

BOOK 2031 PAGE

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REGISTER OF DEEDS

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DECLARATION OF COVENANTS, SC
CONDITIONS AND RESTRICTIONS
FOR
TIMBER TRACE - PHASE I
PLAT BOOK 46-M, PAGE 70

BINDING ARBITRATION

This is the First page of the Covenants, Conditions and Restrictions for Timber Trace - Phase I. Pursuant to South Carolina Code §15-48-10 *et seq.*, as amended, these Covenants, Conditions and Restrictions are subject to the following:

THESE COVENANTS, CONDITIONS AND RESTRICTIONS ARE SUBJECT TO ARBITRATION UNDER ARTICLE XV HEREIN. THESE COVENANTS, CONDITIONS AND RESTRICTIONS ARE BINDING ON ALL OWNERS OF LOTS WITHIN TIMBER TRACE - PHASE I, INCLUDING ANY PERSON OBTAINING FINANCIAL RIGHTS IN SAID LOTS.

In the event other pages, including, but not limited to, cover pages, indexes, or tables of contents, are placed in front of this page, those pages shall not be deemed the first page. This page and only this page shall be deemed or considered the first page of the Covenants, Conditions and Restrictions for all legal purposes.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR TIMBER TRACE

PLAT BOOK 46-M, Page 10

THIS DECLARATION of Covenants, Conditions and Restrictions for Timber Trace is made on this 17th day of March, 2003, by Poinsett Development, LLC, a South Carolina limited liability company, having a principal address of 221 Pelham Road, Greenville, South Carolina 29615, hereinafter referred to as the "Declarant",

WITNESSETH:

WHEREAS, the Declarant is the owner and holder of record title to certain property containing approximately 3.091 acres on the southern side of East North Street Extension in Greenville County, South Carolina, which is more particularly described on plats recorded in the Office of the Greenville County Register of Deeds in Plat Book 45-X at Page 19; and

WHEREAS, Declarant intends to develop the aforementioned property for single family residential purposes only to be used in a manner which will enhance and maintain the quality and value of the Development as a whole, while permitting Declarant to retain sufficient flexibility to profitably develop the property; and

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in the attached Exhibit A shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants, and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the described Property or any part thereof, and shall inure to the benefit of each Owner thereof.

THIS DECLARATION OF COVENANTS CONTAINS ARBITRATION PROVISIONS PURSUANT TO SECTION 15-48-10 ET. SEQ. CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED.

ARTICLE I.
DEFINITIONS

Section 1. "Amenities" shall mean and refer to all of that certain property, to be subsequently described, serving, lying and being within the Development, including, without limitation, the (i) swimming pool, (ii) cabana, (iii) all furniture, fixtures and equipment now or hereafter lying within and/or pertaining to the foregoing facilities, and (iv) all private roadways now or hereafter lying within the Development.

Section 2. "Association" shall mean and refer to Timber Trace Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 3. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 4. "Building" shall mean and refer to a structure containing one or more residences constructed or erected on the Property.

Section 5. "By-Laws" means the By-Laws of the Association as they now or hereafter exist.

Section 6. "Common Area" shall mean and refer to all land within the Property owned by the Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the Members of the Association as shown on the aforementioned recorded plat and the plats of additional properties hereafter annexed as hereinafter provided. Said Common Area shall be maintained by the Association.

Section 7. "Common Expenses" shall mean and include;

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance of the residences as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the Common Areas or Exclusive Common Areas;
- (d) Expenses declared to be Common Expenses by the provisions of this Declaration or the By-Laws;
- (e) Hazard, liability or such other insurance premiums as the Declaration or By-Laws may require the Association to purchase;
- (f) Expenses agreed by the Members to be Common Expenses of the Association.

Section 8. "Common Profits" shall mean and refer to the balance of all income, rents, profits, and revenues of the Association remaining after the deduction of the Common Expenses or reserves therefor. Common Profits shall not mean or include any sums lawfully assessed against Members by the Association.

Section 9. "Declarant" shall mean and refer to Poinsett Development, LLC, its successors and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the Property under a deed in lieu of foreclosure or judicial foreclosure, or one otherwise denominated a "Declarant" hereby.

Section 10. "Development" shall mean and refer to all of that certain property containing approximately 3.091 acres on the southern side of East North Street Extension in Greenville County, South Carolina which is more particularly described on Plats recorded in the Office of the Greenville County Register of Deeds in Plat Book 45-X at Page 19.

Section 11. "Exclusive Common Area" shall mean and refer to real property, interest in real property and personal property, easements, and other interests, together with improvements located on that property, which the Association owns and which is designated for the use and enjoyment of less than all of the Owners.

Section 12. "Lot" shall mean and refer to any plot of land, other than the Common Area and Exclusive Common Area, shown on a recorded subdivision plat of the Property and upon which a residence has been or may be constructed.

Section 13. "Member" shall mean and refer to every person who is a member of the Association.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those who have such interest merely as security for the performance of an obligation.

Section 15. "Person" shall mean and refer to any individual, corporation, partnership, association or trustee or other legal entity.

Section 16. "Property" shall mean and refer to that certain real property described in Exhibit A and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation.

Section 17. "Residence" shall mean and refer to a dwelling or place of residence constructed upon a Lot within the Property and constituting all or part of a Building.

Section 18. "Total Association Vote" shall mean all of the votes attributable to Members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint Members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

**ARTICLE II.
ANNEXATION OF ADDITIONAL PROPERTIES.**

Section 1. Additional properties and improvements, including Common Area and Exclusive Common Area, may be annexed in the manner provided in this Article to the Property herein described.

Additional properties so annexed shall be merged with the Property herein described and any other previously annexed property, and shall be subject to the provisions of this Declaration and to the Articles of Incorporation and By-Laws of the Association.

Section 2. At any time within five (5) years following the date of incorporation of the Association, the Declarant may annex additional properties to the Property herein described. All properties annexed shall be contiguous (i) to the Property herein described or (ii) to property previously annexed.

**ARTICLE III.
FUTURE DEVELOPMENT OF THE PROPERTY**

Section 1. Right to Subdivide. Declarant reserves, and shall have at all times, the right, in its sole discretion, to subdivide the property at any time, or from time to time, into Lots, provided only that such Lots (a) shall be in compliance with any size, width and density requirements set forth in the then applicable zoning classification for the Development pursuant to the Greenville County Zoning Ordinance; and (b) shall be of sufficient size, width and configuration to enable any dwellings thereafter constructed upon the Lots to comply with the purposes, standards and restrictions set forth in this Declaration. Nothing herein shall limit or prescribe the right of the Declarant to fix the boundaries of any portions of the property which it shall elect to subdivide or to determine the order, sequence or location in which any portion of the property shall be subdivided, so long as such subdivision(s) of the property shall comply with the foregoing requirements. Any subdivision of all or any portion of the property into Lots shall become effective only upon recordation in the Office of the Greenville County Register of Deeds of a final subdivision plat which shall depict all Lots created thereby, contain all necessary approvals thereon from applicable governmental agencies or officials, and set forth such other information thereon as shall be necessary or desirable.

Section 2. Additional Covenants, Conditions and Easements. Declarant reserves, and shall have at all times, the right, in its sole discretion, to declare, promulgate and institute such additional, other and further covenants, conditions, easements and restrictions upon all or any portions of the Property, in connection with any subdivisions thereof into Lots, provided only that such additional, other and further covenants, conditions, easements and restrictions shall be consistent with, and shall not conflict with, any covenants, conditions, easements and restrictions contained in this Declaration. Any such additional, other or further covenants, conditions, easements and restrictions shall become effective upon recordation of an instrument setting forth the same in the Office of the Greenville County Register of Deeds, which instrument shall provide that, in the event of any inconsistency between any provisions thereof and any provisions of this Declaration, the provisions of this Declaration shall prevail.

**ARTICLE IV.
PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area in Timber Trace and any Exclusive Common Area adjoining and abutting his Lot, which rights shall be appurtenant to and shall pass with the title to every assessed Lot, subject to each of the following provisions.

- (a) The right of the Association to limit the number of guests of Members.
- (b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and Exclusive Common Area and facilities.
- (c) The right of the Association to suspend the voting rights (and right to use of any recreational facilities located upon the Common Area) of a Member, or any person to whom he has delegated his voting right, for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations.
- (d) The right of the Association to formulate, publish, and enforce rules and regulations as provided in Article X (Use Restrictions).

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment to the Common Area and Exclusive Common Area and facilities to the Members of his family, his tenants, or contract purchaser provided every such delegee shall reside on the Property.

Section 3. Title to Common Area and Exclusive Common Area. At such time as Class A Members shall take control of the Association, the Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Areas and Exclusive Common Areas shown upon the recorded plat referred to in the preamble of this

Declaration, free and clear of all liens and encumbrances, except utility and drainage easements and easements to governmental authorities, upon condition that such Common Area and Exclusive Common Area shall be for the sole and exclusive use and benefit of Members, as long as such area is maintained in conformity with the requirements of this Declaration, the By-Laws, and the Articles of Incorporation of the Association at the sole expense of the Owners. Similarly, the Declarant will convey to the Association, upon the same conditions and for the same uses and purposes, Common Areas and Exclusive Common Areas which are parts of any additional properties that are annexed by it in the future.

Section 4. Parking Rights. The Owners of each Lot shall park their vehicle(s) on their Lot or designated Exclusive Common Area, in their garage or in their designated parking area. All Lot Owners are hereby granted the right of ingress and egress from their respective Lots to the roads located on the Property which are to be private roads, as well as an easement for ingress and egress from and across all private roads to East North Street Extension. No vehicles of any type or recreational equipment may be parked within the Common Area unless designated specifically for that purpose. No boats, trailers, campers or RV's shall be parked on the Property. However, said recreational vehicles or equipment may be parked in a garage of a dwelling, provided the garage door is closed and said vehicles or accessories are not visible to persons from the outside. No cars shall be parked or maintained on the Property unless they are licensed and operational. Guests must use reserved common parking area.

ARTICLE V. HOMEOWNERS ASSOCIATION

Section 1. Nonprofit Corporation. Timber Trace Homeowners Association, Inc. is a nonprofit corporation organized under the laws of the State of South Carolina. The Association shall be managed by a Board of three Directors who need not be Members of the Association. Until the first annual meeting is held, the initial Board of Directors shall be Ted D. Smith, Ronald D. Taylor and A. J. (Pete) Kellos, Jr. The Association may increase the size of the Board up to seven Members by a majority vote of the Members. The initial mailing address of the Board shall be 221 Pelham Road, Greenville, South Carolina, 29615. Said Board shall be responsible for preparing the initial By-Laws of the Association and distributing the same to the Members thereof.

Section 2. Membership. Every person who is record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a Member of the Association. Ownership of such interest shall be the sole qualification for such membership. No Owner shall have more than one membership in the Association and there shall be only one vote for each Lot in the development. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

Section 3. Mergers. To the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the consent of two-thirds of the entire Class A Membership and two-thirds of the entire Class B Membership, if any.

Section 4. Classes. The Association shall have the following two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners thereof determine, but in no event shall more than one vote be cast with respect to any Lot, and no fractional vote may be cast with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant, and it shall be entitled to four (4) votes for each Lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership (excluding Lots owned by Poinsett Homes, LLC) equals the total votes outstanding in Class B membership; provided, however, that Class B membership shall be reinstated with all rights, privileges, and responsibilities, if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided in Article II of this Declaration; or

(2) on January 1, 2006.

ARTICLE VI. COVENANTS FOR ASSESSMENTS

Section 1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board. The assessments levied by the Association shall also be used for (i) the administration, operation, improvement, maintenance, use and enjoyment of the Common Area and Exclusive Common Area and facilities, including the streets, entrance landscaping (whether or not located on Common Area and Exclusive Common Area) and including, but not limited to, the cost of repairs, replacements, additions, insurance, labor, equipment, materials, management and supervision; (ii) personnel or contract services deemed appropriate; (iii) establishing a maintenance and replacement reserve; (iv) repaying loans incurred by the Association, including interest; (v) the payment of taxes assessed against such Common Area and Exclusive Common Area; (vi) the employment of

attorneys, accountants and other professionals to represent the Association when necessary; and (vii) for providing such other services which the Association determines to be necessary or desirable. Additionally, in the event that any Owner fails to properly maintain the exterior features of such Owner's residence for which he is personally responsible, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard, or it may extend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event, the Owner shall be assessed for such expense of maintenance as provided for herein.

Section 2. Creation of the Lien and Personal Obligation for Assessments. For each Lot owned within the Development, each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and is deemed to covenant and agree, to timely pay the Association: (1) annual assessments or charge, including any street maintenance, entrance landscaping (whether or not located on Common Area or Exclusive Common Area), and privacy costs, which assessments or charges may be assessed and/or collected on such basis as the Association deems appropriate; (2) special assessments for capital improvements and other purposes, such assessments to be established and collected as hereinafter provided; and (3) default assessments which may be assessed against an Owner's Lot for failure to perform an obligation under this Declaration, or because the Association has incurred an expense on behalf of an Owner under this Declaration or the Association documents. Neither Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it owns until such time as the Association converts to Class A Membership; however, in order to insure that the Association has sufficient funds to meet its operating budget, the Declarant shall supplement the annual costs and assessments required of other Members in the Association until the time of such conversion. Notwithstanding any other provision herein to the contrary, neither the Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it sells and leases back until such time as the lease is terminated.

Section 3. Late Charges. All assessments shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and costs, including, without limitation, reasonable attorneys' fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Lot.

Section 4. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor or immediately preceding Owner shall not apply to any first Mortgagee or purchaser taking title through foreclosure proceedings, in which event, the prior owner shall continue to remain personally liable.

Section 5. Certificate of Payment. The Association shall, within five (5) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

Section 6. Annual Assessments. Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may, in its sole discretion, distinguish between the occupied Lots and the unoccupied Lots for the purpose of annual assessments. If the Board sets a lower assessment for the unoccupied Lots, the Owner of an unoccupied Lot may not use the Common Areas or Exclusive Common Areas unless such Owner pays the assessment established by the Board for occupied Lots. The Board may allow annual assessments to be paid in monthly, quarterly, semi-annual or annual periodic payments as determined by the Association's Board of Directors, and the Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the annual assessment shall be paid in monthly installments. Neither Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it owns until such time as the Association converts to Class A Membership; however, in order to insure that the Association has sufficient funds to meet its operating budget, the Declarant shall supplement the annual costs and assessments required of other Members in the Association until the time of such conversion. Notwithstanding any other provision herein to the contrary, neither the Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it sells and leases back until such time as the lease is terminated.

Section 7. Computation of Annual Assessments. The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be mailed or delivered to each Member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a called meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year. Written notice of said meeting, setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation. **NOTWITHSTANDING THE ABOVE, THE BOARD OF DIRECTORS AT ALL TIMES IS AUTHORIZED TO INCREASE ASSESSMENTS TO THE EXTENT NECESSARY TO PAY INSURANCE PREMIUMS AND REAL ESTATE TAXES AS AFFECT THE PROPERTY.**

Section 8. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 9. Lien for Assessment. All sums assessed against any Lot, Owner or Member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association.

Section 10. Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lots except for (a) liens for ad valorem taxes, (b) liens for all sums unpaid on any prior Mortgage, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where the Property is located. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such 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 11. Effect of Nonpayment of Assessment. Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than fifteen (15) days shall incur a late charge in an amount set by the Board. If the assessment is not paid within thirty (30) days, a lien shall attach to the Owner's Lot and a Notice of Lien may be filed by the Association in the public records of the local Register of Deeds. The lien shall cover all assessments then due or which come due until the lien is cancelled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid after thirty (30) days, the Association may, in its sole discretion, take any or all of the following actions:

- (a) Assess an interest charge from the date of delinquency at the rate per annum two (2) points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;
- (b) Assess a late charge at the rate established by the Board per delinquency or such other charge as shall have been established by the Board of Directors;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Accelerate all remaining assessments for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once; or

(e) Bring an action at law or in equity against the Owner personally obligated to pay the delinquent assessment by instituting suit to collect such amounts and foreclose its lien against the Lot, and interest, costs of collection and reasonable attorneys fees of such action of foreclosure shall be added to the amount of such assessment. The Association shall have the right to foreclose its lien through any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same.

No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Common Area and Exclusive Common Area or abandonment of such Owner's Lot.

Section 12. No Setoff or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed (i) by reason of any alleged failure of the Association to take some action, (ii) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or (iii) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

Section 13. Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

Section 14. Date of Commencement of Assessments. Assessments shall start on the first day of the month following the sale of the Lot to a Person other than Declarant.

At the time of closing of the sale of each Lot and Residence, the pro rata share of the monthly Homeowners Association assessment plus the following month's regular assessment and a one-time contribution to the working capital fund equal to one month's assessment shall be collected from the purchaser. Said contribution shall be transferred to the Association's working capital fund and maintained in an account for the use and benefit of the Association. The purpose of the fund is to ensure that the Association Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advanced payment of regular assessments.

Section 15. Special Assessments. The Board shall have the power to determine special assessments pursuant to this Section as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may also determine special assessments on Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

(a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received;

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitable among all Lots according to the benefit received; and

(c) expenses for capital improvements. In addition to the assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon any Common Area and Exclusive Common Area, including the streets, entrance walls, signs, and landscaping (as well as fixtures and personal property related thereto), or to make up any deficit or shortage in the current year's budget provided, however, that any such assessment shall have the assent of two-thirds (2/3) of the Total Association Vote who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Association's Board of Directors. Notice of the amount and due dates for such special assessments must be sent to each Owner at least thirty (30) days prior to such due date.

ARTICLE VII. EXTERIOR MAINTENANCE

Section 1. Association Responsibilities. In addition to maintenance of the Common Area and Exclusive Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: Stain and/or paint the exterior of Residence; and repair, replace and care for roofs, gutters, down spouts, exterior Building surfaces, trees, shrubs, grass, walks, and other such exterior improvements. Such exterior maintenance shall not include glass, screening, or doors, with the exception of staining or painting as stated above. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at reasonable times to perform maintenance as provided in this Article.

Section 2. Fences, Screens, Landscaping. Owners may fence in or screen their deck or patio areas; however, any Owner who fences or screens such areas shall first obtain the written approval of the Association. The Owner shall not plant any vegetation in front or back of his Residence, except with the prior written approval of the Association and the maintenance of such additional plantings shall be the sole responsibility and expense of the Owner. If, in the opinion of the Association, any such Owner fails to maintain his plants in a neat and orderly manner, the Association may revoke the Owner's maintenance rights and remove said plants or assess said Owner for any additional expenses incurred in the maintenance of said plants.

Section 3. Willful Negligence by Owner or Damage by Storm or Others. In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful

or negligent acts of its Owner or his family, tenants, contract purchasers, guests, or invitees, the cost of such maintenance, replacement, or repairs shall be added to, and become a part of, the assessment to which such Lot is subject to the extent the costs of such maintenance or repairs is not covered by insurance proceeds.

**ARTICLE VIII.
PARTY WALLS**

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

Section 2. Sharing of Repair and Maintenance. Subject to the terms and provisions of Article XII (Covenants to Keep Residences Insured, etc.), 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. Subject to the terms and provisions of Article XII (Covenants to Keep Residences Insured, etc.), if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Subject to the terms and provisions of Article XII (Covenants to Keep Residences Insured, etc.), notwithstanding any other provision of this Article, an 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.

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

Section 6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 7. Certification With Respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall under any provision of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of South Carolina as they are now or hereafter amended (Section 15-48-10 et seq. Code of Laws of South Carolina, 1976, as amended).

ARTICLE IX. ARCHITECTURAL CONTROL

Section 1. Architectural Committee. The initial Architectural Committee for this Property shall be composed of:

- (a) Ted D. Smith
- (b) Ronald D. Taylor
- (c) A. J. (Pete) Kellos, Jr.

In the event of a vacancy on the Architectural Committee or the failure or inability of any member of said Committee to act, the vacancy shall be filled, as may be necessary, by appointment by the Board of Directors of Timber Trace Homeowners Association, Inc. The members of the Architectural Committee shall be appointed for a term of three years, but may be reappointed for additional terms with no limit on the number of additional terms to which they may be reappointed. In all matters, a majority vote of the members of said Committee shall govern.

Section 2. Submission of Plans. Unless otherwise approved by the Architectural Committee, all Residences constructed on the Property shall be of the design, size and construction quality of the model Residences which Declarant shall pre approve for construction on the Property and which are in keeping with the current project. No improvements of any nature shall be erected, placed, altered or changed on any Lot in this subdivision until and unless the Building plans and specifications showing the proposed type of construction, exterior design and location of such improvement have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistency of plan with existing Residences.

Section 3. Inspection. The said Committee or its agents shall have the right, at their election, to enter upon any Lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 4. Failure to Approve. In the event that the Committee fails to approve or disapprove such plans and other requirements within thirty (30) days after they have been submitted in writing to it, or if no suit to enjoin the erection or alteration of such Building or improvements has been commenced before such erection or alteration is substantially completed, approval of the Architectural Committee will be conclusively presumed, and compliance with this covenant will be deemed to have been fully met. The term "Building or improvement" shall be deemed to include the erection, placement or alteration of any wall, fence, driveway, parking area, or recreational amenity.

Section 5. Permit. Upon the approval by the Committee of any proposed construction or alteration, the Committee shall issue to the applicant a written permit. No construction or alteration shall be carried on until and unless such permit is obtained.

Section 6. Minor Violations. The Architectural Committee is authorized by a unanimous vote of all its members to approve or ratify, in the construction or alteration of any Building, minor violations of any setback, location and size of improvements provisions contained in this Declaration, if, in the opinion of all the members of the Committee, such shall be necessary in order to prevent undue hardship. The approval or ratification by the Committee, in accordance with this paragraph, shall be binding on all persons.

Section 7. Clean premises. All residential building must be completed in a workmanship like manner and the construction site at all times must be kept clean and free of debris.

Section 8. Abandoned Work. In the event construction of any improvement to a Residence is commenced on any Lot in this subdivision and work is abandoned for a period of thirty (30) days or longer, without just cause shown, or should any improvements to a Residence remain unfinished for a period of four (4) months from the date construction is begun, without just cause shown, then and in either event the Architectural Committee shall have (1) the authority to complete the improvements at the expense of the Owner and shall have a lien against the land and all improvements to the extent of any monies expended for said completion, but said lien shall at all times be subordinate to the lien of any prior recorded mortgage or mechanic's lien (but the Committee shall have the right to contest the validity and amount of such liens) or (2) the authority to remove the improvements from the property and the expense of said removal shall constitute a lien against the property which lien shall be subordinate to the lien of any prior recorded mortgage or mechanic's lien. Said liens shall be noticed of record and foreclosed in the same manner as the foreclosure of real estate mortgages. No action shall be taken under this paragraph without giving written registered notice to the Owner with a registered copy of said notice to any mortgagee or other lien holder of the proposed action to be taken and to give ten (10) days in which to allow Owner to

show cause, if any he can, why the Architectural Committee should not take action under this paragraph.

Section 9. Square Footage. The Architectural Committee shall determine the square footage requirements to be contained in each Residence. The minimum requirements shall be applied uniformly as to each phase in this subdivision.

Section 10. Recreational Amenities. The plans for the development provide for a pool site and related facilities as part of the Amenities. Lot Owners in any additional phase that may be developed are hereby granted an easement to use said recreational facilities under the same conditions of Lot Owners in the initial phase. No other recreational amenities of any type or description may be built, erected or placed on any part of the property without first obtaining the written consent and approval of the Architectural Committee in accordance with its requirements.

ARTICLE X. USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Common Area and Exclusive Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours and with reasonable notice.

Section 2. Use of Property. Each Building, the Residences therein, and the Common Area and Exclusive Common Area and facilities shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws.

(a) All Buildings and the Common Area and Exclusive Common Area and facilities shall be used for residential and related common purposes. No Residence may be subdivided and each Residence shall be used as a single-family Residence and for no other purpose, except that the Declarant may use one or more Residences for offices and/or model Residences for sales purposes.

(b) Nothing shall be kept, and no activity shall be carried on, in any Building or Residence or on the Common Area and Exclusive Common Area and facilities which will increase the rate of insurance applicable to residential use of the property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his Residence or on the Common Area and Exclusive Common Area and facilities which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area and Exclusive Common Area and facilities.

(c) No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction relating to any portion of the property shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such affected portion of the Property.

(d) Nothing shall be done in or to any Residence or in, to, or upon any of the Common Area and Exclusive Common Areas and the facilities which will impair the structural integrity of any Building, Residence, or portion of the Common Areas and Exclusive Common Areas and facilities or which would impair or alter the exterior of any Building or portion thereof, except in the manner provided in this Declaration.

(e) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the property, except that (i) the Declarant or its agents may use any unsold Residence or lease up to three (3) Residences for sales or display purposes and (ii) a resident-Owner may maintain a home office in his Residence so long as (a) the existence of said office does not generate pedestrian or vehicular traffic on the property, (b) no signs or advertisements concerning said business are displayed anywhere on the property, and (c) the existence of said office does not in any way affect the rights of the other Owners or their enjoyment of the property.

(f) No Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Residence, Building or any portion of the Common Area and Exclusive Common Area and facilities, except as may be allowed by the Association pursuant to its By-Laws; provided, however, that the Declarant and any mortgagee who may become the Owner of any unit, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied Residence in the interior of the window of said Residence, which sign shall be no larger than eighteen (18) inches by twenty-four (24) inches or in such other place as the Association may approve. In addition, the Declarant or Poinsett Homes, LLC may utilize yard signage as they deem appropriate for sales and marketing purposes.

(g) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area and Exclusive Common Area and facilities except at the direction of, and with the express written consent of, the Association.

(h) The Common Area and Exclusive Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Residences, subject to any rules and regulations that may be adopted by the Association pursuant to its By-Laws.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the property, nor shall anything be done which may be or may become a nuisance or annoyance to

residents within the property.

Section 4. Pets. No animals shall be kept, maintained or quartered on any Lot except that domesticated cats, *small* dogs, and caged birds may be kept as pets for the pleasure of the occupants. A maximum of two (2) pets shall be allowed per Lot. Seeing eye dogs are allowed, also small caged animals which are not normally taken outside (such as fish, gerbils, etc.) may be kept in reasonable numbers. No pet shall exceed the weight limitation of fifty (50) pounds; however, seeing eye dogs are exempt from this weight restriction. The Architectural Committee is authorized (but not required) to issue reasonable rules for the protection of all Owners in this subdivision relating to the number and size of pets which may be kept on any numbered Lot. No animals shall be permitted to go beyond the perimeter of any Residence unless the animal is on a leash and under control of its Owner or the Owner's agent. Pet owners shall be required to remove any animal waste from Lots, Common Areas and Exclusive Common Areas, streets, etc., in a timely manner.

Section 5. Attractive Premises. Garbage containers and trash cans must be located in the garage or in areas designated by the Association so as not to be visible from the front street. The yards of each Lot shall be maintained so as to be neat and clean at all times.

Section 6. Mailboxes. Mailboxes and garbage/trash receptacles and storage areas shall be of the uniform design, size and construction approved by the Architectural Committee.

Section 7. Sanctuary. The Property is hereby declared to be a bird sanctuary and any hunting of birds is hereby prohibited.

Section 8. Speed Limits. The Directors of the Homeowners Association are authorized to establish speed limits through the property and erect such signs as they deem necessary. The Directors are further authorized and empowered to enforce said speed limits by the promulgation of regulations relating thereto. Such regulations shall be furnished to all Members of the Association.

Section 9. TV Satellites/Dishes. No TV satellite dish larger than eighteen (18) inches in diameter will be allowed on any Lot or Residence. The placement and location of said dishes shall require the prior written approval of the Architectural Committee.

ARTICLE XI. EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the Property, including Lots and Common Areas, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of Lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress and to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public

utilities as shall be established prior to subjecting the property to this Declaration by the Declarant or its predecessors in title. The Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area and Exclusive Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Encroachments. All Lots and the Common Area and Exclusive Common Area shall be subjected to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, down spouts, exterior storage rooms, and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall exist a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage.

The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 3. Structural Support. Every portion of a Residence which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Residences within the Building.

Section 4. Emergencies. Every Lot and Residence shall be subject to an easement for entry by the Association for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any Lot or within any Residence and which endangers any Building or portion of the Common Area and Exclusive Common Area.

**ARTICLE XII.
COVENANTS TO KEEP RESIDENCES INSURED AGAINST LOSS,
TO REBUILD AND TO KEEP IN GOOD REPAIR**

The Declarant covenants with the Association, on behalf of itself and on behalf of each subsequent Owner of a Lot within the properties, and each Owner of any Lot within the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in said deed, or by exercise of any act or ownership, is deemed to covenant:

(1) The Association shall obtain a group or blanket insurance policy equal to the full replacement value of the project. Said policy shall contain a Replacement Cost Endorsement providing for replacement of a Residence from insurance loss proceeds.

(2) The full amount of any insurance proceeds shall be applied to the rebuilding or repair of any Residence (subject to the provisions and covenants contained in any mortgage or mortgages creating a lien against any Lot).

(3) The Residence shall be rebuilt or repaired in the event of damage thereto provided the Residence is insured under a group or blanket hazard insurance policy which contains a replacement cost endorsement providing for replacement of a Residence from insurance proceeds.

(4) The Owner shall keep the Residence in good repair except for repairs required of the Association.

(5) Premiums for the group or blanket hazard insurance policy shall be a common expense and shall be collectible in the same manner and to the same extent as provided for annual and special assessments in Article VI (Covenants for Assessments). The lien for assessments for insurance premiums shall be subordinate to the lien of any first mortgage in the same manner provided for annual and special assessments.

(6) Such policies shall provide that insurance proceeds payable on account of loss of, or damage to, the real property shall be adjusted with the carrier by Timber Trace Homeowners Association, Inc. and shall be payable solely to the homeowner's mortgagee, if any, and the Timber Trace Homeowners Association, Inc. as Insurance Trustee for the homeowner(s). Such insurance proceeds shall be applied to repair or restoration of the property as hereinafter provided. All such insurance policies shall provide that coverage may not be canceled by the carrier without first giving the Timber Trace Homeowners Association, Inc. and unit mortgagee, if any, ten days written notice of cancellation. All such policies shall contain, if obtainable, a waiver of the right of subrogation against any unit Owner, Member of the unit Owner's family, the Timber Trace Homeowners Association, Inc., its officers, agents and employees, as well as a waiver of the "pro rata" clause.

(7) The Association shall also obtain a broad form public liability policy covering all Common Area and Exclusive Common Area and all damage or injury caused by the negligence of the Association or any of its agents, officer or employees in an amount of not less than one million dollars for each occurrence and such policies shall contain a waiver of the right of subrogation against Members of the Timber Trace Homeowner's Association, Inc., its officers, agents and employees.

(8) Any Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable beyond that included in the homeowners policy required by the Association.

(9) In the event of damage or destruction by fire or other casualty to any property covered by insurance payable to the Association as trustee for the homeowners, the Board of Directors shall, with the concurrence of mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition

as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the Members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall obtain bids from at least two reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance bond for the repair, reconstruction or rebuilding of such Building or Buildings.

(10) Also, the Association may levy in any calendar year, a special assessment for the purpose of defraying the cost of construction, reconstruction, repair or replacement of a Building or Buildings containing single family residential units, to the extent that insurance proceeds under a group insurance policy containing a Replacement Cost Endorsement are insufficient to pay all costs of said construction, reconstruction, repair or replacement to as good condition as existed prior to damage or destruction by fire or other casualty covered by said insurance.

(11) The reconstructed or repaired Residence shall be substantially identical to the destroyed Residence, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(12) If a Residence is not habitable by reason of damage, the obligation of the Owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the Residence is restored to a habitable condition, whichever shall first occur. In the event a Residence is damaged or destroyed, the Owner, at his expense, shall remove all personal debris from the Lot within thirty (30) days, so that it shall be placed in a neat, clean, and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Residence until paid by the Owner, unless the Residence is thereafter acquired by the Association.

(13) Any Residence which has been destroyed, in whole or in part, by fire or other casualty, and is substantially restored or reconstructed, shall be subject to the provisions of this Declaration and to the By-Laws of the Association.

(14) The Association shall maintain adequate fidelity coverage against dishonest acts by officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. Such fidelity bonds shall:

- (a) Name the Association as an obligee.
- (b) Be written in an amount equal to at least 150% of the estimated annual operation expenses of the planned unit development project, including reserves.

- (c) Contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

**ARTICLE XIII.
GENERAL PROVISIONS**

Section 1. Enforcement. Subject to the provisions of Article VIII, Section 8 (Arbitration) and Article XV, Section 1 (Arbitration of Disputes), the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants, conditions, and restrictions of this Declaration shall run with the land and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of Owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Office of the Greenville County, South Carolina Register of Deeds. All amendments shall become effective upon recordation.

Section 4. Lease of Residence. No Residence shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire unit. Any lease must be in writing and shall provide for a minimum term of one (1) year and the terms of the lease and the occupancy of the unit shall be subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of the Timber Trace Homeowners Association, Inc. and any failure by any lessee to comply with the terms of such documents shall be a default under the lease.

Section 5. Conflicts. In the event of any irreconcilable conflict between this Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provision of the Articles shall control.

Section 6. Contracts. The Homeowners Association, prior to passage of control to it, is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days notice to the other party.

Section 7. Rights to Financing. The constituent documents do not restrict the Lot Owner's right to mortgage his or her unit. In addition, they do not limit the Lot Owner's financing options requiring the use of a specific lending institution or a particular type of lender. Lenders being referred to include Federal National Mortgage Association (FNMA).

ARTICLE XIV. RIGHTS OF FIRST MORTGAGEES

The following provisions, in addition to provisions set forth elsewhere in this Declaration, shall be applicable to the holders of first mortgages (and other parties as may be indicated) upon the individual dwelling subject to this Declaration and any amendments thereto.

(1) This Declaration and other constituent documents create a Planned Unit Development, hereinafter referred to as "PUD."

(2) Any first mortgagee who obtains title to a PUD unit (Residence) pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

(3) Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) [provided they request the right and inform the Association of their addresses in writing] or Owners (other than the sponsor, developer or builder) of the individual units in the PUD have given their prior written approval, the PUD homeowners association, corporation or trust shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association, corporation or trust for the benefit of the units in the PUD (the granting of easements for other public purposes consistent with the intended use of such common property by the PUD shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a PUD unit Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property party walls or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

(d) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any PUD common property for other than the repair, replacement or reconstruction of such common property.

(4) First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any PUD common property, may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefor from the PUD homeowners association, corporation or trust. Entitlement to such reimbursement is hereby reflected in this Declaration as an agreement in favor of all first mortgagees of units in said PUD duly executed by the PUD homeowners, corporation or trust, and an original or certified copy of such agreement is possessed by Seller.

(5) No provision of the PUD constituent documents gives a PUD unit Owner, or any other party, priority over any rights of the first mortgagee of a unit in a PUD pursuant to its mortgage in the case of a distribution to such PUD unit Owner of insurance proceeds or condemnation awards for losses to, or taking of, PUD common property.

(6) The Homeowners Association is required to make available to Lot Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, or other rules concerning the project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

(7) Any holder of a first mortgage is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

(8) Upon written request to the Homeowners Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

- (b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Homeowners Association.
- (d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

**ARTICLE XV.
EXCLUSIVE COMMON AREA**

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of the Lot which said Exclusive Common Area adjoins and abuts. By way of illustration and not limitation, Exclusive Common Area may include entry features, driveways, retaining walls, perimeter or screening fences, landscaping, berms, easements for utilities and drainage, patios, and other portions of the Common Area adjoining and abutting a Lot. All costs associated with maintenance, repair, replacement and insurance of an Exclusive Common Area shall be a Common Expense allocated among the Owners of Lots in Timber Trace; however, upon approval by the Architectural Control Committee, the Owner of a Lot may enclose his/her patio area with a screen porch or sunroom, provided that all costs of construction, maintenance, repair, replacement and insurance of said improvements are the sole and exclusive responsibility of said Owner.

Any Exclusive Common Area shall be designated as such and assigned to particular Lots in this Declaration, a Supplementary Declaration, on a Subdivision Plat designating such Exclusive Common Area, or in the Deed conveying such Exclusive Common Area to the Association. Thereafter, any Exclusive Common Area may be reassigned, subject to the Board's prior approval and (as long as Declarant owns any portion of Timber Trace or has the right to unilaterally subject property to the provisions of this Declaration under Article II) Declarant's prior approval. Any such reassignment shall be evidenced by an assignment executed by the Owners of the Lots between or among which the Exclusive Common Area is assigned and reassigned, or by an amendment to this Declaration executed by such Owners. Such assignment or amendment shall only be effective upon recording in the Office of the Register of Deeds for Greenville County, South Carolina.

**ARTICLE XVI.
MISCELLANEOUS**

Section 1. Arbitration of Disputes. ALL MEMBERS OF THE ASSOCIATION AGREE THAT ANY DISPUTE ARISING BETWEEN THE MEMBERS AND THE ASSOCIATION, OR ANY DISPUTE ARISING BETWEEN THE ASSOCIATION AND THE DEVELOPER, 'POINSETT DEVELOPMENT, LLC', SHALL BE RESOLVED THROUGH ARBITRATION PURSUANT TO THE RULES PROMULGATED BY THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES AGREE THAT JURISDICTION AND VENUE FOR ANY DISPUTE RESOLUTION HEREUNDER SHALL BE GREENVILLE COUNTY, SOUTH CAROLINA.

Section 2. No Mechanic's Liens. No Owner shall have the right to subject any portion of any Owner's Lot or Residence or any part of the Property other than its own Lot or Residence to any lien for goods, labor or materials supplied at the request of said Owner, and no person performing services, labor, or materials or goods to or for said Owner shall have any right of lien with respect to any other Owner's Lot or Residence or the remaining portions of the Property. Each Owner shall keep the Property of any other Owner free of all mechanic's liens or claims resulting from goods, labor or materials supplied at the request of said Owner and, upon written request, said Owner will take all steps necessary, including obtaining a bond in favor of the claimant, for the removal of the mechanic's lien from the other Owner's Property.

Section 3. Exhibits. Each reference hereunder to an "Exhibit" hereto refers to applicable exhibit that is attached to this Declaration, which exhibit may be amended by the Declarant from time to time in accordance with the provisions of this Declaration. All such exhibits constitute a part of this Declaration and by this section are expressly made a part hereof.

Section 4. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the Declarant and all Members.

Section 5. Effective Date. The Effective Date of this Declaration shall be the date that a fully executed original of this Declaration is recorded in the Office of the Register of Deeds or similar office with the county and state in which the Property is located.

Section 6. Controlling Effect. The restrictions, easements and covenants contained herein supersede and replace any restrictions, easements and covenants contained in any document relating to the Property created and/or recorded prior to the Effective Date of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed as of the day and date first written above.

IN THE PRESENCE OF:

POINSETT DEVELOPMENT, LLC (SEAL)

S. Gray Walsh

By: *Ted D. Smith*
Ted D. Smith, Member/Owner

Robin R. Hastings

By: *Ronald D. Taylor*
Ronald D. Taylor, Member/Owner

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Poinsett Development, LLC, by its duly authorized Members/Owners, sign, seal and as its act and deed, deliver the within written Declaration of Covenants, Conditions and Conditions and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 17th S. Gray Wash
day of March, 2003. Witness

Robin D. Hastings (SEAL)
Notary Public for South Carolina
My Commission Expires: 10/2/08

EXHIBIT A**LEGAL DESCRIPTION**

ALL those certain pieces, parcels or lots of land, with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lots 28, 29, 30, 31, 32, 33, 34, and 35 on Plat of Survey of Timber Trace, Phase I, prepared by Wooten Surveying Co., dated March 17, 2003, revised March 18, 2003, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 46-M at Page 70, which plat of survey is hereby craved for a complete metes and bounds description of said Lots.

TOGETHER WITH a perpetual, nonexclusive right of ingress and egress across such private roads, easement areas, Common Areas and Exclusive Common Areas as are shown or noted on said plat as part of Phase I of Timber Trace in order to provide the Owners of said Lots, their successors, assigns, families, guests, invitees, tenants, or lessees with a means of ingress and egress from said Lots to East North Street Extension.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 02:58 PM
03 18 03 RECORDED IN DEED
BOOK 2031 PAGE 0078 THRU 0109
DOC # 2003031172

Judy A. Hill