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**BRAXTON PARK  
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made as of the 15<sup>th</sup> day of September 2006, by **BRAXTON PARK, L.L.C.**, a Virginia limited liability company, Grantor, hereinafter "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of real property located in Campbell County, Virginia, known as "Braxton Park" and described on Exhibit A to this Declaration, and which property is referred to herein as the "Development"; and

WHEREAS, in order to provide for the preservation and maintenance of the Common Area shown on the aforesaid plat and improvements thereon and any additional Common Areas hereafter made subject to this Declaration and to provide for the orderly and cohesive use, preservation and maintenance of Lots and Living Units in the Development, the Declarant desires to subject the Development to the covenants, restrictions, easements, charges, and liens of this Declaration of Covenants and Restrictions, said covenants, restrictions, easements, conditions, and charges running with the real property within the Development; and

WHEREAS, pursuant to § 13.1-814.1, Code of Virginia, the Declarant will incorporate a "community association" to be known as "Braxton Park Property Owners Association" (the "Association") under the laws of the Commonwealth of Virginia to provide a means for meeting the purposes and intents herein set forth.

NOW, THEREFORE, Declarant does hereby declare the real property within the Development to be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges, and liens (hereinafter referred to as "Covenants and Restrictions"), hereinafter set forth, which shall run with the real property within the Development and be binding on all parties having any right, title, or interest in the above-described real property or any portions thereof, their successors and assigns, and shall inure to the benefit of each Owner thereof.

AND FURTHER, the Declarant intends to delegate and assign to the Association the powers of owning, maintaining, and administering Common Areas, administering and enforcing the Covenants and Restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the preservation and enhancement of the property values, amenities, and opportunities in the Development.

Prepared by: Fralin, Feinman, Coates & Kinnier, P.C.  
2104 Langhorne Road  
Lynchburg, VA 24501

## ARTICLE I DEFINITIONS

Unless the context clearly indicates to the contrary, the terms listed below shall be construed in accordance with the following definitions:

Section 1. "Approval" shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights, or a formal letter stating "no objection."

Section 2. "Assessable Unit" shall mean and refer to any real property within the Properties that is subject to assessments, as provided in Article V.

Section 3. "Association" shall mean and refer to Braxton Park Property Owners Association, its successors and assigns.

Section 4. "Book of Resolutions" shall mean and refer to the document containing the rules and regulations and policies of the Association as they may from time to time be amended.

Section 5. "Common Areas" shall mean and refer to all portions of the Development and improvements thereon and all interests therein defined or designated as such by recorded plat or other instrument owned or controlled by the Association for the benefit of the Development. Common Area shall include, without limitation, all land and any structures and improvements thereon located outside the boundary of any Lot, as described on a plat entitled "Plat Showing Braxton Park – Section 1, College Magisterial District, Campbell County, Virginia", dated 6/13/05, made by Perkins & Orrison, Engineers, Planners, Surveyors, recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, as Instrument No. 060005478, at Plat Cabinet B, Slide 390, pages 2807-2808.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions and all other provisions herein set forth in this entire document, as supplemented or amended from time to time by Supplementary Declaration.

Section 7. "Declarant" shall mean and refer to Braxton Park, L.L.C., its successors and assigns; provided, however, that no successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically assigned by the Declarant by document recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, or unless said rights and obligations of the Declarant inure to the successor of Braxton Park, L.L.C., by operation of law. The rights and obligations set forth herein of the Declarant, as Declarant, shall cease when the Declarant or any successor no longer owns any Lot or December 31, 2016, whichever is sooner.

Section 8. "Development" shall mean and refer to all real property described on Exhibit A to this Declaration together with the potential land that may become a part of the Development as described on Exhibit B attached hereto to the extent annexed and subjected to this Declaration as amended or supplemented in accordance with Article II hereof.

Section 9. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, and the Bylaws of the Association, all as initially drawn by the Declarant and filed or recorded as the case may be, and all as may be duly amended from time to time.

Section 10. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 11. "Increment" shall mean any number of Lots with adjoining Living Units shown on a recorded plat of survey or subdivision.

Section 12. "Living Unit" shall mean and refer to a townhouse erected on any numbered lot shown upon any subdivision plat of the Development.

Section 13. "Lot" shall mean and refer to any numbered lot shown upon any subdivision plat of the Development (with the exception of Common Area as heretofore defined).

Section 14. "Members" shall mean and refer to members of the Association, each of whom shall be the Owner of a Lot or the Declarant.

Section 15. "Notice" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient or by email if requested by a Member and the Association has the capacity to transmit and receive email.

Section 16. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether referring to one person or entity or collectively to more than one person or entity who have joint ownership of a Lot. The term "Owner" does not include those having an interest merely as security for the payment or performance of an obligation.

Section 17. "Quorum of Members" shall mean and refer to the representation at a duly called meeting of the Members by presence or proxy of Members who hold at least the minimum percentage of the outstanding Class A votes required by the Bylaws of the Association, and the representation by presence or proxy of the Class B Member, so long as the Class B Member shall exist. In the event a "Quorum of Members" is not present at a duly called meeting of the Members, no action may be taken which requires the vote of a Quorum of Members.

Section 18. "Registered Notice" shall mean and refer to any Notice which has been sent by Certified or Registered U.S. Mail, return receipt requested, to the last known address of the intended recipient and which has been signed for or has been certified by the U.S. Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

Section 19. "Single Family" shall mean and refer to a single housekeeping unit that includes not more than three adults who are not legally related.

Section 20. "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions which may be recorded by the Declarant, which amends this Declaration, establishes provisions related specifically to an Increment of Lots upon recordation of the subdivision plat of such Increment and/or expands the Development beyond the land which is initially subjected to the Declaration.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. The Development. The Development is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. The Development is to be subdivided by Declarant into Lots and Common Areas in increments by means of subdivision plats to be made and recorded by Declarant from time to time.

Section 2. Additions to the Development. The Declarant shall have the unilateral right to subject to the Declaration any additional property that lies within the property described in Exhibit B to this Declaration by a subdivision plat and Supplementary Declaration recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia.

The Supplementary Declaration which subjects additional property to the Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration.

The Declarant is not required to add to the Development any or all of the property described in Exhibit B to this Declaration, nor to improve any portion of such lands unless and until a Supplementary Declaration is filed by the Declarant for such property which subjects it to this Declaration. Thereupon, the Declarant shall then be obligated to complete development of the portion of the Properties annexed by the Supplementary Declaration.

### ARTICLE III THE ASSOCIATION

Section 1. Organization. The Association shall be a nonprofit, non-stock corporation organized and existing under the laws of Virginia as a "community association" as defined in §13.1-814.1, Code of Virginia, and as a "property owners' association" pursuant to Chapter 26, Title 55, Code of Virginia, and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time.

#### Section 2. Membership.

(a) Member's Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents. All Owners must be Members of the Association and the Association may not discriminate by race, creed or sex with regard to Membership, or any rights, duties or obligations of Members.

(b) Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners except the Class B Member. Class A Members shall be entitled to one vote for each Lot owned. Class A membership shall be appurtenant to a Lot and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except as provided in the Governing Documents.

Class B. The Class B Member shall be the Declarant, or any successor or assignee to whom the Declarant assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the land records of Campbell County, Virginia. Such assignment shall only operate as to the land which is owned by such successor or assignee and which is referenced specifically in the instrument of assignment. The Class B Member(s) shall have the number of votes equal to two hundred percent (200%) of the total of the number of Class A votes outstanding at the time the vote is taken. In the event of the assignment by the Declarant of its rights as Declarant as to less than all of the land in the Development then owned by the Declarant the Class B votes shall be allocated between the Declarant and the assignee as agreed by the Declarant and the assignee and stated in the instrument of assignment.

The Class B membership and Class B voting rights shall cease upon the earliest of the date that the Declarant does not own more than twenty-five percent (25%) of the Lots in the Development or December 31, 2016. Thereafter, the Declarant shall have Class A membership rights for each Lot that it owns. For the purpose of this provision the term "vacant" shall mean a Lot with no building erected thereon and a Lot upon which Declarant has erected a building that has not been occupied and used as a residence by a tenant of Declarant. Once a building on a Lot has been occupied and used as a residence by a tenant of Declarant, Declarant shall have Class A membership rights and obligations for such Lot whether or not the Class B membership has ceased.

(c) Exercise of Vote. The vote for any membership held by more than one person may be exercised by any one of them, provided that no objection or protest by any other holder of such membership is made prior to the completion of a vote. If such protest is lodged prior to the completion of the vote, the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting.

### Section 3. Board of Directors.

(a) Composition. The number of Directors and method of selection of Directors shall be as provided in the Bylaws; provided, however, that the Class B Member shall be entitled to appoint the number of Directors sufficient to constitute a majority of the Directors until the Class B membership has ceased.

### (b) Extent of Power.

(1) The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Governing Documents and which are not specifically reserved to Members or the Declarant by said Documents.

(2) The Board of Directors shall exercise its powers in accordance with the Governing Documents.

(c) Powers and Duties. By way of example and without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:

(1) To acquire, own, hold, improve, maintain, and manage in the name of and on behalf of the Association the Common Areas for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging, or disposal of Common Area and/or improvements shall be subject to the provisions of Articles II and IV of this Declaration, any applicable County Ordinance, regulation and the Code of Virginia; and

(2) To establish rules and regulations for the use of property as provided in Articles IV and VI and to review, modify, and approve architectural standards adopted by the Architectural Review Board; and

(3) To fix, levy, and collect assessments as provided in Article V; and

(4) To grant and convey easements over and across the Common Area as may become necessary and as provided in Article VII; and

(5) To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association; and

(6). To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or enforced, suspending membership rights, or enforcing or effectuating any of the provisions of the Governing Documents;

Section 4. Fidelity Bonds. The Association may obtain fidelity coverage against dishonest acts on the part of Directors, officers, managers, employees, or agents responsible for handling funds collected and held for the benefit of the Association.

Section 5. Insurance. The Association shall maintain hazard insurance policies for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering the Common Areas.

#### ARTICLE IV COMMON AREA

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members of the Common Areas and Open Areas conveyed to it, including open spaces, private streets or alleys, parking areas, sidewalks and all improvements thereon or related to or serving any Common Area (including without limitation landscaping, paving, drainage facilities, signs, street lights, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order and repair in compliance with standards established by the Board of Directors.

Section 2. Additional Rights of the Association. The Board of Directors may authorize additional activities including, without limitation, the cleaning and maintenance of any portion of public rights-of-way within or abutting the Development located between the exterior boundary of the right-of-way and the paved or improved portion of the right-of-way, garbage and trash removal from the Common Areas or other portion of the Development (including Lots) and maintenance and cleaning of the roofs, decks and exterior of Living Units, party walls between adjoining Living Units and that portion of Lots not occupied by Living Units to the extent the Board of Directors shall determine from time to time.

Section 3. Easement of Enjoyment. Subject to the provisions herein, every Owner shall have a right and nonexclusive easement of access in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and every member shall have a right of enjoyment of the Common Areas subject to the provisions of Section 4 of this Article IV.

Section 4. Extent of Members' Easement. The Members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to convey or transfer, all or any part of the Common Areas, subject to the prior approval of Campbell County to the extent required by applicable law or regulation, the assent of sixty-seven percent (67%) of the Class A Members and the approval of the Class B Member;

(b) The right of the Association to regulate and limit the use of the Common Areas for the benefit of Members and the overall integrity of the Development;

(c) The right of the Association to establish rules and regulations for the use of the Common Areas;

(d) The right of the Association, at any time or times, consistent with the then existing zoning ordinances of Campbell County, and pursuant to a recorded subdivision or resubdivision plat approved by Campbell County, to transfer or exchange part of the Common areas to the Declarant or a Builder or Owner or at the direction of the Declarant for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Development, provided that:

(1) such transfer or exchange shall not reduce the portion of the Development set aside for Open Space by more than 10% of the total area of the Development set aside for Open Space,

(2) all Lots which were adjacent to Common Area prior to such transfer shall remain adjacent to Common Area after such transfer; and

(3) the adjustment shall not materially alter the nature of the Common Area.

Section 5. Delegation of Use. Any Member may delegate to a tenant or to the Member's or tenant's family and guests his right of enjoyment to the Common Area and facilities subject to such general regulations as may be established from time to time by the Board of Directors, and included within the Governing Documents.

Section 6. Title to Common Area. The Declarant hereby covenants that areas which the Declarant conveys to the Association as Common Areas shall be free and clear of liens and financial encumbrances at the time of conveyance. Partition of Common Areas among Members is prohibited.

Section 7. Amendment by Declarant. It is the intention of the Declarant to develop and build the Development in sections containing increments of any number of Lots with adjoining Living Units by recording a plat of survey or subdivision describing and locating one or more such increments. The Declarant may alter, change or amend the designation, size or dimensions of any portion of Common Area shown on any recorded plat of survey or subdivision of any section in any manner and to any extent until a Lot in such section is conveyed to an Owner. Subject to any right of approval on the part of Campbell County, the Declarant may unilaterally amend the subdivision plat of any such



section to add or convert any portion of the Common Area which constitutes Open Space to a Lot or other form of Common Area, including private streets or alleys, until all Lots in such increment are sold to Owners or the Common Area designated on the recorded plat or plats of such increment has been conveyed to the Association. Any such alteration, change, amendment, addition or conversion shall be subject to the conditions and limitations set forth in Section 2 of ARTICLE II of this Declaration as amended and shall be accomplished by recordation of an amended subdivision plat of such increment approved by Campbell County, Virginia.

## ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation for Assessments. The Declarant hereby covenants and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual and Special Assessments as are established herein and paid in the manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made and, except as provided in Section 2 of this Article V, no sale or transfer of any Lot shall affect the assessment lien. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who is the Owner of such property at the time the assessment becomes due but shall not pass as a personal obligation to a successor in title unless expressly assumed by them. The lien of any assessment may be perfected and enforced in accordance with § 55-516, Code of Virginia, 1950, as amended, or any other applicable law.

Section 2. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority mortgage or first priority deed of trust. The sale or transfer of any Lot pursuant to foreclosure of a first priority mortgage or first priority deed of trust 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 sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3. Method of Assessment. All assessments shall be levied by the Association against Lots, and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments and set the dates such assessments shall become due.

Section 4. Annual Assessments. Annual Assessments shall be payable in such installments as the Board of Directors may determine but not less frequently than quarterly.

Assessments shall be used to improve, maintain, and operate the Common Areas and facilities, the periodic cleaning and caulking of the exterior walls of Living Units and the periodic repair and replacement of exterior decks, roofs and gutters of all Living Units and shall include the funding of appropriate reserves for future maintenance, repair, and replacement.

Until the first day of the fiscal year following commencement of assessments, the maximum Annual Assessment rate for one year shall be \$840.00.

From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum each year by not more than ten percent (10%) of the maximum for the current fiscal year.

Such increase shall become effective the first day of the next fiscal year. From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board with the affirmative vote of a majority of the Class A Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and with the consent of the Class B Member, if Class B membership has not ceased.

#### Section 5. Special Assessments.

##### (a) Maintenance of Party Walls.

(1) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Living Unit in the Development subject to this Declaration and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(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.

(3) 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 repair or restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of repair or 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 others under any rule of law regarding liability for negligent or willful acts or omissions.

(4) Weatherproofing. Notwithstanding any other provisions of this Section, any Owner who by his 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.

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

(6) Association's Right to Repair and Maintain. In the event that any Owner shall fail to maintain a party wall in a manner satisfactory to the Board of Directors, the Association, after thirty (30) days' prior written notice to such Owner, and upon affirmative vote of a majority of the Board of Directors, shall have the right (but not the obligation), through its agents and employees, to enter upon such Lot and adjoining Living Units and to repair, maintain, and restore the party wall. The cost of such repair and maintenance shall be a Special Assessment to which such Lot is subject.

(b) Capital Improvement Assessment. The Association may levy in any assessment year a Special Assessment against Lots, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, any major and/or extraordinary cleaning of exterior surfaces and roofing and gutter work of any Living Unit or other specified purpose, provided that any such assessment shall require the affirmative vote of two-thirds of the Class A Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if Class B membership has not expired.

(c) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VI, Section 2, or who fails to provide such maintenance funds as may be required by the Supplementary Declaration for such Lot. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide Notice of such delinquency as provided by law and may (a) declare the entire balance of such Annual or Special Assessment due and payable in full; (b) charge interest from the due date at a percentage rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate then permitted by law, such rate to be set by the Board for each Assessment period; (c) charge a penalty to be set by the Board of Directors not exceeding twenty percent (20%) of the installment; (d) mail Notice to the Owner, by certified mail, at the Owner's last known address that in the event payment with accrued interest and penalties are not paid within ten (10) days from the date such Notice is mailed, then the lien provided for herein shall be perfected by recordation of a Memorandum of Lien at the Clerk's Office of the Circuit

Court for the City of Lynchburg, Virginia; and (e) upon Registered Notice to the Owner or Occupant of the Lot, suspend the right of such Owner or Occupant to vote until the assessment, accrued interest, penalties, and costs of collection are paid in full.

## ARTICLE VI USE OF PROPERTY

### Section 1. Protective Covenants.

(a) Nuisances. No nuisance shall be permitted to exist or operate upon any of the Properties so as to jeopardize property values or be detrimental to the well being of Members.

(b) Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, easements to public agencies or authorities, or for utilities.

(c) Conditions for Architectural Control. No improvements, alterations, repairs, change of exterior colors, excavations, changes in grade, or other work which in any way alters the exterior of any Lot or Living Unit or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed to an Owner by the Declarant shall be made or done without the prior approval of the Board of Directors.

(d) Residential Use. All Lots and Living Units shall be used, improved, and devoted exclusively to residential use, except home occupations may be pursued if permitted by Campbell County and approved in writing by the Board of Directors, subject to rules and regulations adopted by the Board of Directors to prevent unreasonable adverse impact on adjacent Lots and Living Units. Nothing herein shall be deemed to prevent an Owner from leasing a Living Unit to a Single Family, provided such lease shall be in writing and subject to all of the provisions of the Governing Documents with any failure by a lessee to comply with the terms of the Governing Documents constituting a default under the lease.

(e) Vehicles. Parking, use and storage of all vehicles and recreational equipment within the Development shall be subject to the rules and regulations adopted by the Board of Directors.

(f) Satellite dishes with a diameter of more than eighteen (18) inches are prohibited, unless approved in writing by the Board of Directors. All dishes must be mounted on the rear of a Living Unit and no dish shall be mounted on a roof or affixed to a gutter or downspout.

(g) Signs. No signs of any type shall be displayed to public view on any Lot, Common Area or Open Area without the prior written approval of the Board of Directors, except customary name and address signs meeting standards established by the Board of Directors and real estate sale signs of the usual and customary size and design utilized by Realtors for placement on residential lots which shall be removed immediately when a binding contract or lease has been entered into for the Lot.

(h) Fences, Walls and Enclosures. No fences, walls or other enclosures may be erected on any Lot without written approval of Declarant.

(i) Surfacing of Driveways and Entrances. All driveways or vehicle entrances on lots shall be surfaced with asphalt or concrete.

(j) Leases. All leases of Living Units within the Development shall be for a minimum of twelve (12) months. Leases shall be valid only if the tenant acknowledges receipt of a copy of the rules and regulations of the Association and the lease shall state such acknowledgment. Approved lease language meeting this requirement may be provided by the Board of Directors.

(k) Rules and Regulations. The Rules and Regulations adopted by the Board of Directors may set forth further restrictions, limitations and requirements for the use, occupancy and appearance of Lots and Living Units.

(l) Exceptions. The Board of Directors may permit exceptions to any prohibitions or requirements expressed or implied by this section, provided that Board can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Declarant is engaged in developing or improving any portion of the Development, it shall be exempted from Rules and Regulations affecting movement, disposition, and storage of building materials and equipment, erection and maintenance of directional and promotional signs, and conduct of sales activities, including maintenance of model Living Units.

## Section 2. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not undertaken by the Association pursuant to Section 2 of Article IV or otherwise provided for in this Declaration or a Supplementary Declaration, the Owner of each Lot and Living Unit shall keep the Lot and Living Unit and all improvements therein or thereon, including party walls, in good order and repair, free of debris, all in a manner and with such frequency as is consistent with good property management.

(b) Failure to Maintain. In the event an Owner of any Lot and Living Unit in the Development shall fail to maintain the Lot and the improvements situated thereon as provided herein, the Association, after Notice to the Owner and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain, and restore the Lot and the exterior of the Living Unit

and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided for herein for nonpayment.

### Section 3. Resale of Lots.

(a) Reference to Declaration. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the Covenants and Restrictions set forth in this Declaration as well as any applicable Supplementary Declaration. Failure of any such deed to insert such provision in a deed shall not to any extent limit, abrogate or affect the applicability of such Covenants and Restrictions to any Lot.

(b) Notification. Further, the contract seller of a Lot shall disclose in the contract that the Lot is in a development subject to the Virginia Property Owners' Association Act and, more than fourteen days prior to the closing date, notify the Board of Directors of the name and address of the contract purchaser and the scheduled date and place conveyance will be accomplished (the "closing date"). The seller shall be provided a disclosure packet pursuant to §§ 55-511 and 55-512 of the Code of Virginia, 1950, as amended, which packet shall include a statement of any assessments and charges due upon such Lot as of the closing date whether there are violations of the Governing Documents as to the Lot as of the date of preparation of such packet.

## ARTICLE VII EASEMENTS

Section 1. Easements for Encroachments and Support. Each Lot, Living Unit and the property included in the Common Area shall be subject to an easement for encroachments created by the construction, settling, and overhangs of Living Units and other structures designed or constructed by the Declarant. A valid easement for said encroachments and the maintenance of same, so long as it stands, shall and does exist. In the event that the Living Unit on a Lot shall be partially or totally destroyed, and then rebuilt, the owner of the Lot so affected agree that minor encroachments of parts of the adjacent Living Units due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Every portion of a Living Unit contributing to the support of an abutting Living Unit shall be burdened with an easement of support for the benefit of such abutting Living Unit.

### Section 2. Utility Easements.

(a) There is hereby created and granted to the provider thereof an easement upon, across, over, through, and under the Development, including but not limited to Lots and Common Areas, for ingress, egress, installation, replacement, repair, operation (including reading and checking meters), inspection and maintenance of all utility and service lines and systems, including, but not limited to, water, sanitary sewers, storm water drainage, gas, telephones, electricity, television, cable, or communication lines and systems.

(b) Notwithstanding anything to the contrary contained in this Section 2: (1) no sanitary sewers, storm water drainage facilities, electrical lines, water lines, gas lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved or granted by the Declarant prior to the termination of the Declarant's rights or by the Association thereafter, and (2) this paragraph shall not be construed to apply to the relocation, installation, or removal of utility lines within a Lot which serve only that Lot.

(c) This Section 2 shall in no way affect any other existing recorded easements on the Development.

Section 3. Declarant's Easements to Correct Drainage. For a period of five (5) years from the date of submission of each Lot to this Declaration, the Declarant reserves an easement and right on, over, and under the ground within each Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, to perform any grading of the land, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as nearly as is practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

Section 4. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Declarant is engaged in developing or improving any portion of the Development, the Declarant and its contractors, employees, agents, and assigns shall have an easement of ingress, egress, and use over any portion of the Development not conveyed as a Lot to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities, including maintenance of model residences. Such easement shall be subject to such rules as may be established by the Declarant to maintain reasonable standards of safety, cleanliness, and general appearance of the Development.

Section 5. Easement to Inspect. There is hereby created an easement in favor of the Declarant and the Association for ingress and egress on any Lot (a) to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements and (b) to perform such maintenance as is required by this Declaration for such property, provided the Owner is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

Section 6. Easement for Governmental Personnel. A right of entry on the Development is hereby granted to authorized governmental employees and agents,

including law enforcement officers and fire and rescue personnel, as is needed to carry out their duties, including enforcement of cleared emergency vehicle access.

Section 7. Easement for Landscaping, Signs, and Related Purposes. There shall be and is hereby reserved to the Declarant, for so long as it retains its rights as Declarant, a nonexclusive easement over all Lots and Common Areas for a distance of five (5) feet from a street (whether public or private) or parking area for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or related landscaping. Exercise of this easement will be with the consent of the Owner of the affected Lot, or the Board of Directors of the Association if the said Owner does not consent.

## ARTICLE VIII GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless the Covenants and Restrictions are expressly terminated by an instrument signed by not less than seventy-five percent (75%) of the Class A Members and the Class B Member. A termination must be approved by Campbell County, Virginia, and be recorded in the Clerk's Office of the Circuit Court of said County in order to become effective.

Section 2. Amendment. As to any Section of the Development, the Declarant may amend this Declaration in any manner and to any extent until a Lot in the Section is conveyed to an Owner. As to those areas of the Development not subdivided into Lots by a recorded subdivision plat of a Section, the Declarant may amend this Declaration in any manner and to any extent until any portion of such area is subdivided by a recorded subdivision plat into a Section and a Lot in that Section is conveyed to an Owner. For a period of three (3) years after the recording of this Declaration, the Declarant may make any amendment unilaterally which is required by Campbell County, Virginia, by the execution and recordation of such amendment following Registered Notice to all Owners. Otherwise, any amendment must be approved by a majority of the Class A Members present and voting in person or by proxy at a meeting of the Members after notice that sets forth the amendment and by the Class B Member. At such time as the Class B membership ceases, any amendment must be approved by more than two-thirds of the Class A Members present and voting in person or by proxy at a meeting of the Members after notice that sets forth the amendment. Any amendment must be approved by Campbell County, Virginia, to the extent required by applicable ordinance and recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, in order to become effective.

Section 3. Enforcement. The Association, the Declarant, any Owner or Campbell County, Virginia, as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens,



and charges now or hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Certain Rights of the Declarant. For such time as the Declarant shall own Lots, its rights and interests shall not be prejudiced by any of the following actions unless it shall, in writing, join in such actions:

There shall be no amendments to the Founding Documents which:

- (a) Discriminate or tend to discriminate against its rights as an Owner;
- (b) Change Article I, Definitions, in a manner that alters its rights or status;
- (c) Alter the character and rights of membership or the rights of the Declarant as set forth in Article III;
- (d) Alter previously recorded or written agreements with public or quasi-public agencies as regards easements and rights-of-way;
- (e) Deny the right to convey Common Area to the Association so long as such Common Area lies within the land area represented in the Development or Development Limits;
- (f) Alter its rights as set forth in Article III relating to design controls;
- (g) Alter the basis for assessments;
- (h) Alter the provisions of the protective covenants as set forth in Article VI;
- (i) Alter the number or selection of Directors;
- (j) Alter the Declarant's rights as they appear under this Article.

Section 5. Management Contracts. Until such time as the Class B membership expires, the Declarant shall have the right to enter into professional management contracts for the management of the Development; provided, however, that such contracts shall not be for more than three (3) years, and the Association shall have the right to terminate such contracts, with or without cause, upon ninety (90) days' written notice given to the other party, or upon the expiration of the rights of the Declarant as set forth in Article I, Section 7.

Section 6. Limitations. As long as the Declarant has an interest in developing the Development as defined in Article I hereof, the Association may not use its financial resources to defray any costs of opposing the development activities of the Declarant.

Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 7. Severability. Invalidation of any one of those 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 8. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then the Articles of Incorporation of the Association, then the Bylaws, then the Book of Resolutions; except that in all cases where the Governing Documents are found to be in conflict with statute, the statute shall control.

Section 9. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Development by providing a common plan for the development thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

#### ARTICLE X DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved with the written consent of seventy-five percent (75%) of the Class A Members and the consent of the Class B Member, if any. Prior to the dissolution of the Association, other than incident to a merger or consolidation in accordance with Section 3, ARTICLE II of this Declaration, the assets of the Association shall be offered for dedication to Campbell County. In the event that such dedication is refused acceptance, upon dissolution such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to similar purposes.


IN WITNESS WHEREOF, the Declarant, Braxton Park, L.L.C., has caused this Declaration to be duly executed in its name and on its behalf by all of its members and managers this 21 day of September, 2006.

Braxton Park, L.L.C.

By

  
Mark A. Borel, Member/Manager

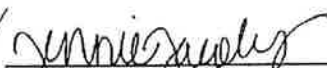
By

  
Gordon T. Cudd, Member/Manager

By   
 Steven H. Behnke, Member/Manager


STATE OF VIRGINIA  
 CITY/COUNTY OF Lynchburg

The foregoing instrument was acknowledged before me this 21 day of September, 2006, by Mark A. Borel as Member/Manager of Braxton Park, L.L.C., on behalf of the company.

My Commission expires: Oct. 31, 2008   
 NOTARY PUBLIC

STATE OF VIRGINIA  
 CITY/COUNTY OF Lynchburg

The foregoing instrument was acknowledged before me this 21 day of September, 2006, by Gordon T. Cudd as Member/Manager of Braxton Park, L.L.C., on behalf of the company.

My Commission expires: Oct. 31, 2008   
 NOTARY PUBLIC

STATE OF VIRGINIA  
 CITY/COUNTY OF Lynchburg

The foregoing instrument was acknowledged before me this 21 day of September, 2006, by Steven H. Behnke as Member/Manager of Braxton Park, L.L.C., on behalf of the company.

My Commission expires: Oct. 31, 2008   
 NOTARY PUBLIC

43006.06

**EXHIBIT A TO  
BRAXTON PARK  
DECLARATION OF COVENANTS AND RESTRICTIONS**

**PROPERTY DESCRIPTION**

All those certain lots or parcels of land, together with the privileges and appurtenances thereunto belonging, located in Campbell County, Virginia, designated and described as all of Lots 1 through 70, inclusive, shown on a plat entitled "Plat Showing Braxton Park – Section I, College Magisterial District, Campbell County, Virginia", dated 6/13/05, made by Perkins & Orrison, Engineers, Planners, Surveyors, recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, as Instrument No. 060005478, at Plat Cabinet B, Slide 390, pages 2807-2808 (the "Plat"), and including the Common Area consisting of parcels designated and described on the Plat as follows:

1. The 50' private right of way designated on the Plat as "Logan Lane";
2. The 50' private right of way designated on the Plat as "Rowse Drive;
3. The 0.062 acre tract designated on the Plat as Common Space.

This is part of the same property conveyed from Bank of America, N. A., Executor and Trustee under the Will of W. Logan Rowse, deceased, to Braxton Park, LLC by deed dated June 14, 2005, and recorded in the Clerk's Office of the Circuit Court for Campbell County, Virginia as Instrument No. 050004590.

*The 0.838 tract designated on the Plat as "Outlot 1" and located on the southerly and easterly side of Lot 1, is not part of the Development and shall not be subject to this Declaration of Covenants and Restrictions.*

**EXHIBIT B TO  
BRAXTON PARK  
DECLARATION OF COVENANTS AND RESTRICTIONS**

**PERMITTED ADDITIONS TO THE DEVELOPMENT**

All that certain tract or parcel of land, together with the buildings and improvements thereon and the privileges and appurtenances thereunto belonging, located in College District, Campbell County, Virginia, and being Parcel #A, 28.236 acres, as shown and designated on a plat entitled "Plat Showing the Division of the Property of W. Logan Rowse, College District, Campbell County, Virginia", dated November 14, 1999, made by Hurt & Proffitt, Inc., J. A. Michael Nichols, L. S., recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia, in Plat Cabinet B, Slide 243, page 1238, LESS AND EXCEPT the property described on Exhibit A to the Declaration of Covenants and Restrictions to which this Exhibit B is attached.

This is part of the same property conveyed from Bank of America, N. A., Executor and Trustee under the Will of W. Logan Rowse, deceased, to Braxton Park, LLC by deed dated June 14, 2005, and f This is part of the same property conveyed from Bank of America, N. A., Executor and Trustee under the Will of W. Logan Rowse, deceased, to Braxton Park, LLC by deed dated June 14, 2005, recorded in the Clerk's Office of the Circuit Court for Campbell County, Virginia as Instrument No. 050004590. recorded in the Clerk's Office of the Circuit Court for Campbell County, Virginia as Instrument No. 050004590.

INSTRUMENT #060007309  
RECORDED IN THE CLERK'S OFFICE OF  
CAMPBELL COUNTY ON  
SEPTEMBER 25, 2006 AT 10:08AM  
DEBORAH E. HUGHES, CLERK

RECORDED BY: SWB

*SWB*

Prepared by: Jester & Jester  
1022 Court Street  
Lynchburg, Virginia 24504

100002480

Tax Map No# Ptn. of 20B-7-A

**BRAXTON PARK  
SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS**

**THIS SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS FOR BRAXTON PARK** ("Supplementary Declaration") is made this May 7, 2010, by **BRAXTON PARK, L.L.C.**, a Virginia limited liability company ("Declarant"), Grantor.

**WITNESSETH THAT:**

**WHEREAS**, Declarant is the owner of the real property described in this Supplementary Declaration; and,

**WHEREAS**, Declarant intends that the property described herein be added to and become subject to the Declaration of Covenants and Restrictions for Braxton Park dated September 15, 2006 and recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia as Instrument Number 070007309, (the "Declaration"), pursuant to the powers reserved to Declarant in the Declaration; and,

**WHEREAS**, Declarant desires to impose certain covenants and restrictions on the property described in this Supplementary Declaration;

**NOW, THEREFORE**, Declarant hereby declares that all of the real property in Braxton Park – Section 2 shown on the attached plat entitled "**PLAT SHOWING BRAXTON PARK – SECTION 2 COLLEGE MAGISTERIAL DISTRICT CAMPBELL COUNTY, VIRGINIA**" made by Perkins & Orrison, dated May 1, 2007 and revised August 23, 2007, July 2, 2008 and July 14, 2009, is added to and made a part of the development known as Braxton Park and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens set forth in the Declaration. All capitalized terms not defined herein shall have the same meaning as set forth in the Declaration,

**IN WITNESS WHEREOF**, Declarant has caused this Supplemental Declaration to be executed on its behalf by all of its members and managers.

**BRAXTON PARK, L.L.C.**

BY

  
**MARK A. BOREL**, Member/Manager

BY

  
**GORDON T. CUDD**, Member/Manager

BY

  
**STEVEN H. BEHNKE**, Member/Manager

COMMONWEALTH OF VIRGINIA,

To-wit:

CITY/COUNTY OF LYNCHBURG,

The foregoing Instrument was acknowledged before me on this the 10 day of May, 2010, by Mark A. Borel as Member/Manager of Braxton Park, L.L.C. on behalf of the company.

My commission expires: 12/31/2013

Donna Mason  
Notary Public  
Registration No.: 7240403

COMMONWEALTH OF VIRGINIA,

To-wit:

CITY/COUNTY OF LYNCHBURG,

The foregoing Instrument was acknowledged before me on this the 10 day of May, 2010, by Gordon T. Cudd as Member/Manager of Braxton Park, L.L.C. on behalf of the company.

My commission expires: 12/31/2013

Donna Mason  
Notary Public  
Registration No.: 7240403

COMMONWEALTH OF VIRGINIA,

To-wit:

CITY/COUNTY OF LYNCHBURG,

The foregoing Instrument was acknowledged before me on this the 10 day of May, 2010, by Steven H. Behnke as Member/Manager of Braxton Park, L.L.C. on behalf of the company.

My commission expires: 12/31/2013

Donna Mason  
Notary Public  
Registration No.: 7240403

