

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SHADY CREEK TOWNS  
PHASE 1, SECTION 3**

This Declaration of Covenants, Conditions and Restrictions made this 21<sup>nd</sup> day of June, 2012, by GROTTOES, LLC, a Virginia limited liability company (hereinafter "Declarant"), Grantor.

**WITNESSETH**

**The Factual Background.** Declarant is the owner of certain real property located in the Town of Grottoes, Rockingham County, Virginia, more particularly shown and described as all those certain lots or parcels of land lying and being situate in the Town of Grottoes, Rockingham County, Virginia, consisting of 12,703 square feet, more or less, and shown on the plat entitled "Shady Creek Subdivision, Phase 1, Section 3", by Hal T. Benner, L.S., dated June 8, 2012, which is intended to be recorded immediately prior hereto (hereinafter "the Subdivision Plat"). Declarant desires to subject the above lots shown on the Subdivision Plat to the Covenants, Restrictions, Conditions and Easements set forth herein, each of which are for the benefit of the Owners of these Lots.

**NOW THEREFORE**, the Declarant declares that the real property as shown on the Subdivision Plat shall be held, transferred, sold, conveyed and occupied subject to the Restrictions, Covenants, Conditions and Easements herein. These Restrictions, Covenants, Conditions and Easements shall be Covenants running with the land and shall be binding upon any and all parties who have or acquire title to all or any part of Shady Creek Subdivision, and shall inure to the benefit of each of the Owners thereof.

## ARTICLE I

### DEFINITIONS

**Section 1.01. Association.** The term Association as used herein shall mean the Shady Creek Townes Homeowners Association, Inc., its successor and assigns.

**Section 1.02. Board of Directors.** The term Board of Directors as used herein shall mean the Board of Directors of the Association.

**Section 1.03. Committee.** The term Committee as used herein shall mean the Architectural Review Committee as set forth in Article VI, and during the applicable time period it shall reference both sub-committees thereunder.

**Section 1.04. Common Area.** The term Common Area as used herein shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shown on the Subdivision Plat as "Common Area, including the street named Carson Circle which adjoins Macon Avenue" or as otherwise modified as set out herein.

**Section 1.05. Declarant.** The term Declarant as used herein shall mean Grottoes, LLC, its successors and assigns. The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, said instrument shall set out the rights hereunder being transferred.

**Section 1.06. Declaration.** The term Declaration as used herein shall mean the restrictions, covenants, conditions and easements, and all other provisions herein set forth in this document, as it may from time to time be amended.

**Section 1.07. Lot.** The term Lot as used herein shall mean and refer to any plot or parcel of land designated as one of the Lots shown on the Subdivision Plat.

**Section 1.08. Owner.** The term Owner as used herein shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding purchasers who have not yet taken title, and further excluding those holding such interest solely as security for the performance of an obligation. In the case where a Lot is held by one or more persons for life, with the remainder to another or others, the term Owner shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen shall come into use, possession, or enjoyment of such Lot. If more than one (1) person or entity is the record Owner of a Lot, the term "Owner" as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

**Section 1.09. Subdivision.** The term Subdivision as used herein shall mean and refer to the aforesaid Lots and Common Area as shown on the Subdivision Plat.

**Section 1.10. Participating Builder.** "Participating Builder" shall mean any entity or individual owning a Lot(s) for the purpose of constructing a dwelling unit(s) and identified by Declarant as a Participating Builder. The Declarant is not a Participating Builder.

**Section 1.11. Single Family.** "Single Family" shall mean and refer to a single housekeeping unit which includes not more than two (2) adults who are not legally related by marriage, blood or adoption.

## ARTICLE II

### MEMBERSHIP

**Section 2.01** Every Owner of a Lot shall be a Member of the Association as set out herein. Membership shall be appurtenant to and may not be separated from ownership of any

Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for Membership.

## ARTICLE III

### VOTING RIGHTS

**Section 3.01. Voting Rights.** The Association shall have two classes of voting Membership:

Class A. Class A Members shall be all those Owners as defined in Article I with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for Membership by Article I. 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 determine among themselves, but in no event shall more than one vote be cast with respect to any Lot. For so long as the Class B Member exists, the Class A Members are non-voting Members.

Class B. The Class B Member shall be Grottoes, LLC, a Virginia corporation, its successors and assigns. The Class B Member shall be entitled to one (1) vote for each Lot it owns. The Class B Membership shall cease upon the happening of the earlier of (i) Grottoes, LLC, or a successor declarant, no longer owning any Lots, or (ii) the surrender of the Class B Membership by Grottoes, LLC, a Virginia corporation, its successors and assigns, which Membership shall be converted to Class A Membership, evidenced by the recordation of a written instrument in the Clerk's Office of Rockingham County, Virginia.

## ARTICLE V

### PROPERTY SUBJECT TO THE DECLARATION

**Section 5.01. Subject Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Grottoes, Rockingham County, Virginia, and is shown and described as Lots 3-1, 3-2, 3-3, 3-4 and 3-5 on the Subdivision Plat.

**Section 5.02. Subdivision.** These Lots shall not be further subdivided except by the Declarant as provided in Article VII.

**Section 5.03. Additions and Withdrawal.** The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this Declaration additional property, so long as such property is adjacent to the property shown on the Subdivision Plat or on later plats brought within the Declaration. Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, indicating what additional property shall be subject to this Declaration. Any additional property added to this Declaration shall be treated for all purposes as part of the Subdivision, except as may otherwise be provided in such supplemental declaration. The Declarant shall have the unilateral right to withdraw any portion of the Subdivision, by executing and recording a Declaration of Withdrawal.

## ARTICLE VI

### ARCHITECTURAL REVIEW

**Section 6.01. Committee Composition.** The Architectural Review Committee, hereinafter the "Committee", will be composed of three individual members. So long as the Declarant or successor declarant is a Class B Member, the Committee shall be composed of

three individuals designated by the Declarant. After the time that the Declarant is no longer a Class B Member, the Committee shall be composed of three Owners, who shall be appointed by the Board of Directors.

**Section 6.02. Purpose.** The Committees shall regulate the external design, appearance, use, site, elevation and location of all improvements on the Lots thereon in such a manner as to preserve and enhance the value of the Lots, maintaining a harmonious relationship among the structures, landscaping, and natural vegetation and topography of the Subdivision and to conserve the existing natural amenities.

**Section 6.03. Removal, Vacancies and Officers.** After the Declarant is no longer in control of the Committee, members of the Committee may be removed by the Board of Directors at any time with or without cause. Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment. The Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

**Section 6.04. Conditions.** No improvements, alterations, repairs, excavations, changes in grade, major landscaping, clearing, tree cutting or other work which in any way alters the exterior appearance of any Lot or improvement located thereon from its natural or improved state shall be made or done until the construction plans, site plans, landscaping plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, color, type, materials, elevations and location thereof, shall have been submitted and approved in writing by the Committee. No building, fence, wall, structure, alteration, landscaping or other improvement shall be commenced without prior written approval of the Committee. Written approval shall also be obtained for the location of the house, and any other structure. Refusal of approval of

plans, location, etc., may be based upon any ground, including purely aesthetic reasons, in the sole discretion of the Committee. No shrubbery, bushes or trees shall be planted, installed or allowed within any access easement, drainage easement or storm water management easement. Site plan approval requires that one (1) set of building permit ready working drawings must be submitted to the Committee and shall include the following:

(a) Site Plan Information Required For Approval

- (i) Accurate building footprint including elevations for proposed finished floor, decks, porches, stoops, or other detached secondary structures such as storage buildings, etc.
- (ii) Accurate "hardscape" information including parking areas, walkways, and on-site storm water drainage
- (iii) Landscaping plan

(b) House Plan Information Required For Approval

- (i) Floor plans;
- (ii) House elevations at  $\frac{1}{4}$ " = 1'-0" scale with notes indicating all exterior finishes and materials, and with all accurate grade lines shown;
- (iii) One wall section at  $\frac{3}{4}$ " = 1'-0" scale fully noted
- (iv) Indicate location for HVAC unit, electric, and gas hookups.

Final approval will not be granted until plans are submitted specifying exterior textures, including siding and/or brick, stone or drivet, roofing material, foundation facing material, windows, and doors. Colors may be submitted at this time or later, but must be submitted and approved prior to application. After reviewing the properly submitted plans, the Committee will return one copy to the Owner with comments and maintain the other for its files. Approval to

build, additional information, or required modifications will be made in writing by the Committee within thirty (30) days after submittal.

**Section 6.05. Procedure.** The Committee shall promptly review and act on all requests for approval of improvements submitted pursuant to Section 6.04. In the event that the Committee fails to approve, modify, or disapprove in writing a request for approval required herein within thirty (30) days after the plans, specifications, and other required materials have been received by the Committee, approval will be deemed to have been granted; provided, however, nothing specifically prohibited by this Declaration shall be deemed to be approved and said failure to act shall not constitute a waiver by the Committee except as set out in Section 6.07. All actions shall be by majority vote.

**Section 6.06. Enforcement.** Any exterior addition, change or alteration made without application to, and approval of, the Committee shall be deemed to be in violation of these covenants and may be required by the Board of Directors (or by the Declarant during such time as there is a Class B Member) to be restored to its original condition at the offending Owner's sole cost and expense.

**Section 6.07. Exceptions.** Notwithstanding the foregoing, the provisions and requirements of this Article shall be deemed waived if no suit in equity or action at law has been filed with notice of lis pendens, in the Circuit Court of the County of Rockingham, Virginia, with respect to any violation of this Article within six (6) months after the initial occurrence of the violation.

**Section 6.08. Appeal.** Any aggrieved party may appeal a decision of the Committee to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

## ARTICLE VII

### BUILDING AND USE RESTRICTIONS

Section 7.01. The Lots shall be occupied and used as follows:

- (a) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that:
  - (i) Dogs, cats and other common and normal household pets may be kept on any Lot subject to reasonable rules and regulations adopted by the Board of Directors.
  - (ii) Such pets shall be confined to the Owner's Lot or on leashes, and be under the control of a responsible person and obedient to the person's command at all times.
  - (iii) The Board of Directors may prohibit keeping certain types or breeds of animals which the Board of Directors reasonably believes to be unsafe.
- (b) No building or buildings of any kind whatsoever shall be erected or maintained on any Lot except one private dwelling house, designed for use and used by a Single Family and utility building for the sole use of a Single Family upon the Lot on which they are located. Lots shall be used for Single Family residential purposes only; provided, however, that the use of a portion of a residence as an office by the occupant shall be allowed if such use does not create employee, customer, client, or other traffic to and from the Lot. In addition, notwithstanding other provisions herein, the Declarant or anyone approved by Declarant may use one or more residences as model homes.

- (c) All dwellings shall have minimum living space area requirements, which requirements shall be established from time to time by the Committee. "Living space" as used herein shall exclude porches and decks.
- (d) No sign of any kind, with the exception of a standard real estate "For Sale" or "For Rent" sign no more than seven square feet in area shall be displayed to the public view from any Lot without prior written consent of the Committee.
- (e) No obnoxious, boisterous, or offensive activities shall be permitted on any Lot, nor shall anything be done thereon that may be an annoyance or nuisance to the Owners of other Lots in the Subdivision.
- (f) No burning of paper, household trash, cardboard, construction materials or other refuse shall be permitted on any Lot.
- (g) The Declarant may subdivide Lots and rearrange boundary lines without the consent of the Committee.
- (h) No structures of a temporary character, tent, or trailer shall be used as a residence on any Lot at any time.
- (i) No radio antennas or television reception devices shall be installed on any Lot without approval of the Committee.
- (j) No commercial, industrial or recreational vehicle (including boats) shall be parked on any Lot or the Common Area without the written consent of the Board of Directors. No motorized vehicle may be used or maintained on the yards, trails, or sidewalks of any Lot or Common Area and no unlicensed vehicles are allowed on any Lot or the Common Area. The Board of Directors shall have the right to tow any improperly parked vehicle or any vehicle, the keeping or parking

of which in the Common Area violates this Declaration upon forty-eight (48) hours notice posted on the vehicle. All costs for towing shall become a lien upon such Lot and such lien may be enforced in the same manner as an annual assessment levied in accordance with Articles XV and XVII hereof.

(k) The Board of Directors shall have the right to tow any disabled vehicle or other vehicle on which current registration plates are not displayed, which is within any Lot or on any part of the Common Area upon forty-eight (48) hours notice. All costs for towing shall become a lien upon such Lot and such lien may be enforced in the same manner as an annual assessment levied in accordance with Articles XV and XVII hereof. The major repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out on any of the Lots or Common Area.

(l) It shall be the responsibility of each Owner and tenant to prevent the development of any unclean, unsightly, or unkept conditions of buildings or ground on their Lot.

(m) Should any dwelling unit or other structure on any Lot be destroyed in whole or in part, it shall be reconstructed, or the debris therefrom removed and the Lot restored to a neat and sightly condition within six (6) months of the damage or loss.

(n) All exterior finishes must be brick, stone, stucco, Hardiplank or vinyl.

(o) There shall be no manufactured or modular homes placed on any Lot and there shall be no flat roofs, except for porches, and no roof with a primary pitch of less than a ratio of 4 to 12.

- (p) No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or temporary structures used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction of the main dwelling house. The design and color of structures temporarily placed on a Lot by a contractor shall be subject to reasonable aesthetic control by the Committee.
- (q) Any and all exterior lighting shall be subject to approval by the Committee. No lighting fixtures or devices shall be installed in any tree. No lighting fixture shall be directed toward a road or adjoining Lot.
- (r) There shall be no exterior clothes lines erected on any Lot.
- (s) The exterior of all residences and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner and builder due to strikes, fires, national emergency or natural calamities. During the continuance of construction, the Owner of the Lot shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition.
- (t) No part of any Lot shall be used as a right-of-way, easement or road for access to any property outside the Subdivision.
- (u) Preserving the existing terrain, using native vegetation and minimizing disturbance of the natural setting shall be focal points for landscaping.

(v) Fences are allowed on the property lines at the rear of each townhome. All fences (including replacements) must be approved by the Committee as provided in Article VI. Fences that are on a common boundary line with another Lot must be maintained and contributed to equally by each Lot Owner unless the repair or replacement is caused due to the negligence of one Owner or their tenants, guests or invitees, and in such event, that Owner shall pay for the repair or replacement.

## ARTICLE VIII

### COMMON AREA

**Section 8.01. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board of Directors to suspend the right to use the Common Area and the voting rights of an Owner for any period during which an assessment against the owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations. The right of the Board of Directors to assess charges against an Owner for violations of the Associations' legal documents or rules or regulations for which the Owner, the Owner's family members, tenants, guests or invitees are responsible, provided that no such charges may be imposed until the Owner has been given the opportunity to be heard and represented by counsel before the Board of Directors. Notice of a hearing shall be hand delivered or mailed by certified delivery, return receipt requested, to the Owner at the address of record with the Association at least fourteen (14) days prior to the hearing. The amount of any charges so

assessed shall not exceed the charges permitted by Section 55-5 13 of the Virginia Property Owners Association Act and shall be treated as an assessment against the Owner's Lot;

- (b) The right of the Board of Directors to mortgage, dedicate or transfer all or any part of the Common Area to any entity, public or municipal agency, authority or utility, subject to the then existing laws and applicable ordinances;
- (c) The right of the Board of Directors to establish uniform rules and regulations pertaining to the use of and access to the Common Area and any facilities thereon;
- (d) The right of the Declarant to the nonexclusive use of the Common Area for display and exhibit purposes, which right Declarant hereby reserves, provided; however, that no such use by Declarant or their sales agents or representatives shall otherwise restrict the Owners in their use and enjoyment of the Common Area or any facilities thereon;
- (e) The right of the Board of Directors to regulate parking on the Common Area through the granting of easements or promulgation of rules and regulations;
- (f) The right of the Board of Directors to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person or entity; provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the Owners to the use and enjoyment of the Common Area;

(g) The right of the Board of Directors to convey portions of the Common Area for purposes of boundary line adjustment(s) if required by the Declarant or any governmental authority or municipal agency and at no cost to the Association, provided, however, that no such conveyance shall be unreasonably and permanently inconsistent with the rights of the Owners to the use and enjoyment of the Common Area and access to their Lots.

**Section 8.02. 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 8.03. Parking Right.** 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 Declarant as Lots are sold and thereafter by the Association. Said spaces shall be used for vehicles used for general transportation and shall not include boats or watercraft, large commercial trucks or vehicles or recreational vehicles.

**Section 8.04. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property. Any person(s) who has access to any part of the Common Area through any recorded easement(s) shall be subject to such rights and restrictions with respect to the easement area as are contained in this Declaration as if he were an Owner.

## ARTICLE IX

### EXTERIOR MAINTENANCE

**Section 9.01. Maintenance.** Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. The Association will be responsible for mowing, pruning and cutting all shrubbery (in front of unit). It will be Owners' responsibility to mow any fenced in areas and maintain the rear of the property unless the Association Board of Directors determines that it is in the best interest of the Association to mow the rear of the Lots and then only to the extent access is reasonable and open to such areas.

**Section 9.02. Stormwater Drainage.** Notwithstanding the foregoing Section, no vegetation, grading, or landscaping shall be allowed which may interfere with stormwater drainage areas on the Lots.

**Section 9.03. Enforcement.** In the event an Owner shall fail to maintain his Lot and the improvements situated thereon, the Association or the Declarant shall have the right to enter upon said Lots after reasonable notification of the Owner, to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lot and such lien may be enforced in the same manner as an annual assessment levied in accordance with Articles XV and XVII hereof.

**Section 9.04. Assessment.** The Association shall charge an assessment for roof (shingle) replacement and shall maintain or replace the roof as necessary (Section 15.07) except each Owner shall be responsible for any damage to the roof other than normal wear and tear.

## ARTICLE X

### PARTY WALLS

**Section 10.01. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Lots 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 the party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 10.02. 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.

**Section 10.03. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the rights of any such Owner regarding liability for negligent or willful acts or omissions.

**Section 10.04. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his/her 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 10.05. Right of Contribution Runs with Land.** The right of any Owner to seek 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 10.06. Arbitration.** In the event of any dispute arising concerning any provisions of this Declaration, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator.

## ARTICLE XI

### EASEMENTS

**Section 11.01. Existing Easements.** The Lots shall be conveyed subject to easements shown on the Subdivision Plat, and such other easements as may exist of record at the time of conveyance. All easements shown on the Subdivision Plat are reserved for the benefit of the Declarant, its successors and assigns, which easements may be conveyed by the Declarant to one or more Grantees, including the Association.

**Section 11.02. Utility Easements.** In addition to all other easements provided for on the Subdivision Plat and in this Declaration, the Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right of way on, above and underground through all areas of each Lot, excepting only such land either designated by the Committee as approved building sites or upon which a structure other than trees, shrubbery, or fences approved by the Committee is constructed. The purpose of said easement shall be to construct, maintain, inspect, re-grade, replace, and repair vegetation, road shoulders, lines, wires, cables, conduits, sewers, pipes, water mains, and other suitable equipment and facilities for the conveyance of water, sewer, gas, telephone, electricity, television cable, exterior lighting, storm water, and other utilities and public conveniences, for any purpose required by the County of Rockingham or Virginia Department of Transportation in conjunction with the acceptance of the Subdivision streets into the state system for maintenance, and for storm and surface water drainage including pipes, ditches, culverts, swales, and other suitable facilities for the disposition

of storm and surface drainage together with the right of ingress and egress to all such facilities and easements for the construction and maintenance thereof.

The phrase "land designated by the Committee as approved building sites" shall mean (i) the area under buildings, patios, walks, decks, porches, or other improvements not including fences, shrubs and trees constructed by Declarant or its agents, contractors, or sub-contractors; (ii) the area under other buildings, patios, walks, decks, porches, or other improvements not including fences, shrubs, and trees, the location of which is approved by the Committee in accordance with Article VI of this Declaration.

The easements provided for herein shall include the right to cut any trees, brush, and shrubbery; dig or grade any soil; and take any other similar action as reasonably necessary for the use of the easement.

The rights herein reserved may be exercised by any licensee, successor or assignee of Declarant but shall not be deemed to impose any obligation upon Declarant to provide, maintain, or be responsible for the lapse or temporary interruption of services except as herein otherwise provided. Any damage to the property resulting from the use of the easements hereby reserved shall be promptly repaired at the expense of the party causing such damage. The rights herein reserved shall include the right to temporarily interrupt utility service as necessary or appropriate upon reasonable notice to the Owner of the servient property.

**Section 11.03. Easements of the Association.** There is reserved to the Association, and its successors and assigns, the right and power to remove snow from the parking lots, sidewalks and access easement (Carson Circle) at the discretion of the Association. Further, the Association shall maintain the right to mow the Common Area and pave or repair the access easement. The Association shall maintain the right to repair and replace the roof of each townhome, as the

Board of Directors of the Association may direct. The Association may, in its discretion, be responsible for mowing and maintaining the front and side yards of the Lots to insure uniform care and appearance. Further, the Association may mow the rear of Lots, if access to such Lot is unobstructed, if the Association determines to do so.

**Section 11.04. Easements Over Sidewalks and Private Access Easement.** Each Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over sidewalks and the access easement located on all Lots, for the sole purpose of ingress to and egress from the Lots, all in keeping with the provisions of this Declaration.

**Section 11.05. Crossover Easement.** If the Owner (including the Declarant) of any Lot must, in order to make responsible repairs or improvements to a building on his Lot, enter or cross any Common Area, or a Lot of another Owner, such Owner shall have an easement to do so, provided that said Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition, at the expense of said Owner.

**Section 11.06. Blanket Easement.** An easement is hereby retained in favor of Declarant and the Association over the Lots and any Common Area for installation of landscaping, construction of a common cable television system, a common sprinkler, entrance sign or features, or any other item for the common enjoyment and/or benefit of the Owners. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. Any entry upon any Lot or any Common Area to effectuate the foregoing purposes shall not be deemed trespass. Each Owner shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any portion damaged or destroyed by uh Owner, his family, his guests or invitees.

### **Section 11.07. Drainage Easements and Drainage and Storm Water Management**

**Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable drainage as shown on the Subdivision Plat. These easements are solely for surface and storm water drainage purposes and are not to be used for access or any other purpose by the public or any other Lot Owner. The maintenance of the portion of each of these easements within each Lot shall be the responsibility of the Owner of that Lot.

**Section 11.08. Maintenance Responsibilities.** The Owner of each Lot shall be responsible for the maintenance of the surface area of any portion of any easement within the boundaries of that Lot.

## **ARTICLE XII**

### **ROADS**

**Section 12.01. Subdivision Roads.** The roads shown on the Subdivision Plat serving the Lots within the Subdivision are private and are a part of the Common Area.

## **ARTICLE XIII**

### **SET BACK**

**Section 13.01. Building Set Backs.** Building set backs are as shown on the Subdivision Plat.

## **ARTICLE XIV**

### **SITE PLANS, LANDSCAPING AND CLEARING**

**Section 14.01. Plans.** Prior to initiating any work on a Lot, the Owner shall submit to the Committee one (1) complete set of the following: Complete plans for the construction of all improvements on the Lot, site plan showing the location of all improvements on the Lot,

landscape plan showing all clearing to be done and landscaping to be installed on the Lot, and grading plan showing all grading to be done on the Lot and the finished grade thereof.

**Section 14.02. Trees.** No trees on a Lot having a caliper of four inches or greater shall be cut unless approved by the Committee.

## ARTICLE XV

### HOMEOWNERS ASSOCIATION AND ASSESSMENTS

**Section 15.01. Formation.** The Declarant shall form a non stock corporation, to be known as the "Shady Creek Townes Homeowners Association, Inc.", not later than the time it conveys to a third party its interest in the last Lot it owns within the Subdivision. The membership in the Association shall be as set forth in Article II. Declarant may, but shall not be required to, assign to the Association all of Declarant's rights and responsibilities under this Declaration.

The Declarant's responsibility for maintaining the easements under Article XI shall be assigned to the Association at the discretion of the Declarant, and upon the assignment the Declarant shall have no further responsibilities for such maintenance.

**Section 15.02. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, 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 each Lot

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 Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them, although it shall remain a lien on the Lot.

**Section 15.03. Determination of Annual Assessments.** The Association shall, in November of each year, after Declarant has assigned its rights and responsibilities with respect to the easements and Common Area under this Declaration to the Association, estimate the amount of money which shall be required during the next calendar year to maintain the Common Areas and easements and create a reserve for the maintenance, repair or replacement of any improvements to the Common Area, and shall allocate this amount equally among the Lots not owned by the Declarant and assess the Owners of each such Lot for their proportional share. The Association shall also contribute to Shady Creek Subdivision Homeowners Association, Inc. for its proportionate share of the maintenance costs of the subdivision sign. However, no assessment or allocation shall be made to any Lot owned by the Declarant. In the event that two or more Lots should be combined into a single Lot, this shall not affect the allocation and assessment of such costs to the Owner, and the Lots which have been combined shall be allocated and assessed for the same amount as they would have been had the Lots not been combined. The Association shall notify each Owner in writing of the assessment not later than December 31 of each year, and of the date upon which payment of the assessment is due. Payment of the assessment shall be due at such time and location as the Association shall determine from year to year, which time shall not be earlier than February 1 each year. Should natural causes, requirements imposed by Rockingham County or the Town of Grottoes or any other circumstances require a level of

maintenance during a year which exceeds the estimate previously determined by the Association or for any other cost incurred by the Association, the Association shall determine the additional funds that will be required in addition to those already assessed for the year, and assess an equal portion of such additional required funds upon each Lot in the same manner provided above.

Notice of the assessment shall be given in writing as soon as reasonably practical to each Owner, and the Owner shall be given a minimum of thirty days from the date of mailing of the notice within which to pay the assessment.

The initial annual assessment shall be \$420.00 on each Lot sold to an Owner after January 1, 2013. From and after January 1, 2015, the maximum annual assessment described above may be increased by the Board of Directors as required, without a vote of the Class A membership.

**Section 15.04. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, as special assessment for the purpose of defraying, in whole or in part, the cost of any construction reconstruction, repair or replacement of the Common Area, including fixtures and personal property related thereto or for any purpose which the Association is responsible. Any special assessment may be rescinded by a majority vote of each Class of Members in person or by proxy, at a meeting of the Members convened within sixty (60) days of notice of the special assessment.

**Section 15.05. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected in advance on a monthly, quarterly or annual basis, as determined by the Association.

**Section 15.06. Effect of Nonpayment of Assessments; 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, there shall be a late fee as set by the Board of Directors and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action shall 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 the Lot.

**Section 15.07. Subordination of the Lien to Deeds of Trust.** The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust. 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 by a first deed of trust, 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 from any assessments thereafter becoming due or from the lien thereof.

**Section 15.08. Reserves for Replacements.** The Association shall establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The

reserve for replacements of the Common Area may be expended only for the purpose of affecting their repair, replacement or improvement of major repairs to any equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature. The Association may establish such other reserves for such other purposes as the Board of Directors may, from time to time, consider to be necessary or appropriate. The proportional interest of any member in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

**Section 15.09. Townhouse Roofing Assessment.** The following shall apply:

(a) Creation of Townhouse Roofing Assessment Lien. 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 therefore, 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: (i) all annual Townhouse Roofing Assessments, fees and charges; and (ii) 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.

(b) 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 at such times and in such manner as the Board of Directors of the Association shall determine.

(c) 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, 2014, 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 \$50.00 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.

(d) 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 for 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.

(e) 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 or annual basis.

**Section 15.10. Initial Working Fund.** The Board of Directors shall levy a one-time "initial" assessment at settlement against the Owner of a Lot who is a Class A Member at the time of conveyance from the Declarant or if sold by the Declarant to a Participating Builder, when the Participating Builder sells to the Class A Member. Such initial assessment shall be One Hundred Dollars (\$100), and shall be used for working capital and commencing the business of the Association or any other purpose established by the Board of Directors.

**Section 15.11. Insurance.**

(a) **Casualty Insurance on Insurable Common Area.** The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a Common Expense of the Association to be included in the regular Common Assessments of

the owners, as levied by the Association. The insurance coverage with respect to the Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Homeowners.

(b) **Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Dwelling Units, the Association shall repair or replace the same from the insurance proceeds available.

(c) **Annual Review of Policies.** All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

## ARTICLE XVI

### DUTIES OF ASSOCIATION

Section 16.01. There is reserved to the Association, and its successors and assigns, which shall have title to the Common Areas within the Subdivision, the right and power to erect such fences, structures, buildings, playground equipment, swimming pools agility trails or other

facilities, improvements and appurtenances, for recreation, parking or other civic and/or public purposes, as, in the discretion of the Association, may be appropriate. Uses of the Common Areas shall not interfere with storm water drainage or retention facilities.

Section 16.02. The Association shall be responsible for snow removal from the parking areas and roadways. Snow removal from the Lots and lot owners' sidewalks shall be the responsibility of the Owner. The Association shall be responsible for mowing the Common Areas. Further, the Association shall be responsible for repairing and replacing the roof of each townhome, as the Board of Directors of the Association may direct and in accordance with Section 15.09.

Section 16.03. The Owner shall be responsible for removal of lot owner's trash. All trash shall be put in designated areas in closed approved containers. However, the Association, at its discretion, may take responsibility for the removal of lot owners' trash from designated receptacles. Should the Association decide to accept the responsibility of trash removal, it shall be the lot owners' responsibility to place his/her trash in the designated area in the subdivision for removal of trash by the Association.

Section 16.04. The Association shall maintain and repair the roadways and parking areas shown on the Subdivision Plat as "access easement" or "Carson Circle" including repaving as necessary, lining of parking spaces, fire lanes, or traffic patterns, etc.

Section 16.05. The Association shall maintain and repair the storm water drainage areas as designed and constructed and as required by the Town of Grottoes, including the private drainage easements as shown on the Subdivision Plat, the storm water retention facilities located on the Common Areas and all other drainage areas as shown on the Subdivision Plat.

Section 16.06. The Association, by decision of its Board, may delegate its responsibility including the collection of assessments and records pertaining thereto, to a management company that is in the business of managing such Homeowner Associations.

## ARTICLE XVII

### GENERAL PROVISIONS

Section 17.01. **Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the address of the Owner shown on the real estate tax records of the County of Rockingham, Virginia.

Section 17.02. **Enforcement.** Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said provisions, either to restrain violation or recover damages, or both. Such action may be brought by the Declarant, any Owner, or the Association. In addition, the Declarant and/or the Association shall have the power to suspend an Owner's (i) voting rights, (ii) right to hold office on the Board of Directors or Committee, and (iii) right to use the Common Area, facilities or services provided directly through the Declarant or the Association to the extent that access to the Lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety or property of the Owner, tenant or occupant and to assess charges against any Lot Owner for any violation of the provisions of this Declaration for which the member or his family members, tenants, guests or other invitees are responsible. Before any action is taken hereunder, the Owner shall be given an opportunity to be heard by the Declarant and/or the Association and to be represented by counsel. Notice of a hearing, including the charges or other sanctions that may be imposed shall be hand delivered or mailed by registered

or certified mail, return receipt requested, to the Owner at the address of record with the Association, at least 14 days prior to the hearing. The amount of any charges so assessed shall not be limited to the expense or damage to the Declarant or the Association caused by the violation, but shall not exceed \$150.00 for a single offense or \$10.00 per day for any offense of a continuing nature. The total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days. A suspension or assessment of charges may be enforced through an action filed in the Courts for Rockingham County, Virginia. The Declarant, Association or any Owner bringing a successful action pursuant to this paragraph shall be entitled to recover its court costs and reasonable attorneys' fees.

**Section 17.03. Costs.** Should the Association, Declarant or any Owner prevail in any action at law or in equity enforcing any of the restrictions, conditions, covenants, reservations, liens and charges imposed hereunder, the Association, Declarant or Owner shall also be entitled to an award for reasonable attorney's fees incurred by the Association, Declarant or Owner in consulting with an attorney regarding enforcement and in the enforcement action. The award for attorney's fees shall be assessed against the Lot against which the action is taken and shall be added to and become a part of such annual assessment or charge to which such Lot is subject under Article XV hereof; and as a part of such annual assessment or charge, shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Article XV hereof.

**Section 17.04. Severability.** Invalidation of one or more of the provisions of this Declaration by judgment, court order or otherwise, shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 17.05. Amendments.** This Declaration may be modified or amended in whole or in part by recorded instrument bearing the signature of the Declarant, until such time as the Declarant has conveyed its interest in all of the Lots in the Subdivision to a third party, not to include a successor declarant. After said termination of Declarant's amendment rights, this Declaration may be amended only by an affirmative vote of two-thirds (2/3) of the Owners present at a duly convened meeting of the Association. Any amendment must be properly executed and acknowledged by the Declarant or the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

**Section 17.06. Duration.** The provisions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date hereof, and thereafter shall be renewed automatically for successive periods of ten (10) years each, unless modified or amended as provided in the foregoing Section 17.05.

**Section 17.07. Waiver.** The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Subdivision, hereby expressly reserves unto itself, so long as these restrictions are in effect, the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots.

IN WITNESS WHEREOF, Grottoes, LLC., a Virginia limited liability company, being the Declarant herein, has caused this Declaration to be executed in its name by its duly authorized Manager on this \_\_\_\_\_ day of June, 2012, and Dean M. Nichols, Sole-Acting Trustee, and Farmers and Merchants Bank, Noteholder, and CPC Holdings, LLC, a Kentucky limited liability company, Noteholder, join herein to evidence their consent to this Declaration.

GROTTOES, LLC

By:

ROBERT J. LYNCH, Manager

(Seal)

STATE OF VIRGINIA AT LARGE, to-wit:

CITY/COUNTY OF Harrisonburg

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that ROBERT J. LYNCH, as Manager of Grottoes, LLC, has on this 29<sup>th</sup> day of June, 2012, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 29<sup>th</sup> day of June, 2012.

My commission expires: 3/31/2014  
Notary Registration Number: 266814

Tanya P. Dinges  
Notary Public

Commonwealth Of Virginia  
Tanya P. Dinges - Notary Public  
Commission No. 266814  
My Commission Expires 3/31/2014

  
(Seal)  
DEAN M. NICHOLS, Sole-Acting Trustee

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF Harrisonburg

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that DEAN M. NICHOLS, Sole-Acting Trustee, has on this 29<sup>th</sup> day of June, 2012, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 29<sup>th</sup> day of June, 2012.

My commission expires: 3/31/2014

Notary Registration Number: 266814

Tanya P. Dinges  
Notary Public

Commonwealth Of Virginia  
Tanya P. Dinges - Notary Public  
Commission No. 266814  
My Commission Expires 3/31/2014

FARMERS & MERCHANTS BANK

By: Joshua P. Hale (Seal)  
Its: Vice President

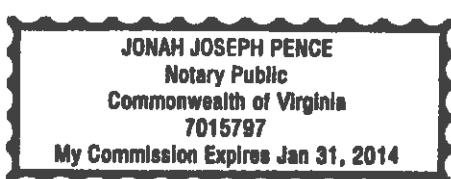
STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF Rockingham

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that Joshua P. Hale, as Vice President on behalf of FARMERS & MERCHANTS BANK, has on this 27<sup>th</sup> day of June, 2012, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 27<sup>th</sup> day of June, 2012.

My commission expires: 1/31/14

Notary Registration Number: 7015797



J. P. Pence  
Notary Public

CPC HOLDINGS, LLC

By: Joseph Clayton (Seal)  
Its: Member

STATE OF Kentucky AT LARGE, to-wit:  
CITY/COUNTY OF Madison

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that Joseph Clayton, as Member on behalf of CPC Holdings, LLC, a Kentucky limited liability company, has on this 22 day of June, 2012, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 22 day of June, 2012.

My commission expires: 3-21-2015

Notary Registration Number: 438781

Sue A. Collins  
Notary Public

C:\CLIENT\REAL ESTATE\GROTTOES LLC TOWNHOUSE PHASE 1 SECTION 3 RESTRICTIVE COVENANTS.CLEAN



ROCKINGHAM COUNTY  
Chaz W. Evans-Haywood  
CLERK OF COURT  
Harrisonburg, VA 22801

Instrument Number: 2015-00021807

Recorded On: September 03, 2015

As  
Amendment

Parties: GROTTOES LLC

To

NO GRANTEE

Recorded By: LAYMAN & NICHOLS

Num Of Pages:

8

Comment:

\*\* Examined and Charged as Follows: \*\*

Amendment	8.50	10 or Fewer Pages	14.50
Recording Charge:	21.00		

\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: ROCKINGHAM COUNTY, VA

File Information:

Record and Return To:

Document Number: 2015-00021807

LAYMAN & NICHOLS

Receipt Number: 326163

268 NEWMAN AVE

Recorded Date/Time: September 03, 2015 02:07:12P HARRISONBURG VA 22801

Book-Vol/Pg: Bk-OR VI-4619 Pg-594

Cashier / Station: A Pittman / Cash Station 3



THE STATE OF VIRGINIA)  
COUNTY OF ROCKINGHAM)

I certify that the document to which this authentication is affixed is a true copy of a record in the Rockingham County Circuit Court Clerk's Office and that I am the custodian of that record.

CLERK OF COURT  
ROCKINGHAM COUNTY, VIRGINIA

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SHADY CREEK TOWNS  
PHASE 1, SECTION 3

THIS AMENDMENT TO THE DECLARATION made this 10<sup>th</sup> day of July, 2015, by  
GROTTOES, LLC, a Virginia limited liability company (hereinafter "Declarant"), Grantor,  
DEAN M. NICHOLS, SOLE-ACTING TRUSTEE, to be indexed as Grantor, FARMERS AND  
MERCHANTS BANK, to be indexed as Grantor, and K & T SERVICES, INC., to be indexed as  
Grantor.

WITNESSETH

WHEREAS, Declarant entered into Declaration of Covenants, Conditions and  
Restrictions, which are of record in the Clerk's Office of the Circuit Court of Rockingham  
County, Virginia, in Deed Book 4075, page 662 ("Declaration"); and

WHEREAS, Declarant entered into Supplemental Declaration of Covenants, Conditions  
and Restrictions, which are of record in the aforesaid Clerk's Office in Deed Book 4221, page  
245 ("Supplemental Declaration"); and

WHEREAS, Declarant entered into Supplemental Declaration of Covenants, Conditions  
and Restrictions, which are of record in the aforesaid Clerk's Office in Deed Book 4558, page 66  
("Supplemental Declaration"); and

WHEREAS, Declarant conveyed the property which is subject to the Declaration and  
Supplemental Declaration to John N. Crist, Dean W. Withers and Dean M. Nichols, Trustees,  
any of whom may act, pursuant to a Deed of Trust dated April 30, 2009, which is recorded in the  
aforesaid Clerk's Office in Deed Book 3507, page 275, securing a loan from Farmers &  
Merchants Bank; and

**WHEREAS**, Declarant conveyed the property which is subject to the Declaration and Supplemental Declaration to Dean M. Nichols, Sole-Acting Trustee, pursuant to a Supplemental Deed of Trust dated August 22, 2012, which is recorded in the aforesaid Clerk's Office in Deed Book 4102, page 745, securing a loan from Farmers & Merchants Bank to Foothill Spring, LLC; and

**WHEREAS**, Declarant conveyed the property which is subject to the Declaration and Supplemental Declaration to Dean M. Nichols and Michael L. Layman, Trustees, either of whom may act, pursuant to a Deed of Trust dated September 1, 2012, which is recorded in the aforesaid Clerk's Office in Deed Book 4105, page 345, securing a loan from K & T Services, Inc.; and

**WHEREAS**, Declarant reserved the right to amend the Declaration and Supplemental Declaration under Section 17.05 of the Declaration; and

**WHEREAS**, Declarant desires to amend the Declaration.

**NOW, THEREFORE**, the Declaration shall be amended as follows:

**FIRST**, Article I, DEFINITIONS, Section 1.04, **Common Area**, shall be amended to add the following at the end of that Section:

“Common Area shall include the retaining wall installed behind Units 4-1 through 4-7.”

**SECOND**, Article VII, BUILDING AND USE RESTRICTIONS, Section 7.01 (i) shall be amended to add the following at the end of that Section:

“Satellite dishes may only be mounted onto the rear side of the building and may not be mounted onto poles in the ground or the roof. In the event that a signal cannot be received from mounting onto the rear of the building, the Owner must submit a request to the Committee requesting an alternate location, which shall be considered and governed by Article VI of the Declaration.”

**THIRD, Article XIII, SET BACK, Section 13.01, Building Set Backs, shall be deleted, and the following shall be substituted in its place:**

**"Building set backs shall be determined and comply with the Town of Grottoes Zoning Ordinance. This change in set backs shall relate back to the initial Subdivision Plat and control over any setbacks shown on any prior Subdivision Plat."**

**FOURTH, Article IX, EXTERIOR MAINTENANCE, Section 9.01, Maintenance, shall be deleted and the following Section 9.01 shall be substituted in its place:**

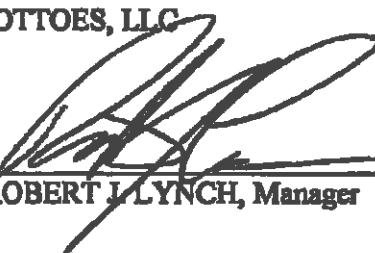
**"Section 9.01. Maintenance. Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. The Association will be responsible for mowing, pruning and cutting all shrubbery. It will be Owners' responsibility to mow any fenced-in areas."**

**FIFTH, Article XV, HOMEOWNERS ASSOCIATION AND ASSESSMENTS, Section 15.03, Determination of Annual Assessments, shall be amended to add the following at the end of that Section:**

**"The annual assessments shall not apply to a commercial builder who has purchased a lot for the purpose of building a unit and reselling to a third party. The Board of Directors shall use their reasonable discretion to determine if a party qualifies as a commercial builder under this exception."**

IN WITNESS WHEREOF, Grottoes, LLC., a Virginia limited liability company, being the Declarant herein, has caused this Amendment to be executed in its name by its duly authorized Manager, and Dean M. Nichols, Sole-Acting Trustee, and Farmers and Merchants Bank, Notholder, and K & T Services, Inc., a Virginia corporation, Notholder, join herein to evidence their consent to this Amendment.

GROTTOES, LLC

By:   
ROBERT J. LYNCH, Manager (Seal)

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF Harrisonburg

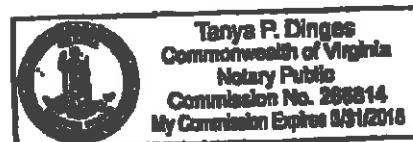
I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that ROBERT J. LYNCH, as Manager of Grottoes, LLC, has on this 10<sup>th</sup> day of August, 2015, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 18<sup>th</sup> day of August, 2015.

My commission expires: 3 | 31 | 2018

Notary Registration Number: 266814

Tanya P. Dinges  
Notary Public



  
(Seal)  
DEAN M. NICHOLS, Sole-Acting Trustee

STATE OF VIRGINIA AT LARGE, to-wit:  
CITY/COUNTY OF Harrisonburg

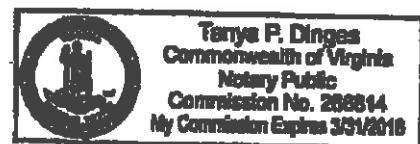
I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that DEAN M. NICHOLS, Sole-Acting Trustee, has on this 10<sup>th</sup> day of July, 2015, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 10<sup>th</sup> day of July, 2015.

My commission expires: 3/31/2018

Notary Registration Number: 266814

Tanya P. Dinges  
Notary Public



FARMERS & MERCHANTS BANK

By: John P. Hale (Seal)  
Its: Senior Vice President

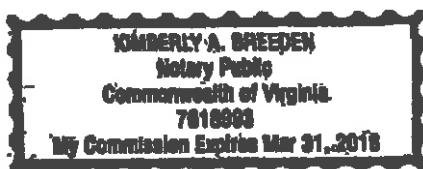
STATE OF VIRGINIA AT LARGE, to-wit:  
COUNTY OF Rockingham

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that John P. Hale, as Senior Vice President on behalf of FARMERS & MERCHANTS BANK, has on this 24 day of August, 2015, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 24 day of August, 2015.

My commission expires: March 31 2018

Notary Registration Number: 76018993



Kimberly Breeden  
Notary Public

K & T SERVICES, INC.

By: H. T. Services Inc. (Seal)  
Its: President

STATE OF Virginia AT LARGE, to-wit:  
CITY/COUNTY OF Harrisonburg

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that Kenneth Wood, as President on behalf of K & T SERVICES, INC., a Virginia corporation, has on this 31<sup>st</sup> day of August, 2015, acknowledged the same before me in the City or County aforesaid.

Given under my hand and seal this 31<sup>st</sup> day of August, 2015.

My commission expires: 1/31/2018

Notary Registration Number: 7607138

Heather Renee Boos  
Notary Public

CLIENT: REAL ESTATE GROTTOS LLC TOWNEHOUSE PHASE I SECTION 3 RESTRICTIVE COVENANTS AND

