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CATAWBA COUNTY  
RUTH MACKIE  
REGISTER OF DEEDS

BOOK 2556 PAGE 1731

The foregoing certificate(s) of

YOUNG M SMITH JR

WANDA R BOWEN

BEVERLY G KING

ELIZABETH A WINCHESTER

FILED Mar 03, 2004  
AT 10:54:09 am  
BOOK 02556  
PAGE 1731

notary/notaries public  
is/are certified to be correct,  
*Ruth Mackie*  
RUTH MACKIE Register of Deeds

**006365**

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
BRAXTON GATE

WEB

✓ Prepared by:  
Young M. Smith, Jr., Attorney  
Hickory, North Carolina

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
BRAXTON GATE**

THIS DECLARATION is made this 5th day of January, 2004, by Braxton Gate, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Catawba County, North Carolina, which it desires to develop under the provisions of the North Carolina Planned Community Act into a residential community of single-family townhomes known as Braxton Gate; and

WHEREAS, Declarant desires to subject the property in Braxton Gate to the covenants, conditions, and restrictions set forth below for the purpose of protecting the value and desirability of the property and for the purpose of providing for the maintenance and operation of the common areas located thereon;

NOW, THEREFORE, Declarant hereby agrees that all of the property described hereinafter shall be subject to the following easements, covenants, conditions, and restrictions, all of which shall be collectively referred to in this Declaration as "restrictions".

**ARTICLE 1  
DEFINITIONS**

The following terms when used in this Declaration or any Supplemental Declaration shall have the following meanings:

1.01. Act. "Act" shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

1.02. Additional Land. "Additional Land" shall mean the real property described in Exhibit "A" attached hereto, all or any portion of which may from time to time be made subject to this Declaration and which, when so subjected, shall become a part of Braxton Gate.

1.03. Agency. "Agency" shall mean the Federal Housing Administration and the Department of Veterans Affairs.

1.04. Articles. "Articles" shall mean the Articles of Incorporation of the Association and any amendments thereto.

1.05. Association. "Association" shall mean the Braxton Gate Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.06. Board. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.07. Bylaws. "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

1.08. Common Area. "Common Area" shall mean all real property and easements over real property acquired by the Association for the common use and enjoyment of its Members. "Common Area" shall include any public or private road or right-of-way shown on Plats of the Property, and Declarant hereby grants to the Association a non-exclusive easement over all such roads and rights-of-way.

1.09. Completion of Sales. "Completion of Sales" shall mean the date on which the Declarant has conveyed all Lots to purchasers other than a successor Declarant hereunder and all of the Additional Land has been annexed to Braxton Gate as provided in Section 2.02.

1.10. Declarant. "Declarant" shall mean Braxton Gate, LLC and any successor or assign to whom Declarant shall expressly assign its interest as Declarant under this Declaration.

1.11. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions and all amendments or supplements hereto.

1.12. Braxton Gate, Phase 1. "Braxton Gate, Phase 1" shall mean all of Lots 1 through 3 and approximately 14,197 square feet of Common Area adjacent thereto as shown on a plat of Braxton Gate, Phase 1, recorded in Plat Book 59 at Page 106, Catawba County Registry.

1.13. Braxton Gate. "Braxton Gate" shall mean all of Braxton Gate, Phase 1, and all or any portion of the Additional Land as may hereafter be subjected to the terms and provisions of this Declaration.

1.14. Lot. "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any Plat of the Property.

1.15. Management Documents. "Management Documents" shall mean this Declaration, the Articles and Bylaws of the Association, and the Rules and Regulations.

1.16. Member. "Member" shall mean a member of the Association.

1.17. Mortgage. "Mortgage" shall mean a mortgage or deed of trust which constitutes a first lien upon a Lot.

1.18. Mortgagee. "Mortgagee" shall mean the holder of the beneficial interest in any Mortgage.

1.19. Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot and shall include Declarant as to any Lot owned by Declarant.

1.20. Person. "Person" shall mean an individual, corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.

1.21. Plat. "Plat" or "Map" shall mean a subdivision plat of a portion of the Property recorded in the Catawba County Registry.

1.22. Property. "Property" shall mean all of Braxton Gate, Phase 1, and all or any portion of the Additional Land as may hereafter be subjected to the terms and provisions of this Declaration.

1.23. Phase. "Phase" shall mean the real property shown on each Plat of the Property recorded in the Catawba County Registry.

1.24. Rules and Regulations. "Rules and Regulations" shall mean reasonable rules and regulations as may be adopted from time to time by the Association.

1.25. Special Declarant Rights. "Special Declarant Rights" or "Declarant's Rights" shall mean rights reserved for the benefit of the Declarant, including without limitation the Special Declarant Rights allowed to the Declarant under Section 47F-1-103(28) of the Act, which include without limitation the right to elect, appoint, or remove any officer or member of the Board of Directors of the Association during the period of Declarant control. All such Special Declarant Rights, as authorized by the Act, are reserved to the Declarant.

1.26. Supplemental Declaration. "Supplemental Declaration" shall mean a supplement to this Declaration recorded for the purpose of annexing additional

property to Braxton Gate and causing such property to be subject to the terms and provisions of this Declaration.

1.27. Townhome. "Townhome" shall mean the single family dwelling constructed on each Lot by Declarant.

**ARTICLE 2  
PROPERTY SUBJECT TO THIS DECLARATION**

2.01. Property Subject to this Declaration. All of Braxton Gate, Phase 1, shall be held, transferred, sold, conveyed, occupied, and used subject to all of the covenants, conditions, and restrictions set forth herein.

2.02. Future Additions. Additional lands may hereafter be annexed and subjected to this Declaration in the following manner:

(a) The Declarant shall have the right from time to time to bring within the operation and effect of this Declaration portions of the Additional Land more particularly described in Exhibit "A" attached hereto. Such additions shall be made by recording in the Catawba County Registry a Supplemental Declaration. Such Supplemental Declaration need be executed only by the Declarant (and the owner of such additional land if the Declarant is not the owner thereof) and shall describe the additional land and state that it is subject to this Declaration. The additions authorized by this Section 2.02(a) shall not require the approval of the Association or the Owners.

(b) Any Supplemental Declaration may contain such complementary additions and modifications of the restrictions contained herein as may be necessary to reflect the different character, if any, of the added property, provided they are not inconsistent with this Declaration. In no event, however, shall any such supplement revoke, modify, or add to the restrictions established by this Declaration insofar as they pertain to the Property as the same exists prior to the supplement.

**ARTICLE 3  
COMMON AREA**

3.01. Conveyance of Common Areas. The Declarant shall from time to time convey to the Association fee simple title to the Common Areas. At the time of the conveyance such Common Areas shall be free of any liens or encumbrances except for: (a) ad valorem taxes prorated to the date of conveyance, (b) the restrictions and easements set forth in this Declaration, (c) other utility, drainage, and access easements, and (d) other title matters acceptable to the Association. The Association shall hold the Common Areas conveyed to it subject to the rights of Declarant set forth in the Management Documents and in the Act.

3.02. Community Use. The Common Areas conveyed to the Association shall be deemed property and facilities for the use and enjoyment, in common, of each Owner. No portion of any Common Area may be used exclusively by any Owner for a personal garden, storage facility, or other private use without the prior written approval of the Association. No Owner, except the Declarant, may place any signs in the Common Area or within the right of way of any street in the Property.

3.03. Owners' Easements of Enjoyment. Each Owner shall have a non-exclusive right and easement to use and enjoy the Common Area. This right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of the Management Documents, including but not limited to the following:

(a) The right of the Association to adopt Rules and Regulations governing the use and enjoyment of the Common Area and to charge reasonable fees with respect to the use of any Common Area facilities;

(b) The right of the Association to suspend the right of an Owner to use any Common Area facilities for any violation of the Management Documents or for any period during which any assessment, fine, or other charge due to the Association remains unpaid;

(c) The right of the Association to dedicate, transfer, sell, convey, or encumber all or any part of the Common area and to grant easements, leases, licenses, and concessions upon, over, under, and across the Common Area; and

(d) All other rights and easements of the Association and the Declarant set forth in the Management Documents and the Act.

3.04. Delegation of Use. Any Owner may delegate, subject to the provisions of the Management Documents, his rights of enjoyment of the Common Area to the members of his family and to his guests, tenants, and contract purchasers who reside on the property. The Association shall have the right to limit the number of guests of Owners.

3.05. Maintenance of the Common Area. The Association shall be responsible for the operation, maintenance, and repair of the Common Area.

3.06. Conveyance or Encumbrance of Common Area. Portions of the Common Area may be conveyed or subjected to a security interest by the Association if: (a) persons entitled to cast at least eighty percent (80%) of the votes in the Association, including at least sixty-seven percent (67%) of the votes appurtenant to the Class A membership, agree in writing to that action, and (b) the Declarant also agrees in writing to that action. This paragraph shall not preclude the Board from granting easements,

leases, licenses, and concessions through and over the Common Area without the assent of the membership as provided by the Act.

3.07. Rules and Regulations. The Association shall have the right to adopt, publish, and enforce reasonable Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and the personal conduct thereon of the Owners, their guests, invitees, tenants, and members of their families or households.

#### ARTICLE 4 THE ASSOCIATION

4.01 Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair, and replacement of the Property. Subject to the provisions of this Declaration and unless expressly prohibited herein, the Association shall have all of the rights, powers, and authority allowed or allowable to it under the Act. The Association shall be governed by a Board of Directors which can act in all instances on behalf of the Association unless the Management Documents or the Act specifically provide otherwise.

4.02. Membership. All Owners, including Declarant, shall be Members of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

4.03. Voting. The Association shall have two classes of voting membership:

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

(b) Class B. The Class B Member shall be the Declarant, which shall be entitled to four votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of the following dates: (i) the date that seventy-five percent (75%) of the Lots in Braxton Gate are conveyed by Declarant to other Owners, provided that the Class B membership shall be reinstated if thereafter additional lands are annexed to the Property as provided in Section 2.02, or (ii) December 31, 2015.

4.04. Period of Declarant Control. The period of Declarant control, during which the declarant has the right under the Act to appoint or remove any officer or member of the Board of Directors of the Association, shall terminate upon the Completion of Sales or December 31, 2015, whichever is earlier.

ARTICLE 5  
COVENANTS FOR ASSESSMENTS

5.01. Covenant to Pay Assessments; Lien. Every Owner of a Lot, other than the Declarant, shall be obligated to pay to the Association such annual and special assessments as may be levied by the Association pursuant to the provisions of this Declaration. Any such assessment levied against a Lot remaining unpaid for a period of thirty days or longer shall constitute a lien upon that Lot when the Association files a claim of lien in the office of the Clerk of Superior Court of Catawba County. The lien provided for herein, upon filing, shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances (specifically including without limitation any Mortgage on the Lot) recorded before the docketing of the claim of lien and (b) liens for real estate taxes and other governmental assessments and charges against the Lot. The lien may be enforced by foreclosure pursuant to Section 47-3-116 of the Act or in any other manner allowed by law.

5.02. Personal Obligation. Each annual or special assessment, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the owner of the Lot at the time such assessment was levied. If more than one Person held an ownership interest in the Lot at such time, the personal obligation to pay such assessment shall be both joint and several. The personal obligation for delinquent assessments shall pass to such Owner's heirs and personal representative, but shall not pass to such Owner's assigns unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligation. No Owner may exempt himself from payment of assessments by waiver of use or by non-use of the Common Area or by abandonment or leasing of his Lot.

5.03. Purpose of Assessments. The assessments levied by the Association shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities under the Management Documents and the Act and for all other purposes allowed or allowable to the Association under the Management Documents, and the Act.

5.04. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and those other portions of the Property which the Association may be obligated to maintain. At the time of the closing of the sale or resale of each Lot, the purchaser shall pay to the Association a sum equal to two months assessment to be added to the reserve fund. This obligation of the purchaser shall be in addition to his obligation to pay annual and special assessments and shall not be considered advance payment of any such assessments.



5.05. Regular Annual Assessments. Regular annual assessments shall be determined on a calendar year basis for the period from January 1 through December 31 of each year. For calendar year 2004 the regular annual assessment shall be \$600.00 per Lot, payable monthly. For calendar year 2005 and for each calendar year thereafter the Board shall adopt a budget and fix the amount and due date of the regular annual assessment on a yearly basis at least sixty days in advance of each assessment year. Within thirty days after the adoption of the budget the Board shall provide to all of the Members a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Members to consider ratification of the budget, such meeting to be held not less than ten nor more than thirty days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting it is rejected by at least sixty percent (60%) of all of the Lot Owners in the Association. In the event the proposed budget and assessment is rejected, the budget and assessment for the previous year shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable monthly on the first day of each month or at such other time as the Board may fix. The Association shall, upon demand and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.

5.06. Special Assessments. If for any reason the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board shall determine that it is in the best interest of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Executive Board may levy a special assessment against the Lots and the Owners thereof (other than the Declarant) to raise such needed funds, provided that such assessment may not be levied without the assent of sixty-seven percent (67%) of the votes of each class of Members voting in person or by proxy at a meeting duly called for this purpose. Any special assessment levied by the Board pursuant to the provisions of this Section 5.06 shall be payable at such times and such installments as the Board shall determine. Each Lot not owned by the Declarant shall be liable for the payment of an equal share of such assessment.

5.07. Lots Owned by Declarant. No Lot owned by the Declarant shall be subject to any assessment provided under this Article 5 for so long as said Lot is owned by the Declarant. Upon the sale or conveyance of a Lot by the Declarant the assessments provided under this Article 5 shall be levied against such Lot, and the Purchaser shall pay to the Association at the closing of the sale that portion of the assessment attributable to the remainder of the year in which the closing takes place.

5.08. Assessment as Remedy. After notice and opportunity for hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs and reasonable attorneys' fees incurred in bringing the Owner, his Lot, or his Townhouse into compliance with the provisions of the Management Documents.

5.09. Suspension of Privileges. The Association, after notice and opportunity for hearing, may suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty days or longer.

5.10. Allocation of Assessments. Except as otherwise provided in this Declaration and except for the exemption from assessments on Lots owned by Declarant, all regular and special assessments shall be levied equally against all Owners.

5.11. Delinquent Assessments. Any assessment not paid within fifteen days after the due date shall be delinquent. The Board may impose reasonable charges for late payment of assessments and other sums due and payable to the Association, including without limitation interest, late charges, collection costs, and reasonable attorneys' fees. All such late payment charges, along with all other fees, fines, charges, and sums of any kind due and payable to the Association, shall constitute assessments secured by the lien under Section 5.01 and shall be enforceable as assessments under this Article 5. Any interest charged by the Association for late payment of assessments shall be at the rate of eighteen percent (18%) per year and shall accrue from the due date until paid.

5.12. Subordination of the Lien to Mortgages. The lien for assessments provided for herein, prior to its docketing in the Office of the Clerk of Superior Court of Catawba County, shall be a continuing charge and lien upon the Lot, but shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

5.13. Voluntary Conveyance; Estoppels. Except as provided in Section 5.12 the lien for assessments provided for herein, prior to its docketing in the office of the Clerk of Superior Court of Catawba County, shall not be affected by any conveyance of a Lot and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed after being docketed in the Office of the Clerk of Superior Court of Catawba County, as provided in Section 5.01. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board setting forth the amount of the unpaid assessments against the Lot, and such grantee shall not be liable for, nor shall the Lot

conveyed be subject to, a lien for any unpaid assessments in excess of the amount set forth in that statement.

5.14. Subsidy. Declarant shall subsidize the difference between revenues received through annual assessments and all reasonable expenses of the Association until such time as the Class B membership ceases to exist.

#### ARTICLE 6 ARCHITECTURAL CONTROL

6.01. Architectural Review Committee. Upon the Completion of Sales the Board of Directors shall appoint an Architectural Review Committee consisting of not less than three members. Prior to that time the Declarant shall function as the Architectural Review Committee, and reference herein to such Committee shall mean the Declarant until the Completion of Sales.

6.02. Approval of Plans. No building, fence, wall, awning, or other structure or improvement on any Lot shall be commenced, erected, constructed, placed, replaced, demolished, or altered on a Lot until the plans and specifications showing the nature, kind, shape, height, materials, color, exterior finish, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. Disapproval of plans or specifications may be based upon any ground, including purely aesthetic considerations, which in its discretion the Committee deems sufficient. If the Architectural Review Committee fails to approve or disapprove an application within thirty days following its receipt, further approval will not be required and this Article will be deemed to have been fully complied with. The Architectural Review Committee or the Board of Directors shall be entitled to stop any construction in violation of these instructions. This Article 6 shall not apply to the Declarant.

#### ARTICLE 7 USE RESTRICTIONS

7.01 Residential Use. No portion of the Property shall be used for other than residential purposes and for purposes incidental thereto. All Lots shall be known and described as residential lots, and no part of said Lots shall be used for any commercial, business, or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section 7.01 shall prohibit: (a) the Declarant from conducting such sales, leasing, and promotional activities on any Lot as the Declarant shall deem appropriate, including but not limited to using any Townhome as a model home and sales office, or (b) the Owner of any Townhome from using a portion of the Townhome as an office, provided that such use does not create regular customer or client traffic to and from

such Townhome and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Lot. It shall be within the discretion of the Board to determine, on a case-by-case basis, which home occupation or business-related activities will be compatible with the residential nature of the Property.

7.02. Prohibited Activity. No noxious, offensive, or unlawful activity shall be conducted on any Lot or on any other part of the Property, nor shall anything be done thereon that may be or become an unreasonable annoyance, inconvenience, or nuisance to the residents of the Property or that unreasonably interferes with their quiet enjoyment of the Property.

7.03. Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property or cause or allow any disturbance, including but not limited to playing any musical instruments, radio, stereo, or television in a manner that unreasonably disturbs any other Owner.

7.04. Signs. No signs shall be displayed on any Lot other than as may be permitted by the Rules and Regulations, except for one sign of customary and reasonable dimensions, conforming to such reasonable standards as may be adopted by the Board, advertising a Lot for sale. This sign restriction shall not apply to Declarant.

7.05. Antennas. Except for a satellite dish no more than eighteen inches in diameter that is not visible from the street and except as may be permitted by the Architectural Review Committee, no Owner shall construct, install, erect, or maintain any antenna, aerial, satellite dish or other reception devices upon any Lot.

7.06. Clotheslines. No clotheslines shall be allowed on any lot.

7.07. Pets. No animals shall be raised, bred, or kept on any Lot except dogs, cats, or other household pets which are kept for personal enjoyment and not for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed two in number except for newborn offspring of such household pets which are under nine months of age. No savage or dangerous pets may be kept on the Property, and no pet shall be allowed if such pet constitutes an unreasonable annoyance, inconvenience, or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes such an unreasonable nuisance, the Board shall afford the Owner of such animal notice and opportunity for hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, or nuisance, the Board may require that such animal be removed from the Property.

All pets must be housed inside a Townhome, and no pet shall be permitted upon the common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area or urinate on the shrubbery, and each Owner shall clean up immediately after his pet if an accident occurs. All pets

shall be registered or inoculated as required by law. Each owner shall hold the Association harmless from any claim resulting from any action of his pet and shall repair at his expense any damage to the Common Area caused by his pet. If any owner violates these rules more than twice in any twelve month period, then in addition to any fines provided in the Declaration, the Board shall have the right to require the owner to remove the pet from the Property after notice and opportunity for hearing.

The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration. The Board may also adopt a rule prohibiting certain pets which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience, or nuisance be removed as provided hereinabove.

7.08. Trash and Vegetation. No trash, rubbish, garbage, or other waste material shall be kept or permitted upon any Lot except temporarily in sanitary containers located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials, or other materials of any kind shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to the Owner of any other Lot in the vicinity.

7.09. Parking. Unless otherwise permitted by the Rules and Regulations, no boats, trailers, recreational vehicles, motor homes, campers, inoperable vehicles, trucks or commercial vehicles (except pickup trucks of no more than three-quarter ton capacity), or similar vehicles shall be parked, stored, or left on any part of the property unless the same is fully enclosed within the garage located on a Lot, with the garage door closed. Automobiles, pickup trucks of no more than three-quarter ton capacity, and vans used solely as passenger vehicles may be parked on those parts of a Lot improved for that purpose (garage, driveway, or parking pad).

7.10. Patios. No patio coverings, awnings, or enclosures shall be permitted except as approved by the Architectural Review Committee. Each owner will care for and keep his patio clean and in a neat and good condition. The furniture on the patio shall be appropriate patio furniture and shall be maintained in a neat, tidy, and good condition. Barbecue grills may be stored on the patio, but all other personal property (such as bicycles, lawn care equipment, and recreational equipment) shall be stored in a manner so as not to be visible from the Common Area or other Lots.

7.11. Fences. No fence, wall, patio enclosure, hedge, garden, or mass planting shall be erected, maintained, or permitted upon the Property except as approved by the Architectural Review Committee.

7.12. Leases. Any lease of a Lot or portion thereof shall be in writing and shall provide that the lease shall be subject in all respects to the Declaration and that any failure by the tenant to comply with all of the terms of the Declaration shall constitute a default under the lease.

## ARTICLE 8 PARTY WALLS

8.01. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhomes in Braxton Gate and placed on the dividing line between the Lots and any replacement thereof 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.

8.02. 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, to the extent such maintenance is not the responsibility of the Association under Article 9.

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

8.04. Weatherproofing. Notwithstanding any other provision of this Article, 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.

8.05. 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.

8.06. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina relating to arbitration as then existing.

8.07. Boundaries. Notwithstanding the depiction of the boundaries of any Lot on the Plat, the centerline of any common wall separating any Townhome from an adjoining Townhome shall constitute that portion of the common boundary line that runs between the attached areas of such Townhomes. Similarly, if any portion of any structure originally constructed by Declarant, including any party wall, any extension

of a party wall, or any common fence, protrudes over an adjoining Lot or into the Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. If there is such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision shall also apply to any replacements in conformance with the original structure, wall, or fence constructed by Declarant. The provisions of this Section 8.07 shall be perpetual in duration and shall not be affected by any amendment of this Declaration.

## ARTICLE 9 MAINTENANCE OF THE PROPERTY

9.01. Maintenance by Association. The Association shall be responsible for the operation, maintenance, and repair of the Common Area. In addition, the Association shall provide the following items of exterior maintenance upon each Lot: (a) lawn care and landscape maintenance, including the maintenance and repair of walkways and paved areas, but excluding such maintenance and care within any enclosed patio or other enclosure, (b) the periodic repainting or restaining of exterior building surfaces on each Townhome, and (c) the repair and replacement when necessary of the following structural elements of each Townhome: exterior walls and building surfaces, roofs, front stoops, gutters, and downspouts. In the event that the need for any maintenance or repair is caused by the negligence or intentional misconduct of the Owner, his agents, guests, or family members, the cost of such maintenance or repair shall be the obligation of the Owner and shall be added to and become a part of the assessment to which such Lot is subject.

9.02. Maintenance by Owners. Except for the maintenance required of the Association under Section 9.01, each Owner shall be responsible for keeping his Lot and all improvements thereon in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Townhome, shall be maintained and kept in good repair by the Owner. Each owner shall also repair, maintain, and replace at his expense the heating and air conditioning systems servicing said Owner's Lot, whether located on the Owner's Lot or in the Common Area adjacent thereto. If an Owner fails to maintain his Lot and the improvements thereon in accordance with this Article 9 in a manner reasonably satisfactory to the Board, the Board shall give written notice to such Owner, and if the necessary maintenance is not completed within thirty days thereafter, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain, and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good

and workmanlike manner. The cost of such repair, maintenance, or restoration shall be added to and become a part of the assessment to which such Lot is subject.

9.03. Right to Enter. The Association, or any person authorized by it, shall have the right of access to each Lot to the extent necessary for performance of its maintenance and other obligations with respect to such Lot and the Common Area. In the event of an emergency originating in or threatening any Townhome, regardless of whether the Owner is present at the time of such emergency, the Association or any person authorized by it shall have the right, with or without notice, to enter the Townhome for the purpose of abating the emergency or making any necessary repairs not performed by the Owner, and such right of access shall be immediate. In addition, all police, firemen, ambulance personnel, and similar persons shall have the right to enter upon the streets, driveways, and other parts of the Common Area in the performance of their duties.

#### ARTICLE 10 DAMAGE OR DESTRUCTION OF TOWNHOMES

10.01. Reconstruction. In the event of any damage or destruction by fire or other casualty to any one or more Townhomes, such damage or destruction shall be repaired or rebuilt in all events. All repair, reconstruction, or rebuilding of any Townhome shall be substantially in accordance with the plans and specifications for such damaged or destroyed Townhome prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the Owner of the Townhome which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors. The work of repairing, reconstructing, or rebuilding any damaged or destroyed Townhome shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable at no cost or expense to the Association.

10.02. Owners' Insurance. Each Owner shall obtain and keep continuously in force fire and casualty and extended coverage insurance upon his Townhome in an amount not less than one hundred percent (100%) of the replacement cost of such Townhome. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association upon the closing of the purchase of his Lot, and proof of each renewal thereof shall be forwarded with the next monthly assessment payment as is appropriate.

#### ARTICLE 11 COMPLIANCE WITH MANAGEMENT DOCUMENTS

11.01. Management Documents. The administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws, and the



Rules and Regulations, herein referred to as the "Management Documents", and if there are any conflicts or inconsistencies in such documents, then the provisions of this Declaration shall control. In the event that anything shown on any Plat of the Property is inconsistent with the provisions of this Declaration, then the provisions of this Declaration shall prevail. Should any of the provisions of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control.

11.02. Compliance with Management Documents. Each Owner, resident, or tenant of a Lot shall comply with the provisions of the Management Documents. The failure of any Owner to comply with any such provisions shall entitle the Association, the Declarant, or any other Owner to maintain an action for the recovery of damages or for injunctive relief or both, and such persons or entities shall have the right to enforce all of the restrictions set forth in the Management Documents. Failure to enforce the provisions of the Management Documents shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under the law.

If any structure is built on the Property in violation of this Declaration, the Association or its designated agents may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, at the expense of the Owner, make whatever repairs are necessary to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal, or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall be the personal obligation of the Owner and shall be added to and become a part of the assessment to which such Lot is subject. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any improvements within the Property.

There shall be a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the covenants or restrictions set forth in this Declaration cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

11.03. Fines and Suspension of Privileges. The Association, after notice and opportunity for hearing, may impose reasonable fines or suspend membership and voting rights (except rights of access to Lots) for reasonable periods for violation of the Management Documents. Any fine may be imposed, in an amount not to exceed that

permitted by the Act, for each day after its imposition that the violation continues. Such fines shall be assessments secured by the lien under Article 5 hereinabove. If a suspension of membership rights and privileges is imposed, the suspension shall be continued until the violation or delinquency is cured.

## ARTICLE 12 DECLARANT'S RIGHTS

12.01. Declarant's Rights. Notwithstanding anything to the contrary contained in this Declaration, the Declarant shall have the right to take such actions as it deems necessary, advisable, or convenient for the completion and improvement of Braxton Gate as a residential community and for the sale, rental, or other disposition of Townhomes in Braxton Gate. The rights of Declarant shall include without limitation:

(a) The right to use easements throughout the Common Area for the purpose of making improvements within the Property or the Additional Land, performing acts allowed or required by the Management Documents or the Act, and performing on any part of the Property acts deemed necessary, advisable, or convenient for the completion and improvement of the Property as a residential community and for the sale, rental, or other disposition of Lots;

(b) The right to install, construct, and maintain utilities and drainage facilities on any portion of the Common Area to serve the Common Area or any Lot;

(c) The right to install, construct, maintain, or remove facilities, structures, landscaping, and other improvements on the Common Area deemed necessary, advisable, or convenient for the completion and improvement of Braxton Gate as a residential community and for the sale, rental, or other disposition of Lots;

(d) The right to maintain sales offices, management offices, models, signs, and other sales aids advertising Braxton Gate on any portion of the Property;

(e) The rights of Declarant set forth elsewhere in the Management Documents; and

(f) The Special Declarant Rights set forth in Section 47F-1-103(28) of the Act and all other rights, powers, and authority allowed or allowable to the Declarant under the Act not expressly prohibited to it by the Management Documents. Included in these Special Declarant Rights authorized by the Act is the right to appoint or remove any officer or member of the Board of Directors of the Association during the period of Declarant control.

The rights reserved under this Article 12 shall terminate one year after the Completion of Sales, except for the right to appoint or remove any officer or director of

the Association, which shall sooner terminate upon the termination of the period of Declarant control as set forth in Section 4.04 of this Declaration.

### ARTICLE 13 GENERAL PROVISIONS

13.01. Indemnification of Officers and Directors. The Association shall indemnify all persons who serve at any time as officers or directors of the Association against all costs incurred by them in connection with the defense or settlement of any claim, action, suit, or proceeding in which they are made parties or which may be asserted against them by reason of having been an officer or director of the Association, except in relation to matters in any such proceeding as to which any such officer or director shall be found guilty of willful and intentional negligence or misconduct. In the event of a settlement this indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

13.02. Amendments and Termination. Except as is otherwise specifically authorized herein, this Declaration may be amended only upon the affirmative vote or written agreement signed by Owners to which at least sixty-seven percent (67%) of the votes of the Association are allocated and the written consent of the Declarant. The Declarant, without the approval of the Owners, may amend this Declaration to reflect any changes requested, required, or suggested by the Federal Housing Administration, the Department of Veterans' Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Corporation. The Declarant may also amend this Declaration without the approval of the Owners to correct minor and clerical errors. The Declarant, for so long as it is a Class B member, and thereafter the Board of Directors, may amend this Declaration as shall be necessary, in its opinion and without the approval of the Owners, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Any amendment to this Declaration shall not be effective until an instrument evidencing the same shall be recorded in the Catawba County Registry, which instrument shall contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration. This Declaration may be terminated only by agreement of Lot Owners to which at least ninety percent (90%) of the votes in the Association are allocated and the written consent of the Declarant.

13.03. Agency Approval. Annexation of additional properties other than as provided in Section 2.02(a) hereof, the mortgaging or conveyance of any portion of the Common Area to persons other than the Association, and any material amendment of this Declaration shall require the prior approval of any Agency then holding or insuring a Mortgage as long as there is a Class B membership.

13.04. Interpretation of Declaration. Whenever appropriate, the singular may be read as plural, the plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender.

13.05. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

13.06. Headings. The headings used in this Declaration are for convenience and reference only, and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

13.07. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the Owner's address last appearing in the books of the Association; (b) if to Declarant, to 1930 Plaza Drive, Hickory, North Carolina 28602; and (c) if to the Association, to 1930 Plaza Drive, Hickory, North Carolina 28602. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

13.08. No Liability. Neither Declarant, nor any employee, agent, successor or assign of Declarant, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

13.09. Covenants Running with the Land. All of the provisions of this Declaration shall be construed as covenants running with the land and shall be binding upon and inure to the benefit of all parties having any right, title, and interest in the Property or any part thereof and their heirs, successors, and assigns.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on its behalf by its duly authorized member-managers as of the date first above set forth.

BRAXTON GATE, LLC

By: Warlick and Associates, Inc., Member-  
Manager

By: Tracy D. Warlick  
Tracy D. Warlick, President

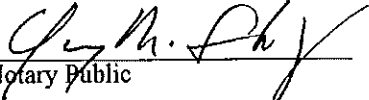
By: Allison Terry Lines, II  
Allison Terry Lines, II, Member-Manager

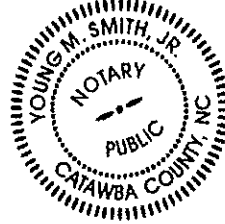
WEB

NORTH CAROLINA  
CATAWBA COUNTY

I, Young M. Smith, Jr., a Notary Public of Catawba County, North Carolina, certify that Allison Terry Lines, II, member-manager of Braxton Gate, LLC, a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this 2nd day of March, 2004.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 7/28/2007

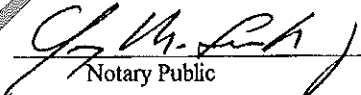


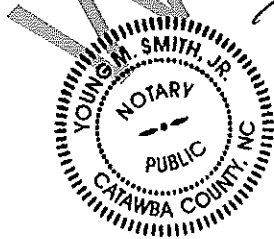
NORTH CAROLINA  
CATAWBA COUNTY

I, Young M. Smith, Jr., a Notary Public of the County and State aforesaid, certify that Tracy D. Warlick, President of Warlick and Associates, Inc., a North Carolina Corporation, acting in its capacity as Member-Manager of Braxton Gate, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this 2nd day of March, 2004.

My Commission Expires: 7/28/2007

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**Additional Land  
Braxton Gate**

Being all of the Braxton Gate Townhome Development, consisting of approximately 6.854 acres, as shown on a plat recorded in Plat Book 59 at Page 106, Catawba County Registry, less and excepting all of Braxton Gate, Phase 1, as shown on said plat.

WEB

CONSENT AND JOINDER

WHEREAS, Carolina Trust Bank (hereinafter referred to as "Beneficiary") is the owner and holder of certain obligations secured by two Deeds of Trust recorded in Book 2436 at Page 1721 and Book 2460 at Page 102, Catawba County Registry, and J. Michael Cline (hereinafter referred to as "Trustee") is Trustee under both of said Deeds of Trust; and

WHEREAS, Trustee and Beneficiary have agreed at the request of Braxton Gate, LLC, a North Carolina limited liability company, to consent to the provisions of the attached Declaration of Covenants, Conditions and Restrictions for Braxton Gate (hereinafter referred to as the "Declaration"), which Declaration is applicable to the property encumbered by the aforesaid Deeds of Trust;

NOW, THEREFORE, Trustee and Beneficiary, by joining herein, hereby:

(1) Consent to the execution, delivery, and recordation of the Declaration;

(2) Subordinate the lien of the aforesaid Deeds of Trust to the provisions of the Declaration with the same effect as if the Declaration had been executed, delivered, and recorded prior to the execution, delivery, and recordation of the Deeds of Trust; and

(3) Agree notwithstanding the foreclosure of the Deeds of Trust (or a conveyance in lieu thereof), that the Declaration and all rights therein described shall continue unabated and in full force and effect.

IN WITNESS WHEREOF, the Beneficiary and the Trustee have hereunto set their hands and seals as of this 29<sup>th</sup> day of February, 2004.

CAROLINA TRUST BANK

By: S. Michael Lee  
Sr. Vice President

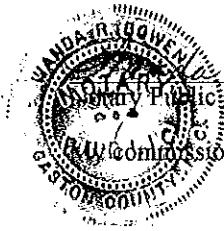
J. Michael Cline  
J. Michael Cline, Trustee



NORTH CAROLINA

*GASTON*  
LINCOLN COUNTY

I, Wanda R Bowen, a Notary Public of the County and State aforesaid, certify that S. Micah Lee personally came before me this day and acknowledged that        is SR Vice Pres. President of Carolina Trust Bank, a North Carolina corporation, and that by authority duly given and as the act of the corporation, he signed the foregoing instrument in its name and on its behalf as its act and deed. Witness my hand and official stamp or seal, this 27<sup>th</sup> day of February, 2004.



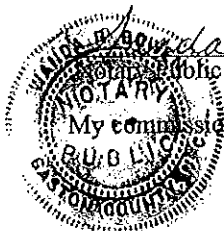
W R Bowen

My commission expires: 10-27-07

NORTH CAROLINA

*GASTON*  
LINCOLN COUNTY

I, Wanda R Bowen, a Notary Public of the County and State aforesaid, certify that J. Michael Cline, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 27<sup>th</sup> day of February, 2004.



Wanda R Bowen

My commission expires: 10-27-07

**CONSENT AND JOINDER**

**WHEREAS**, Douglas P. Ehmann (hereinafter referred to as "Beneficiary") is the owner and holder of certain obligations secured by a Deed of Trust recorded in Book 2460 at Page 114, Catawba County Registry, and Joseph N. Tissue (hereinafter referred to as "Trustee") is Trustee under said Deed of Trust; and

**WHEREAS**, Trustee and Beneficiary have agreed at the request of Braxton Gate, LLC, a North Carolina limited liability company, to consent to the provisions of the attached Declaration of Covenants, Conditions and Restrictions for Braxton Gate (hereinafter referred to as the "Declaration"), which Declaration is applicable to the property encumbered by the aforesaid Deed of Trust;

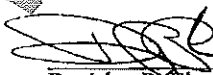
**NOW, THEREFORE**, Trustee and Beneficiary, by joining herein, hereby:

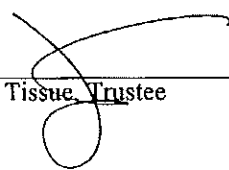
(1) Consent to the execution, delivery, and recordation of the Declaration;

(2) Subordinate the lien of the aforesaid Deed of Trust to the provisions of the Declaration with the same effect as if the Declaration had been executed, delivered, and recorded prior to the execution, delivery, and recordation of the Deed of Trust; and

(3) Agree notwithstanding the foreclosure of the Deed of Trust (or a conveyance in lieu thereof), that the Declaration and all rights therein described shall continue unabated and in full force and effect.

**IN WITNESS WHEREOF**, the Beneficiary and the Trustee have hereunto set their hands and seals as of this 5th day of January, 2004.

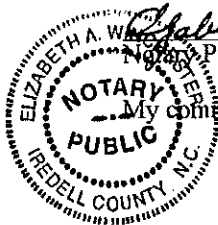
  
\_\_\_\_\_  
Douglas P. Ehmann, Beneficiary

  
\_\_\_\_\_  
Joseph N. Tissue, Trustee

NORTH CAROLINA

MECKLENBURG COUNTY

I, Elizabeth A. Windham, a Notary Public of the County and State aforesaid, certify that Douglas P. Ehmann, Beneficiary, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of January, 2004.



Elizabeth A. Windham  
Notary Public  
My commission expires: 02/01/2006

NORTH CAROLINA

MECKLENBURG COUNTY

I, Beverly G. King, a Notary Public of the County and State aforesaid, certify that Joseph N. Tissue, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 20 day of January, 2004.

Beverly G. King  
Notary Public

My commission expires: 6/30/05

