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DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
GRIFFIN SUBDIVISION

THIS DECLARATION, made this 8th day of September, 2005, COSNER DEVELOPMENT, LC, a Virginia Limited Liability Company, (Grantor), hereinafter referred to as "Declarant."

WITNESSETH:

Declarant is the owner of Lot 11, containing 2.505 acres, more or less, as shown on a plat entitled "Heritage Villas", recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 2070, Page 77, together with the Declaration of Covenants, Conditions, and Restrictions of Heritage Villas recorded in the aforesaid Clerk's Office in Deed Book 2070, at Page 84.

Declarant has further subdivided said Lot 11 Heritage Villas into Lots of land situate in the Town of Broadway, Virginia, shown and designated on a plat entitled "Final Plat Griffin Subdivision", dated the 5th day of July, 2005, and made by Jeffrey S. Simmons, Land Surveyor, (the Properties)", which plat is to be recorded in the Clerk's Office of Circuit Court of Rockingham County, Virginia, immediately prior to the recordation of this instrument. Declarant conveyed the said Properties, subject to certain protective covenants, conditions, restrictions, reservations, liens, and charges as hereinafter set forth.

Farmers & Merchants Bank has a Deed of Trust, dated June 13, 2005, which is recorded in the aforesaid Clerk's Office in Deed Book 2684 page 36 on the property that is subject to this Declaration, Farmers & Merchants Bank and its Trustee, M. Steven Weaver, join in the Declaration to evidence their consent; and

NOW, THEREFORE, Declarant hereby declares that the Properties described above shall be held, sold and conveyed subject to the following

CLARK & BRADSHAW, P.C.
ATTORNEYS AT LAW
88 NORTH LIBERTY STREET
P. O. BOX 71
HARRISONBURG, VIRGINIA
22803

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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 and insuring a uniform mode of development. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any rights, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE ONE

DEFINITIONS

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

Section 2. "Association" shall mean and refer to Griffin Subdivision Property Owners' Association, Inc., its successors and assigns.

Section 3. "Book of Resolutions" shall mean and refer to the document containing the rules and regulations and policies of the Association as they may from time to time be amended.

Section 4. "Builder" shall mean and refer to a person or entity that acquires a portion of the Properties for the purpose of improving such portion for resale to Owners or for lease to tenants.

Section 5. "Common Area" shall mean all real property identified as "Common Area" on the plat prepared by Jeffrey S. Simmons, Land Surveyor, dated July 5, 2005, entitled "Final Plat of Griffin Subdivision," and recorded immediately prior hereto. Said Common Area shall, at the time designated herein, be owned by the Association for the common use and enjoyment of the members of the Association.

Section 6. "Family" shall mean two or more persons all of whom are related to each other by blood, marriage, or adoption.

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Section 7. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, the Supplementary Declarations, or amendments to this Declaration, and the Bylaws of the Association, all as initially drawn by the Declarant and filed or recorded as the case may be, and all as may be duly amended from time to time.

Section 8. "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

Section 9. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 10. "Member" shall mean and refer to every person or entity who owns one or more of the properties.

Section 11. "Notice" shall mean and refer to (a) written notice delivered personally or mailed to the last known address of the intended recipient; or (b) notices published at least once a week for two consecutive weeks in a newspaper having general circulation in Rockingham County, Virginia; or (c) notice published in two consecutive issues of the newsletter of the Association which is delivered personally or mailed to the address of each Unit.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simply title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Registered Notice" shall mean and refer to any Notice which has been sent by Registered U.S. Mail, return receipt requested, to the last known

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address of the intended recipient and which has been signed for or has been certified by the U.S. Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

Section 15. "Unit" shall mean and refer to any structure or portion of a structure situated upon the Properties designed, intended, and with the appropriate approvals, including a residential use permit, for use and occupancy as a residence by a Single Family.

ARTICLE TWO

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERE TO

Section 1. The Properties The Properties are and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

Section 2. The Development Limits Land

a. *Purpose.* The land set forth within the Development Limits is the maximum limit to which the Properties can be expanded without the approvals referenced above. The Development Limits are merely a limit on the unilateral expansion of the Properties by the Declarant and shall not bind the Declarant to add to the Properties any or all of the lands which are shown on the Development Limits, nor to improve any portion of such lands unless and until a Supplementary Declaration is filed by the Declarant for such property which subjects it to this Declaration. Thereupon, the Declarant shall then be obligated to complete development of the portion of the Properties annexed by the Supplementary Declaration.

Section 3. Merger In accordance with its Articles of Incorporation, the real estate, personalty, rights and obligations of the Association may by operation of law be transferred to another surviving or consolidated association similar in corporate nature and purposes. Similarly the real estate, personalty, rights, and obligations of an association similar in corporate nature and purposes may by

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operation of law be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the Covenants established by this Declaration within the Properties excepts as hereinafter provided. Such merger or consolidation shall require the affirmative vote of sixty-seven percent (67%) of the Class A Members and the approval of the Class B Member, if Class B membership has not ceased.

ARTICLE THREE

COMPOSITION OF ARCHITECTURAL CONTROL COMMITTEE

Section 1. Composition of Architectural Control Committee. Until such time as seventy-five percent (75%) of the Lots are sold, Declarant shall act as the Architectural Control Committee. Upon the sale of seventy-five percent (75%) of the Lots in the subdivision, the Architectural Control Committee consisting of at least three in number, shall be elected by the record title owners of all lots in said subdivision, each lot having one vote in such election. Such election may be called by any one lot owner in such subdivision by giving 30 days written notice to all other owners at the address then listed with the Treasurer of the governmental subdivision having real estate tax jurisdiction over said subdivision. A majority of the committee may designate a representative or representatives to act for it.

Section 2. Authority of Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change, including paint and trim, or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color of paint, 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 Control Committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said

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plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 3. Fences. All fencing, subject to the decision of the Architectural Control Committee, shall be white vinyl fencing of equal or better quality than Dutchway fencing.

ARTICLE FOUR

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a 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, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article One, Section 13 with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership as set forth herein. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Owners shall not be entitled to vote until their lot is subject to assessment.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership as set forth herein, provided that the Class B membership shall cease and be converted to Class A membership when the total

votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership.

Section 3. Association's Board of Directors. The business of the Property Owners' Association shall be managed by its Board of Directors. The initial number of directors shall be three (3). Said initial directors shall be appointed by Declarant until such time as fifty percent (50%) of the lots are independently owned. At that time, the directors shall be elected annually by and from the membership with voting privileges.

Section 4. Association's Authority. The Association shall have the authority and responsibility of maintaining the common area.

Section 5. Conveyance to Association. The Declarant shall convey all of its right, title, and interest in and to the Common Area to the Association at such time as fifty percent (50%) of the lots of Griffin Subdivision are independently owned.

ARTICLE FIVE

PROPERTY RIGHTS

Section 1. Members' Easement of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of members;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereto to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(d) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; no such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer;

(f) the right of the individual owners to the exclusive use of the parking spaces as provided in this Article.

Section 2. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area and facilities to the members of his family, tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free of all encumbrances and liens.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not less than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. Said parking spaces shall be allocated by the Association.

ARTICLE SIX

COVENANTS FOR MAINTENANCE ASSESSMENTS

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Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not is shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and relating to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis of Annual Assessments.

The initial annual assessment of Fifty Dollars (\$50.00) per Lot, shall commence upon the conveyance of a Lot from the Declarant and shall be prorated for the remainder of the assessment year from the time of such conveyance. Thereafter, upon a majority vote of the Board of Directors the annual assessment may be increased to meet current and future maintenance costs and operational responsibilities for the Common Area.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Board of Directors shall have the authority as provided by Section 55-514 of the Code of Virginia, as amended, to levy in any assessment year a special assessment applicable to that year only, if the purpose in so doing is found by the Board to be in the best interests of the Association and the proceeds of the assessment to be used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. A

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special assessment must have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members in accordance with the Association's bylaws. Pursuant to Section 55-514 of the Code of Virginia, as amended, a special assessment may be rescinded or reduced upon a majority of votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members in accordance with the Association's bylaws; provided that such meeting to rescind or reduce the special assessment is held within sixty (60) days of notice of the meeting.

Section 5. Declarant Exempt from Assessment. Declarant shall not be assessed on any Lots owned by it.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis. Special assessments shall not be made more than once per year and shall not exceed the amount of the annual assessments.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each lot upon the conveyance of the lot from the Declarant. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The assessment payment due date shall be established and modified, as needed, by a majority vote of the Board of Directors of the Association. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessment; remedies of the Association. Any assessments which are not paid when due shall be delinquent.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the current legal rate, and the Association may bring an action at law against the Owner personally obligated to pay the same, or may perfect the lien against the property, pursuant to Section 55-516 of the Virginia Code. Interest, costs, and reasonable attorney's fees of any such action shall also be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Deeds of Trust. Pursuant to Section 55-516 of the Code of Virginia, as amended, the lien of the assessments provided for herein shall be subordinate to (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien; provided, however, that mechanics' and materialmen's liens shall not be affected by this Section 9. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any deed of trust, pursuant to a deed of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or for the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (1) all properties dedicated to and accepted by a local public authority; (2) the Common Area; and (3) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Each lot is subject to those assessments as set forth in the Declaration of Covenants, Conditions, and Restrictions of Heritage Villas recorded in Deed Book 2070, Page 84.

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ARTICLE SEVEN

TOWNHOUSE ROOFING ASSESSMENT

Section 1. Creation of Townhouse Roofing Assessment Lien. Declarant for each Lot owned on which a townhouse is presently or shall hereafter be constructed hereby covenants, and each Owner of any such Lot by acceptance of a deed or other instrument of conveyance therefor, including any purchaser at a judicial or trustee sale, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) all annual Townhouse Roofing Assessments, fees, and charges, and (2) all special Townhouse Roofing Assessments for major and/or extraordinary roofing and gutter work, together with interest as hereinafter provided. The annual and special Townhouse Roofing Assessment, together with interest as hereinafter provided, costs of collection, and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such Townhouse Roofing Assessment is made as hereinafter provided. No Owner subject thereto may waive or otherwise avoid liability for such Townhouse Roofing Assessments by the nonuse or abandonment of his Lot.

Section 2. Purpose of Townhouse Roofing Assessments. The Townhouse Roofing Assessments levied by the Association shall be used for the purpose of providing the periodic repair and replacement of roofs and gutters of all townhouses as such times and in such manner as the Board of Directors of the Association shall determine.

Section 3. Basis and Maximum of Annual Townhouse Roofing Assessment. The annual Townhouse Roofing Assessments shall be made on the basis of a fiscal year beginning January 1 and ending December 31. Until December 31, 2005, the maximum annual Townhouse Roofing Assessment on each improved townhouse Lot (improved by a completed townhouse structure for which a certificate of occupancy has been issued by Rockingham County, Virginia) shall be \$33.00 per year. There shall be no annual Townhouse Roofing Assessment on any unimproved Lots or on any Lot improved by a structure other

than a townhouse. Each fiscal year thereafter, the maximum annual Townhouse Roofing Assessment may be increased by up to five percent (5%) per year of the prior year's annual Townhouse Roofing Assessment effective January 1 of each year by the Board of Directors of the Association, without a vote of the Members, which Board of Directors may fix such annual increase after due consideration of the current and anticipated costs and needs of the Association for the purpose of providing the periodic roofing and gutter work of all townhouses. Any increase requested by the Board of Directors in the usual annual Townhouse Roofing Assessment above the annual 5% increase over the prior fiscal year's assessment must be approved by a majority of the quorum at a meeting of the Association duly called for that purpose. The payment due date for the Townhouse Roofing Assessment shall be established by a majority vote of the Board of Directors of the Association.

Section 4. Special Townhouse Roofing Assessment. In addition to the annual Townhouse Roofing Assessment authorized above, the Association may levy in any assessment year a special Townhouse Roofing Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the costs of any major and/or extraordinary roofing and gutter work of any townhouse, provided that any such special Townhouse Roofing Assessment shall have the consent of two-thirds (2/3) of the quorum at a meeting of the Association duly called for this purpose.

Section 5. Uniform Rate of Assessment. Both annual and special Townhouse Roofing Assessments must be fixed at a uniform rate for all improved townhouse Lots as a class, and may be collected in advance on a quarterly basis.

ARTICLE EIGHT

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law

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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. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, and 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.

Section 4. Weatherproofing. 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 the Land. The right of any Owner to contributions 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. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 7. Association's Right to Repair and Maintain. In the event any Owner shall fail to maintain a party wall in a manner satisfactory to the Board of Directors, the Association, after thirty (30) days' prior written notice to such Owner, and upon affirmative vote of a majority of the Board of Directors, shall have the right (but not the obligation), through its agents and employees, to enter upon such Lot and to repair, maintain, and restore the party wall. The cost of such repair and maintenance shall be added to and become a part of the Assessment to which such Lot is subject.

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