

## ARCHITECTURAL CONTROL TRANSFER AGREEMENT

This ARCHITECTURAL CONTROL TRANSFER AGREEMENT (this "Agreement") is entered into this 5<sup>th</sup> day of DECEMBER, 2008 by and between OELLA HOMEOWNERS ASSOCIATION, INC., a Maryland corporation, having an address of P.O. Box 802, Ellicott City, Maryland 21043 ("Oella") and CHARLES L. WAGANDT, an individual resident of the State of Maryland, having an address of 803 Oella Avenue, Ellicott City, Maryland 21043 (the "Developer").

WHEREAS, by a Declaration of Restrictions and Grant of Easements dated June 28, 1984 and recorded among the Land Records of Baltimore County, Maryland (the "Land Records") in Liber 6747, Folio 021 *et seq.*, made by the Developer (the "Declaration"), the Developer subjected the community known as Oella as described in Exhibit A thereto (the "Property") to the operation and effect of the Declaration;

WHEREAS, the Declaration provided the Developer with certain approval rights and other architectural control rights with respect to the construction, rehabilitation, erection, placement, alteration or maintenance of any Structures located on a Lot pursuant to Article IV of the Declaration;

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions dated June 9, 1988 and recorded among the Land Records in Liber 7958, Folio 335 *et seq.*, made by the Developer (hereinafter the "Amended Declaration"), the Developer incorporated all of the terms and conditions contained in the Declaration into the Amended Declaration;

WHEREAS, the Developer and Oella entered into an Architectural Review Committee Agreement dated November 5, 2004 (the "ARC Agreement") which established the Oella Architectural Review Committee (the "Existing ARC") and transferred some of the rights and duties granted to the Developer pursuant to Article IV of the Declaration with respect to any existing Structure to the Existing ARC;

WHEREAS, the Developer and Oella wish to abolish the Existing ARC and irrevocably transfer all of the rights of the Developer contained in the ARC Agreement, the Declaration and the Amended Declaration with respect to architectural control of the Property to Oella.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the HOA and Developer, intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitals are incorporated into this Agreement by this reference.
2. Defined Terms. As used in this Agreement, the following terms have the following meanings:

(a) "Board of Directors" means the Board of Directors of Oella.

(b) "Common Areas" means all portions of the property (including all improvements thereon) owned by Oella or the Developer for future conveyance to Oella, including active and passive open space, non-tidal wetlands, private streets, roadways and parking areas, neighborhood identification signs and real property or other facilities in which Oella requires a right of use for the benefit of it and its members.

(c) "Lot" means any plot of land now or hereafter shown as a lot upon any recorded subdivision map of all or any part of the Property, together with all buildings and improvements thereon, excluding, however, all Common Areas.

(d) "Owner" means the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding mortgagees.

(e) "Structure" means anything which constitutes a "Structure" for purposes of the zoning ordinance of Baltimore County, Maryland, provided that, in addition, each of the following shall be deemed a Structure for the purposes of this Agreement:

(i) any thing or device, the placement of which upon any Lot might affect the physical appearance thereof (including by way of example rather than of limitation, any building, shed, covered patio, fountain, pool, tree, shrubbery, paving, curbing, landscaping, fence or wall, sign or signboard); and

(ii) Any excavation or fill, the volume of which exceeds ten (10) cubic yards; and

(iii) any excavation or fill, ditch, diversion, dam, or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or the flow of any water in any natural or artificial stream, wash or drainage channel on or across any Lot.

3. Transfer of Developer's Rights. The Developer hereby irrevocably transfers to the Board of Directors or its designated Architectural Review Committee, all of the Developer's rights and responsibilities contained in Article IV of the Declaration and any and all other of the Developer's rights and responsibilities with respect to architectural control of the Property as may be contained in the Declaration and the Amended Declaration. It is the intent of this Agreement to transfer all control of the Developer with respect to architectural control to Oella.

4. Termination of ARC Agreement. The Developer and Oella hereby terminate the ARC Agreement and the Existing ARC.

5. Architectural Control Documents. The Developer agrees to permit representatives of Oella to access for the purpose of copying and/or scanning, at Oella's expense, at the office of the Developer during regular business hours any documentation in the possession of the Developer and/or the Existing ARC as of the date hereof with respect to enforcement actions, correspondence, policies and procedures and any other documentation regarding architectural control of the Property and enforcement thereof. Oella shall be allowed to remove these copies or scans, but must leave the originals with the Developer.

6. Formation of New Architectural Review Committee. Oella hereby agrees that upon the transfers contemplated hereunder, it shall form a new Architectural Review Committee (the "ARC") the composition of which, the terms of its members and its procedures shall be determined by the Board of Directors. Notwithstanding anything contained herein, the Developer shall have the right, but not the obligation, to serve on the ARC for a period of three (3) years from the date of the signing of this Agreement. While serving on the ARC, the Developer shall have the right to cast one (1) vote on all matters brought before the ARC. In addition, for a period of five (5) years from the date of the signing of this Agreement, the Developer shall have the right, but not the obligation, to vote on all applications for the construction of a single family dwelling unit on the three (3) remaining undeveloped Lots within Oella, one of which is located on Reservoir Hill and two of which are located off Charles James Circle. The Developer shall have the right to cast one (1) vote on all such matters.

7. Indemnification. The Developer agrees to indemnify, hold harmless and defend Oella, its Board of Directors, officers, ARC, residents and owners (singularly and collectively, the "Indemnified Parties") from and against all liabilities, demands, claims, actions, causes of action, losses, costs, damages and expenses, including, without limitation, costs and reasonable attorneys' fees, which any Indemnified Parties may suffer or incur relating to or by virtue of any action, demand, proceeding or claim by any person relating to architectural control of Oella from the date of the recording of the Declaration among the Land Records up to and including the date of this Agreement. Notwithstanding anything contained herein, the Developer shall not indemnify or hold harmless Oella for any decisions rendered jointly by the Existing ARC and the Developer.

Oella agrees to indemnify, hold harmless and defend the Developer, from and against all liabilities, demands, claims, actions, causes of action, losses, costs, damages and expenses, including, without limitation, costs and reasonable attorneys' fees, which the Developer may suffer or incur relating to or by virtue of any action, demand, proceeding or claim by any person relating to architectural control of Oella from and after November 5, 2004. Notwithstanding anything contained herein, Oella shall not indemnify or hold harmless the Developer for any architectural decisions rendered by the Developer unilaterally.

8. Policies & Procedures. Within 90 days of the date of this Agreement Oella shall adopt written policies and procedures for, but not limited to, submission of requests by Owners to the ARC, the ARC's standard of review, the approval and appeal process,

and policies for the enforcement of architectural controls and other decisions of the ARC and by the Oella Board of Directors.

9. Guidelines. Oella shall adopt a written set of architectural guidelines that conforms to recognized standards for historic preservation, including, but not limited to, the standards and guidelines established by the U. S. Secretary of the Interior for the preservation and rehabilitation of historic buildings. In addition Oella shall use as a general guide the Howard County Historic District Commission – Ellicott City guidelines.

Within 60 days of the date of this Agreement, Oella shall select a committee of interested local residents and/or outside consultants for the purpose of establishing clear architectural guidelines to assist in guiding the decisions of present and future ARCs in a consistent, careful and historically responsible manner. This committee shall be primarily charged with determining the distinction between “Historic” and “New” homes and defining guidelines for each as well as defining how these guidelines will be applied. This committee will also be charged with protecting exceptionally important historic scenic streetscapes such as Long Brick Row. Oella shall pay an amount not to exceed \$3,000 for the costs of a third party consultant with experience in the development of historical preservation guidelines to review and advise the committee in connection with the establishment of the architectural guidelines. The Developer agrees to pay the costs of the consultant in excess of the \$3,000 paid by Oella if and only to the extent such costs have been approved in advance and in writing by the Developer and Oella.

Within 150 days of the date of this Agreement this committee shall submit a draft set of guidelines for review by Oella and the Developer. Oella and the Developer shall submit written comments to the committee within forty-five (45) days of the receipt of the draft guidelines.

Within 240 days of the date of this Agreement this committee shall submit the final guidelines for approval by Oella and the Developer, such approvals not being unreasonably withheld by either party. In the event that such approvals are withheld and/or an agreement cannot be reached between the two parties with respect to the architectural guidelines for Oella, Oella and the Developer agree to submit the matter to binding arbitration in accordance with the arbitration rules of the American Arbitration Association. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Baltimore County law. The costs of arbitration will be paid one half by each party.

10. Miscellaneous. This Agreement constitutes the complete and exclusive agreement between the Developer and Oella with respect to the transfer of architectural control. Any amendment to this Agreement must be in writing. This Agreement is binding upon and will inure to the benefit of the parties, their personal representatives, successors and assigns. All headings are inserted for convenience and ease of reference


and are not to be considered in the construction or interpretation of any provision of this Agreement. Unless the context otherwise requires, whenever used in this Agreement the singular will include the plural, the plural will include the singular, and the masculine gender will include the neuter or feminine gender and vice versa. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified with retroactive effect to render such provision valid and enforceable to the maximum extent permissible so as to effect the intent of the parties hereto, and the remainder of this Agreement shall continue in full force and effect. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland. Any action, suit, or proceeding arising from, connected with, or pertaining to this Agreement shall be submitted exclusively to the State courts sitting in Maryland or the federal courts sitting in Maryland. All parties hereto hereby consent to the jurisdiction of such courts and irrevocably waive any objection as to personal jurisdiction, venue, or inconvenient forum. In the event either party to this Agreement is required to file a legal action due to a breach hereof, the costs of said action including, but not limited to, reasonable attorney's fees actually incurred, shall be paid to the prevailing party.

IN WITNESS WHEREOF, the Developer and Oella have executed this Agreement as of the date first written above.


WITNESS:

OELLA:

OELLA HOMEOWNERS ASSOCIATION, INC.

  
By: M. Steven Appler, President

DEVELOPER:

  
Charles I. Wagandt