PREPARED BY: MOSS & ROCOVICH, P.C.

003593

BOTETOURT COMMONS DECLARATION

THIS DECLARATION is made as of the 27th day of June, 2000, by **TIMBERBROOK ASSOCIATES, L.C.**, a Virginia limited liability company (the "Declarant"), Grantor/Grantee.

RECITALS

A. Declarant is the owner of certain real estate (the "Property") situate in the County of Botetourt, Virginia, as more particularly described in Exhibit A hereto, and desires to create thereon a planned development of high quality to be known as "BOTETOURT COMMONS" (hereinafter referred to as the "Development") to provide for the preservation and enhancement of property values, amenities and opportunities within the development, and to provide for the management, maintenance and care of certain of the improvements within the development. For the foregoing purposes, the undersigned desire to subject the Property (together with such additions thereto as may hereafter be made pursuant to Article II hereof) to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the Development and the owners of property within the Development.

B. First-Citizens Bank & Trust Company (hereinafter referred to as "Lender") is the beneficiary of a deed of trust (the "Purchase Money Deed of Trust") dated January 12, 1998, and recorded in the Clerk's Office in Deed Book 547, page 1024, which encumbers a portion of the Property. The Lender is also the beneficiary of a credit line deed of trust (the "Construction Deed of Trust") dated July 29, 1999, and recorded in the Clerk's Office in Deed Book 572, page 1241, which encumbers Parcel 2, as hereinafter defined. The Construction Deed of Trust has been modified by Modification of Deed of Trust dated June 1, 2000, and recorded in the Clerk's Office in Deed Book 584, page 1862. The Purchase Money Deed of Trust and the Construction Deed of Trust, as modified by the Modification of Deed of Trust, are hereinafter collectively referred to as the "Deed of Trust".

NOW, THEREFORE, Declarant hereby declares that the Property, and such additions thereto as may hereafter be made pursuant to Article II hereof (but as to such additions, subject to any additions, deletions and modifications to the provisions of this Declaration as are made pursuant to Section 2.2 and Section 2.3), is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS AND APPLICATION

Section 1.1 Definitions. As used in this Declaration, the terms listed below shall have the indicated meanings unless otherwise required by the context.

"Additional Area" shall have the meaning set forth in Section 2.1 of this Declaration.

"Architectural Review Committee" shall have the meaning set forth in Section 6.1 of this Declaration.

"Articles" shall mean the articles of incorporation of the Association, as the same may be amended from time to time.

"Assessment" shall mean any Regular Assessment, as described in Section 5.3 of this Declaration, any Special Assessment, as described in Section 5.4 of this Declaration, or any Additional Assessment as described in Section 3.5, Section 8.2, Section 8.3 or Section 9.1 of this Declaration.

"Association" shall mean Botetourt Commons Property Owners Association, a Virginia nonstock corporation, its successors and assigns. If the Association is not in existence on the Effective Date, Declarant shall promptly cause the Association to be incorporated under Virginia law in accordance with the provisions of this Declaration and, until such time, Declarant shall be responsible for the obligations of the Association and shall have all of the Association's rights and powers.

"Board of Directors" shall mean the board of directors of the Association.

"Bylaws" shall mean the bylaws of the Association, as the same may be amended from time to time.

"Clerk's Office" shall mean the Clerk's Office of the Circuit Court of the County in Virginia where the Property is situated.

"Common Area" shall mean any area or facility within the Property owned or leased by the Declarant or the Association, or required to be maintained or operated by the Association, for use by the Owners and designated as Common Area in this Declaration or in any Supplemental Declaration. "Special Easement Area" is included within the definition of Common Area. The initial Common Area is more particularly described in Exhibit B attached hereto.

"County" shall mean Botetourt County, Virginia.

"Declarant" shall mean Timberbrook Associates, L.C., a Virginia limited liability company.

"Deed of Trust" shall have meaning set forth in Recital Paragraph B hereof.

"Declaration" shall mean this instrument, as the same may from time to time be amended or supplemented. All references herein to this Declaration shall include all Supplemental Declarations recorded from time to time pursuant to the provisions hereof.

"Development" shall have the meaning set forth in Recital Paragraph A hereof.

"Effective Date" means the date on which this Declaration is recorded in the Clerk's Office.

"Improvement" and "Improvements" shall have the meanings set forth in Section 6.2 hereof.

"Invitees" shall mean, with regard to an Owner or a tenant in possession of all or any portion of a Lot, all officers, directors, members, managers, partners, agents, tenants, subtenants, guests, family members and other invitees of such Owner or tenant.

"Kroger Property" shall mean Parcel 1, containing 4.570 acres, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, at pages 27 and 28.

"Lender" shall have the meaning set forth in Recital Paragraph B hereof.

"Lot" shall mean (i) any tract or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for the Development or the boundaries of which are described in this Declaration or any Supplemental Declaration or which constitutes a legally subdivided lot, tract or parcel of land, excluding the Common Area, and (ii) a unit in a condominium or in a real estate cooperative if the condominium or cooperative is designated as part of the Development.

"Member" shall mean every person or entity who holds membership in the Association. Each Owner shall be a Member.

"Mortgagee" shall mean the holder of, or person secured by, any deed of trust or mortgage recorded in the Clerk's Office and which encumbers any part of the Development. The Lender is included within the definition of Mortgagee.

"Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers but excluding those having such interest merely as security for the performance of an obligation. Each Owner shall be a Member.

"Plans" shall have the meaning set forth in Section 6.2 hereof.

"Property" shall mean that certain real property described in Exhibit A and such additions thereto as may hereafter be subjected in whole or in part to this Declaration by Declarant pursuant to Article II hereof.

"Reciprocal Easement Agreement" shall mean the agreement between Kroger Limited Partnership I, an Ohio limited partnership, and Declarant dated March 4, 1999, and recorded in the Clerk's Office in Deed Book 566, page 12, many of the provisions of which are applicable to portions of the Development.

"Shopping Center" shall mean Botetourt Commons Shopping Center constructed on the Kroger Property and on Parcel 2, containing 1.770 acres, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, at pages 27 and 28.

"Special Easement Area" shall mean that portion of Common Area which exists as an easement in favor of the Association pursuant to Section 3.8 hereof.

"Subdivide", "Subdivided" and Subdividing" shall mean, with respect to any Lot or any part of the Common Area, the subdivision, resubdivision, vacation of property lines, vacation of subdivision plat or other boundary line adjustment with regard to the property in question.

"Submission Date" shall have the meaning set forth in Section 6.2 hereof.

"Supplemental Declaration" shall have the meaning set forth in Sections 2.2 and 2.3 of this Declaration.

"Zoning Ordinance" shall mean the zoning ordinance duly adopted by the jurisdiction in which the Property is located, together with all other land use ordinances, subdivision ordinances, rules and regulations and proffers as may be applicable to the Property from time to time, as any of the same may be amended from time to time.

Section 1.2 Interpretation. For the purpose of construing this Declaration, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, and words in one gender shall be deemed to include words in all other genders. The titles to articles and section headings are for convenience only and neither limit nor amplify the provisions of this Declaration.

Section 1.3 Application.

(a) This Declaration binds the Property in accordance with the provisions hereof. The Reciprocal Easement Agreement also binds portions of the Property in accordance with its terms.

(b) The Kroger Property is subject to the provisions of the Reciprocal Easement Agreement but will not otherwise be affected by this Declaration unless and until the owner of the Kroger Property elects to submit the Kroger Property to this Declaration.

(c) Each of the following rights regarding the Reciprocal Easement Agreement is hereby exclusively reserved to the Association and shall be exercised only by the Association and not by any Owner:

(i) The right of any Owner (referred to as "Parcel Owner" in the Reciprocal Easement Agreement) to dispute a billed expense under Reciprocal Easement Agreement Section 3.2;

(ii) All rights of any person other than the owner of the Kroger Property as set

forth in Reciprocal Easement Agreement Section 3.3;

(iii) The right of any person other than the owner of the Kroger Property to refer a matter to arbitration pursuant to Reciprocal Easement Agreement Section 3.5;

(iv) The right of any Owner to consent or withhold consent as set forth in the first sentence of Reciprocal Easement Agreement Section 6.6;

(v) The right of any Owner to consent or withhold consent as set forth in Reciprocal Easement Agreement Section 8.1; and

(vi) The right to amend, modify, revoke or terminate the Reciprocal Easement Agreement.

(d) Declarant is the "Developer" and the owner of "Parcel SC2" as described in the Reciprocal Easement Agreement. Declarant hereby assigns to the Association all of its obligations and duties under the Reciprocal Easement Agreement and its non-exclusive right to enforce the provisions of the Reciprocal Easement Agreement.

(e) A cross-reference between certain terms used in this Declaration and their counterparts in the Reciprocal Easement Agreement is attached as Exhibit C.

ARTICLE II
ADDITIONS TO THE PROPERTIES

Section 2.1 Additional Area. The real estate which is subject to this Declaration as of the first date of its recordation in the Clerk's Office is the Property described in Exhibit A hereto, and constitutes the first phase of the Development. Declarant contemplates the possible extension of this Declaration to other real estate from time to time hereafter designated by the Declarant and located within a one (1) mile radius of the Property, whether presently owned by Declarant or not (such other real estate hereafter designated by Declarant and within such radius being collectively referred to as the "Additional Area"). However, Declarant shall not be obligated to bring all or part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then subject to such additions, deletions and modifications as are made pursuant to Section 2.2 and Section 2.3.

Section 2.2 Right to Subject Additional Area to Declaration. Declarant reserves the right, at its discretion, at such time or times as it shall determine on or before twenty (20) years from the Effective Date, to subject the Additional Area, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Area which is not, on or before twenty (20) years from the Effective Date, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and

thereby constituted a part of the "Property," shall cease to be "Additional Area." Each of the additions authorized pursuant to this Section 2.2 shall be made by Declarant's recording in the Clerk's Office one or more supplemental declarations (each a "Supplemental Declaration") describing the portion(s) of the Additional Area subjected to this Declaration. Each such Supplemental Declaration may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by the Declarant and without any limitation on Declarant's discretion. However, no negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the Supplemental Declarations subjecting the Additional Area to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications.

Section 2.3 Supplemental Declarations. In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Declarant may, in its discretion during the twenty-year period described in Section 2.2, execute and record one or more Supplemental Declarations for the purpose of establishing certain additional or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to a specific portion or portions of the Property to be developed for a specific type of use. However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any portion of the Property not expressly subjected thereto.

Section 2.4 Power Not Exhausted by One Exercise. No exercise of the power granted Declarant hereunder as to any portion of the Additional Area shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Area not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration. The discretionary right of Declarant to subject the Additional Area to the provisions of this Declaration, by a Supplemental Declaration in accordance with this Article II, is not conditioned upon or subject to the approval of other Owners or Mortgagees and, therefore, the requirements set forth in Section 9.4 for amendments to this Declaration shall be inapplicable to this Article II and to Declarant's right to execute and record Supplemental Declarations as permitted by this Declaration. The failure of Declarant to extend the provisions of this Declaration to the Additional Area or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Area to which this Declaration is not extended.

Section 2.5 Development of Additional Area. The portion(s) of the Additional Area subjected to the provisions of this Declaration may contain additional Common Area to be owned and/or maintained by the Association.

Section 2.6 Master Plan; Reciprocal Easement Agreement. The existence of a master plan for the Development as part of the Zoning Ordinance or otherwise shall not be deemed to constitute a representation by Declarant that the real estate shown thereon shall be developed as depicted on the master plan, and the master plan may be amended from time to time in the sole discretion of Declarant. No negative reciprocal easement or implied restriction, covenant or condition affecting any of the Property shall arise from, or be implied by, anything shown on any of the plats, plot plans or drawings attached to the Reciprocal Easement Agreement.

ARTICLE III
COMMON AREA

Section 3.1 Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the maintenance, management, operation and control of the Common Area (except for such portions thereof as are the responsibility of Owners as hereinafter set forth) and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the same in good, clean and attractive condition, order and repair.

Section 3.2 Owner's Rights of Enjoyment. Subject to the provisions of this Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

Section 3.3 Limitations on Owner's Rights. The Owners' rights of enjoyment in the Common Area shall also be subject to the following:

(i) the right of the Association to establish, adopt and enforce reasonable rules and regulations with respect to the use of the Common Area;

(ii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Area, or any of the services provided directly through the Association, for any period during which any Assessment against his Lot is more than 60 days past due;

(iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Area, or to assess additional charges against the Owner, for any infraction or violation of this Declaration or the rules and regulations of the Association, for which the Owner or his Invitees are responsible;

(iv) subject to the provisions of the Bylaws, the right of the Association to mortgage any or all of the Common Area for the purpose of making improvements or repairs thereto;

(v) the right of the Association to levy Special Assessments for the maintenance and upkeep of the Common Area, and such other areas of Association responsibility expressly provided for in this Declaration;

(vi) subject to the provisions of the Bylaws, the right of the Declarant, its successors and assigns, to grant utility easements across the Common Area as provided in Section 8.1;

(vii) the right of the Declarant, and, subject to the provisions of the Bylaws, the right of the Association, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by

the Association; and

(viii) all of the other easements, covenants and restrictions provided for in this Declaration and applicable to the Common Area.

Section 3.4 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to his tenants and other Invitees subject to such rules and regulations as may be established from time to time by the Association.

Section 3.5 Damage or Destruction of Common Area by Owner. In the event any Common Area or improvement thereon or Association facility is damaged or destroyed by an Owner, his tenants or other Invitees, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become an Additional Assessment upon the Lot of such Owner and shall constitute a lien upon such Owner's Lot and be collectible in the same manner as other Assessments set forth herein. Notwithstanding the foregoing, the Owner shall be released of liability for such costs to the extent that the same are covered by the proceeds of insurance paid under the Association's insurance policies (but only if such release of liability will not invalidate such insurance).

Section 3.6 Rights in Common Area Reserved by Declarant. Until such time as Declarant conveys to the Association its interest in any of the real estate constituting the Common Area, Declarant shall have the right as to that real estate, but not the obligation, (i) to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, (ii) to maintain such Common Area in neat condition and repair, (iii) to use such Common Area for other purposes not inconsistent with the provisions of this Declaration, and (iv) to exercise the rights of the Association with respect to such real estate. In addition, Declarant has the right to Subdivide the Common Area as reserved in Section 2.3 hereof.

Section 3.7 Title to Common Area. Declarant may retain legal title to the Common Area or portions thereof, but notwithstanding any provision herein to the contrary, Declarant shall convey its right, title and interest in and to each Common Area to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record, not later than twenty (20) years from the date such Common Area is designated as such by recordation of an appropriate instrument in the Clerk's Office. Owners and the Association shall have all the rights and obligations imposed by this Declaration, any applicable rules and regulations promulgated hereunder, and the Articles and Bylaws with respect to the Common Area from and after the time such Common Area is designated as such by recordation of an appropriate instrument in the Clerk's Office, regardless of whether the Common Area has been conveyed to the Association, and the Association shall be liable from the date of designation as a Common Area for payment of real estate taxes, insurance and maintenance costs with respect thereto.

Section 3.8 Special Easement Area. Notwithstanding the provisions of Section 3.7 above, the fee simple title to the Special Easement Area shall not be conveyed to the Association; instead, an easement for signage, lighting and landscaping (and such other or additional purposes as may be specified in a Supplemental Declaration) is hereby created for the benefit of the Association. The servient estate affected by the Special Easement Area described in Exhibit B attached hereto, is made subject to the rights of the Association in the Special Easement Area as of the Effective Date. The servient estate affected by any Special Easement Area described in any future Supplemental Declaration, shall become subject to the rights of the Association in such Special Easement Area on the date on which such Supplemental Declaration be recorded in the Clerk's Office. Upon the creation of a Special Easement Area, the Association shall be liable for payment of insurance and maintenance costs thereof. In the event that the County assesses a separate real estate tax against any facilities or structures maintained in the Special Easement Area by the Association, the Association shall be liable for such tax.

Section 3.9 Condemnation of Common Area. Except to the extent that this Declaration, the Bylaws or the Reciprocal Easement Agreement otherwise provide, in the event that any portion of the Common Area titled in the name of the Association is taken or damaged under the power of eminent domain, (a) any award or payment therefor shall be paid to the Association, which shall be a party in interest in the condemnation proceeding, and (b) the Board of Directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings and, upon such agreement, convey the subject Common Area to the condemning authority. Thereafter, the president of the Association may unilaterally execute and record the deed of conveyance to the condemning authority. A Member of the Association, by virtue of his membership, shall be estopped from contesting the action of the Association in any proceeding held pursuant to this Section 3.9.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 4.1 Owners as Members. Every Owner of a Lot shall be a Member of the Association. Membership shall not be separated from ownership of any Lot. Upon the closing of the sale of a Lot, the membership of the selling Owner shall cease and the purchasing Owner shall become a Member of the Association. Notwithstanding any other provision of this Declaration, the owner of the Kroger Property shall not be required to be a Member of the Association.

Section 4.2 Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners including Declarant. Each Class A Member shall be entitled to cast one vote for each Lot owned by such Owner except that the Owner of Parcel 2 (a portion of the Shopping Center) shall have one vote for each separate commercial unit or store within the portion of the Shopping Center located on Parcel 2 which may be lawfully occupied by a tenant.

Class B. The Class B Member shall be Declarant, who shall be entitled to cast

the Class B vote. The Class B membership shall terminate on the earliest of the following:

(a) the date on which Declarant ceases to own any of the Property;

(b) the date on which Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership (which amendment shall not require the consent of any other Member as provided in Section 9.4); or

(c) twenty (20) years from the Effective Date.

Section 4.3 Suspension of Voting Rights. The Board of Directors of the Association may suspend the voting rights of any Member subject to Assessment under this Declaration during the period when any such Assessment shall be delinquent, but upon payment of such Assessment the voting rights of such Member shall be restored automatically.

Section 4.4 Articles and Bylaws to Govern. Except to the extent expressly provided in this Declaration, all of the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles and the Bylaws. The Bylaws provide, among other things, that the Class B Member shall appoint the members of the Board of Directors of the Association until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of the Articles or Bylaws, this Declaration shall control.

ARTICLE V
ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for Assessments. For each Lot owned by Declarant, Declarant hereby covenants (subject to Sections 5.7 and 5.10), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, to pay to the Association, from and after the Effective Date, the Assessments as set forth in this Declaration, any Supplemental Declaration or in the Bylaws. Any Assessment, together with interest thereon, late charges and costs of collection including attorney's fees, shall be a continuing lien in favor of the Association upon the Lot against which each such Assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot at the time the Assessment fell due. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Lot, (ii) liens and encumbrances recorded prior to the recordation of this Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. No Owner may waive or otherwise avoid liability for the Assessments provided herein by nonuse of the Common Area or abandonment of his Lot. Each Assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed 5% per annum above the prime rate (or base rate) of interest reported in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is

published in each month. Each Assessment that is not paid within seven (7) days of its due date shall incur a late charge equal to 5% of the delinquent Assessment.

Section 5.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Area and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the discharge of all real estate taxes and other levies and assessments against the Common Area and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association as more particularly described in the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles or Bylaws or this Declaration, and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

Section 5.3 Regular Assessments. "Regular Assessments" shall be established (and increased or decreased from time to time) by the Board of Directors pursuant to the Bylaws.

Section 5.4 Special Assessments. In addition to the Regular Assessments, the Board of Directors of the Association may levy, in any Assessment year, one or more "Special Assessments" applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any other extraordinary or unanticipated cost incurred by the Association in carrying out its duties. If any such Special Assessment (or the aggregate of such Special Assessment with all previous Special Assessments levied during such year) is in an amount greater than the Regular Assessment for the same year, then no such Special Assessment shall be levied without the approval of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose; otherwise, such Special Assessment may be established by the Board of Directors without a vote of the membership.

Section 5.5 Assessment Rate. Except as otherwise provided in Section 5.10, both Regular and Special Assessments shall be levied against the Owners and the Lots prorata based upon the provisions set forth on Schedule 5.5 attached hereto.

Section 5.6 Loans from Declarant. If the funds available to the Association from Regular and Special Assessments are not sufficient to defray expenses incurred by the Association, then subject to the terms and conditions hereafter set forth, Declarant may, at its option, lend funds to the Association to enable it to defray such expenses. Such loans by Declarant shall be subject to the following terms and conditions:

(a) Maximum Loan. The aggregate outstanding principal balance at any one time of the loans which may be made by Declarant to the Association shall not exceed $100,000.00; provided, however, that Declarant may lend the Association principal amounts such that the outstanding principal balance at any one time of the loans may be in excess of $100,000.00

upon the approval of a majority of each class of Members voting in person or by proxy at a meeting duly called for this purpose.

(b) Type Loan and Interest Rate. Such loans shall be unsecured and shall not bear interest at a rate in excess of 2% per annum above the prime rate or base rate) of interest reported in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is published in each month. No such loan shall be made for the purpose of construction of additional capital improvements to the Common Area.

(c) Prepayment. Such loans may be prepaid in whole or in part at any time without penalty.

(d) Payment. Interest only on such loans shall be payable in such installments as Declarant elects. The principal balance of any such loans together with all accrued interest thereon shall be due on demand and if demand is not otherwise made shall become due and payable in full on the first to occur of (i) four years from the date of such loan or (ii) one year after the date that Declarant's Class B membership in the Association terminates.

Section 5.7 Date of Commencement of Regular Assessment; Due Dates: The Regular Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot to an Owner other than the Declarant, except as otherwise provided in Section 5.10. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the Regular Assessment as provided in the Bylaws.

Section 5.8 Effect of Nonpayment of Assessments; Remedies of Association. The lien of the Assessments provided for in this Declaration, once perfected as provided below, may be foreclosed or enforced against the Lot by a bill in equity in the same manner as provided for the foreclosure of mortgages, vendor's liens and liens of similar nature. In the alternative, the Association may enforce the lien by sale of the Lot in accordance with any other provision of the Code of Virginia, as amended from time to time, which governs this Declaration and the Development. A statement from the Association showing the balance due on any Assessment shall be prima facie proof of the current Assessment balance and the delinquency, if any, due with respect to a particular Lot. The Association also may bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure. In any action taken by the Association to recover unpaid Assessments, interest, late charges and costs of collection including reasonable attorney's fees shall be added to the amount of such Assessment and secured by the Assessment lien.

Section 5.9 Perfection of Lien for Assessments. (a) The Association shall file in the Clerk's Office before the expiration of twelve months from the time such Assessment became due and payable a memorandum of lien verified by the oath of the President or other Officer of the Association. Notice of the memorandum of lien to a holder of a credit line deed of trust under Virginia Code Section 55-58.2 shall be given in the same fashion as if the Association's lien were a

judgment. At least ten days prior to filing the memorandum of lien, the Association shall send a written notice to the Owner by certified mail, at the Owner's last known address, informing the Owner that a memorandum of lien will be filed in the Clerk's Office. The cost of recording and releasing the memorandum of lien shall be assessed against the Owner liable for payment of such lien.

(b) The memorandum of lien shall contain the following:

(i) The name of the Development;
(ii) A description of the Lot;
(iii) The name or names of the persons constituting the Owner of that Lot;
(iv) The amount of unpaid Assessments currently due or past due relative to such Lot together with the date when each fell due;
(v) The date of issuance of the memorandum of lien;
(vi) The name of the Association and the name and current address of the person to contact to arrange for payment or release of the lien; and
(vii) Any other statement or information which may be required by applicable law.

Section 5.10 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments and liens created herein: (i) all property owned by Declarant except for any Lot owned by Declarant on which a building has been constructed, in which case the Assessments shall commence on the first day of the month following the date on which the County issues a certificate of occupancy (temporary or permanent) for the building; (ii) all properties dedicated to and accepted for maintenance by a public authority; (iii) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption; and (iv) all Common Area.

Section 5.11 Annual Budget. The Board of Directors of the Association shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of Assessments (including provision for reserves, including physical damage insurance deductibles) and an allocation of expenses. For each Assessment year, the amount of the Regular Assessment shall be estimated until after the Board of Directors of the Association adopts its budget for such year.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 6.1 Architectural Review Committee. There is hereby established a committee (the "Architectural Review Committee") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Architectural Review Committee shall be composed of a minimum of one (1) and a maximum of five (5) persons from time to time appointed by Declarant so long as its Class B membership in the Association continues or by the Board of Directors of the Association from and after the date on which the Class B membership terminates or Declarant delegates this responsibility to the Association. The members of the Architectural Review Committee shall serve for such terms as may be determined by Declarant or the Board of Directors, as the case may be.

Section 6.2 Plans to be Submitted. Before commencing the construction, erection or installation of any building, driveway, parking lot, fence, wall, retaining wall, exterior lighting, sign, improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement" and collectively as "Improvements") on a Lot, including any site work in preparation therefor, and before commencing any alteration, modification, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot on which it is situated, each Owner shall submit to the Architectural Review Committee a proposed construction schedule and two (2) sets (or such greater number of sets as may be reasonably required by the Architectural Review Committee) of plans and specifications of the proposed construction, erection, installation, alteration, modification, enlargement, demolition or removal, which plans and specifications shall include (unless waived by the Architectural Review Committee), (i) a site plan showing the size, location and configuration of all existing and proposed improvements, including signage, driveways and landscaped areas, (ii) landscaping plans showing the trees to be removed and to be retained and shrubs, plants and ground cover to be installed and (iii) architectural plans and specifications of the Improvements showing exterior elevations, construction materials, exterior facades, finishes and colors, driveway material and such other items of information as the Architectural Review Committee in its discretion shall require (collectively, the "Plans"). The Architectural Review Committee shall not be required to review any Plans unless and until the Plans contain all of the foregoing items. The Plans and the proposed construction schedule may be submitted to the Architectural Review Committee at the address of Declarant in the same manner as notices are to be sent to Declarant pursuant to Section 9.5, for so long as all of the members of the Architectural Review Committee are appointed by Declarant, and thereafter the Plans and the proposed construction schedule may be submitted to the Architectural Review Committee at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Section 9.5. The "Submission Date" will be the date on which the Architectural Review Committee receives a complete package of the Plans accompanied by a written submission request specifically listing the elements of the Plans.

Section 6.3 Approval of Plans. The Architectural Review Committee shall not approve the Plans for any Improvement that would violate any of the provisions of this Declaration or of any Supplemental Declaration applicable thereto. In all other respects, the Architectural Review Committee may exercise its sole discretion in determining whether to approve or disapprove any Plans, including, without limitation, the location of an Improvement on a Lot. Within thirty (30) days after the Submission Date, the Architectural Review Committee shall notify the Owner in writing that (a) the Architectural Review Committee has approved the Plans; (b) the Architectural Review Committee has rejected the Plans but will approve a resubmission of the Plans if certain modifications in the Plans are made to the satisfaction of the Architectural Review Committee; (c) the Architectural Review Committee has rejected the Plans; or (d) the Architectural Review Committee has found the Plans to be incomplete as specified in the notice. If the Architectural Review Committee does not respond within thirty (30) days after the Submission Date, such Plans (or construction schedule, as the case may be) shall be deemed approved. Within thirty (30) days of the request of any Owner, the Architectural Review Committee shall state in writing, for the benefit of such Owner or any mortgagee or prospective mortgagee or purchaser of such Owner's site, whether the Plans described in such request have been approved.

. Section 6.4 No Improvements to be Constructed Without Approval. No Improvement shall be constructed, erected, installed or maintained on any Lot, nor shall any Improvement be altered, modified, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot in which it is situated, unless the Plans and construction schedule therefor have been approved by the Architectural Review Committee and by any governmental body whose approval of the Plans shall be required by applicable law. After the Plans therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Committee; otherwise the Plans and construction schedule must be resubmitted pursuant to Section 6.2.

Section 6.5 Guidelines May Be Established. The Architectural Review Committee may, in its discretion, establish guidelines and standards to be used in considering whether to approve or disapprove Plans. However, nothing contained in this Declaration shall require the Architectural Review Committee to approve the Plans for Improvements on a Lot on the grounds that the layout, design and other aspects of such improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Architectural Review Committee for another Lot. The provisions of this Article are for the Declarant's benefit or the Association's benefit, as the case may be, in creating and controlling the aesthetics of the Development, and the review of the Plans will be largely a subjective determination and will encompass not only architectural style, exterior finish and color, site lighting, landscaping and signage, but also other relevant factors which the Architectural Review Committee may from time to time include in the review of the Plans.

Section 6.6 Limitation of Liability. The approval by the Architectural Review Committee of any Plans, and any requirement by the Architectural Review Committee that the Plans are to be modified, shall not constitute a warranty or representation by the Architectural Review Committee of the legality, feasibility, competency, desirability, adequacy, technical sufficiency or safety of the Improvements described in such Plans as approved or as modified, and the Architectural Review Committee shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Architectural Review Committee have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Committee's approval, disapproval or conditional approval of any Plans.

Section 6.7 Other Responsibilities of Architectural Review Committee. In addition to the responsibilities and authority provided in this Article VI, the Architectural Review Committee shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration and in the Bylaws.

ARTICLE VII
RESTRICTIONS

Section 7.1 Use of Property. Each of the Lots can be used only for the purposes permitted by the Zoning Ordinance and any Supplemental Declaration applicable thereto. Unless specifically permitted by a Supplemental Declaration recorded by Declarant, no Lot shall be used for residential or recreational purposes. A hotel or motel serving primarily transient lodgers shall not be deemed a residential use. The restrictions set forth in the Reciprocal Easement Agreement are incorporated herein by reference to the extent, and for the period of time, such restrictions are applicable to the Development.

Section 7.2 Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may become a nuisance or annoyance to other Owners. The Association may adopt reasonable rules and regulations to protect the quiet enjoyment of the Property by all Owners and Invitees.

Section 7.3 Appearance. All Lots and the Improvements thereon shall at all times be maintained in a good, clean and attractive condition, order and repair consistent with a development of high quality.

Section 7.4 Water and Sewer. All building(s) on each Lot requiring water and sewer service shall be connected to the public systems. No septic system shall be constructed on any Lot.

Section 7.5 Dumping on Common Area. Without the approval of the Board of Directors of the Association, no Owner shall dump or otherwise dispose of or place trash, garbage, debris or any unsightly or offensive materials on the Common Area, nor shall any Owner permit its tenants or other Invitees to do so.

Section 7.6. Subdivision of Lots. An Owner may Subdivide a Lot in accordance with the Zoning Ordinance.

ARTICLE VIII
EASEMENTS

Section 8.1 Utility Easements. Declarant reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, detention basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public conveniences or utilities, upon, in and over those portions of the Property (including Lots and Common Area) as the Declarant, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). However, no Utility Easements shall burden the portion of a Lot on which is already located a building which was approved by the Architectural Review Committee or on which a building is to be located pursuant

to Plans approved by the Architectural Review Committee. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant or the governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements may be installed above or below ground level, except as otherwise provided in any Supplemental Declaration. Declarant shall have the right to convey Utility Easements to other Owners, to governmental authorities or utility companies, to the Association or to any other party or parties. Declarant shall have the right to assign to the Association its right to create and convey Utility Easements pursuant to this section.

Section 8.2 Erosion Control. Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct soil erosion or situation thereon; provided, however, that Declarant or the Association shall not exercise such right unless it has given the Owner of the Lot or the Association (in the case of Declarant's exercise of such right with respect to any portion of the Common Area) at least thirty (30) days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or situation problem. The cost incurred by the Association in undertaking such erosion control measures on any Lot shall become an "Additional Assessment" upon the Lot and shall be collectible in the manner provided herein for the payment of Assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.3 Maintenance of Lots. Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter upon any Lot, after at least thirty (30) days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall appearance of the Property or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action shall constitute an "Additional Assessment" upon the Lot and shall be collectible in the manner provided herein for the payment of Assessments. This Section shall not apply to Lots owned by Declarant.

Section 8.4 Special Easement Areas. Pursuant to Section 3.8 hereof, the Association shall maintain, repair and replace signage, lighting fixtures and landscaping within the Special Easement Areas.

Section 8.5 Appurtenant Easements. The Property will have the following as appurtenant easements: all appurtenant easements shown on plats of the Property recorded by Declarant in the Clerk's Office and all appurtenant easements described or created by a Supplemental Declaration.

Section 8.6 Reciprocal Easement Agreement. To the extent applicable to the Development, the easements created by the Reciprocal Easement Agreement are incorporated

herein by reference.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 Compliance and Enforcement. Every Owner, and all those entitled to occupy a Lot, shall comply with the provisions of this Declaration. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs expended in such enforcement. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration and such failure continues for at least ten days after notice thereof is given to the Owner, then either Declarant, the Association, or any managing agent on behalf of the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot) to correct the noncompliance; provided, however, that judicial proceedings shall be instituted before any improvements are altered or demolished. The cost incurred in taking such action shall constitute an "Additional Assessment" upon the Owner's Lot(s) and shall be collectible in the manner provided herein for the payment of Assessments. Failure by the Declarant, the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2 Severability and Rules of Property Law. (a) All provisions of this Declaration shall be deemed severable, and any unlawful provision thereof shall be void. The 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.

(b) The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of this Declaration restraining the alienation of non-residential lots.

(c) The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in this Declaration.

Section 9.3 Covenants Running with the Property; Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the Property and the Owners thereof, for a term of thirty (30) years from the Effective Date, after which time they shall be automatically extended for three (3) successive periods of ten (10) years each unless revoked by a recorded instrument executed by the Owners of a majority of the Lots subject hereto. Notwithstanding the foregoing, the provisions of Article VIII shall be perpetual.

Section 9.4 Amendments. (a) Except as otherwise set forth in this Declaration and subject to the provisions of the Bylaws, this Declaration may be amended only with both (i) the written consent of Declarant so long as its Class B membership in the Association continues, and (ii) the vote of two-thirds of the Class A votes (including Declarant as to Class A votes held by

Declarant). Notwithstanding the foregoing, the provisions of Articles II, IV and VIII, and of Sections 1.3, 3.6, 3.7, 3.8, 3.9, 5.6, 5.10, 7.1, 7.6, 9.3, 9.4, and 9.7 may not be amended in any event without the written consent of Declarant regardless of whether the Class B membership has terminated.

(b) Any amendment to this Declaration which alters the priority of the lien of a Mortgagee or which materially impairs or affects a Lot as collateral or the right of a Mortgagee to foreclose on a Lot as collateral, shall require the written consent of all Mortgagees. No Mortgagee consent shall be required for any other amendment to this Declaration or for any Supplemental Declaration except to the extent any provision of a Supplemental Declaration violates the provisions of the previous sentence.

(c) The agreement of the required number of Owners (and the Declarant and/or the Mortgagees, if applicable) to any amendment of this Declaration shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded in the Clerk's Office together with a certification, signed by the President or other Officer of the Association, that the requisite majority of the Owners (and the Declarant and/or the Mortgagees, if applicable) signed the amendment or ratifications thereof.

(d) The Declarant may unilaterally execute and record a corrective amendment to this Declaration to (i) amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Development to comply with applicable laws now in effect or hereafter enacted; or (ii) correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity with respect to an objectively verifiable fact, within five years after the recordation of this Declaration containing or creating such mistake, inconsistency, error or ambiguity. No such amendment may materially reduce what the obligation of the Declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of this Declaration, the President of the Association may also unilaterally execute and record such a corrective amendment to correct such mistake, inconsistency, error or ambiguity upon a vote of two-thirds of the members of the Board of Directors.

(e) An action to challenge the validity of an amendment to this Declaration or a Supplemental Declaration shall not be brought more than one (1) year after the effective date of such amendment or Supplemental Declaration.

Section 9.5 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by U.S. certified mail, return receipt requested and postage prepaid. Notices to the Declarant shall be sent c/o Steven S. Strauss, 5100 Bernard Drive, S.W., Roanoke, VA 24018, or to such other address as the Declarant shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.4. Notices to the Association or to Owners (other than the Declarant) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given upon delivery at the appropriate address specified above, whether in person, by express courier or by certified mail, return receipt

requested. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication.

Section 9.6 Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by members of the Association in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 9.7 Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner or to any other person in Declarant's sole discretion. Each such assignment shall be evidenced by a Supplemental Declaration or by other instrument which shall be recorded in the Clerk's Office.

Section 9.8 Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of the Declarant, the Association, and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

Section 9.9 Joinder by Lender. Lender (and, at the direction of Lender, one of the Trustees, as sole acting Trustee under the Deed of Trust) joins in this Declaration for the sole purpose of subordinating, and does hereby subordinate, the lien of the Deed of Trust to the effect of this Declaration, just as if this Declaration had been executed and recorded before the execution, delivery and recordation of such Deed of Trust.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures.

DECLARANT:

TIMBERBROOK ASSOCIATES, L.C.

By: _____
Title: Manager

COMMONWEALTH OF VIRGINIA)
) to-wit:
COUNTY OF ROANOKE)

The foregoing instrument was acknowledged before me this 28 day of June, 2000, by Steven S. Strauss, Manager of Timberbrook Associates, L.C., a Virginia limited liability company, on behalf of the company.

_____
Notary Public

My commission expires: July 31, 2002

LENDER:

FIRST-CITIZENS BANK & TRUST COMPANY

By: _____
Title: Senior Vice President

TRUSTEE:

_____
Dennis P. Traubert, Sole Acting Trustee

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY/~~COUNTY~~ OF Roanoke)

The foregoing instrument was acknowledged before me this 28th day of June, 2000, by Stephen F. Brown, Senior Vice President of First-Citizens Bank & Trust Company, on behalf of the bank.

_____
Notary Public

My commission expires: 7/30/01

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY/~~COUNTY~~ OF Roanoke)

The foregoing instrument was acknowledged before me this 28th day of June, 2000, by Dennis P. Traubert, Sole Acting Trustee.

_____
Notary Public

My commission expires: 7/30/01

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

County of Botetourt, Virginia

The following Lots:

Parcel 2, containing 1.770 acres; Parcel 3, containing 0.992 acre; Parcel 4, containing 2.817 acres; and Parcel 5, containing 1.509 acres, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, at pages 27 and 28;

Together with the Common Area more particularly described in Exhibit B attached to this Declaration.

EXHIBIT B

COMMON AREA

County of Botetourt, Virginia

(1) **Stormwater Management Area**, containing 1.500 acres, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, at pages 27 and 28 (the "Phase I Plat"), together with all improvements, structures, facilities and drainage easements located thereon or appurtenant thereto, now in existence or hereafter constructed or created, including without limitation the following easements shown on the Phase I Plat: "New Variable Width Private Drainage Easements," "Exist. 20' x 20' D.E." (Drainage Easement), "New 30' Private Drainage Easement," and "New 10' Drainage Easement"

(2) **Common Access Parcel (Private)**, containing 0.771 acre, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, at pages 27 and 28, and known as Kingston Drive, a private road for the benefit of Parcels 1 through 5, Phase I, "Botetourt Commons," as shown on said Plat.

(3) **Special Easement Areas**: signage, lighting and landscaping easements adjacent to Commons Parkway within the following described metes and bounds:

Special Easement Area I:

BEGINNING at Corner #1, said point located on the easterly right-of-way of Commons Parkway (P.B. 20, Pg. 27-28); said corner also located on the southerly right-of-way of U.S. Route 220; thence leaving Commons Parkway and with U.S. Route 220, S. 38° 14' 25" E., 110.33 feet to Corner #2; thence leaving U.S. Route 220 and with the following 5 calls comprising the southerly perimeter of said easement through the remaining property of Timberbrook Associates, L.C.; thence S. 51° 45' 35" W. 24.00 feet to Corner #3; thence N. 44° 14' 22" W, 123.98 feet to Corner #4; thence S. 52° 13' 19" W., 183.76 feet to Corner #5; thence with a curve to the right, which said curve is defined by a delta angle of 17° 06' 22", a radius of 567.00 feet, an arc of 169.28 feet, a chord of 168.65 feet and bearing S. 60° 46' 30" W., to Corner #6; thence N. 36° 48' 26" W., 28.16 feet to Corner #7, said point located on the easterly right-of-way of Commons Parkway; thence with Commons Parkway for the following 3 courses; thence with a curve to the left, which said curve is defined by a delta angle of 17° 56' 12", a radius of 540.00 feet, an arc length of 169.05 feet, a chord of 168.36 feet and bearing N. 61° 11' 25" E., to Corner #8; thence N. 52° 13' 19" E., 180.82 feet to Corner #9; thence with a curve to the right, which said curve is defined by a delta angle of 89° 32' 16", a radius of 40.00 feet, an arc length of 62.51 feet, a chord of 56.34 feet and bearing S. 83° 00' 33" E., to Corner #1, the place of BEGINNING and containing 0.32 acre; and

Special Easement Area II:

BEGINNING at Corner #A, said point located on the southerly right-of-way of U.S. Route 220, said corner also located on the westerly right-of-way of Commons Parkway; thence leaving Route 220 and with Commons Parkway for the following 4 courses; thence with a curve to the right, which said curve is defined by a delta angle of 90° 27' 44", a radius of 40.00 feet, an arc length of 63.15 feet, a chord of 56.80 feet and bearing S. 06° 59' 27" W., to Corner #B; thence N. 52° 13' 19" E., 194.29 feet to Corner #C; thence with a curve to the right, which said curve is defined by a delta angle of 15° 30' 52", a radius of 353.00 feet, an arc length of 95.59 feet, a chord of 95.29 feet, and bearing S. 61° 59' 33" W., to Corner # E; thence S. 70° 27' 10" W., 18.44 feet to Corner #F, said point located on the northerly right-of-way of common access parcel; thence leaving Commons Parkway and with common access parcel for the following course; thence with a curve to the right, which said curve is defined by a delta angle of 24° 21' 46", a radius of 47.50 feet, an arc length of 20.20 feet, a chord of 20.05 feet and bearing N. 75° 13' 28" W., to Corner #G; thence leaving the common access parcel and with 5 calls through Parcel No. 4, Phase I, Botetourt Commons (P.B. 20, Pages 27 & 28) comprising the westerly perimeter of said easement through Parcel 4; thence N. 63° 07' 49" E, 78.00 feet to Corner #H; thence N. 58° 09' 37" E., 50.00 feet to Corner #J; thence N. 67° 33' 24" E., 49.69 feet to Corner #K; thence N. 52 13' 19" E., 191.86 feet to Corner #L; thence N. 23° 03' 24" E, 45.81 feet to Corner #A, the place of BEGINNING and containing 0.167 acre.

EXHIBIT C

The Kroger Property, as defined in this Declaration, constitutes "Parcel SC1" in the Reciprocal Easement Agreement. The following tracts of land described in the Reciprocal Easement Agreement constitute substantially the same tracts of land described in this Declaration as follows:

Reciprocal Easement Agreement	Declaration
(1) "Parcel SC2"	Parcel 2
(2) "Parcel OP1"	Parcel 3
(3) "Parcels OP2 & OP3"	Parcel 4
(4) "Parcel OP4"	Parcel 5
(5) "FP1"	Portion of Additional Area
(6) "FP2"	Portion of Additional Area
(7) "FP3"	Portion of Additional Area
(8) "FP4"	Portion of Additional Area
(9) "HL"	Portion of Additional Area
(10) "Shopping Center"	Parcel 1 & Parcel 2
(11) "Detention Pond"	Stormwater Management Area
(12) "Main Access Road"	Common Access Parcel (Private)
(13) "Botetourt Parkway"	Commons Parkway, a public road

The initial Common Area under this Declaration is set forth in Exhibit B hereof. The "Common Area" described in the Reciprocal Easement Agreement constitutes substantially the following tracts of land as described in this Declaration: Stormwater Management Area, Common Access Parcel (Private), and the portions of Parcel 1 and Parcel 2 which are not reserved for buildings.

SCHEDULE 5.5

ALLOCATION OF ASSESSMENTS

1. The cost and maintenance of the Shopping Center shall be allocated between the owner of the Kroger Property and the Owner of Parcel 2 in accordance with the provisions of Reciprocal Easement Agreement Section 3.2.

2. Pursuant to Reciprocal Easement Agreement Section 3.2, the owner of the Kroger Property is obligated to pay a portion of the costs association with the Stormwater Management Area and Special Easement Areas I and II. The remainder of such costs shall be allocated to the Lots based on the ratio that the acreage of each such Lot bears to the aggregate acreage of all Lots.

3. Pursuant to Reciprocal Easement Agreement Section 3.2, the owner of the Kroger Property is obligated to pay fifty percent (50%) of the costs associated with the Common Access Parcel (Private), also known as Kingston Drive, and the remaining fifty percent (50%) of such costs shall be allocated to the following Lots: Parcel 2, Parcel 3, Parcel 4 and Parcel 5, based on the ratio that the acreage of each such Lot bears to the aggregate acreage of all such Lots.

VIRGINIA: In the Office of the Circuit Court Clerk of Botetourt County
JUNE 30, 2000. This deed was this day presented in said office and with certificate thereto annexed admitted to record
12:50 o'clock p m. after payment of tax imposed by Sec. 58-54.1.

ST_____ CT_____ TF_____ TT 3.00 CF 36.00 120_____ 220_____

Teste: Tommy L. Moore, Clerk By: Catherine R Heath D.C.

0701762

PREPARED BY: MOSS & ROCOVICH, P.C.
TAX MAP NO. 101-44C (portion)

BOTETOURT COMMONS

EIGHTH SUPPLEMENTAL DECLARATION

THIS EIGHTH SUPPLEMENTAL DECLARATION is made as of the 30th day of March, 2007, by **TIMBERBROOK ASSOCIATES, L.C.**, a Virginia limited liability company ("Declarant"), Grantor/Grantee; and **BOTETOURT COMMUNITY CHURCH, INC.**, a Virginia nonstock corporation ("Purchaser"), Grantor/Grantee.

RECITALS

A. Declarant is the owner of certain real estate situate in the County of Botetourt, Virginia, and known as "BOTETOURT COMMONS," which is subject to the provisions of a Declaration dated June 27, 2000, and recorded in the Clerk's Office in Deed Book 585, page 2010, as supplemented by First Supplemental Declaration dated June 28, 2000, and recorded in the Clerk's Office in Deed Book 586, page 919; Second Supplemental Declaration dated January 29, 2001, recorded in Deed Book 592, page 2114 (and as amended by Deed of Exchange dated March 17, 2003, and recorded as Instrument Number 0302439); Third Supplemental Declaration dated March 1, 2001, recorded in Deed Book 594, page 305; Fourth Supplemental Declaration dated August 21, 2001, recorded as Instrument Number 0105089; Fifth Supplemental Declaration dated November 3, 2003, recorded as Instrument No. 0310310 and re-recorded as Instrument No. 0405498; Sixth Supplemental Declaration dated January 20, 2005, recorded as Instrument No. 050000443; and Seventh Supplemental Declaration dated April 14, 2005, recorded as Instrument Number 050002119 (hereinafter collectively referred to as the "Declaration").

B. Declarant has agreed to sell to Purchaser a certain tract or parcel of land known as Tract "1," Phase 3, Botetourt Commons, containing 0.587 acre (hereinafter referred to as "**Tract 1 – Phase 3**") according to a certain plat of survey prepared by Lumsden Associates, P.C., dated March 26, 2007, entitled PLAT SHOWING THE SUBDIVISION OF TRACT "A-1" (33.134 ACRES) "BOTETOURT COMMONS," which plat is recorded in the Clerk's Office of the Circuit Court of the County of Botetourt, Virginia, simultaneously with the recordation of this instrument (hereinafter referred to as the "**Tract 1 - Phase 3 Plat**"). This instrument is the supplement to the Declaration described in Note #7 on the Tract 1 - Phase 3 Plat.

C. As depicted on the Tract 1 - Phase 3 Plat, Tract 1 – Phase 3 contains an existing building and a portion of an existing asphalt parking lot located partly on Tract 1 – Phase 3 and

partly on an adjoining portion of Tract A-1 (the "Phase 3 Parking Lot"). Tract 1 – Phase 3 and the Phase 3 Parking Lot are part of a tract of land that is more particularly described in the attached "Exhibit – Phase 3 Description" and that comprises Phase 3 of Botetourt Commons ("Phase 3"). At this time, it is contemplated that there will be a total of five (5) Lots in Phase 3 but Declarant retains the right to create a greater or lesser number of Lots in Phase 3.

D. Declarant desires to subject Tract 1 – Phase 3 and the remainder of Phase 3 to the provisions of the Declaration, as amended below, and to restrict the use of Tract 1 – Phase 3 and the remainder of Phase 3, as set forth below.

E. All capitalized words and phrases not otherwise defined herein shall have the meanings set forth in the Declaration. The Effective Date of this Supplemental Declaration shall be the date on which this instrument is recorded in the Clerk's Office.

NOW, THEREFORE, Declarant hereby declares that Tract 1 – Phase 3 and the remainder of Phase 3 are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in the Declaration, as supplemented by this Supplemental Declaration. This Supplemental Declaration has been executed and recorded pursuant to Article II of the Declaration.

1. Restated Allocation of Assessments. Schedule 5.5 attached to the Declaration and identified in Section 5.5 thereof, is hereby deleted and replaced in its entirety by Restated Schedule 5.5 which is attached hereto and incorporated herein by reference. Henceforth, all allocations of Assessments under the Declaration shall be made in accordance with Restated Schedule 5.5.

2. Use Restrictions. Section 7.1.11 and Section 7.1.12 are hereby added to the Declaration as follows:

7.1.11 Use of Tract 1 – Phase 3.

Tract 1 – Phase 3 shall not be used in any way which violates a valid and enforceable exclusive-use covenant heretofore granted by Declarant to the owner or lessee ("Third Party Beneficiary") of any other real property located in the Development where such exclusive-use covenant is recorded in the Clerk's Office prior to the recordation of this instrument. The provisions of this Section 7.1.11 are subject to enforcement in accordance with the provisions of the Declaration and may also be enforced by a Third Party Beneficiary.

7.1.12 Phase 3 Restrictions.

No Lot in Phase 3 shall be used for, or leased to, any business which principally features sexually explicit products or drug paraphernalia. No Lot in Phase 3, exclusive of Tract 1

– Phase 3, shall be used for, or leased to, any religious organization, group, congregation, or denomination that holds its principal religious service on Sunday mornings. The provisions of this Section 7.1.12 are subject to enforcement in accordance with the provisions of the Declaration and may also be enforced by a Third Party Beneficiary.

3. Cross-Access and Parking Easements. Section 8.7 is hereby added to the Declaration as follows:

8.7 Phase 3 Easements and Maintenance.

8.7.1 Cross-Access Easements. Each Lot in Phase 3 (including, but not limited to, Tract 1 – Phase 3) shall enjoy, and is hereby granted, an easement for the purpose of vehicular and pedestrian ingress, egress and access over, upon, across and through the Phase 3 Parking Lot, thereby providing access to Commons Parkway (the "Phase 3 Access Easement"). The Phase 3 Access Easement shall apply to the designated travel lanes in the Phase 3 Parking Lot but to no other portion of the Phase 3 Parking Lot. No person shall block any of the designated travel lanes at any time. The Phase 3 Access Easement runs with the land.

8.7.2 Parking Easements. Each Lot in Phase 3 (including, but not limited to, Tract 1 – Phase 3) shall enjoy, and is hereby granted, an easement for vehicular parking within the designated parking spaces located in the Phase 3 Parking Lot. The Phase 3 Parking Lot shall be used in common by the Owners of the Lots in Phase 3 and their lessees, employees, agents, guests, and invitees. The Association shall have the power, from time to time, to promulgate commercially reasonable rules and regulations regarding the use of the Phase 3 Parking Lot. The easements created by this subsection run with the land.

8.7.3 Drainage Easements. Each Lot in Phase 3 (including, but not limited to, Tract 1 – Phase 3) shall enjoy, and is hereby granted, an easement for stormwater drainage over and across the two drainage easement areas identified on the Tract 1 - Phase 3 Plat as "New Private 20' D.E." The drainage easement area that runs in a northerly direction from point D2 to point D1 as shown on the Tract 1 - Phase 3 Plat connects to the stormwater management system for Phase I of Botetourt Commons and drains into the Stormwater Management Area shown on the Phase I Plat (Plat Book 20, pages 27 and 28). The drainage easement area that runs from point D3 to point D8 as shown on the Tract 1 - Phase 3 Plat drains directly into Tinker Creek.

8.7.4 Maintenance of Phase 3 Parking Lot. The Association shall maintain the Phase 3 Parking Lot including, but not limited to, paving, curbs and gutters, stormwater management facilities (including the underground drainage lines located within the two drainage easement areas identified on the Tract 1 - Phase 3 Plat as "New Private 20' D.E."), and lighting (including providing electrical power), in a safe condition including, but not limited to clearing snow and debris, repairing broken pavement and potholes, repaving as necessary, and maintaining the light fixtures. As used in this subsection, "maintenance" shall include repair or

replacement as circumstances require, and the frequency and level of maintenance of the Phase 3 Parking Lot shall be consistent with a first class commercial development or office park, all as determined by the Association.

8.7.5 **Landscaping**. The Association shall maintain all landscaping within and adjacent to the Phase 3 Parking Lot including, but not limited to, regular mowing of grass on all Lots in Phase 3. As used in this subsection, "maintenance" shall include repair or replacement as circumstances require, and the frequency and level of maintenance of the landscaping in Phase 3 shall be consistent with a first class commercial development or office park, all as determined by the Association.

8.7.6 **Assessments in Phase 3**. (a) The Owners of the Lots in Phase 3 shall be responsible for the cost of maintenance of the Phase 3 Parking Lot and all landscaping within Phase 3, and such costs shall constitute Regular Assessments under this Declaration and be known as "Phase 3 Assessments." No Lot in Botetourt Commons outside of Phase 3 shall be liable for any of the costs covered by the Phase 3 Assessments.

(b) Until all of the Lots in Phase 3 have been created and a building constructed on each such Lot, the Phase 3 Assessments shall be allocated as follows: twenty percent (20%) to each Lot without a building (a "vacant Lot") and the remainder shall be allocated among the Lots containing buildings based on the ratio that the square footage of the building constructed on each such Lot bears to the aggregate square footage of all such buildings, provided that for such calculation each such building shall be deemed to contain: (i) the actual square footage of such building, (ii) 4,000 square feet, or (iii) an amount of square footage equal to seventy-five percent (75%) of the average square footage of all such buildings in Phase 3, whichever amount of square footage is greater. Declarant shall bear the portion of Phase 3 Assessments for such Lots that have not yet been created. Until all Lots have been created by Declarant or Declarant executes and records a Supplemental Declaration changing the proposed number of Lots in Phase 3 from a total of five such Lots, all calculations under this subsection shall be based upon the assumption of a total of five Lots in Phase 3. If the total number of such Lots is finally determined by Declarant to be more or less than five, then the minimum percentage of Phase 3 Assessments allocated to each vacant Lot shall be the fraction (expressed as a percentage) wherein the numerator is equal to 1 and the denominator is equal to the total number of such Lots as determined by Declarant.

(c) Once all Lots in Phase 3 have been created and a building constructed on each such Lot, the Phase 3Assessments for each year shall be allocated among the Lots in Phase 3 based on the ratio that the square footage of the building existing on each such Lot bears to the aggregate square footage of all such buildings, provided that for such calculation each such building shall be deemed to contain: (i) the actual square footage of such building, (ii) 4,000 square feet, or (iii) an amount of square footage equal to seventy-five percent (75%) of the average square footage of all such buildings in Phase 3, whichever amount of square footage is

(d) The allocation of Assessments (other than Phase 3 Assessments) is set forth in Restated Schedule 5.5 attached to this instrument.

4. **Confirmation of Certain Rights**. Nothing in the Declaration prohibits the creation by Declarant of a condominium, planned unit development, or similar regime or development, on any Lot or Lots in Botetourt Commons, and Declarant expressly reserves the right to do so.

5. **Purchaser's Consent**. Purchaser hereby consents to the provisions of this Supplemental Declaration.

6. **Ratification**. The Declaration, as supplemented and amended by this Supplemental Declaration in accordance with Article II of the Declaration, is hereby ratified and affirmed by Declarant. Purchaser agrees to be bound by the Declaration and hereby ratifies the Declaration as supplemented and amended by this Supplemental Declaration.

WITNESS the following signatures:

DECLARANT:

TIMBERBROOK ASSOCIATES, L.C.

By: _____
Steven S. Strauss, Manager

COMMONWEALTH OF VIRGINIA)
) to-wit:
COUNTY OF ROANOKE)

The foregoing instrument was acknowledged before me this 30th day of March, 2007, by Steven S. Strauss, Manager of Timberbrook Associates, L.C., a Virginia limited liability company, on behalf of the company.

_____
Notary Public

My commission expires: June 30, 2007

MADORA L. LANE
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

BK0000PG0344

PURCHASER:

BOTETOURT COMMUNITY CHURCH, INC.

By: Edward K. Bailey President
Edward K Bailey, President

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY/~~COUNTY~~ OF Roanoke)

The foregoing instrument was acknowledged before me this 7th day of March, 2007, by Edward K. Bailey, President of Botetourt Community Church, Inc., a Virginia nonstock corporation, on behalf of the corporation.

Notary Public

My commission expires: April 30, 2010

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RESTATED SCHEDULE 5.5

(Last restated as part of the Eighth Supplemental Declaration)

ALLOCATION OF ASSESSMENTS

1. The cost and maintenance of the Shopping Center shall be allocated between the owner of the Kroger Property and the Owner of Parcel 2, Phase I, Botetourt Commons, in accordance with the provisions of Reciprocal Easement Agreement Section 3.2.

2. Pursuant to Reciprocal Easement Agreement Section 3.2, the owner of the Kroger Property is obligated to pay a portion of the costs associated with Special Easement Areas I and II. The remainder of such costs (in excess of the portion paid by the owner of the Kroger Property) shall be allocated to the Lots based on the ratio that the acreage of each such Lot bears to the aggregate acreage of all Lots.

3. Pursuant to Reciprocal Easement Agreement Section 3.2, the owner of the Kroger Property is obligated to pay fifty percent (50%) of the costs associated with the Common Access Parcel (Private), also known as Kingston Drive, and the remaining fifty percent (50%) of such costs shall be allocated to the following Lots in Phase I, Botetourt Commons (Plat Book 20, pages 27-28, Plat Book 23, page 85, and Plat Book 28, page 52): Parcel 2, Parcel 3, Parcel 4A1, Parcel 4B1, Parcel 4C1 and Parcel 5, based on the ratio that the acreage of each such Lot bears to the aggregate acreage of all such Lots.

4. (a) Pursuant to Reciprocal Easement Agreement Section 3.2, the owner of the Kroger Property is obligated to pay a portion of the costs associated with the Stormwater Management Area. The remainder of such costs (in excess of the portion paid by the owner of the Kroger Property) shall be allocated to the Watershed I Tracts (defined below) based on the ratio that the acreage of each Watershed I Tract bears to the aggregate acreage of all Watershed I Tracts.

(b) The Watershed I Tracts are (i) Parcel 2, Parcel 3, Parcel 4A1, Parcel 4B1, Parcel 4C1 and Parcel 5, Phase I, Botetourt Commons; (ii) Parcels A through F, inclusive, and Parcel G-1, Phase 2, Botetourt Commons, (iii) Tract 1, Phase 3, Botetourt Commons, and (iv) the portion of any Lot, created in the future by Declarant from the Additional Area, which drains into the Stormwater Drainage Area, as determined from time to time by a licensed engineer selected by Declarant after site work, grading and construction has been completed on such Lot. For a Lot described in (iii) or (iv) above, only the portion of the Lot which drains into the Stormwater Drainage Area (as determined in the previous sentence) shall be used in calculating such Lot's allocable share of the costs associated with the Stormwater Management Area.

(c) Any future Lot which is not identified as a Watershed I Tract shall not bear any of the costs related to the Stormwater Management Area but shall bear the costs of any requisite stormwater management serving such Lot.

5. The Lots in Phase 3 of Botetourt Commons shall bear the Phase 3 Assessments in accordance with Section 8.7 of the Declaration.

EXHIBIT – PHASE 3 DESCRIPTION

The following is a description of Phase 3 of Botetourt Commons containing 3.617 acres. The description is as follows:

BEGINNING at Corner #1, said point being the southwesterly corner of Parcel 5, Phase 1, Botetourt Commons, P.B. 20, Pg. 28, property of Timberbrook Associates, L.C., said point also located on the northerly right-of-way of Commons Parkway; thence leaving Commons Parkway and with Timberbrook Associates, Parcel 5, Phase 1 for the following 2 courses; N 55° 42' 16" W, 97.32 feet to Corner #6, an existing iron pin; thence N 26° 23' 45" W, 56.84 feet to Corner #5, an existing iron pin; thence leaving Timberbrook Associates, L.C., and with the southerly boundary of Patrick T. & Nikkole B. Hallinan property (Instrument #040007899); for the following 2 courses; thence N 78° 39' 35' W, 335.13 feet to a point, an existing iron pin; thence S 21° 33' 53" W, passing boundary corner of Hallinan at 326.64 feet, and with Phase 3 line through property of Timberbrook Associates, L.C., in all 412.35 feet to a point located on the northerly side of the 20 foot water line easement, property of Timberbrook Associates, L.C.; thence continuing with said water line easement and phase line through property of Timberbrook Associates, L.C., also following northerly side of 50' access easement at 58.69 feet S 70° 53' 22' B, 273.13 feet in all to a point; thence continuing with waterline easement and access easement with a curve to the left which said curve is defined by a delta angle of 81° 31' 59", a radius of 25.00 feet, an arc length of 35.58 feet, a chord of 32.65 feet and bearing N 68° 20' 38"E, to a point, said point located on the northerly right-of-way of Commons Parkway; thence leaving Timberbrook Associates, L.C., and with Commons Parkway for the following 2 courses; thence with a curve to the right, which said curve is defined by a delta angle of 16° 07' 10", a radius of 525.00 feet, an arc length of 147.70 feet, a chord of 147.21 feet and bearing N 35° 38' 13" E, to a point; thence continuing with a curve to the right, which said curve is defined by a delta angle of 15° 12' 10", a radius of 1,025.00 feet, an arc length of 271.97 feet, a chord of 271.17 feet and bearing N 51° 17' 53" E to Corner #1, the place of BEGINNING and containing 3.617 acres.

INSTRUMENT #070001762 (8)
RECORDED IN THE CLERK'S OFFICE OF
BOTETOURT ON
MARCH 30, 2007 AT 03:14PM
TOMMY L. MOORE, CLERK

RECORDED BY: LSD

L. Smith, DC

Prepared by and Return to: MOSS & ROCOVICH, P.C., 4415 Electric Road, Roanoke, Virginia 24014
TAX MAP NO. 101-44F

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0805108

BOTETOURT COMMONS

TENTH SUPPLEMENTAL DECLARATION

THIS TENTH SUPPLEMENTAL DECLARATION is made as of the 6th day of October, 2008, by **TIMBERBROOK ASSOCIATES, L.C.**, a Virginia limited liability company ("Declarant"), Grantor/Grantee; and **AARON LENK PROPERTIES, LLC**, a Virginia limited liability company ("Purchaser"), Grantor/Grantee.

RECITALS

A. Declarant is the owner of certain real estate situate in the County of Botetourt, Virginia, and known as "BOTETOURT COMMONS," which is subject to the provisions of a Declaration dated June 27, 2000, and recorded in the Clerk's Office in Deed Book 585, page 2010, as supplemented by First Supplemental Declaration dated June 28, 2000, and recorded in the Clerk's Office in Deed Book 586, page 919; Second Supplemental Declaration dated January 29, 2001, recorded in Deed Book 592, page 2114 (and as amended by Deed of Exchange dated March 17, 2003, and recorded as Instrument Number 0302439); Third Supplemental Declaration dated March 1, 2001, recorded in Deed Book 594, page 305; Fourth Supplemental Declaration dated August 21, 2001, recorded as Instrument Number 0105089; Fifth Supplemental Declaration dated November 3, 2003, recorded as Instrument No. 0310310 and re-recorded as Instrument No. 0405498; Sixth Supplemental Declaration dated January 20, 2005, recorded as Instrument No. 050000443; Seventh Supplemental Declaration dated April 14, 2005, recorded as Instrument Number 050002119; Eighth Supplemental Declaration dated March 30, 2007, recorded as Instrument Number 070001762; and Ninth Supplemental Declaration dated October 31, 2007, and recorded as Instrument Number 070007541 (hereinafter collectively referred to as the "Declaration").

B. Declarant has agreed to sell to Purchaser a certain tract or parcel of land known as Tract "5," Phase 3, Botetourt Commons, containing 0.547 acre (hereinafter referred to as "**Tract 5 – Phase 3**"), as shown on Plat Showing the Subdivision of Tract "A-1" (32.547 Acres) "Botetourt Commons," dated December 7, 2007, prepared by Lumsden Associates, P.C., and recorded in the Clerk's Office of the Circuit Court of Botetourt County, Virginia, in Plat Book 43, page 21 (hereinafter referred to as the "**Tract 5 – Phase 3 Plat**"). This instrument is the supplement to the Declaration described in Note #7 on the Tract 5 - Phase 3 Plat.

C. As depicted on the Tract 5 - Phase 3 Plat, Tract 5 – Phase 3 contains an existing building and a portion of an existing asphalt parking lot located partly on Tract 5 – Phase 3 and partly on the adjoining portion of Phase 3 of Botetourt Commons (the "Phase 3 Parking Lot"). Phase 3 of Botetourt Commons ("Phase 3") is more particularly described in the Eighth Supplemental Declaration described above in Recital Paragraph A. At this time, it is

contemplated that there will be a total of five (5) Lots in Phase 3 but Declarant retains the right to create a greater or lesser number of Lots in Phase 3.

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D. Declarant desires to subject Tract 5 – Phase 3 to the provisions of the Declaration, as amended below, and to restrict the use of Tract 5 – Phase 3, as set forth below.

E. All capitalized words and phrases not otherwise defined herein shall have the meanings set forth in the Declaration. The Effective Date of this Supplemental Declaration shall be the date on which this instrument is recorded in the Clerk's Office.

NOW, THEREFORE, Declarant hereby declares that Tract 5 – Phase 3 is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in the Declaration, as supplemented by this Supplemental Declaration. This Supplemental Declaration has been executed and recorded pursuant to Article II of the Declaration.

1. **Restated Allocation of Assessments.** All allocations of Assessments under the Declaration shall be made in accordance with Restated Schedule 5.5 attached to the Eighth Supplemental Declaration.

2. **Use Restrictions.** Section 7.1.15 and Section 7.1.16 are hereby added to the Declaration as follows:

7.1.15 **Use of Tract 5 – Phase 3.**

Tract 5 – Phase 3 shall not be used in any way which violates a valid and enforceable exclusive-use covenant heretofore granted by Declarant to the owner or lessee ("Third Party Beneficiary") of any other real property located in the Development where such exclusive-use covenant is recorded in the Clerk's Office prior to the recordation of this instrument. Without limiting the foregoing, Tract 5 – Phase 3 is subject to the provisions of the Eighth Supplemental Declaration regarding Phase 3. The provisions of this Section 7.1.15 are subject to enforcement in accordance with the provisions of the Declaration and may also be enforced by a Third Party Beneficiary.

7.1.16 **Exclusive-Use Covenant Restricting the Restricted Parcels**

(a) For the purposes of this subsection, the **Restricted Parcels** are defined (i) as Parcel 2, containing 1.770 acres, and Parcel 5, containing 1.509 acres, as shown on Plat Showing Phase I, "Botetourt Commons," recorded in the Clerk's Office in Plat Book 20, pages 27 and 28, and (ii) the remaining acreage in Phase 3 currently owned by Declarant as of the effective date of this instrument.

(b) The Restricted Parcels shall not be used in violation of the use restriction defined below (the **"Exclusive Use Restriction"**). The Exclusive Use Restriction encompasses and is limited to the right to practice orthodontist work as set forth below. The Restricted Parcels shall not be used for the practice of orthodontist work in violation of the Exclusive Use

Restriction; however, this Exclusive Use Restriction shall not prohibit any other owner, tenant or occupant providing dental or other health care services on the Restricted Parcels from practicing orthodontist work so long as such orthodontist work does not exceed twenty percent (20%) of his, her, or its total practice as determined by actual patient billings.

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(c) This restriction shall attach to and run with the Restricted Parcels and shall be binding upon Declarant's heirs, personal representatives, tenants, successors and assigns buy only for the period of time set forth in the next paragraph..

(d) The parties agree that this Exclusive Use Restriction shall be limited to, and remain effective for, the period of ten (10) years from February 10, 2008, but shall automatically terminate in the event of a material change in use by Purchaser's tenant or occupant so that business operations conducted on that portion of Tract 5 – Phase 3 currently leased to Lenk Family Orthodontics, Inc., no longer constitutes an orthodontist practice during such ten-year period.

(e) The provisions of this Section 7.1.16 shall be subject to enforcement in accordance with the provisions of the Declaration, and Purchaser shall have no right to bring any action against Declarant regarding any violation of the Exclusive Use Restriction unless Declarant has participated in such violation.

3. **Cross-Access and Parking Easements**. The provisions of the Eighth Supplemental Declaration, as amended and supplemented in the future, shall continue to apply to all Lots in Phase 3 including Tract 5 – Phase 3.

4. **Confirmation of Certain Rights**. Nothing in the Declaration prohibits the creation by Declarant of a condominium, planned unit development, or similar regime or development, on any Lot or Lots in Botetourt Commons, and Declarant expressly reserves the right to do so.

5. **Playground and Employee Parking.** Subject to the provisions of the Declaration (including, without limitation, Articles VI and VII) and the Zoning Ordinance, the Purchaser may utilize the portion of Tract 5 – Phase 3 that is located behind the existing building for the installation of (a) a playground with fencing, and (b) an additional parking area (collectively, the "Ancillary Improvements"). The Ancillary Improvements do not constitute Common Area and will not be maintained, insured, or operated by the Association, and the owner of Tract 5 – Phase 3 shall be responsible for all construction, maintenance, repair, and replacement of the Ancillary Improvements.

6. **Purchaser's Consent**. Purchaser hereby consents to the provisions of this Supplemental Declaration.

7. **Ratification**. The Declaration, as supplemented and amended by this Supplemental Declaration in accordance with Article II of the Declaration, is hereby ratified and affirmed by Declarant. Purchaser agrees to be bound by the Declaration and hereby ratifies the Declaration as supplemented and amended by this Supplemental Declaration.

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WITNESS the following signatures:

DECLARANT:

TIMBERBROOK ASSOCIATES, L.C.

By: _____
Steven S. Strauss, Manager

COMMONWEALTH OF VIRGINIA)
) to-wit:
COUNTY OF ROANOKE)

The foregoing instrument was acknowledged before me this 7th day of October, 2008, by Steven S. Strauss, Manager of Timberbrook Associates, L.C., a Virginia limited liability company, on behalf of the company.

_____
Notary Public

My commission expires: June 30, 2011

Registration No. 227133

MADORA L. LANE NOTARY PUBLIC REG. #227133 MY COMMISSION EXPIRES 6-30-11 COMMONWEALTH OF VIRGINIA

000051

PURCHASER:

AARON LENK PROPERTIES, LLC

By: _____
Name: Gavin M. Aaron
Title: managing member

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY/~~COUNTY~~ OF Roanoke)

The foregoing instrument was acknowledged before me this 7 day of October, 2008, by Gavin M Aaron, Managing Member of Aaron Lenk Properties, LLC, a Virginia limited liability company, on behalf of the company.

_____
Notary Public

My commission expires: 4-30-09
Registration No. 225445

JANET B. CROSSWHITE
Notary Public
Commonwealth of Virginia
Reg. #225445
My Commission Exps. April 30, 2009

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RECORDED
OCTOBER

BOTETOURT COMMONS

TWELFTH SUPPLEMENTAL DECLARATION

THIS TWELFTH SUPPLEMENTAL DECLARATION is made as of the ___ day of June, 2014, by **TIMBERBROOK ASSOCIATES, L.C.**, a Virginia limited liability company ("**Declarant**"), Grantor/Grantee; and **BOTETOURT COMMUNITY CHURCH, INC**., a Virginia nonstock corporation ("**Purchaser**"), Grantor/Grantee.

RECITALS

A. Declarant is the owner of certain real estate situate in the County of Botetourt, Virginia, and known as "BOTETOURT COMMONS," which is subject to the provisions of a Declaration dated June 27, 2000, and recorded in the Clerk's Office in Deed Book 585, page 2010, as supplemented by First Supplemental Declaration dated June 28, 2000, and recorded in the Clerk's Office in Deed Book 586, page 919; Second Supplemental Declaration dated January 29, 2001, recorded in Deed Book 592, page 2114 (and as amended by Deed of Exchange dated March 17, 2003, and recorded as Instrument Number 0302439); Third Supplemental Declaration dated March 1, 2001, recorded in Deed Book 594, page 305; Fourth Supplemental Declaration dated August 21, 2001, recorded as Instrument Number 0105089; Fifth Supplemental Declaration dated November 3, 2003, recorded as Instrument No. 0310310 and re-recorded as Instrument No. 0405498; Sixth Supplemental Declaration dated January 20, 2005, recorded as Instrument No. 050000443; Seventh Supplemental Declaration dated April 14, 2005, recorded as Instrument Number 050002119; Eighth Supplemental Declaration dated March 30, 2007, recorded as Instrument Number 070001762; Ninth Supplemental Declaration dated October 31, 2007, and recorded as Instrument Number 070007541; Tenth Supplemental Declaration dated October 6, 2008, recorded as Instrument Number 0805108, and Eleventh Supplemental Declaration dated December 17, 2009, recorded as Instrument Number 090006484 (hereinafter collectively referred to as the "Declaration").

B. Tract 1 – Phase 3, Botetourt Commons, was subjected to the Declaration pursuant to the Eighth Supplemental Declaration, as described above, and Tract 5 – Phase 3, Botetourt Commons, was subjected to the Declaration pursuant to the Tenth Supplemental Declaration, as described above.

C. Declarant is the owner of certain parcels of real estate known as: (i) "0.3859 Acre Portion of Original Tract A-1 Bounded by Corners 5 to 6, to 7 to D to E to F to 5, inclusive, To be Added to and Combined with Tract 1 to Create New Tract 1A" (hereinafter referred to as the "**0.3859 Acre Tract**), (ii) Tract "2", Phase 3, Botetourt Commons,

containing 1.1319 acres (hereinafter referred to as "**Tract 2 – Phase 3**"), and (iii) Tract "4", Phase 3, Botetourt Commons, containing 0.9244 acre (hereinafter referred to as "**Tract 4 – Phase 3**"), all as shown on Plat Showing the Resubdivision of Tract "A-1" (30.7955 Acres) "Botetourt Commons", dated May 28, 2014, prepared by Lumsden Associates, P.C., and recorded in the Clerk's Office of the Circuit Court of Botetourt County, Virginia, prior to or simultaneous with the recordation of this instrument (hereinafter referred to as the "**Revised Phase 3 Plat**"). This instrument is the supplement to the Declaration described in Note #9 on the Revised Phase 3 Plat.

D. Phase 3 of Botetourt Commons ("Phase 3") is more particularly described in the Eighth Supplemental Declaration and the Tenth Supplemental Declaration as described above in Recital Paragraph A. As depicted on the Revised Phase 3 Plat, Tract 4 – Phase 3 contains an existing building and a portion of the Phase 3 Parking Lot as described in the Eighth Supplemental Declaration, and Tract 2 - Phase 3 contains vacant land and a portion of the Phase 3 Parking Lot. By deed (the "**Tract 1A Deed**") recorded prior to or simultaneous with the recordation of this instrument, the 0.3859 Acre Tract has been conveyed to Purchaser to be combined with Tract 1 – Phase 3 in order to create New Tract 1A, Phase 3, Botetourt Commons (hereinafter referred to as "**Tract 1A – Phase 3**").

E. Declarant desires to subject the 0.3859 Acre Tract, Tract 2 – Phase 3, and Tract 4 - Phase 3 to the provisions of the Declaration, as amended below, and to restrict the use of Tract 1A – Phase 3, Tract 2 – Phase 3, and Tract 4 - Phase 3, as set forth below. With the recordation of the Tract 1A Deed, the Revised Phase 3 Plat, and this instrument, there are currently a total of four (4) Lots in Phase 3 of Botetourt Commons: Tract 1A – Phase 3, Tract 2 – Phase 3, Tract 4 – Phase 3, and Tract 5 – Phase 3.

F. All capitalized words and phrases not otherwise defined herein shall have the meanings set forth in the Declaration. The Effective Date of this Supplemental Declaration shall be the date on which this instrument is recorded in the Clerk's Office.

NOW, THEREFORE, Declarant hereby declares that the 0.3859 Acre Tract, Tract 1A – Phase 3, Tract 2 – Phase 3, Tract 4 – Phase 3, and Tract 5 – Phase 3, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in the Declaration, as supplemented by this Supplemental Declaration. This Supplemental Declaration has been executed and recorded pursuant to Article II of the Declaration.

1. **Restated Allocation of Assessments.** All allocations of Assessments under the Declaration shall continue to be made in accordance with Restated Schedule 5.5 attached to the Eighth Supplemental Declaration.

2. **Use Restrictions.** Section 7.1.17 is hereby added to the Declaration as follows:

7.1.17 **Use of Tract 1A – Phase 3, Tract 2 – Phase 3, and Tract 4 – Phase 3.**

Tract 1A – Phase 3, Tract 2 – Phase 3, and Tract 4 – Phase 3 shall not be used in any way which violates a valid and enforceable exclusive-use covenant heretofore granted by Declarant to the owner or lessee ("Third Party Beneficiary") of any other real property located in the Development where such exclusive-use covenant is recorded in the Clerk's Office prior to the recordation of this instrument. Without limiting the foregoing, Tract 1A – Phase 3, Tract 2 – Phase 3, and Tract 4 – Phase 3 are subject to the provisions of the Eighth Supplemental Declaration and the Tenth Supplemental Declaration regarding Phase 3. The provisions of this Section 7.1.17 are subject to enforcement in accordance with the provisions of the Declaration and may also be enforced by a Third Party Beneficiary.

3. **Cross-Access and Parking Easements**. The provisions of the Eighth Supplemental Declaration, as amended and supplemented to date and in the future, shall continue to apply to all Lots in Phase 3 (Tract 1A – Phase 3, Tract 2 – Phase 3, Tract 4 – Phase 3, and Tract 5 – Phase 3). Subsection 8.7.6 of the Declaration pertaining to Assessments in Phase 3 is hereby revised and amended to provide as follows:

8.7.6 **Assessments in Phase 3**. (a) The Owners of the Lots in Phase 3 shall be responsible for the cost of maintenance of the Phase 3 Parking Lot and all landscaping within Phase 3, and such costs shall constitute Regular Assessments under this Declaration and be known as "Phase 3 Assessments." No Lot in Botetourt Commons outside of Phase 3 shall be liable for any of the costs covered by the Phase 3 Assessments.

(b) Until a building has been created on each Lot in Phase 3, the Phase 3 Assessments shall be allocated as follows: twenty-five (25%) percent to each Lot without a building (a "vacant Lot") and the remainder shall be allocated among the Lots containing buildings based on the ratio that the square footage of the building constructed on each such Lot bears to the aggregate square footage of all such buildings, provided that for such calculation each such building shall be deemed to contain: (i) the actual square footage of such building, (ii) 4,000 square feet, or (iii) an amount of square footage equal to seventy-five percent (75%) of the average square footage of all such buildings in Phase 3, whichever amount of square footage is greater. Until Declarant executes and records a Supplemental Declaration changing the proposed number of Lots in Phase 3 from a total of four (4) Lots, all calculations under this subsection shall be based upon the assumption of a total of four Lots in Phase 3. If the total number of such Lots is finally determined by Declarant to be more or less than four, then the minimum percentage of Phase 3 Assessments allocated to each vacant Lot shall be the fraction (expressed as a percentage) wherein the numerator is equal to 1 and the denominator is equal to the total number of such Lots as determined by Declarant.

(c) Once all Lots in Phase 3 have been created and a building constructed on each such Lot, the Phase 3 Assessments for each year shall be allocated among the Lots in Phase 3 based on the ratio that the square footage of the building existing on each such Lot

bears to the aggregate square footage of all such buildings, provided that for such calculation each such building shall be deemed to contain: (i) the actual square footage of such building, (ii) 4,000 square feet, or (iii) an amount of square footage equal to seventy-five percent (75%) of the average square footage of all such buildings in Phase 3, whichever amount of square footage is greater.

(d) The allocation of Assessments to Lots in Phase 3 (other than Phase 3 Assessments) is set forth in Restated Schedule 5.5 attached to the Eighth Supplemental Declaration.

4. **Confirmation of Certain Rights**. Nothing in the Declaration prohibits the creation by Declarant of a condominium, planned unit development, or similar regime or development, on any Lot or Lots in Botetourt Commons, and Declarant expressly reserves the right to do so.

5. **Ratification**. The Declaration, as supplemented and amended by this Supplemental Declaration in accordance with Article II of the Declaration, is hereby ratified and affirmed by Declarant. Purchaser agrees to be bound by the Declaration and hereby ratifies the Declaration as supplemented and amended by this Supplemental Declaration.

[See following pages for signatures.]

WITNESS the following signatures:

DECLARANT:

TIMBERBROOK ASSOCIATES, L.C.

By: _____
Steven S. Strauss, Manager

COMMONWEALTH OF VIRGINIA)
) to-wit:
COUNTY OF ROANOKE)

The foregoing instrument was acknowledged before me this _____ day of June, 2014, by Steven S. Strauss, Manager of Timberbrook Associates, L.C., a Virginia limited liability company, on behalf of the company.

_____
Notary Public

My commission expires: _____

Registration No. _____

PURCHASER:

BOTETOURT COMMUNITY CHURCH, INC.

By: _____
Name:
Title:

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY/COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of June, 2014, by _____, _____ of Botetourt Community Church, Inc., a Virginia nonstock corporation, on behalf of the corporation.

_____
Notary Public

My commission expires: _____

Registration No. _____

Botetourt Commons
Property Owners Assocaiton
Common Area Budget - 2014
Track 2, Phase 3

Utilities	$	715.00
Landscaping	$	305.00
Snow removal	$	490.00
Master POA	$	325.00
Management	$	245.00
Total	$	2,080.00