintaining the exterior walls, roofs, and approved privacy fences on adjoining Lots, provided that such easement rights shall be exercised in such a way as to minimize disruption to the burdened Lots.

**Section 2.** In connection with the development of the Property, certain sanitary sewer facilities, water facilities, electrical distribution facilities, storm drainage facilities and other utilities will be constructed above ground or underground, over, across or under portions of the Lots, and each Owner of a Lot does, by acceptance of a deed to such Lot, grants an easement and right-of-way for the purpose of installing, maintaining, repairing or replacing such utilities as are or may be installed from time to time to serve one or more of the Lots.

## **ARTICLE X**

### **LIMITATION OF LIABILITY**

#### **Section 1. Limited Liability of the Board Members of the Association.**

A. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the person is or was a Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding.

B. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was a Board member or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action or suit by or in the right of the Association.

C. Indemnification under Sections A and B above shall be automatic and shall not require any determination that indemnification is proper, except that no indemnification shall be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

D. The Association shall advance expenses incurred by a Board member or of the Association who is entitled to be indemnified pursuant to the provision of this Article in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

E. The Association may, at the discretion of, and to the extent and for such Persons as determined by the Board of the Association, (i) indemnify any person who neither is nor was a Board member or officer of the Association but who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether brought by or in the right of the Association), by reason of the fact that the person is or was a representative of the Association, against expenses

(including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such threatened, pending or completed action, suit or proceeding and (ii) pay such expenses in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Association.

**Section 3. Indemnification Insurance.** The Board may obtain insurance to satisfy the indemnification obligations set forth in this Article, if and to the extent available.

## **ARTICLE XI** **GENERAL PROVISION**

**Section 1. Duration/Amendments.** The Covenants and Restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of an Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of 12 years from the date this Declaration is recorded, after which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said Covenants and Restrictions in whole or in part. Notwithstanding the preceding, the Developer shall have the right to amend this Declaration without the consent of the Owners for a period of seven (7) years from the date this Declaration is recorded in order to correct technical errors, for clarification, or to conform this Declaration to the requirements of the Federal Housing Administration, Federal National Mortgage Association, the Veterans Administration and/or any other government lending program (state or federal) so that the Lots and the prospective Owners thereof shall be eligible for and may participate in any governmental program which contributes to making available mortgage financing for the purchase of residential dwellings. Otherwise, this Declaration may be amended by the vote or written consent of 67% of the Owners of the Lots, and any such amendment shall be effective upon its recordation in the Office of the Cumberland County Recorder of Deeds.

**Section 2. Notices.** Any notice required to be sent to an Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 3. Enforcement.** Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the Lot to enforce any lien created by this Declaration; and failure by the Association or any Owner to enforce any Covenant or Restriction herein contained shall in not even be deemed a waiver of the right to do so thereafter.

**Section 4. Reservation.** Developer has submitted to the authorities of East Pennsboro Township certain plans for the future development of the Property, said plans having been submitted in order to fulfill the requirements of township ordinances and the Pennsylvania Municipalities Planning Code. Said plans are on file with East Pennsboro Township. The plans are part of the

public controls imposed by the township board, the developers, owners, residents and users of the Property, and they do not create, and are not intended to create, any private property or contract right in the owners and residents of the Property. The plans which the Developer has submitted to the township authorities represent a plan of development which the Developer believes will provide maximum benefits to the residents, owners and the public. During the extended development program, however, various factors can intervene which may hinder the effectiveness of such long-term plans and which may threaten the benefits to be realized by the residents, owners and the public, unless such plans can be modified as prescribed by the applicable township ordinances. Accordingly, this Declaration is not intended to nor do such plans continue to remain subject to modification by the proper township authorities in accordance with the procedures set forth in the ordinances of the township and the Pennsylvania Municipalities Planning Code.

**Section 5. 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 6. Joinder of Max D. Marbain.** By the execution of the Joinder set forth below, Max D. Marbain subjects those Lots which he owns to the provisions of this Declaration.



