

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR LAUREL RIDGE**

THIS DECLARATION, made on the \_\_\_\_ day of \_\_\_\_\_, 1993, by Laurel Branch Development Corporation, a North Carolina corporation, having its principal offices in Black Mountain, North Carolina, hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Black Mountain Township, Buncombe County, North Carolina, as the same is more particularly described on Exhibit "A", which said Exhibit is attached hereto and hereby incorporated by reference as if set forth herein verbatim; and

WHEREAS, Declarant desires to subject that property described on Exhibit "A" to the following easements, restrictions, covenants and conditions; and

WHEREAS, Declarant is the owner of a larger tract commonly known and referred to as the Laurel Branch Base Tract from which the property described on Exhibit "A" is derived, which larger tract, excluding the property described on Exhibit "A", is more particularly described on Exhibit "B" as the same is attached hereto and hereby incorporated by reference as if set forth herein verbatim, and such remaining portion of Laurel Branch Base Tract (Exhibit "B") shall be held by Declarant free of the easements, restrictions, covenants and conditions herein imposed, but Declarant desires herein to retain the right, at a later date, to subject said property described on Exhibit "B", or a portion thereof, to the easements, restrictions, covenants and conditions contained herein; and

WHEREAS, Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties, and Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the property described on Exhibit "A" as the same is attached hereto and made a part hereof and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with said property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE 1

### DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

**SECTION 1. AREA OF COMMON RESPONSIBILITY** shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement with any Neighborhood, become the responsibility of the Association.

**SECTION 2. ARTICLES OF INCORPORATION** or **ARTICLES** shall refer to the Articles of Incorporation of Laurel Ridge Property Owners Association, Inc., as filed with the Secretary of State of the State of North Carolina as amended from time to time.

**SECTION 3. ASSOCIATION** shall mean and refer to Laurel Ridge Property Owners Association, Inc., a North Carolina not-for-profit corporation, its successors and assigns.  
subject to assessment under Article 5 to fund common Expenses for the general benefit of all Units, as more particularly described in Article 5, Sections 1 and 2, of this Declaration.

**SECTION 5. BOARD OF DIRECTORS** or **BOARD** shall be the body responsible for administration of the Association and shall mean the board of directors of the Association duly elected in accordance with the By-Laws of the Association and generally serving the same role as the board of directors under North Carolina corporate

**SECTION 4. BASE ASSESSMENT** shall refer to assessments levied on all Units law.

**SECTION 6. BUILDER** shall mean any Person which purchases one (1) or more Units for the purpose of constructing improvements thereon for later sale to consumers or parcels of land within the Properties for further subdivision, development, and resale in the ordinary course of such Person's business.

**SECTION 7. BY-LAWS** shall refer to the By-Laws of Laurel Ridge Property Owners Association, Inc., attached hereto as Exhibit "C" and incorporated by reference, as they may be amended from time to time.

**SECTION 8. CLASS "b" CONTROL PERIOD** shall refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in the By-Laws.

**SECTION 9. COMMON AREA** shall mean all real and personal property which the Association now or hereafter owns, leases or in which the Association now or hereafter otherwise holds possessory or use rights for the use and enjoyment of the Owners, and easements held by the Association in connection therewith. The term shall include the Exclusive Common Area, as defined. The Common Area to be owned by the Association at the time of the conveyance of the first Unit is described on Exhibit "D" attached hereto and hereby incorporated by reference.

**SECTION 10. COMMON EXPENSES** shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association and shall include, by way of illustration, without limitation: (a) all sums lawfully assessed against the owners by the Association; (b) expenses of administration, operation, maintenance, repair and replacement of the Common Areas and facilities, including recreational facilities, streets, driveways, parking areas and landscaping; (c) expenses agreed upon as common expenses by the Association; (d) hazard insurance premiums as required and applicable; (e) public utilities, including, but not limited to, water, sewer, and electricity used for any community building or facility and site lighting.

**SECTION 11. COMMUNITY-WIDE STANDARD** shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

**SECTION 12. DECLARANT** shall refer to Laurel Branch Development Corporation, a North Carolina corporation, or any successor, successor-in-title, or assign who (1) acquires title to properties from Declarant for the purpose of development and sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant or (2) acquires title to properties from Laurel Branch Development Corporation, or its successors or assigns, under a deed in lieu of foreclosure, judicial foreclosure or foreclosure under power of sale in any Mortgage. However, there will be no more than one (1) legal entity entitled to exercise the rights and powers of the Declarant at any one point in time.

**SECTION 13. EXCLUSIVE COMMON AREA** shall refer to a portion of the Common Area which the Association now or hereafter owns, leases, or otherwise holds possessory or use rights in for the exclusive use or primary benefit of one (1) or more, but less than all, Neighborhoods, as more particularly described in Article 2 of this Declaration.

**SECTION 14. LIVING UNIT** shall mean and refer to a building situation upon a Unit and intended for use and occupancy as a residence.

**SECTION 15. MEMBER** shall refer to a Person entitled to membership in the Association.

**SECTION 16. MORTGAGE** shall refer to a mortgage, a deed of trust, a deed to secure debt, security deed, and any and all other similar instruments used for the purpose of encumbering real property as security for the payment or satisfaction of an obligation.

**SECTION 17. MORTGAGEE** shall refer to a beneficiary or holder of a Mortgage.

**SECTION 18. MORTGAGOR** shall refer to any Person who grants or conveys a Mortgage.

**SECTION 19. NEIGHBORHOOD** shall refer to each separately designated residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each townhome development and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one (1) housing type with other features in common. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as described in Article 2 of this Declaration) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Article 2 of this Declaration.

**SECTION 20. NEIGHBORHOOD ASSESSMENTS** shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article 5, Sections 1 and 4, of this Declaration.

**SECTION 21. NEIGHBORHOOD ASSOCIATION** shall refer to any owners association having concurrent jurisdiction with the Association over any part of the Properties.

**SECTION 22. NEIGHBORHOOD EXPENSES** shall mean and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

**SECTION 23. OWNER** shall refer to one (1) or more Persons, other than Declarant, who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**SECTION 24. PERSON** shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**SECTION 25. PROPERTIES** shall mean and refer to that certain real property described on Exhibit "A", as the same is attached hereto and hereby incorporated by reference as if set forth herein verbatim, and such additions thereto as may hereafter be submitted to this Declaration and be brought within the jurisdiction of the Association.

**SECTION 26. SPECIAL ASSESSMENT** shall mean and refer to assessments levied in accordance with Article 5, Section 6, of this Declaration.

**SECTION 27. SPECIFIC ASSESSMENT** shall mean assessments levied in accordance with Article 5, Section 7, of this Declaration.

**SECTION 28. SUPPLEMENTAL DECLARATION** shall mean an amendment or supplement to this Declaration filed pursuant to Article 11 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by the Declarant pursuant to Article 2 which designates Neighborhoods.

**SECTION 29. UNIT** shall mean a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration by not limitation, townhouse units and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public. The ownership of each unit shall include and shall pass with each unit as an appurtenance thereto, whether or not separately described, all the right, title and interest of an owner in the common area, which shall include, without limitation, membership in the Association.

## **ARTICLE 2**

### **USE OF PROPERTY AND NEIGHBORHOODS**

**SECTION 1. COMMON AREA.** Every owner shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every unit, subject to the following provisions:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and facilities, including rules limiting the number of guests who may use the Common Area and facilities. Any owner may delegate, in accordance with the By-Laws, his rights or enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit. In any case, the rights to and enjoyment of the Common Area and facilities, including such recreational facilities, shall be limited to those persons actually occupying the living unit; extension of these rights to guests or social invitees of such occupants shall be subject to rules and regulations imposed by the Association;

(c) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains unpaid after due date and grace period, if applicable, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to the By-Laws;

(d) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be deemed appropriate by the Association.

Notwithstanding the foregoing, if ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area is subject to the Unit Owner's easement.

(e) The right of the Association, acting through the Board, to the mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(f) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas", as more particularly described in Section 3 below.

## **SECTION 2. NEIGHBORHOODS.**

(a) Creation. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties. Exhibit "A" to this Declaration and any Supplemental Declaration may assign property described therein or property already submitted to the Declaration to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. If Neighborhoods are established, all Units not specifically assigned to a Neighborhood shall be deemed assigned to the same Neighborhood.

The Units within a particular Neighborhood may be subject to additional covenants and/or the Owners within the Neighborhood may be mandatory members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not

be required except as required by law. Any Neighborhood which does not have a Neighborhood Association may have a Neighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

(b) Modification. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to establish or to redesignate Neighborhood boundaries; provided, however, two (2) or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods. If Neighborhoods are established, the Owner(s) of a majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two(2) or more Neighborhoods. Such petition shall be in writing and shall include a plat or survey of the entire parcel which indicated the boundaries of the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within thirty (3) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(c) Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the neighborhood Association, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their prorate share of any expenses incurred by the Association in taking such action in the manner provided in Article 5, Section 7. Such Assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

Since a Neighborhood Committee is a committee of the Association, the Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The authority of the Board shall

include, without limitation, the power to veto any action taken or contemplated to be taken by any Neighborhood Committee and to require specific action to be taken by any Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties.

**SECTION 3. EXCLUSIVE COMMON AREA.** Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Area may include entry features, landscaped medians and cul-de-sacs, ponds and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat or survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Article 12, Section 1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned only upon the vote of Members holding a majority of the total votes in the Association, including a majority of the votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment reassignment shall also require the consent of the Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

## **ARTICLE 3**

### **MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1. MEMBERSHIP.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.



No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event a Unit is owned by more than one (1) Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 2 of this Article and in the By-Laws; and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

**SECTION 2. VOTING AND CLASSES OF MEMBERSHIP.** The Association shall have two (2) classes of membership, Class "A" and Class "B".

**A. CLASS A:** Class A Members shall be all Owners except the Class "B" Member, if any. Class A Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; provided, however, there shall be only one (1) per Unit.

In any situation where there is more than one (1) Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

**B. CLASS B:** The sole Class B Member shall be the Declarant as hereinabove defined and shall be entitled to one (1) equal vote for each Unit owned by Declarant subjected to this Declaration, and such vote shall be weighted equally to the vote allocated to each Class A Member. The Class B Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class B Control Period as specified in Article III, Section 2 of the By-Laws. After termination The Class B Control Period, the Class B Member shall have a right to disapprove actions of the Board of Directors and committees as provided in Article III, Section 3 of the By-Laws. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs first:

(1) two (2) years after expiration of the Class B Control Period pursuant to Article III of the By-Laws; or

(2) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

**SECTION 3. SUSPENSION OF VOTING RIGHTS.** The Board shall have the right to suspend the voting rights of an Owner for any period during which an Owner commits or allows a repeated or continuing violation of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association, not including a failure to pay

assessments, after (a) notice and a hearing pursuant to the By-Laws, and (b) a reasonable time to discontinue or prevent said repeated or continuing violation.

**SECTION 4. USE OF FACILITIES LOCATED BEYOND THE PROPERTIES.**

No Owner shall be entitled to any privilege, right, title or interest in or use of any property, including facilities and improvements thereon, which shall be located beyond the Properties solely by virtue of ownership of a Unit within the Properties.

**ARTICLE 4**

**CREATION OF ASSOCIATION AND FUNCTIONS**

**SECTION 1. CREATION AND PURPOSE.** Near in time to the conveyance of the first Unit, there shall be incorporated a property owners' association for the following purposes: (1) to provide for maintenance of the roadways shown on a plat or plats of any portion of the Properties recorded by the Declarant for the purpose of describing and conveying Units; (2) to maintain the entrance sign and landscaping surrounding the entrance to the Properties, and all other street signs located within the Properties; (3) to provide for the enforcement of these restrictions; and (4) to provide for any other matters which relate to the general welfare of the Owners within Laurel Ridge.

**SECTION 2. RIGHT TO LEVY ASSESSMENTS.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive, and sanitary condition, order, and repair.

**SECTION 3. COMMON AREA.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive, and sanitary condition, order, and repair.

**SECTION 4. PERSONAL PROPERTY AND REAL PROPERTY FOR COMMON USE.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibits "A" and/or "B", personal property and leasehold and other property interests. Upon conveyance or dedication by the Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions or limitations set forth in the deed of conveyance.

**SECTION 5. RULES AND REGULATIONS.** The Association, through its Board of Directors, may make, modify and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such rules and regulations shall be binding upon all Owners,

occupants, invitees, and licensees, if any, until and unless overruled, cancelled, or modified in a regular or special meeting of the Association by the vote of Members holding a majority of the total Class "A" votes in the Association and by the Class "B" Member, do long as such membership shall exist.

**SECTION 6. ENFORCEMENT.** The Association shall be authorized to impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association, through the Board, in accordance with the By-Laws, shall have the right to exercise self-help to cure violations and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's property in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

**SECTION 7. IMPLIED RIGHTS.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**SECTION 8. PUBLIC INTERESTS.** For so long as the Declarant owns any property described on Exhibit "A" or "B", the Association shall permit the Declarant to designate sites within the Properties for parks and other public facilities. The sites may include portions of the Common Areas.

**SECTION 9. INDEMNIFICATION.** The Association, to the fullest extent allowed by applicable law and in accordance therewith, shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available.

**SECTION. 10. DEDICATION OF COMMON AREAS.** The Board shall have the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

**SECTION 11. SECURITY.** The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be.

NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS.

## ARTICLE 5

### COVENANT FOR ASSESSMENTS

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 9 of this Article. There shall be four (4) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 6 below; and (d) Specific Assessments as described in Section 7 below. Each Owner of any Unit by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate to set by the Board (not to exceed the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8 of this Article. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. In the event of a transfer of title of a Unit, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. However, no first

Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so elects, assessments may be paid in installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or others charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

During the Class "B" Control Period, the Declarant may annually elect either to pay regular assessments on all Units owned by Declarant which are subject to assessments as set forth in this Article, if any, or to pay to the Association the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the end of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for the payment of some portion of the Common Expenses.

**SECTION 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of

the residents of the properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, any or all of which may be obtained from Declarant, under contract, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance related to the Common Area, its facilities and use in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, garbage and trash collection services, street lighting, landscaping of common areas, maintenance of roadways other than private driveways, parking, walks, private utilities and other site maintenance, and such other needs as may arise.

**SECTION 3. COMPUTATION OF BASE ASSESSMENT.** It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in Section 5 of this Article.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. The Board shall take into account the number of Units subject to assessment under Section 9 hereof on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article 11 hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall cause a copy of the budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least seventy-five percent (75%) of the total votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

**SECTION 4. COMPUTATION OF NEIGHBORHOOD ASSESSMENT.** It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefited thereby and levied as a Neighborhood Assessment unless otherwise specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by the Neighborhood in writing to the Board of Directors.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority vote of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

**SECTION 5. RESERVE BUDGET AND CAPITAL CONTRIBUTION.** The Board of Directors shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the cost of desired construction of capital improvements upon the Common Area, including fixtures and personal property related thereto, and the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 3 and 4 of this Article.

**SECTION 6. SPECIAL ASSESSMENTS.** In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to

cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Members holding at least fifty-one percent (51%) of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

#### **SECTION 7. SPECIFIC ASSESSMENTS.**

(a) Specific Assessment for Construction. There shall be assessed a one-time construction assessment for each construction period as set forth in Article 7 herein, due and payable to the Association upon approval of the plan by the New Construction Committee, for the purpose of defraying some of the additional and cumulative burden placed upon roads and other common areas and facilities by heavy equipment during ongoing construction in the development. The amount of the assessment shall be uniform for all Units and shall be established by the Board in consultation with the New Construction Committee. Nothing contained herein shall be construed to prevent a further assessment under the following paragraph for any damage resulting from gross negligence of an Owner, his employees or his agents or for significant damage occurring in the absence of gross negligence in connection with a specific construction project.

(b) Other Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Unit or Neighborhood to reimburse the Association for costs incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Specific Assessments may be levied upon the vote of the Board after notice to the Owner or Neighborhood, as applicable, and an opportunity for a hearing.

**SECTION 8. LIEN FOR ASSESSMENTS.** The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys fees). Such lien shall be prior and superior to all other liens, except (a) the liens of



all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure in accordance with North Carolina law.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Unit. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorneys fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 9 below, including such acquirer, its successors and assigns.

**SECTION 9. DATE OF COMMENCEMENT OF ASSESSMENTS.** The obligation to pay the assessments provided for herein shall commence as to a Unit on the first day of the month following initial conveyance of the Unit by Declarant. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

**SECTION 10. FAILURE TO ASSESS.** The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**SECTION 11. CAPITALIZATION OF ASSOCIATION.** Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the

Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year as determined by the Board. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

**SECTION 12. EXEMPT PROPERTY.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, Special Assessments, and Specific Assessments:

- (a) All Common Area;
- (b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public streets and public parks, if any; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

## **ARTICLE 6**

### **ARCHITECTURAL STANDARDS**

**SECTION 1. GENERAL.** No structure shall be placed, erected, or installed upon any Unit, and no construction or modification (which shall include clearing, excavation, grading and other site work, and exterior alteration or modification of existing improvements) shall take place except in strict compliance with this Article, until the requirements below have been fully met, and approval of the appropriate committee has been obtained pursuant to Section 2 below.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any structure located upon a Unit or the paint the interior of such structure any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a structure visible from outside the structure shall be subject to approval. No permission or approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer.

This Article shall not apply to the activities of the Declarant nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

**SECTION 2. ARCHITECTURAL REVIEW.** Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by two (2) committees, as described in subsections (a) and (b) of this Section. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of application hereunder and may require such fees to be paid in full prior to review of any application.

(a) New Construction Committee. The New Construction Committee shall consist of at least three(3), but not more than five (5) persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the New Construction Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the member of the New Construction Committee, who shall serve and may be removed at the discretion of the Board of Directors.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. The Modifications Committee, if established, shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units. Notwithstanding the above, the New Construction Committee shall have the right to veto any action taken by the Modifications Committee which the New Construction Committee determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the New Construction Committee.

**SECTION 3. GUIDELINES AND PROCEDURES.**

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use thereof.

The New Construction Committee, acting on behalf of the Board of Directors, shall adopt such Design Guidelines at its initial organizational meeting, and thereafter, shall have sole and full authority to amend them from time to time.

(b) The New Construction Committee shall make the Design Guidelines available to Owners and Builders who seek to engage in construction upon any portion of the Properties and such Owners shall conduct their activities in strict accordance with such Design Guidelines. Any amendments to the Design Guidelines adopted from time to time by the New Construction Committee in accordance with this Section shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved by the New Construction Committee or Modification Committee once the approved construction or modification has commenced.

(c) The Modifications Committee may promulgate detailed application and review procedures and design standards governing its area of responsibility and practice. Any such standards shall be consistent with those set forth in the Design Guidelines and shall be subject to review and approval by the New Construction Committee.

(d) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning, without limitation, irrigation systems, drainage, all lighting (including nocturnal lighting), energy conservation equipment, fences, outdoor pools, and any other special features of such proposed construction or modification, as applicable, shall be submitted.

(e) In the event that the New Construction Committee or Modifications Committee fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the New Construction Committee pursuant to Section 5 below.

(f) Declarant may, in Declarant's sole discretion, require an artist's rendering of the proposed improvements to be submitted with such plans.

**SECTION 4. NO WAIVER OF FUTURE APPROVALS.** The approval of either the New Construction Committee or Modifications Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

**SECTION 5. VARIANCE.** The New Construction Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances

such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may be granted, however, only when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the New Construction Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain (i) approval of any governmental agency, (ii) the issuance of any permit, or (iii) the terms of any financing shall not be considered a hardship warranting a variance.

**SECTION 6. LIMITATION OF LIABILITY.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the New Construction Committee nor the Modifications Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction of any structure on a Unit or any modifications thereto.

**SECTION 7. ENFORCEMENT.** Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, bring such construction, alteration or other work into conformity with this Article to the satisfaction of the Board or remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Association shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against a Unit previously in violation and collected as a Specific Assessment pursuant to Article 5, Section 7, hereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of this Article and the decisions of the New Construction Committee and Modifications Committee.

## ARTICLE 7

### USE RESTRICTIONS

#### **SECTION 1. RESIDENTIAL, RECREATIONAL AND RELATED PURPOSES.**

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration, and Supplemental Declaration, and amendments to either. Any Supplemental Declaration or additional covenants may impose stricter standards than those contained in this Article. The Association shall have standing and the power to enforce such standards. The primary structure to be constructed on each Unit shall be a detached single family residential dwelling; any other structure shall be constructed only after approval of the New Construction Committee.

#### **SECTION 2. USES TO BE ENCLOSED, HIDDEN OR CONTROLLED.**

**A. HUNTING, TRAPPING, DISCHARGE OF WEAPONS.** Hunting and trapping of animals, fowl and game, and the discharge of firearms, bows and arrows, or other weapons, without the express written consent of the Board of Directors to be evidenced by a permit available for immediate presentation, is prohibited. In the issuance of permits, the Board of Directors shall consider carefully the safety of the residential community, taking into account such factors as density of housing, safety record of the individual requesting the permit, type of firearm or activity anticipated, and the Board may limit the use of such permit to specified areas, times of the year, or in such other manner as may seem appropriate. Such permits may be immediately withdrawn without cause at the sole discretion of the Board. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bows and arrows, slingshots, and other firearms and weapons of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take any action to enforce this Section.

**B. MOTORIZED VEHICLES.** Any vehicle requiring its operator to have an operator's license under the laws of the State of North Carolina shall be operated only by a person having a valid operator's license. Motorcycles, minibikes, dune buggies, motorized bikes, all-terrain vehicles or similar recreational vehicles may only be operated within the roads of the Properties while riding to and from a living unit to the public road or a destination beyond the Properties, and may not be ridden within the Properties for any other purpose. No disabled, unlicensed, uninspected or abandoned vehicles shall be permitted on any Unit, nor shall any vehicle be stored thereon, nor shall major repairs be permitted upon any vehicle parked upon any Unit unless completely hidden from view from roads and any other Units. Vehicles must be parked on driveway or parking areas within the Unit. All motorized vehicles operated within the Properties shall run as quietly as reasonably possible, with appropriate working mufflers and/or other noise abating devices.

**C. PETS AND PET CONTROL.** No animals, livestock, or poultry of any kind, including, without limitation, cows, pigs, goats, chickens, sheep and horses, shall be raised, bred, or kept on any portion of the Properties. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be allowed. Generally recognized house or yard pets, in reasonable numbers, may be kept and maintained upon a Unit, provided all pets be kept under the control of their owner and kept in such a manner so as not to become a nuisance or an annoyance to other residents. Specific regulations may be promulgated by the Association which provide for control of pets so as to avoid nuisances and which provide for the type of pets to be allowed, including breeds of pets with a known history or propensity of dangerous or vicious behavior to be prohibited. Those pets which are permitted to roam free or, in the sole discretion of the Board, endanger health or safety, make objectionable noise, or constitute a nuisance or inconvenience to the owners of other living units shall be removed upon request of the Board. If the owner fails to honor such request, the pet may be removed by the Board. All pets shall at all times whenever they are outside a living unit be within a confined area or on a leash held by a responsible person.

**D. QUIET ENJOYMENT.** Nothing shall be done or maintained on any part of a Unit which emits foul or obnoxious odors outside the living unit or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Units. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Units, or which tends to affect injuriously the use, occupation or value of any adjoining Units for residential purposes. No outside burning shall be permitted within the Properties. No speaker, horn, whistle, bell, or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Properties.

**E. OUTSIDE LIGHTING AND DISPLAYS.** Except for traditional holiday decorative lights and displays, which may be set up for one month prior to and two (2) weeks after any commonly recognized holiday for which such lights and displays are traditionally set up, all exterior lights and displays shall be kept to a minimum and shall be designed to illuminate, so far as it is practical to do so, only the area owned by the Owner of the Unit where the lighting is installed and all such exterior lights and displays must be approved in accordance with Article 6 of this Declaration. Exterior lighting may be operated by photocell, but shall be manually switched also in order to allow for override of the photocell.

**F. WETLANDS, LAKES AND OTHER WATER BODIES.** All wetlands, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property

arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association. Notwithstanding the foregoing, nothing herein shall be construed to limit the use that may be made by an Owner of wetlands, ponds and streams upon said Owner's Unit.

### **SECTION 3. PROHIBITED STRUCTURES AND USES.**

**A. MOBILE OR TEMPORARY STRUCTURES.** No mobile home, trailer, or temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Unit, nor shall any residence not meeting North Carolina Department of Insurance standards be moved onto a Unit; provided, however, that the Association may grant permission for temporary structures for storage of materials during construction. No such temporary structure as may be approved shall be used at any time as a residence. Nothing contained herein shall be construed to prohibit any recreational vehicle located upon any Unit, provided that such recreational vehicle shall not be used as a residence and shall be registered with the Association prior to location upon any Unit.

**B. BUSINESS USE.** No business, trade, garage sale, moving sale, rummage sale, or similar activity may be conducted in or from any living unit, except that an Owner or occupant residing in a living unit may conduct business activities within the living unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the living unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the living unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or par-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

Notwithstanding the above, the leasing of a living unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

**C. OUTDOOR FIRES.** No outdoor fire shall be built within the Properties unless built within an approved structure designed for safety and containment in an approved



location. No leaves, trash, or similar debris shall be burned. All fires must be continuously supervised.

**D. TREASPASSING.** Unused and/or vacant Units which are privately owned, as evidenced by approved address and identification signs, are not to be trespassed upon for any reason.

**E. PROHIBITED VEHICLES.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other water craft, and boat trailers shall be parked only in enclosed garages, areas not visible from the roads or streets within the development or from adjoining Units, or in such other areas as may be designated by the Board of Directors. Service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a deliver to a Unit or the Common Area. Any vehicle parked in violation of this Section or parking rules which may be promulgated by the Board of Directors may be towed at the owner's expense.

**F. LAWS AND ORDINANCES.** Every Owner and occupant of any living unit, their guests and invitees, shall comply with all laws, statutes, ordinances, and rules of federal, state, and municipal governments applicable to the Properties. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, and rules.

**SECTION 4. EXCLUSIVE USE OF LAND IMPROVEMENTS.** All roads, entry and road signs, infrastructure, and common areas (collectively hereinafter referred to as land improvements) now or hereafter subjected to this Declaration, are private but are dedicated for the nonexclusive use of the Owners for ingress and egress and for public utilities.

## **ARTICLE 8**

### **MAINTENANCE**

**SECTION 1. ASSOCIATION'S RESPONSIBILITY.** The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to, all landscaping and other flora, parks, ponds, structures, improvements, including private roadways and rights of way, and bike and pedestrian pathways/trails serving the Properties situated upon the Common Area, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any covenant, contract, or agreement for maintenance thereof entered into by the Association. All roadways serving as ingress, egress and regress to and from Units submitted to this Declaration and the public road shall be included within the Area of Common Responsibility unless specifically exempted therefrom by Declarant. The cost of such maintenance shall be allocated among all Owners, and the Association shall have

the further right to enter into contracts with Declarant or third parties for an allocation of such cost of maintenance for such roadways as may be shared with users in addition to the Owners and others incidental to the beneficial use and enjoyment of the Properties subjected to this Declaration.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Any improvements which may be constructed or installed by Declarant and designated by Declarant as an Area of Common Responsibility or Common Area shall thereafter be maintained by the Association.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment; provided, however, all costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Area is assigned.

**SECTION 2. OWNER'S RESPONSIBILITY.** Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements on the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Article 5, Section 7, of this Declaration. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**SECTION 3. NEIGHBORHOOD'S RESPONSIBILITY.** Upon resolution of the Board or pursuant to additional covenants applicable to the Neighborhood, a Neighborhood may be delegated responsibility for operating, maintaining and insuring certain portions of the Area of Common Responsibility which are the responsibility of the Association within or adjacent to such Neighborhood. This may include, without limitation, maintaining any signage, entry features, right-of-way and green space between the Neighborhood and adjacent public roads, and ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. The costs of such operation, maintenance, and insurance shall be paid by the Owners within such Neighborhood through either Neighborhood Assessments established by the Board or assessment of the Owners within such Neighborhood by the Neighborhood Association assigned such responsibility.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood fails, in the opinion of the Board, to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Article 5, Section 7, of this Declaration. In addition, the Association may assume such maintenance responsibility by agreement with the Neighborhood and assess the costs thereof as a Neighborhood Assessment against those Units within the Neighborhood to which the services are provided. The provision of services in accordance with this paragraph shall not constitute discrimination within a class.

**SECTION 4. STANDARD OF PERFORMANCE.** Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Neither the Association, the Declarant, any Owner nor any Neighborhood shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

**SECTION 5. PARTY WALLS, FENCES AND DRIVEWAYS.**

(a) General Rules of Law to Apply. Each wall, fence or driveway built as a part of the original construction on the Units which shall serve and or separate any two adjoining Units and is not common property of any Neighborhood shall constitute a party wall, party fence, or party driveway, as applicable. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls, fences and driveways, and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. If a party wall, fence or driveway is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall, fence or driveway may restore it. The reasonable cost of such restoration shall be shared equally by the Owners who make use of the wall, fence or driveway. However, such sharing of costs will not prejudice any Owner's right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to seek contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**SECTION 6. PUBLIC MAINTENANCE OF LAND IMPROVEMENTS.** If and when any land improvements in the Properties shall be accepted for maintenance and taken over by any governmental unit, no permission or agreement shall be required of the Declarant

or any Unit owners, it being understood that the Declarant and the Unit owners, for themselves and their heirs, successors and assigns, agree that such land improvements shall become part of the governmental jurisdiction at such time as the governmental unit shall assume the responsibility of the maintenance and upkeep thereof. The Unit owners and Declarant agree to execute any documents that may be necessary or expedient for said governmental unit to accept the maintenance of any land improvements within the Properties.

## **ARTICLE 9**

### **EASEMENTS AND UTILITIES**

**SECTION 1. EASEMENTS WITHIN THE PROPERTIES.** All rights of way, together with easements ten (10) feet wide along the margin of said rights of way and fifteen (15) feet wide along each Unit's rear and side boundary lines within the Properties shall be reserved and available for the installation and maintenance of telephone lines, electric lines, water lines, gas lines and other public utilities, and for drainage facilities. Provided, however, that where two or more adjoining Units are owned by the same person or persons, easements reserved along the interior boundary lines may be extinguished, in whole or in part, with the express, written and recorded consent of the Declarant. Rights of way approximately fifty (50) feet wide are reserved for major streets or roads in the subdivision. No other easements, rights of way or rights of access shall be conveyed, granted or in any other way given to any person, firm or corporation, through, over or upon any Unit in this subdivision, except to Declarant, or with the written consent of the Association or New Construction Committee, whichever may then be appropriate; provided, however, Declarant shall have the right to designate such other easements, rights of way, or rights of access as Declarant shall deem reasonable upon the recorded Plat of the subdivision prior to the conveyance of any Unit shown upon said Plat.

**SECTION 2. CP& L RESERVATION.** Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company or similar utility for the installation of street lighting, which requires a continuing monthly payment to Carolina Power & Light Company by each residential customer.

**SECTION 3. EASEMENTS TO SERVE ADDITIONAL PROPERTY.** The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and Declarant hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of the real property described in Exhibit "B" attached hereto and incorporated herein, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic in connection with development of the real property described in Exhibit "B".

**SECTION 4. EASEMENT FOR EMERGENCY.** The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any Unit for emergency, security, and safety reasons. The Association's rights may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

**SECTION 5. EASEMENT TO THE PROPERTIES.** Until such time as the roadway extending from the public road, commonly known as Lake Eden Road or North Fork Road, to the Properties may be conveyed as Common Area to the Association, the Declarant shall grant to the Owner of each Unit a non-exclusive easement over said roadway for purposes of ingress, egress and regress, and the Association shall maintain such roadway as an Area of Common Responsibility as defined herein. The Declarant shall retain a non-exclusive easement over said roadway at all times for the use and benefit of Declarant, its successors and assigns.

## **ARTICLE 10**

### **INSURANCE AND CASUALTY LOSSES**

**SECTION 1. ASSOCIATION INSURANCE.** The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect adequate blanket "all-risk" property insurance on properties within such Neighborhood, if reasonably available. If "all-risk" property insurance is not generally available at reasonable cost, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be

insured. The costs thereof shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment. All policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood, if any.

The Board also shall obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents, or contractors while acting on behalf of the Association. If generally available at reasonable cost, the public liability policy shall have at least a One Million Dollar (\$1,000,000.00) combined single limit as respects bodily injury and property damage and at least a Three Million Dollar (\$3,000,000.00) limit per occurrence and in the aggregate.

Except as otherwise provided above with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Area may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful conduct of one (1) or more Unit Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Article 5, Section 7.

All insurance coverage obtained by the Board of Directors, whether obtained on behalf of the Association or a Neighborhood, shall be governed by the following provisions:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) All insurance shall be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood, and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All property insurance policies shall have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one (1) or more qualified persons, at least one (1) of whom must be in the real estate industry and familiar with construction in the Buncombe County, North Carolina, area.

(f) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees, and its manager, the owners and their tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subjected to non-renewal on account of any one (1) or more individual Owners;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subjected to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, director's and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The amount of fidelity coverage shall be determined in the Board of

Directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

**SECTION 2. OWNERS INSURANCE.** By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Unit(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6 of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins, and thereafter, shall maintain the unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

**SECTION 3. DAMAGE AND DESTRUCTION.**

(a) Immediately after damage or destruction by fire or other peril to all or any part of property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Owners representing at least seventy-



five percent (75%) of the total vote of the Neighborhood Association decide within sixty (60) days after the damage or destruction not to repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties shall be cleared of all debris and ruins. Thereafter, the affected portion of the Properties shall be maintained by the Association or the Neighborhood, as applicable, in a neat attractive, landscaped condition consistent with the Community-Wide Standard.

**SECTION 4. DISBURSEMENT OF PROCEEDS.** Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with any affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association or the Neighborhood Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

**SECTION 5. REPAIR AND RECONSTRUCTION.** If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area or to the common property of a Neighborhood Association, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 1 of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE 11

### ANNEXATION AND WITHDRAWAL OF PROPERTY

**SECTION 1. ANNEXATION WITHOUT APPROVAL OF MEMBERSHIP.** The Declarant shall have the unilateral right, privilege, and option, from time to time at any time unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" attached hereto, has been subjected to this Declaration or December 31, 2022, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B".

The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the public records of Buncombe County, North Carolina. Such Supplemental Declaration shall not require the consent of any Owner, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record or such Supplemental Declaration unless otherwise provided therein.

**SECTION 2. ANNEXATION WITH APPROVAL OF MEMBERSHIP.** Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B" and following the expiration of the right in Section 1, any property described on Exhibit "B" to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members holding a majority of the votes of the Association represented at a meeting duly called for such purpose and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Buncombe County, North Carolina. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

**SECTION 3. WITHDRAWAL OF PROPERTY.** The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to annex property pursuant to this Article 11, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

**SECTION 4. ADDITIONAL COVENANTS AND EASEMENTS.** The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than the Declarant.

**SECTION 5. AMENDMENT.** This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits “A” or “B”.

## **ARTICLE 12**

### **RESUBDIVISION AND BOUNDARY ADJUSTMENT**

Once sold, no Unit may be further divided in such a manner as to create an additional Unit. However, from time to time, it may become advantageous for Owners to adjust the common boundary of adjacent Units, and such adjustment shall be authorized if Declarant, in its sole discretion, shall consent to such adjustment and indicate consent by execution of a written, recorded consent. Declarant may change unsold Units at its discretion.

## **ARTICLE 13**

### **RIGHT OF FIRST REFUSAL ON SALES AND LEASES EXCLUSIVE OPTION TO PURCHASE UPON DEATH OF OWNER**

**SECTION 1. RIGHT OF FIRST REFUSAL ON SUBSEQUENT SALES.** The Declarant is hereby specifically granted a right of first refusal and the right to buy any Unit and all improvements thereon at such time as the Owner wishes to convey or transfer said Unit, subject and pursuant to the following conditions:

a. At such time as the Owner desires to convey or transfer the Unit to a third party, the Owner shall first inform the Declarant, in writing, of the Owner’s intention to convey or transfer the Unit and the terms and conditions of the bona fide offer received from said third party which the Owner has conditionally accepted. Thereafter, the Declarant shall have 30 days in which to inform the Owner of its intent to purchase the Unit. If the Declarant has not notified the Owner, in writing, of its intention to purchase within 30 days following receipt of written notice from the Owner, the Owner shall thereafter be free for a period of 120 days to convey or transfer the Unit to the third party upon the terms and conditions of the offer made by said third party and presented to Declarant.

b. From the delivery of notice to Owner that Declarant intends to purchase the Unit as set forth above, the Declarant shall have ninety (90) days to tender the purchase price and close on the purchase of the Unit.

c. This right of first refusal shall be a covenant running with the land and shall be binding (a) if the Owner is a natural person, upon the Owner for the Owner’s lifetime and upon heirs, devisees, legal representatives, successors and assigns of the Owner for the lifetime of the Owner, plus twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr., or (b) if the Owner is not a natural person, upon the Owner and upon legal representatives, successors and assigns of the Owner

for a period of twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr.

**SECTION 2. EXCLUSIVE OPTION TO PURCHASE UPON DEATH OF OWNER.** The Declarant is hereby specifically granted an exclusive option to purchase the Unit, upon the death of the Owner (or last surviving Owner, if more than one) if the Owner (or last surviving Owner, if more than one) herein shall devise the Unit, or any part thereof, to any person not related to said decedent by blood or marriage within five degrees of kinship as computed by North Carolina General Statutes Chapter 104A entitled "Degrees of Kinship". This option to purchase shall exist for a period ending on the later of twelve (12) months after (i) notice to the Declarant of the death of said Owner or (ii) notice to the Declarant of the appointment of a duly qualified personal representative in Buncombe County, North Carolina (or other probate court having jurisdiction) for the Estate of the said Owner (hereinafter "the Estate").

The Declarant shall exercise the aforesaid option by written notice of such exercise to the Estate within the applicable time period.

The price to be paid by the Declarant in the case of the exercise of its option to purchase shall be determined by mutual agreement between Declarant and the Estate, if such is possible, during a period not to exceed 30 days. However, if the Declarant and the Estate cannot agree on a price within said 30-day period, then the price shall be decided by arbitration. The Declarant and the Estate shall each choose an appraiser of its respective choice, and the two appraisers so chosen shall agree upon a third appraiser. The appraisers shall render a written decision on a price to be paid by the Declarant to the Estate not later than 60 days following their appointment, and that decision shall be final and binding on all parties. The expenses of the arbitration, including the cost of the three appraisers, shall be paid equally by the Declarant and the Estate.

The option referred to in this Paragraph shall be a covenant running with the land and shall be binding upon the heirs, devisees, legal representatives, successors and assigns of the Owner for the lifetime of the Owner, plus twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr.

**SECTION 3. RIGHT OF FIRST REFUSAL ON LEASES.** In the event that the Owner desires to live elsewhere while owning the Unit and to lease the Unit to a third party for any period greater than three (3) months, the Owner shall first inform the Declarant, in writing, of the Owner's intention to lease said Unit. The notice shall contain the name of the proposed Lessee, the term of the Lease, the amount of rent to be paid and any other relevant terms. Thereafter, the Declarant shall have thirty (30) days in which to inform the Owner of its desire to lease the Unit on the terms and conditions set forth in the notice from the Owner; provided, however, that the Declarant, as Lessee of the Owner, shall have the right at any time during the term of sublease to a Sub lessee for the remainder of the term, notwithstanding any provision against subletting the premises contained within the proposed terms of the Owner's Lease to the third party. If the Declarant has not notified the Owner, in writing, of its desire to lease said Unit within thirty (30) days following receipt of written notice from the Owner,

the Owner shall thereafter be free to lease the Unit to a third party on the same terms and conditions offered to the Declarant. The Owner cannot lease the Unit to a third party on more favorable terms than those offered to the Declarant. This right of first refusal to lease shall be a covenant running with the land and shall be binding (a) if the Owner is a natural person, upon the Owner for the Owner's lifetime and upon heirs, devisees, legal representatives, successors and assigns of the Owner for the lifetime of the Owner, plus twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr., or (b) if the Owner is not a natural person, upon the Owner and upon legal representatives, successors and assigns of the Owner for a period of twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr.

## **ARTICLE 14**

### **DECLARANT'S RIGHT TO ASSIGN RESPONSIBILITY**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the By-Laws, as applicable. Furthermore, not such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Buncombe County, North Carolina. Nothing in this Declaration shall be construed to require the Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

## **ARTICLE 15**

### **GENERAL PROVISIONS**

**SECTION 1. NO PARTITION.** Except as permitted in this Declaration or amendments hereto, there shall be no judicial partition of the Common Area or any part thereof. No Person acquiring any interest in the Properties or any part thereof shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration and disposing of such real property.

**SECTION 2. CONDEMNATION.** Whenever all or any part of the Common area shall be taken )or conveyed in lieu of and under threat of condemnation by the Board acting upon approval of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or

eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within sixth (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members holding at least seventy-five percent (75%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article 10 hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

**SECTION 3. BINDING UPON OCCUPANTS.** All provisions of the Declaration, any applicable Supplemental Declaration, By-Laws, and rules and regulations which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants, guests, and invitees of his or her Unit to comply with the Declaration, any applicable Supplemental Declaration, By-Laws, and rules and regulations. Every Owner shall be responsible for all violations and losses to the Common Area caused by such occupants, guests, or invitees, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations.

**SECTION 4. COMPLIANCE AND ENFORCEMENT.** Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws, and the rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Declarant, Association or, in a proper case, by any aggrieved Unit Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

**SECTION 5. CUMULATIVE EFFECT: CONFLICT.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood, and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

**SECTION 6. NOTICE OF SALE OR TRANSFER OF TITLE.** At such time as any Owner intends to sell or otherwise transfer title to or interest in his or her Unit, and subject to the additional requirements of Article 13, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit coming due prior to the date upon which such notice is received by the Board of Directors including assessment obligations, notwithstanding the transfer of title to the Unit.

Each transferee of a Unit shall, within seven (7) days of taking title to a Unit, confirm that the information previously provided by the transferor is complete and accurate.

**SECTION 7. RULE AGAINST PERPETUITIES.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last to survive of the now living descendants of James Thomas Jackson, Sr.

**SECTION 8. PERIOD APPLICATION.** The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

**SECTION 9. AMENDMENT.**

(a) By Declarant. The Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure or guarantee mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" or "B", it may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially

adverse effect upon any substantive right of any Owner unless such affected Owner shall consent thereto in writing.

(b) By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least seventy-five percent (75%) of the total votes in the Association, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Article 11, Section 1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the public records of Buncombe County, North Carolina.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

**SECTION 10. SEVERABILITY.** Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**SECTION 11. GOVERNING LAW.** This Declaration and all Supplemental Declarations hereto shall be governed by the law of the State of North Carolina.



The Declarant has caused this instrument to be signed in its corporate name by its duly authorized officers, and its seal to be hereunto affixed, all by authority of its Board of Directors, the day and year first above written.

(Corporate seal)

LAUREL BRANCH DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of said State and County, do hereby certify that \_\_\_\_\_ personally appeared before me and acknowledged that he is the \_\_\_\_\_ Secretary of LAUREL BRANCH DEVELOPMENT CORPORATION, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal, and attested by \_\_\_\_\_ as its \_\_\_\_\_ Secretary.

Witness my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT A**

Being all of those 141 Units as hereinafter more specifically numbered, and that 0.758 acre parcel of land designated "Park", all as shown on a Plat of Laurel Ridge duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 62, Pages 20, 20A, 20B, 20C, and 20D, reference to which said Plat is hereby made for a more particular description of said Units and parcel of land. Said 141 Units appear thereon as follows: 100-125, 127-129; 201-215; 301-318; 401-425, 426-429; 501-508; 600-603; 701-706; 801-814; and 901-920.

Together with a non-exclusive easement for purposes of ingress, egress, regress, landscaping, and public utilities over those rights of way as shown on the above-referenced Plat.

**RESERVING AND EXCEPTING**, however, to the Declarant, its successors and assigns, all remaining interest in the rights of way shown on the above-referenced Plat.

## **EXHIBIT B**

Being all of the 1126.966 acre tract shown on a Plat of Laurel Branch Development Corporation, prepared by Webb A. Morgan & Associates, P.A., dated April 20, 1993, and duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 60, Pages 157 and 158, reference to which said Plat is hereby made for a more particular description of said tract.

EXCEPTING AND RESERVING, all of those 141 Units and that 0.758 acre parcel of land designated "Park", all as shown on a Plat of Laurel Ridge, duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 62, Pages 20, 20A, 20B, 20C, and 20D, reference to which said Plat is hereby made for a more particular description of said Units and parcel of land, and a non-exclusive easement for purposes of ingress, egress, regress and public utilities over those rights of way shown on the above-referenced Plat.