

WAKE COUNTY, NC 179  
 LAURA M RIDDICK  
 REGISTER OF DEEDS  
 PRESENTED & RECORDED ON  
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RETURN TO: Trevi Fountain Associates, LLC  
 123 South White Street, Wake Forest, NC 27587  
 PREPARED BY: Titchener Law Office

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**PORTO FINO**

THIS DECLARATION, made on the date hereinafter set forth by TREVI FOUNTAIN ASSOCIATES, LLC, a North Carolina Limited Liability Company, (hereinafter referred to as the "Declarant"):

**WITNESSETH:**

WHEREAS, Declarant desires to ensure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the subdivision, and to provide for the maintenance and upkeep of the Homeowners Common Area, as hereinafter defined, and to that end desires to subject the real property, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable, for the efficient preservation, protection and enhancement of the values and amenities in said subdivision and to ensure the residents' enjoyment of the specific rights, privileges and easements in the Homeowners Common Area, as hereinafter defined, and to provide for the maintenance and upkeep of the Homeowners Common Area, to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Homeowners Common Area and administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under North Carolina law, PORTO FINO OF WAKE FOREST HOMEOWNERS ASSOCIATION, INC.; as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, among others, and which shall be in good standing prior to the sale of any lot; and

WHEREAS, Declarant is the owner of land shown on the plat recorded in Book of Maps 2005, pages \*\*, Wake County Registry hereinafter called the initial plat.

\*\*90 & 91

NOW THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the said real property shown on the initial recording plat and such additional lands thereto as may be hereafter annexed into the association is and shall be held, mortgaged, used, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the title or interest in said real property and any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

Section 1. "Common Area" shall mean and refer to all the real property to be owned by the Association in fee simple or by easement for the common use and enjoyment of the owners of Lots within PORTO FINO SUBDIVISION and to be designated as "Common Area," or open space and any additional area annexed thereto at a later date. All water and sewer lines as well as any Stormwater Control Measures which serves more than one lot which serve this development and which lie outside public right of way and town of Wake Forest utility or drainage easements are Common Area.

Section 2. "Declarant" shall mean and refer to TREVI FOUNTAIN ASSOCIATES, LLC., a North Carolina Limited Liability Company, its successors and assigns.

Section 3. "Homeowners Association" or "Association" shall mean and refer to PORTO FINO OF WAKE FOREST HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Homeowners Common Area owned in fee by the Association, if any.

Section 5. "Member" shall mean and refer to every person or entity who hold membership in the Homeowners Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple 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 7. "Properties" shall mean and refer to that certain real property shown on the Initial Recording Plat, and any additional land later annexed into the Association in accordance with the terms and conditions herein provided.

Section 8. "Stormwater Control Measures" means grass swales, detention pipes and diversion berms situated within the private drainage easements as shown on the Basins Recording Plat and plats of additional lands annexed into the Association that serve more than one lot.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Homeowners Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owners of said Lot to one (1) vote per lot.

When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as a majority, among themselves, determine, but fractional voting shall not be allowed.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class B Lot. The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the happening of either of the following events, whichever shall first occur:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; or

(2) On January 1, 2008.

Notwithstanding anything contained in paragraph (1) -(2) to the contrary, the Class B membership shall be reinstated, if prior to January 1, 2008, the Declarant annexes additional lots into the declaration, and the declarant with the additional lots owns seventy-five percent (75%) of all the lots.

## ARTICLE III

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of use and enjoyment in and access to, from, and over the Homeowners Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Right of the Homeowners Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association; the right of the Homeowners Association to suspend the rights of a tenant who violates Association rules or when the landlord of the tenant is delinquent in paying Association dues.

In such event, a hearing shall be held before an adjudicatory panel appointed by the Executive Board to determine if such Lot Owner should be fined or if privileges or services should be suspended. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. The Lot Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. A fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under NCGS-47F-3-116. Any imposition of a suspension of privileges or services may be continued without further hearing until the violation or delinquency is cured.

(b) The right of the Homeowners Association to dedicate or transfer all or any part of the Homeowners 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 at least four-fifths (4/5) of each Class of members agree to such dedication or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements for the installation and maintenance of sewage, utility (including CATV) and drainage facilities upon, over, under and across the Homeowners Common Area without the assent of the Members when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Homeowners Common Area shall be preserved to the perpetual benefit of the Owners or of the

public in general and shall not be conveyed except to the Town of Wake Forest or to another nonprofit corporation with purposes similar to those of this Association;

(c) The right of the Homeowners Association, with the written assent of Members entitled to at least four-fifths (4/5) of the votes of each Class of member to mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the owners and Homeowners Association as set forth herein.

(d) The right of the Homeowners Association, to exchange any portion of the Homeowners Common Area for other properties

provided that:

1. written notice of the exchange is given to each member of the Homeowners Association and
2. after notice is given, the Homeowners Association must approve such exchange with the written assent of at least eighty percent (80%) of each class in accordance with the provision herein described as "Membership and Voting Rights,"
3. the exchanged properties and other considerations are of like value and utility; and
4. the acreage and configuration of the remaining open space equal (including property to be received in such exchange) or exceed the requirements of the Town of Wake Forest Code; and
5. the exchange is approved by the Town of Wake Forest Planning Director.

(e) The right of the Homeowners Association to adopt and enforce use regulations for the Homeowners Common Area as set forth in this Declaration.

#### Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment and access granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina. This right is subject to limitations set forth in Article III, Section 1 above.

(b) Tenants or Contract Purchasers. The right and easement of use and enjoyment granted to every Owner in Section 1 of this Article may be delegated by the owner to his tenants or contract purchasers who occupy a residence or a portion of said residence within the Properties as their principal residence in Wake County, North Carolina. This right is subject to limitations set forth in Article III, Section 1 above.

(c) Guests. The right and easement of use and enjoyment granted to every owner by Section 1 of this Article may be delegated to guests of such Owners, tenants, or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors governing said use. This right is subject to limitations set forth in Article III, Section 1 (a.) above.

#### Section 3. Parking Rights

(a) Recreation/Commercial Vehicles. No campers, commercial vehicles trucks, or recreational vehicles of an owner or tenant may be parked or kept within the Properties, except at locations that may be designated for such parking by the Board of Directors of the Homeowners Association. The Board of Directors may at its discretion, refuse to allow such parking within the confines of the Properties. No trailers, boats or tractors may be parked or kept within the Properties, except for maintenance equipment owned by the Homeowners Association. Such vehicles may be parked in private garages.

(b) Rules and Regulations Regarding Parking. The Board of Director of the Homeowners Association may make such reasonable rules and regulations as it may elect with respect to the parking of vehicles aforesaid and may amend and vary the requirements of subparagraph (a) above without the consent of the Members of the Association. All modifications and amendments shall be in writing and kept with the official records of the Association.

Section 4. Conveyance of Title to the Homeowners Association. Declarant covenants, for itself and its successors and assigns, that it will convey title to the Homeowners Common Area to the Homeowners Association prior to the conveyance of the first Lot to an Owner within any phase, section, or annexation. Such conveyance shall be free and clear of all encumbrances and liens, except utility, drainage, pedestrian access, of record or shown on the recorded plats of PORTO FINO. Declarant reserves an easement to, from, over and across the Homeowners Common Area for the purpose of constructing additional residences upon the Lots; provided that, following such use the Homeowners Common Areas shall be restored to as nearly the same condition as which prevailed prior to the commencement of construction as is reasonably practicable.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (1) annual assessments or charges; and (2) special assessments; and (3) individual expense assessments, such assessments to be established and collected as hereinafter provided. The annual, special assessments, and individual expense assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall also the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement, and maintenance of the Common Areas, including the maintenance, repair and reconstruction of Stormwater Control Measures in accordance with the Stormwater Detention Basin Operations and Maintenance Manual and Budget attached hereto as Exhibit A, which is fully incorporated herein by reference,

concrete entrance stamp, driveways, walks, and parking areas situated on the Common Area, the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance of Common Areas and maintenance and landscaping of the Common Areas, including but not limited to, the cost of repairs, replacements or additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments levied against the Common Area owned in fee, the payment of the Common Expenses, the procurement and maintenance of insurance in accordance with this Declaration or bylaws, payment of all costs and expenses incurred by the Homeowner's Association pursuant to the terms of the Stormwater Replacement Protection Easement and Access Maintenance Installment Replacement Contribution Agreement between the Declarant, the Homeowners Association, and the Town of Wake Forest recorded contemporaneously with the Declaration and hereinafter called the Stormwater Replacement Agreement, the employment of attorneys and engineers to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, Stormwater Control Measures, paving and any other expenses for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. In addition to the Stormwater Replacement Protection and Access Maintenance Agreement Replacement Contribution, the Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair, and replacement of improvements to the Common Area and those other portions of the properties that the Association may be obligated to maintain. Such reserve fund is to be established out of regular or special assessments for Common Expenses for the Owners of the kind of Lots that require the reserve fund or funds.

Section 4. Budget Ratification. Within thirty (30) days after adoption of any proposed budget for the planned community, the executive board of the Association ("Association's Board") shall provide to all the Lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Association's Board shall set a date for the meeting of the Lot Owners to consider ratification of the budget, said meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There is no requirement that a quorum be present. The budget is considered ratified unless at that meeting the super-majority of all the Lot Owners in the Association specified in section 5(a) rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Association's Board.

Section 5. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment for detached single family Lots shall be \$720.00. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(a) From and on January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessments may be increased effective January 1 of each year by 10% or less of the previous year's assessments, unless the Owners of 90% of the lots reject the budget.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for Lots may be increased above the increase permitted in Section 5(a) if such increase is approved by the owners in the same manner as set forth in Section 6 immediately below.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have assent of two-third (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. Any special assessment shall be payable at such times and at such installment as stated in the initial adoption.

Section 7. Notice and Quorum for any action authorized under Section 5 and 6. Unless specifically provided otherwise, written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 shall be sent to all members not less than thirty (15) days nor more than sixty (60) days in advance of the meeting. Unless specifically provided otherwise, at the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be more than 60 days following the preceding meeting.

Section 8. Fines. Following notice and a hearing to present evidence, and the notice of the decision, the Association's Board may impose fines against any Lot and Lot Owner for a failure to comply with this Declaration. Fines shall be paid not later than thirty (30) days after notice of the assessment is given to the offending Owner and shall be subject to the collection and lien rights of the Association provided in Section 11 of this Article. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Any fine paid by the offending Owner shall nevertheless be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from that Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of one hundred dollars (\$100.00).
- (c) Third and subsequent non-compliance or violation, or violations that are of a continuing nature: a fine not in excess of the maximum allowable pursuant to N.C.G.S Chapter 47F, The

North Carolina Planned Community Act, for each day of continued violation or non-compliance.

Section 9. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected as determined by the Board of Directors. Provided, however, that the assessment for Lots owned by Declarant for which no certificate of occupancy has been issued shall be twenty-five percent (25%) of the regular assessments for those Lots.

Section 10: Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to Lots for which a certificate of occupancy has been issued and have been sold to an Owner on the first day of the month following the conveyance of the first lot subject to this declaration. Such annual assessments shall be paid ratably as determined by the Board of Directors. The Board of Directors shall fix the amount if the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, within ten business days after receipt of written demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessment on a specified Lot has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest of 1.5 % (percent) or a late fee to be determined by the Board of Directors per month from the due date. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of such action shall be added to the assessment. Any assessment levied against a lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. Foreclosure is to be in the same manner as that of Deeds of Trust, foreclosed under Article 2A of Chapter 45 of North Carolina General Statutes. 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. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 12: Lien to Town of Wake Forest. The Association grants and assigns to the Town of Wake Forest, rights to file a lien and collect such assessments without a vote of the owners for monies owned by the Association to the Town of Wake Forest pursuant to the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution. The payment of such assessments shall be secured by a lien against all the Property, including each Lot, upon the filing of a claim of lien by the Association or by the Town of Wake Forest, as the assignee of the Association's lien rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the Clerk of Superior Court of Wake County, North Carolina, which claim of lien shall state the description of the Property, or portion thereof, encumbered by the claim of lien, the name and address of the Association, the record owners of the encumbered portion of the Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of the lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded, plus interest at the rate set forth in the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. The Town of Wake Forest lien claims shall be signed by the Town of Wake Forest Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Section 13. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due from the lien thereof.

Section 14. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 15. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant, a sum equal to at least two (2) months assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to ensure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 16. Dues Paid In Advance. The annual assessments provided for herein shall commence as to Lots being purchased at the time of recordation of a deed from the Declarant to a new owner, pro rated to the first day of the month following said recordation. An amount equivalent to one annual assessment (prorated to the end of the

Association's fiscal year), plus any working capital collections, shall be collected at the time of closing to the ultimate consumer referenced to in this Section. Such annual assessments shall be paid ratably on an annual basis and shall be collected at the time of purchase.

## ARTICLE V

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including, but not limited to, the erection of antennas, satellite dishes or disks, not limited to, aerials or awnings, or the placement of reflective or other material in the windows of a dwelling unit or other exterior attachment, until completed plans and specifications showing the nature, kind, shape, heights, materials, 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 Board of Directors of the Homeowners Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. If the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said completed plans and specifications have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. The Homeowners Association shall have the right to charge a reasonable fee, not to exceed \$25.00, for receiving and processing each application. Neither the board of Directors nor the Architectural Control Committee shall approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Homeowners Common Area. Nothing herein shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development. The Architectural Control Committee shall have a right and easement of unobstructed access over and upon each lot at all times to monitor compliance with the approved plans.

## ARTICLE VI

### EXTERIOR MAINTENANCE

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## ARTICLE VII

### USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for residential purpose only and only one family may occupy a Lot as a principal residence at any one time. Declarant may maintain a sales office, models and construction office in one or more units in accordance with the Wake Forest Municipal Code.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes.

Section 4. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Board of Directors or its designated agent or representative.

Section 5. Use of Homeowners Common Area. The Homeowners Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Board of Directors.

Section 6. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including patios) within the Properties other than between the hours of 8 A.M. and 5 P.M. on Monday through Friday and 8 A.M. through 1 P.M. on Saturdays and clothes hanging devices such as lines, reels, poles, and frames shall be stored out of sight other than during the times aforementioned.

Section 7. Signs. Except as required by the Town Code, no signs or other advertising devices shall be displayed upon any Lot so as to be visible from outside the dwelling without prior written permission of the Board of Directors. Anything herein to the contrary notwithstanding, Declarant or owner may post temporary "For Sale" signs on the Properties until all units owned by Declarant have been sold.

Section 8. Garbage Disposal. Garbage shall be stored within the residence of each Owner or in the storage facilities, if any, provided for said residence at the time same is constructed. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence as of the date of completion of construction thereof unless the Board of Directors or Architectural Control Committee, if appointed by the board, shall first approve in writing the change or addition to the method of storage. Nothing contained herein shall prevent an Owner from complying with the specific requirements of public health authorities or other public agencies regarding garbage disposal.

Section 9. Regulations. Reasonable regulations governing the use of the Homeowners Common Area and the personal conduct of the residents may be made and amended from time to time by the Board of Directors of the Homeowners Association. Copies of such regulations and amendment thereto shall be furnished to each Member by the Homeowners Association upon request.

Section 10: Structure Specification. No structure shall be constructed which contains less than 2300 enclosed and heated square feet. Each structure must also contain a garage for no less than two cars. The Declarant may waive any violation of the square footage requirement of up to twenty percent (20%) without obtaining the prior or subsequent approval of the Board of Directors or the Architectural Control Committee.

## ARTICLE VIII

### EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power line, sanitary sewer and storm drainage facilities and for other public utility installations are reserved as shown on the recorded plat. The Homeowners Association may reserve and grant easements for the installation and maintenance of sewage, utility and drainage facilities over the Properties as provided herein. Within any such easements herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewage disposal facilities and utilities, or which may change the direction of flow or drainage of water through drainage channels in the easements. The Homeowners Association shall also have the continuing right and easement to maintain all stormwater pipes, sewer and water lines located on the Lots which serve more than one Lot; except that this provision shall not apply to sewer lines located in Town of Wake Forest Sanitary Sewer Easements. For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right on, over and under the Properties to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Except when in conflict with laws and regulations of government agencies, such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners.

Section 2. Easements for Government Access. An easement is hereby established over and across the Homeowners Common Area for the benefit of applicable governmental agencies for setting, removing, and reading water meters, maintaining and replacing water lines of the Town of Wake Forest facilities, fire fighting, animal control, garbage collection, police protection and delivery of mail.

Section 3. Owner's Right of Entry for Repair, Maintenance, and Reconstruction. If a dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to repair, maintain, or reconstruct his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of such work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Easements for Encroachments. All Lots and the Homeowners Common Area shall be subject to easements for the encroachment to initial improvements constructed thereon to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, bay windows, steps and walls.

Section 5. Access to Lot. The Homeowners Association and its agents or employees shall have access to any Lot from time to time during reasonable working hours and with prior oral or written notice to the Owner of such Lot for the maintenance of the Homeowners Common Area or of facilities located thereon or of facilities located upon such Lot which serves the Homeowners Common Area or another Lot. The Association and its agents shall also have access to any Lot at any time without notice as may be necessary to make emergency repairs to prevent damage to the Homeowners Common Area or another Lot.

Section 6. Sight Triangles. Within sight triangles easements shown on the initial recording plat and shown on all plats of lands annexed into the Association, no obstruction between two and eight feet in height above the curb line elevation shall be located in whole or in part. Obstructions include, but are not limited to, any berm, fence, wall, sign, foliage, or parked vehicle.

Section 7. Street Tree Easements. There shall exist a street tree easement seventeen (17) feet from the right of way of each dedicated street in Porto Fino subdivision for the purpose of the Town of Wake Forest or Homeowner's Association to Plant and maintain trees.

## ARTICLE IX

### INSURANCE

Section 1. Owner's Responsibility to Insure. Declarant suggests that each Owner, at his expense, secure and maintain in full force and effect one or more insurance policies insuring his Lot and the improvements thereon for the full replacement value thereof against loss and damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief. Declarant also suggests that each Owner, at his expense, secure and maintain in full force and effect comprehensive personal liability insurance for damage or injury to person or property of others occurring on his Lot.

Section 2. Insurance Responsibilities of the Association. the Homeowners Association shall procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, insuring the Homeowners Association and its members against injuries occurring upon the Homeowners Common Area. The Association shall also maintain hazard insurance covering property owned by the Association as set forth herein; and in an amount for full replacement value.

## ARTICLE X

### FINANCING PROVISIONS

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of first deeds of trust or first mortgages on Lots located within the Properties have given their prior written approval, the Homeowners Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Homeowners Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the real property owned is for the perpetual benefit the Owners or of the public in general and shall not be conveyed except to the Town of Wake Forest or to another non-profit corporation for the purposes set forth herein.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot.
- (c) Fail to maintain fire and extended coverage insurance on insurable improvements in the Homeowners Common Area on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value.
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Homeowners Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 2. Books and Records. Any Owner or holder of a first deed of trust on any Lot, or the agent or agents of either, shall have the right to examine the books and records of the Homeowners Association during any reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The Owners or holders of first deeds of trust or first mortgages on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Homeowners Common Area owned in fee simple and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Homeowners Association. The persons, firms, or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

Section 4. Dissolution or Insolvency of the Association: The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than four-fifths (4/5) of the Members of each class of members, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the Town of Wake Forest, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the Town of Wake Forest or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the Town of Wake Forest or other such appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the Town of Wake Forest or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

## ARTICLE XI

**GENERAL PROVISIONS**

Section 1. Enforcement. The Homeowners Association or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Homeowners Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

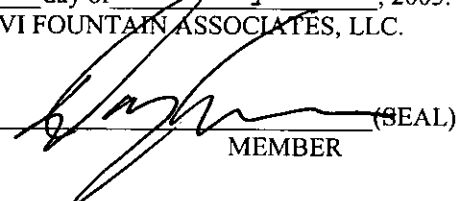
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds for Wake County. All amendments shall be recorded with the Wake County Register of Deeds.

Section 4. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with VA or FHA insured mortgage loans, then as long as any Class B Lot exists, as provided in Article II hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of real property owned by the Homeowners Association, deeding of Homeowners Common Area to persons other than the Homeowners Association, and amendment of this Declaration.

Section 5. Additions to Existing Property. Additional land may be brought within the schemes of this Declaration in the following manner.  
(a) Additional land may be annexed to the existing property to Declarant their successors or assigns, in the future stages of development, without the consent of any other Lot Owner or owners, provided that said annexations must occur within ten (10) years after the date of this instrument.  
(b) The additions authorized under Section (a) above shall be made by filing a record Supplementary Declarations of Covenants, Conditions, and Restrictions with respect to the additional properties which shall extend the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions, and obligations set forth herein. Such Supplemental Declaration shall reference this document without setting forth the complete text in said Supplemental Declaration.

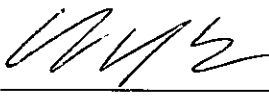
Section 6. Failure to Maintain Stormwater Control Measures. Failure to maintain the Stormwater Control Measures is a violation of the Wake Forest Code, and may subject each Lot Owner to daily significant penalties and other enforcement actions.

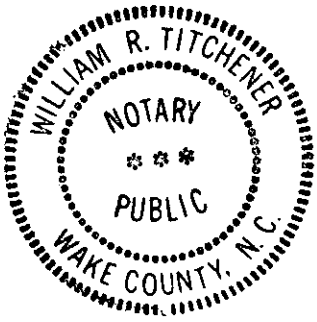
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on this the 28th day of January, 2005.  
TREVI FOUNTAIN ASSOCIATES, LLC.

By:  (SEAL)  
MEMBER

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned Notary Public, do hereby certify that DARYL W. CADY personally came before me this day and acknowledged that he is a member of Trevi Fountain Associates, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the Limited Liability Company, the foregoing instrument was signed in its name by its Member. Witness my hand and notarial seal, this 28th day of January, 2005.  
My Commission Expires: 9/25/2005

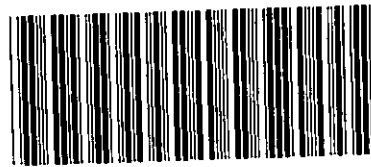
  
Notary Public  
WILLIAM R. TITCHENER



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EXHIBIT A

See Book of Maps 2005, Pages 90 and 91, Wake County Registry and all subsequent recorded maps for PORTO FINO for Stormwater Detention Basin Operations and Maintenance Manual and Budget



BOOK:011206 PAGE:00752 - 00762

Yellow probate sheet is a vital part of your recorded document. Please retain with original document and submit for rerecording.



Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds

North Carolina – Wake County

The foregoing certificate \_\_\_ of \_\_\_\_\_  
William R. Fitchner

\_\_\_\_\_ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds  
By: Frederick C. Salmon Deputy  
Assistant/Deputy Register of Deeds

This Customer Group \_\_\_\_\_ # of Time Stamps Needed

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