

Instrument Control Number

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001124

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

[ILS VLR Cover Sheet Agent 1.0.66]



Doc ID: 000931700027 Type: DEE
Recorded: 01/24/2005 at 11:03:56 AM
Fee Amt: \$36.00 Page 1 of 27
Albemarle County, VA
Shelby Marshall Clerk Circuit Court
File# 2005-00001124

BK 2908 PG 209-235

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Date of Instrument: [1/24/2005]

Instrument Type: [DEC]

Number of Parcels [1]

Number of Pages [26]

City County [Albemarle County] (Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[Hauser Homes Inc]	[]	[]	[]
[]	[]	[]	[]

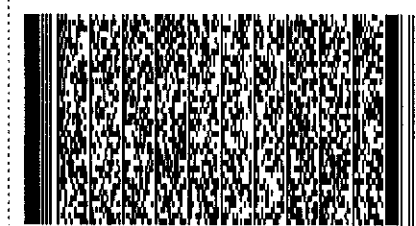
First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
[]	[]	[]	[]
[]	[]	[]	[]

Grantee Address (Name) [Hauser Homes Inc]
 (Address 1) [1412 Sachem Place]
 (Address 2) []
 (City, State, Zip) [Charlottesville] [VA] [22901]
 Consideration [0.00] Existing Debt [0.00] Assumption Balance [0.00]

Prior Instr. Recorded at: City County [] Percent. in this Juris. [100]
 Book [] Page [] Instr. No []
 Parcel Identification No (PIN) []
 Tax Map Num. (if different than PIN) []
 Short Property Description [Lot 23A, 35A, 36A and New Parcel A]
 [Parkside Townhomes]
 Current Property Address (Address 1) []
 (Address 2) []
 (City, State, Zip) [] [] []

Instrument Prepared by [Scott Kroner PLC]
 Recording Paid for by [Scott Kroner PLC]
 Return Recording to (Name) [Scott Kroner PLC]
 (Address 1) [418 East Water Street]
 (Address 2) []
 (City, State, Zip) [Charlottesville] [VA] [22902]
 Customer Case ID [] [] []



This instrument was prepared by Scott Kroner, PLC, Charlottesville, Virginia.

TMP# 056A2-04-00-02600, 02700, 02800, 02900, 03000, 03100, 03200, 03300 and 03400. TMP 056A2-04-00-023A0, 056A2-04-00-035A0, 056A2-04-00-036A0

DECLARATION OF COVENANTS AND RESTRICTIONS
OF PARKSIDE TOWNHOMES

THIS DECLARATION is made this 8th day of December, 2004, by HAUSER HOMES, INC., a Virginia corporation.

WITNESSETH:

WHEREAS, the Company is the Owner of certain real property described in Article II of this Declaration and desires to create thereon a residential townhome community; and

WHEREAS, the Company desires to provide for the preservation of values and for the maintenance of facilities and services and for the administration and enforcement of covenants and restrictions; and

WHEREAS, the Company will cause to be incorporated under the laws of the Commonwealth of Virginia a non-stock corporation for the purpose of exercising functions which are hereinafter more fully set forth.

NOW, THEREFORE, the Company declares that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to these covenants and restrictions, easements, charges, assessments, affirmative obligations and liens, all as hereinafter set forth.

ARTICLE I
DEFINITIONS

The following words and terms when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

"Association" shall mean and refer to Parkside Townhome Owners Association, a Virginia non-stock corporation, its successors and assigns.

"Common Areas" shall mean and refer to all landscaped areas on the Lots (exclusive of trees, plants or bushes planted by individual Owners), the roofs on all improvements located on the Lots, and the Easement Areas.

"Company" shall mean and refer to Hauser Homes, Inc., a Virginia corporation, and its successors and assigns.

"Declaration" shall mean or refer to the terms, covenants, restrictions and obligations contained in this Declaration of Covenants and Restrictions of Parkside Townhomes.

"Easement Areas" shall mean and refer to those portions of the Lots which are paved and designated for use as parking areas and roadways, together with the sidewalks located adjacent to such parking areas and roadways and the sidewalks in the courtyards between Lots 52 through 59 and between Lots 60 and 67. The term "Easement Areas" shall also include any personal property acquired or leased by the Association.

"Lot" shall mean or refer to each of the lots which will be created upon the subdivision of Parcel A, containing 95,837 square feet, as shown on the plat entitled "Subdivision Plat, Lot 23A, Lot 35A, Lot 36A and Parcel A Parkside Village – Phase 2, White Hall Magisterial District, Albemarle County, Virginia," made by Roudabush, Gale & Associates, dated June 29, 2004, last revised August 4, 2004, which is recorded in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia, in Deed Book 2830, pages 78-91, and any re-divisions of the Lots. The Company presently

anticipates that Parcel A as shown on the aforementioned subdivision plat will be re-subdivided into twenty-four (24) Lots, namely Lots 48 through 71.

"Member" shall mean or refer to all Owners who are Members of the Association as defined in Article III.

"Owner" shall mean or refer to the owner as shown by the real estate records of the Clerk's Office of the Circuit Court of Albemarle County, Virginia, whether it is one or more persons, firms, associations, corporations or other legal entities, of any Lot which is part of the Properties, but shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; never shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the office of the Clerk of the Circuit Court of Albemarle County, Virginia, a long term contract of sale conveying any land within the Properties, the Owner of such land shall be the purchaser under said contract and not the fee simple title holder. A long term contract of sale shall be one where the purchaser is required to make payments for the land for a period extending beyond nine months from the date of the contract and where the purchaser does not receive title to the land until all such payments are made, but the purchaser is given the use of the land.

"Properties" shall mean or refer to that certain real property described in Article II of this Declaration.

"Voting Member" shall mean or refer to the Owner entitled to vote on Association matters.

ARTICLE II
PROPERTY

Section 1. *Existing Property.* The real property which is subject to these covenants and restrictions is described as follows: All those certain tracts or parcel of land situated, lying and being in Albemarle County, Virginia, which are more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

Section 2. *Additions to Existing Property.* Additional land may become subject to this Declaration in the following manner:

(a) The Company, its successors and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration additional property. Such additions of property may be subject to this Declaration as one parcel or as several smaller parcels at different times. The additions of such property authorized under this paragraph will increase the number of Lots and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

(b) The addition authorized under this Declaration shall be made by recording one or more supplemental declarations of covenants and restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The supplemental declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration, but such modification shall have no effect upon the properties described in Section 1 of this Article II, or upon any other additions to the properties.

(c) Additional lands which become subject to this Declaration under the provisions of this Article II may in the future be referred to as a part of the Parkside Townhomes.

ARTICLE III MEMBERSHIP

Section 1. *Members.* The Company shall be a member of the Association, and a creditor who acquired title to the Properties or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a member of the Association. Every Owner shall be a member of the Association.

Section 2. *Voting Rights.* The Association shall have two types of regular Voting Member.

(a) Type "A" Voting Members shall be all Owners with the exception of the Company. Type "A" Voting Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Type "B" Voting Members shall be the Company, its successors or assigns. The Class "B" Voting Members shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership.

Section 3. *Voting By Joint Owners.* When any property entitling the Owner to membership as a Type "A" or a Type "B" Voting Member of the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association their acts with respect to voting shall have the following effect:

(a) If only one (1) Owner votes, in person or by proxy, his act shall bind all;

(b) If more than one (1) Owner votes, in person or by proxy, the act of the majority so voting shall bind all;

(c) If more than one (1) Owner votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes.

(d) If the instrument or order filed with the Secretary of the Association shows that any such tenancy is held in unequal interest, a majority or even split under subparagraphs (b) and (c) immediately above shall be a majority or even split in interest in the property to which the vote is attributable.

Section 4. *Board of Directors.* The Association shall be governed by a Board of Directors consisting of no fewer than three (3) and no more than five (5) persons, as provided in the Association's bylaws. The term of such directors is to be determined in accordance with the provisions of the Articles of Incorporation of the Association.

Section 5. *Election of the Board of Directors.* Each Voting Member of Type "A" and Type "B" membership shall be entitled to as many votes as equals the total number of votes such Member is entitled to based on the number of Lots owned. Each Voting Member may cast the total number of votes to which he is entitled for each vacancy to be filled. Cumulative voting shall not be allowed.

Section 6. *Quorum Required for any Action Authorized at Regular or Special Meetings of the Association: Notice and Proxies.* The quorum required for any action which is subject to a vote of the Voting Members at an open meeting of the Association shall be as follows:

(a) The first time a meeting is called for any purpose, the presence at the meeting of Voting Members or proxies entitled to cast thirty percent (30%) of the total vote shall constitute a quorum.

(b) If the required quorum is not present as set forth in paragraph (a) above, another meeting or meetings may be called and the required quorum at a subsequent meeting or meetings shall be one-half (½) of the required quorum at the preceding meeting.

(c) All meetings shall require proper notice which shall be deemed to be given when each Voting Member is given not less than fifteen (15) days notice prior to the date of the meeting proposed.

(d) All Voting Members may vote and transact business at any meeting of the Association by proxy authorized in writing.

ARTICLE IV

PROPERTY RIGHTS IN THE EASEMENT AREAS

Section 1. *Members' Easements in Easement Areas.* Subject to the provisions of these covenants, any supplemental covenants, and the rules and regulations of the Association, every Member, and every resident family member, tenant, guest or invitee of such Member, shall have a right and easement for (i) parking purposes in the designated parking areas, (ii) vehicular and pedestrian ingress and egress over the roadways and (iii) pedestrian ingress and egress over the sidewalks, where such parking areas, roadways and sidewalks are located in the Easement Areas, and such easement shall be appurtenant to and shall pass with the title of every Lot.

Section 2. *Maintenance of Common Areas and Easement Areas.*

(a) Upon sale by the Company of Lot, and upon a reasonable determination by the Company that the Easement Area located on such Lot is maintainable,

the Association shall immediately become responsible for all maintenance and operation of the Common Areas and Easement Areas on such property, and for such additional construction of improvements thereon as may be authorized by the Association's Board of Directors subject to restrictions of record, as more particularly provided in Section 2, Article V of this Declaration.

(b) Notwithstanding anything in the foregoing to the contrary, the Company reserves unto itself, its successors and assigns, and its agents, the right to enter upon any Lot or Easement Area for the purpose of constructing or maintaining roofs, parking, sidewalk, roadways, and landscaped areas (other than foundation plantings and other landscaping installed by individual Owners), for the purpose of emptying trash receptacles, and for exercising any other rights and duties reserved to it under this Declaration. The provisions of this paragraph shall in no way create any obligation on the part of the Company to construct or maintain any such facilities on said properties. The Company further reserves for itself, its assigns and successors the right to reserve and to grant to third parties such easements as it may deem necessary over the Easement Areas.

Section 3. *Extent of Members' Easements.* The rights and easements created hereby shall be subject to the right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, or to any third party, utility or drainage easements on any part of the Easement Areas, provided, however, that no such easement shall in any way unreasonably restrict use of the Easement Areas for parking and access.

ARTICLE V
COVENANTS FOR ASSESSMENTS

Section 1. *Creation of the Lien and Personal Obligations of Assessments.*

The Company covenants, and each Owner of any Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) Annual Assessments or charges; and (b) Special Assessments or charges for the purposes set forth in this Article, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof, including a reasonable attorney's fee as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof, including a reasonable attorney's fee as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the Assessment first became due and payable. In the case of co-ownership, all of such co-owners shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. *Purpose of Assessments.* The Annual Assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement and operation of the Common Areas, and to establish reserve accounts, as reasonably determined by the Association's Board of Directors, to cover the reasonably anticipated replacement costs of capital assets (including roofs, roads and parking areas). By way of illustration, the Annual Assessments are intended to provide for the maintenance of the properties, services and facilities which the Association is required to maintain and operate as follows:

(a) *Routine Maintenance:* The Association shall maintain, repair, and replace, as deemed necessary or appropriate by the Association's Board of Directors, all paved areas designated for parking and as private roads, the sidewalks adjacent to the parking areas, the sidewalks located on the north side of Hill Top Street, the sidewalks in the courtyards between Lots 52 and 59 and between Lots 60 through 67, and all postal mail boxes located in the Easement Areas. In addition, the Association shall provide maintenance on all Lots for the care (including, without limitation, fertilizing and mulching, as appropriate), cutting and replacement of all trees, shrubs, and grass with the exception that the Association shall not maintain and replace individual gardens and shrubs planted by the Owner. In addition, the Association shall arrange for routine trash removal, and may regulate the location and type of outdoor trash receptacles. In addition, the Association may, but is not required to, maintain all sidewalks, grass and trees which may lie within the bounds of any publicly dedicated and maintained right-of-way or road. The private roads and sidewalks shall be maintained by the Association at all times in a safe and passable state of repair, free of debris, snow and standing water.

(b) *Damages caused by Owner:* In the event that any such need for maintenance or repair is caused by the willful or negligent act of the Owner, his family, tenant, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which said Lot is subject.

Section 3. *Creation of Assessments.* There are hereby created Regular Annual Assessments as may be from time to time specifically authorized by the Board of Directors. These Assessments shall be allocated among all Lots within the Association as set forth in Section 5(a) herein, and shall be for expenses (including deposits to reserve

funds) determined by the Board of Directors to be for the benefit of the Association as a whole. Assessments on a Lot shall commence on the day of closing of the initial sale of the Lot from the Company, provided, however, that until such time as a certificate of occupancy is issued by the County of Albemarle for a residence built on a Lot, only twenty-five percent (25%) of the Assessment or Special Assessment shall be paid by the Owner. Assessments shall be prorated for any partial year.

Section 4. *Application of Maximum Regular Annual Assessment; Supplemental Assessment.* It shall be the duty of the Board of Directors, at least thirty (30) days before the beginning of each fiscal year, to prepare a budget covering the estimated costs of operating the Association during the next year. The Maximum Regular Annual Assessment, as set forth hereinbelow, and as is automatically increased annually pursuant to the provisions of this Article, shall be levied by the Association. If, however, the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Assessment less than the Maximum Regular Annual Assessment, it may levy such lesser Assessment; provided, however, so long as the Company or its assigns is engaged in the development of properties which are subject to the terms of the Declaration of Covenants and Restrictions, the Association may not reduce Assessments below those set out in Section 5(b) immediately below without the written consent of the Company or its assigns. The levy of an Assessment less than the Maximum Regular Annual Assessment in one (1) year shall not affect the Board's right to levy an Annual Assessment equal to the Maximum Regular Annual Assessment in subsequent years.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and thereafter, during such Assessment year, determine that the

important and essential functions of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote, levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

If the Board of Directors, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any one (1) year, or in any one (1) year and all subsequent years, it may request approval of a specified increase in the Maximum Regular Annual Assessment for either one (1) year only, or for that one (1) year and all subsequent years, by a favorable vote of seventy-five percent (75%) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6. Should the vote be in favor of such proposed increase, it shall be deemed approved and may be levied by the Board. An increase in the Maximum Regular Annual Assessment for one (1) year only pursuant to the provisions hereof shall in no way affect the Maximum Regular Annual Assessment for subsequent years or increases thereof in subsequent years.

Section 5. *Maximum Assessments and Increases.*

(a) Until September 30, 2005, the Maximum Regular Annual Assessment shall be \$78.00/per month per improved Lot.

(b) From and after October 1, 2005, the Maximum Regular Annual Assessment may be automatically increased each year by an amount equal to no more than ten percent (10%) of the previous year's Maximum Regular Annual Assessment.

Section 6. *Special Assessments for Improvements and Additions.* In addition to the Regular Annual Assessments, the Association may levy Special Assessments for the following purposes:

(a) Construction, reconstruction, repair, or replacement of improvements upon the Easement Areas, including the necessary fixtures and personal property related thereto;

(b) To provide for the necessary facilities and equipment to offer the services authorized herein; and

(c) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such Special Assessment, before being charged, must have received the approval of the Voting Members of the Association by the favorable vote of fifty-one percent (51%) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6. The notice of such meeting shall include one (1) statement from those Directors favoring the Special Assessment, and one (1) statement from those Directors opposing the Special Assessment, containing the reasons for those Directors' support for or opposition to the Special Assessment. Neither statement shall exceed five (5) pages in length.

This provision shall be interpreted to mean that the Association may make in any one (1) year a Regular Annual Assessment up to the amount set forth in Section 5(a) of this Article V, plus an additional Special Assessment. Such Special Assessment in any one (1) year may not exceed a sum equal to the amount of the Regular Annual Assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster, or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to

the Maximum Regular Annual Assessment shall not affect its right to make a Special Assessment during the year.

Section 7. *Date or Commencement of Annual Assessments and Billing Schedule.* Notwithstanding anything in the foregoing to the contrary, the Regular Annual Assessments provided for herein shall commence on each Lot as it is sold by the Company.

Section 8. *Duties of the Board of Directors.* It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated costs of operating the Association during the next year. The Board may not, without the vote or written assent of a majority of the voting power of the Association impose a Regular Annual Assessment per Lot which is more than one hundred ten percent (110%) of the Regular Annual Assessment for the immediately preceding fiscal year. Once the assessment is set, it shall direct the preparation of an index of the Properties and Regular Annual Assessments applicable thereto, which shall be kept in the office of the Association and which shall be open to inspection by any Member. Written notice of Assessments shall thereupon be sent to every Member subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said Assessments a certificate in writing signed by an Officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid. If the Board of Directors authorizes a Billing Agent to collect Assessments, the Certificate of the said Billing Agent shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid.

Assessments shall be billed annually, quarterly, monthly, or on such other basis as may be determined by the Board of Directors. All Assessment bills shall be due and payable within thirty (30) days from the date of mailing.

Section 9. *Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; the Lien: Remedies of Association.* If the Annual Assessment or any Special Assessment or Supplemental Assessment is not paid on or before the date that is thirty (30) days following the date on which the bill for such Assessment is mailed, then such Assessment shall become delinquent and shall (together with (i) interest thereon at the maximum annual rate permitted by law accrued from the due date, and (ii) cost of collection thereof including a reasonable attorney's fee as hereinafter provided) become a charge and continuing lien on the land and all improvements thereof, against which each such Assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns.

If the Assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Owner personally and there shall be added to the amount to such Assessment the costs of preparing the filing of the complaint in such action and a reasonable attorney's fee and, in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee together with the costs of the action. If the Board of Directors elects to utilize a Billing Agent to collect Assessments, interest which shall accrue on past-due sums will be the maximum interest rate which such agent may lawfully charge.

Section 10. *Subordination of the Lien.* The continuing lien of the Assessments provided for herein shall be subordinate to the lien of any first or second deed

of trust now or hereafter placed upon any properties subject to Assessment and, in addition, shall be subordinate to the lien for any Assessments under the Declaration of Covenants and Restrictions of Parkside Village which is recorded in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia, in Deed Book 1974, page 456, as amended and supplemented from time to time. In the event a creditor acquires title to any property subject to Assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to Assessments accruing after such acquisition.

Section 11. *Reserve Funds.* The Association shall establish reserve funds from its Annual Assessments to be held in reserve in an interest drawing account or investments as a reserve for:

- (a) Major rehabilitation, repair or replacement of roofs, parking areas, roads, sidewalks, or other capital improvements which are maintained by the Association;
- (b) Emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; and
- (c) Initial costs of any new service to be performed by the Association.

Section 12. *Annual Statements.* The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association; provided, however, that this requirement shall be construed to apply only to creditors of more than One Thousand and no/100 Dollars (\$1,000.00). Such Officer shall furnish to each Member of the

