

BK 2265 PG 001

REGISTERED

2000 APR 20 P 3 07

*Alfred W. Dubouff*  
REGISTER OF DEEDS  
DUNWOODE CO., LLC

Upon recording, please return to:

M. Maxine Hicks, Esq.  
COFER, BEAUCHAMP, STRADLEY & HICKS, LLP  
Suite 200  
99 West Paces Ferry Road, N.W.  
Atlanta, Georgia 30305

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

AVERY PARK

000446

# TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS .....	1
1.1. "Additional Property" .....	1
1.2. "ARB" .....	1
1.3. "Area of Common Responsibility" .....	1
1.4. "Articles of Incorporation" or "Articles" .....	1
1.5. "Association" .....	1
1.6. "Board of Directors" or "Board" .....	1
1.7. "By-Laws" .....	1
1.8. "Common Area" .....	1
1.9. "Common Expenses" .....	2
1.10. "Community-Wide Standard" .....	2
1.11. "County" .....	2
1.12. "Days" .....	2
1.13. "Declarant" .....	2
1.14. "Design Guidelines" .....	2
1.15. "Development Period" .....	2
1.16. "Exclusive Common Area" .....	2
1.17. "General Assessments" .....	2
1.18. "Governing Documents" .....	2
1.19. "Majority" .....	2
1.20. "Member" .....	2
1.21. "Mortgage" .....	2
1.22. "Mortgagee" .....	2
1.23. "Owner" .....	3
1.24. "Person" .....	3
1.25. "Properties" .....	3
1.26. "Public Records" .....	3
1.27. "Special Assessments" .....	3
1.28. "Specific Assessments" .....	3
1.29. "Supplemental Declaration" .....	3
1.30. "Unit" .....	3
ARTICLE 2: PROPERTY RIGHTS .....	3
2.1. <u>Common Area</u> .....	3
2.2. <u>Private Streets</u> .....	4
2.3. <u>Community Recreational Facilities</u> .....	4
2.4. <u>Exclusive Common Area</u> .....	4
2.5. <u>No Partition</u> .....	5
2.6. <u>Condemnation</u> .....	5
ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS .....	5
3.1. <u>Membership</u> .....	5
3.2. <u>Voting</u> .....	5
ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....	6
4.1. <u>Function of Association</u> .....	6
4.2. <u>Common Area</u> .....	6
4.3. <u>Personal Property and Real Property for Common Use</u> .....	6
4.4. <u>Enforcement</u> .....	6
4.5. <u>Implied Rights; Board Authority</u> .....	7
4.6. <u>Indemnification</u> .....	7

4.7. <u>Dedication of or Grant of Easements on Common Area</u> .....	7
4.8. <u>Security</u> .....	7
Street Lighting Agreement .....	8
<b>ARTICLE 5: MAINTENANCE</b> .....	8
5.1. <u>Association's Responsibility</u> .....	8
5.2. <u>Owner's Responsibility</u> .....	9
5.3. <u>Standard of Performance</u> .....	9
<b>ARTICLE 6: INSURANCE AND CASUALTY LOSSES</b> .....	9
6.1. <u>Owners' Insurance</u> .....	9
6.2. <u>Association Insurance</u> .....	9
6.3. <u>Limitation of Liability</u> .....	10
<b>ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY</b> .....	10
7.1. <u>Annexation by Declarant</u> .....	10
7.2. <u>Annexation by the Membership</u> .....	11
7.3. <u>Withdrawal of Property</u> .....	11
7.4. <u>Amendment</u> .....	11
<b>ARTICLE 8: ASSESSMENTS</b> .....	11
8.1. <u>Creation of and Obligation for Assessments</u> .....	11
8.2. <u>Declarant's Obligation for Assessments for Unsold Units</u> .....	12
8.3. <u>Computation of General Assessments</u> .....	12
8.4. <u>Special Assessments</u> .....	13
8.5. <u>Specific Assessments</u> .....	13
8.6. <u>Remedies for Non-Payment of Assessments</u> .....	13
8.7. <u>Date of Commencement of Assessments</u> .....	14
8.8. <u>Failure to Assess</u> .....	14
8.9. <u>Exempt Property</u> .....	14
<b>ARTICLE 9: ARCHITECTURAL STANDARDS</b> .....	14
9.1. <u>General</u> .....	14
9.2. <u>Architectural Review</u> .....	14
9.3. <u>Design Guidelines</u> .....	15
9.4. <u>Procedures</u> .....	15
9.5. <u>Specific Guidelines and Restrictions</u> .....	15
9.6. <u>Construction Period</u> .....	16
9.7. <u>No Waiver of Future Approvals</u> .....	17
9.8. <u>Variance</u> .....	17
9.9. <u>Limitation of Liability</u> .....	17
9.10. <u>Enforcement</u> .....	17
<b>ARTICLE 10: USE RESTRICTIONS</b> .....	18
10.1. <u>Use Restrictions</u> .....	18
10.2. <u>Rules and Regulations</u> .....	18
10.3. <u>Occupants Bound</u> .....	18
10.4. <u>Leasing</u> .....	18
10.5. <u>Residential Use</u> .....	18
10.6. <u>Occupancy of Unfinished Units</u> .....	19
10.7. <u>Vehicles</u> .....	19
10.8. <u>Private Streets</u> .....	19
10.9. <u>Use of Common Area</u> .....	19
10.10. <u>Animals and Pets</u> .....	20
10.11. <u>Nuisance</u> .....	20

10.12.	<u>Storage of Materials, Garbage, Dumping, Etc.</u>	20
10.13.	<u>Combustible Liquid</u>	21
10.15.	<u>Subdivision of Unit</u>	21
10.16.	<u>Drainage and Grading</u>	21
10.17.	<u>Irrigation</u>	21
10.18.	<u>Streams</u>	21
ARTICLE 11:	<u>EASEMENTS</u>	21
11.1.	<u>Easements of Encroachment</u>	22
11.2.	<u>Easements for Utilities, Etc.</u>	22
11.3.	<u>Easements to Serve Additional Property.</u>	22
11.4.	<u>Easement for Entry.</u>	22
11.5.	<u>Easements for Maintenance and Enforcement</u>	23
11.6.	<u>Easements for Lateral Support</u>	23
11.7.	<u>Easement for Special Events</u>	23
11.8.	<u>Easement for Park and Walking Trail Access</u>	23
11.9.	<u>Liability for Use of Easements</u>	23
ARTICLE 12:	<u>MORTGAGEE PROVISIONS</u>	23
12.1.	<u>Notices of Action.</u>	24
12.2.	<u>No Priority.</u>	24
12.3.	<u>Notice to Association.</u>	24
12.4.	<u>Failure of Mortgagee to Respond.</u>	24
12.5.	<u>Construction of Article 12.</u>	24
ARTICLE 13:	<u>DECLARANT'S RIGHTS</u>	24
13.1.	<u>Transfer or Assignment.</u>	24
13.2.	<u>Development and Sales.</u>	24
13.3.	<u>Improvements to Properties.</u>	25
13.4.	<u>Additional Covenants.</u>	25
13.5.	<u>Amendments.</u>	25
13.6.	<u>Additional Covenants and Easements by Declarant</u>	25
ARTICLE 14:	<u>GENERAL PROVISIONS</u>	25
14.1.	<u>Duration.</u>	25
14.2.	<u>Amendment.</u>	26
14.3.	<u>Severability.</u>	26
14.4.	<u>Dispute Resolution.</u>	26
14.5.	<u>Litigation.</u>	26
14.6.	<u>Non-Merger</u>	27
14.7.	<u>Grants</u>	27
14.8.	<u>Cumulative Effect; Conflict.</u>	27
14.9.	<u>Use of the Words "Avery Park".</u>	27
14.10.	<u>Compliance.</u>	27
14.11.	<u>Notice of Sale or Transfer of Title.</u>	27
14.12.	<u>Exhibits.</u>	27

TABLE OF EXHIBITS

Exhibit	Subject Matter	Page First Appearing
A	Land Initially Submitted	1
B	Additional Property	1
C	By-Laws of Avery Park Community Association, Inc.	1

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR AVERY PARK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by LAND RESOURCE GROUP OF North Carolina, LLC, a North Carolina limited liability company (the "Declarant").

Declarant is the owner of the real property in Buncombe County, North Carolina, as described on Exhibit A attached hereto and incorporated herein by this reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Avery Park Community Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (as these terms are defined below).

Declarant hereby declares that all of the property described on Exhibit A and any Additional Property subjected to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended, to create a property owners' development within the meaning of O.C.G.A. §44-3-220, *et seq.*

ARTICLE 1: DEFINITIONS

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

1.1. "Additional Property": All of that certain real property which is more particularly described on Exhibit B, which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2. "ARB": The Architectural Review Board, as described in Article 9.

1.3. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenant, contract or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Avery Park Community Association, Inc., as filed with the Secretary of State of the State of North Carolina.

1.5. "Association": Avery Park Community Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

1.6. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under North Carolina corporate law.

1.7. "By-Laws": The By-Laws of Avery Park Community Association, Inc., attached hereto as Exhibit C, and incorporated herein by this reference as they may be amended from time to time.

1.8. "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.

1.9. "Common Expenses": 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, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the term of the Class "B" membership for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Association.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Board.

1.11. "County": Buncombe County, North Carolina.

1.12. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.13. "Declarant": Land Resource Group of North Carolina, LLC, a North Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits A or B for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; *provided however*, there shall be only one (1) "Declarant" hereunder at any time.

1.14. "Design Guidelines": The architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.15. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.16. "Exclusive Common Area": A portion of the Common Area intended for exclusive use or primary benefit of one or more, but less than all Units, as more particularly described in Article 2.

1.17. "General Assessments": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Article 8.

1.18. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules and regulations of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.

1.19. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.20. "Member": A Person subject to membership in the Association pursuant to Article 3.

1.21. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.22. "Mortgagee": A beneficiary or holder of a Mortgage.

1.23. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of the Owner.

1.24. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another Person or any other legal entity.

1.25. "Properties": The real property submitted to this Declaration as more particularly described on Exhibit A, together with the Additional Property as is subjected to this Declaration in accordance with Article 7.

1.26. "Public Records": The Office of the Register of Deeds and/or the Clerk of Superior Court of Buncombe County, North Carolina.

1.27. "Special Assessments": Assessments levied in accordance with Section 8.4.

1.28. "Specific Assessments": Assessments levied in accordance with Section 8.5.

1.29. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article 7 which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.30. "Unit": A lot or 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 a residence for a single family. In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Unit until such time as a subdivision plat is filed in the Public Records on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this Section.

## ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and passes with the title to each Unit. Any Owner may extend his or her right of use and enjoyment to members of the family, lessees, and invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the Lessee of the Unit. The Owner's rights to the Common Area are subject to the following:

- (a) this Declaration and all other Governing Documents;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.4;
- (e) the right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
- (f) the right of the Board to permit the use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests, upon payment of reasonable fees, if any, established by the Board.



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

(h) the right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(i) the right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13; and

(j) the rights of certain Owners to the exclusive use of portion of the Common Area designated Exclusive Common Area pursuant to Section 2.4.

2.2. Private Streets. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable. The Owners rights to the Private Streets are subject to the following:

(a) this Declaration and all other Governing Documents;

(b) the right of the owner of the Private Street to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, *provided that* the owner of the Private Street shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;

(c) the right of the owner of the Private Streets to permit the use of the Private Streets by persons other than Owners, their families, lessees and guests;

(d) the right of the Declarant or Association to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, *provided that* the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and

(e) the right of the Association acting through its Board, to dedicate, or grant easements across all or a portion of the Private Street, subject to any approval requirements set forth in the Governing Documents.

2.3. Community Recreational Facilities. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to, over and across the community recreational park(s) and pool and cabana, and tennis court shown on any recorded plat of the Properties. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit. Such easements are subject to the right of the Association to adopt reasonable rules and regulations governing the use of such facilities, to impose a reasonable use fee for the facilities, and to permit the use of the facilities by persons other than Owners upon payment of reasonable fees established by the Board.

#### 2.4. Exclusive Common Area.

(a) 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 specified Units. By way of illustration and not limitation, Exclusive Common Areas may include entry features, private streets, landscaped medians and shared driveways. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Specific Assessment against the Owners of Units to which the Exclusive Common Areas are assigned.

(b) Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, this Declaration, a Supplemental Declaration

and/or on the subdivision plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board and the Majority vote of the total Class "A" Members in the Association, including, if applicable, a Majority vote of the Class "A" Members to which the Exclusive Common Area is assigned, if previously assigned, and to which the Exclusive Common Area is to be assigned or reassigned.

(c) The Association may, upon approval of a Majority vote of the Class "A" Members to which any Exclusive Common Area is assigned, permit Owners of other Units 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 Specific Assessments attributable to such Exclusive Common Area.

2.5. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.6. Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds of such conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

### ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

*w/ In Bylaws*  
3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, partner, or authorized manager of fiduciary acting on behalf of the Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, described in this Section as 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 have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. Class "A" Members shall be entitled to vote on all matters specifically set forth in this Declaration and in the By-Laws, *provided that*, except for matters specifically set forth in the Declaration and By-Laws, the rights and powers of the Association shall be exercised by the Board pursuant to Section 4.5.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors until the Class "B" membership terminates. The Class "B" membership shall continue until the first to occur of the following; (i) December 31, 2010; or (ii) when, in its discretion, the Class "B" Member so determines. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Exercise of Voting Rights. In any situation where a Member is entitled to exercise a vote for a Unit and there is more than one (1) Owner of the Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and notify the secretary of the Association in writing prior to the vote being taken. Absent notice to the secretary, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

#### ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of North Carolina.

*win bylaws*  
4.2. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, recreational facilities, furnishings, equipment, and other personal property of the Association), and shall keep it in attractive condition and good repair, consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.3. Personal Property and Real Property for Common Use. The Association through the action of its Board may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits A or B, personal property and leasehold and other property interests. 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. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

#### 4.4. Enforcement.

(a) The Board may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.23 of the By-Laws. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting. Sanctions may include the actions enumerated below. In every instance in which the Board may act, any committee established and approved by the Board, may act in the Board's stead.

(i) The Board may impose reasonable monetary fines which shall constitute a lien upon the Unit of the violator. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

(ii) The Board may suspend an Owner's right to vote.

(iii) The Board may suspend any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit.

(iv) The Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

(v) The Board may levy Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with Section 8.5(b) and 9.10.

(b) The Association may also elect to enforce the provisions of the Governing Documents by filing suit at law to recover monetary damages or in equity to enjoin any violation, or both.

(c) In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by self-help as more particularly described in Sections 8.6 and 9.10 (specifically including, but not limited to the filing of liens for non-payment of assessments and/or notices of violations in the Public Records, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules). Entry onto a Unit under this Section shall not be deemed a trespass.

(d) In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, incurred in such action.

(e) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or estop the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce County, City, State or Federal ordinances, laws, or rules if applicable, and permit local governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.5. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6. Indemnification. The Association shall indemnify every officer, director, and ARB or committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred 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, ARB or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and North Carolina law. The officers, directors, and ARB or 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, directors, and ARB or committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, or ARB or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and ARB or committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB 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.

4.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area, including any Private Streets, to the County, or to any other local, state, or federal governmental, quasi-governmental entity or private utility.

4.8. 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

original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9 Street Lighting Agreement. Declarant reserves the right to subject the Properties to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to an electric company by each Owner or the Association.

#### ARTICLE 5: MAINTENANCE

##### 5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) Common Area and the facilities located therein;
- (ii) all landscaping and other flora and all structures and improvements, including but not limited to any gates, gate house, entry features, fencing, private streets, parking areas, streetlights, parks, walking trails, pool and cabana and tennis court;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, buffers, entry features, fencing, streetlights, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board; and
- (v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by the Governing Document, or any contract or agreement for maintenance thereof entered into by the Association.

(b) The Association may, as a Common Expense, maintain other property and improvements which it does not own, including without limitation property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association, and the Declarant during the Development Period, agree in writing to discontinue such operation.

(d) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to one (1) or more Owners or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Except

as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(e) 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 General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a specific assessment against the Units to which the Exclusive Common Areas are assigned.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the driveway and any mailbox or mail facility serving his or her Unit and any sidewalks located on the Unit or within the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails to properly perform maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.5. 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.

5.3. Standard of Performance. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Maintenance responsibilities shall include the responsibility for repair and replacement as necessary. Neither the Association nor any Owner 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.

#### ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the policies and rules of the ARB. The Owner shall pay any costs which are not covered by insurance proceeds.

#### 6.2. Association Insurance.

(a) Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures on real property which is part of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other portion of the Common Area, whether real or personal property, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in assessments made by the Association.

(b) Additional Coverage. The Association, acting through its Board of Directors or its duly authorized agent, shall also obtain and continue in effect commercial general liability insurance on the Common Area insuring the Association and its Members; and directors and officers liability coverage. The Association may also obtain and

continue in effect, if reasonably available and to the extent the Board deems reasonably necessary fidelity insurance covering persons handling Association funds; and such Additional insurance as the Board, in its best business judgment, determines advisable or is required by law.

(c) Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide: (i) a waiver of subrogation as to any claims against the Board, its agents, the Owners, and their guests; (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause; (v) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; (vi) a cross liability provision; and (vii) a provision vesting the Board with the authority to adjust losses.

(d) Replacement or Repair of Property. In the event of damage to or destruction of any part of the improvements to real property being a part of the Common Area, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other General Assessment made against such Owners.

(e) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

6.3. Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's Immediate household for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Common Area or in individual Units.

Each Owner, by virtue of the acceptance of title to his or her Unit, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

#### ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit B. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit A or Exhibit B and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. The Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of the property being annexed, if other than Declarant. Annexation shall be effective upon the filing for record of the Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2. Annexation by the Membership. The Association may annex any other real property to the provisions of this Declaration with the consent of the owner of the property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant. Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any Supplemental Declaration under this Subsection shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Annexation shall be effective upon filing the Supplemental Declaration unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant.

7.4. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

#### ARTICLE 8: ASSESSMENTS

##### 8.1. Creation of and Obligation for Assessments.

(a) The Board may authorize the creation of assessments for Common Expenses of the Association from time to time, as follows: (i) General Assessments as described herein and in Section 8.3; (ii) Special Assessments as described in Section 8.4; and (iii) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to have notice of liability for these assessments and to covenant and agree to pay these assessments.

(b) All assessments, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, shall be (i) a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.5, and (ii) the personal obligation of the Person who was the Owner of the Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or through a deed in lieu of foreclosure shall be liable for unpaid assessments which accrued prior to acquisition of title. The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether the assessment has been paid. This statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of a statement. Assessments shall be paid in the manner and on the dates as the Board may establish, which may include discounts for early payment or similar time and price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15<sup>th</sup>) day following the due date unless otherwise specified by Board resolution.

(c) No Owner is exempt from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner which runs with title to the Unit. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.



(d) 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 payment of Common Expenses.

8.2. Declarant's Obligation for Assessments for Unsold Units. While the Class "B" Membership is in effect, Declarant may elect annually either to pay an amount equal to regular assessments on its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) Days before the beginning 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 by a combination of these.

### 8.3 Computation of General Assessments.

(a) General Assessments shall be levied equally against all Units subject to assessment 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. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreements. Notwithstanding the above, increases in the General Assessment shall be limited to the maximum General Assessment as set forth herein. The maximum General Assessment shall automatically increase for each subsequent fiscal year after 1999 by five percent (5%) over the maximum General Assessment of the immediately preceding fiscal year. The Association may, but shall not be required to, levy General Assessments in the amount of the maximum General Assessment each fiscal year. The maximum General Assessment for any year may be increased by an amount greater than that set forth above with the consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present.

(b) During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant, and the treatment of such payment shall be made known to the membership.

(c) The Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund, and shall send a copy of the budget and notice of the amount of the General Assessment for the following year 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 sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. 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 Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting. If 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 is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be allocated equally among all Units. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. 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.

8.5. Specific Assessments.

(a) The Association shall have the power to levy Specific Assessments against a particular Unit or Units to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

(b) The Association shall have the power to levy Specific Assessments against a particular Unit or Units as a fine levied pursuant to Section 4.4 or to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

8.6. Remedies for Non-Payment of Assessments. Any assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any Unit where there remains an assessment unpaid for a period of thirty (30) Days or longer. Said lien shall be filed in the Public Records in a manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. Such lien shall be 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. The Association may bring an action at law against any Owner personally obligated to pay any assessments, charges, interest or other costs. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association shall be the trustee for all purposes of the foreclosure proceeding, and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the Unit subject to the lien at public auction for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such sale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45. The trustee shall be authorized to retain an attorney to represent such trustee in such proceedings. The proceeds of the sale shall, after the trustee retains its commission, together with any additional attorneys' fees incurred by the trustee, be applied to the costs of the sale, including but

not limited to costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Unit, and any advancements made by the Association in the protection of the security.

The Association may bid for the Unit, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While 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 pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder 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 subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date the Unit is conveyed to a Person other than a Declarant, and shall be paid at closing. The first annual General Assessment 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.

8.8. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail 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 General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9. Exempt Property. The following property shall be exempt from payment of assessments: (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and (b) any property dedicated to and accepted by any governmental or quasi-governmental authority or public utility.

#### ARTICLE 9: ARCHITECTURAL STANDARDS

9.1. General. No exterior structure or improvement, as described in Section 9.5, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the ARB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.4. 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. Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals. During

the Development Period, the Declarant shall appoint all members of the ARB, who shall serve at the Declarant's discretion. 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 or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3. Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and their builders regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application. The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The ARB shall make the Design Guidelines available to Owners and their builders who seek to engage in development or construction within the Properties.

9.4. Procedures. Unless otherwise provided in the Design Guidelines, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval. In addition, information concerning septic tank drainage fields and placement, wells, irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the ARB may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARB members change over time. In the event that the ARB 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 ARB pursuant to this Article. Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

9.5. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; window air-conditioning units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt specific guidelines as part of the Design Guidelines or rules and regulations which address the following items.

(i) Signs. No sign of any kind shall be erected by an Owner or occupant within any portion of the Properties, including Common Area or Unit, without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the ARB in its sole discretion. The Declarant and the ARB reserve the right to adopt additional restrictions with respect to the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; *provided however*, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) front house illumination of model homes.

(iv) Temporary or Detached Structures. Except as may be permitted by the ARB, no temporary house, manufactured house, dwelling, garage or outbuilding shall be placed or erected on any Unit. Except as provided in Section 10.7(b), no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(v) Accessory Structures. With the approval of the ARB, detached accessory structures may be placed on a Unit to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Unit. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Unit shall be located only behind the dwelling as such dwelling fronts on the street abutting such Unit or in a location approved by the ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vi) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(vii) Minimum Dwelling Size. Each residential dwelling located on any Unit shall have a minimum of 1800 square feet of enclosed, heated and cooled living space. Upon written request of an Owner, the ARB may waive the square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties.

(viii) Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem. The Design Guidelines may include additional sight line limitations.

9.6. Construction Period. Each Owner shall diligently work to complete construction on any Unit in a timely manner. The initial construction of all structures must be completed within one (1) year after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB at the time the project is approved by the ARB. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a structure

has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

9.7. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.8. Variance. The ARB 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 only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.9. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty on the part of the Declarant, the Association, the Board or the ARB to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARB or any committee, or 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 or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.10. Enforcement.

(a) The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB or the Board shall have the right to enter the property pursuant to Section 11.5, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, and the ARB by any means of enforcement described in Section 4.4. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

(b) Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

(c) Neither the ARB nor the Association, the Declarant, nor their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

#### ARTICLE 10: USE RESTRICTIONS

10.1. Use Restrictions. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits A or B, offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules and regulations shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members, and, during the Development Period, the written consent of the Declarant.

10.3. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4. Leasing. Units may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

#### 10.5. Residential Use.

(a) Units may be used only for residential purposes of a single family, and for ancillary business or home office uses so long as: (i) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the activity conforms to all zoning requirements for the Properties; (iii) the activity does not involve door-to-door solicitation of residents of the Properties; (iv) the activity does not increase traffic or include frequent deliveries within the Properties; and (v) the 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.

(b) No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent 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: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

(c) The leasing of a 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 with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

(d) No garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Unit without the prior written consent of the Board.

10.6. Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed. Completion of a dwelling shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

10.7. Vehicles. All vehicles shall be subject to such reasonable rules and regulation as the Board of Directors may adopt. In addition, the following shall apply.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on trails, paths, or unpaved Common Area except for public safety vehicles and as specifically authorized by the Board.

(b) Recreational vehicles belonging to Owners or occupants of the Units shall be parked only in garages, if any, serving the Units or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street. "Visibility" shall be determined by the ARB in its sole discretion. Guests of an Owner or occupant may park a motor or mobile home on the driveway serving the Owner's or occupant's Unit for a period not to exceed seven (7) Days each calendar year. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, and camper trucks and vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven (7) Days shall be considered a nuisance and may be removed from the Properties. Fees and costs for removal and storage under this provision shall be assessed against the Unit as a Specific Assessment. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

10.8. Private Streets. The Private Streets shall be subject to the provision of this Declaration regarding use of Common Area. Additionally, Owners of Units and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

10.9. Use of Common Area.

(a) There shall be no obstruction of the Common Area nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(b) Owners of Units, as well as their families, tenants, guests, invitees, and pets shall refrain from any actions which deter from the enjoyment by other Owners of areas within the Properties designated as Common Area or Recreation Area. Prohibited activities shall include without limitation, maintenance of dogs or other pets under conditions which interfere with the use of the specified areas by other Owners, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, and use of portable outdoor grills,



cooking facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board. The Board may promulgate other rules and restrictions for the use of these areas.

(c) Encroachment of structures into, over, or across any Common or Recreation Areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping installed by Owners in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas.

10.10. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. The Board may permit up to two horses on certain Units within the Properties. The Board may adopt additional rules and regulations concerning horses, including, without limitation, rules concerning use of designated trails. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. All animals shall be kept free from infectious, contagious or transmissible diseases. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.4.

10.11. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. The Properties shall not be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person within the Properties. 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. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically. The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.12. Storage of Materials, Garbage, Dumping, Etc.

(a) All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch or stream within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except as may be permitted during any period of construction of improvements to a Unit.

(b) Each Owner shall maintain its Unit in a neat and orderly condition throughout construction of a residential dwelling or accessory structure and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during construction shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. All Units on which construction is in progress must be inspected by the Owners or their builders prior to each weekend, and

during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

10.13. Combustible Liquid. Storage of gasoline, propane, heating or other fuels is prohibited, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines, and exercise other means of enforcement as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop such discharge.

10.15. Subdivision of Unit. Without the Declarant's prior written consent, no Unit shall be subdivided or its boundary lines changed after a subdivision plat depicting the Unit has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns, with the written prior consent of the owner of the Unit or Units affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.16. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, or storm drains, if any.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit, and for controlling the natural and man-made water flow from its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Unit. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Units. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.

(c) No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

10.17. Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any stream or other bodies of water within the Properties without the prior written approval of the ARB. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.18. Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

#### ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, and the Owners, and their successors-in-title.

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; streams, and other bodies of water; irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

(b) Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(c) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits A or B.

(d) Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(e) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, 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, for the posting of signs, and for connecting and installing utilities serving the Additional 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 connected with development of the Additional Property.

11.4. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Unit for emergency, security, and safety

reasons. Such right may be exercised by any member of the Board, the Association's officers, ARB or committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request 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. Entry under this Section shall not constitute a trespass.

#### 11.5. Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter all portions of the Properties, including each Unit, to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

(b) The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.6. Easements for Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.7. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.8. Easement for Park and Walking Trail Access. Declarant hereby grants to the Owners a perpetual, non-exclusive easement over and across any areas designated as parks, recreation areas, walking trails or paths on any recorded subdivision plat of the Properties. Use of such facilities shall be governed by reasonable rules and regulation promulgated by the Association.

11.9. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

#### ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An Institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) Days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or North Carolina law for any of the acts set out in this Article.

#### ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant may maintain and carry on upon the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant has easements over the Properties for access, ingress and conducting such activities. In addition, the Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of

all or a portion of such facilities in the Declarant's sole discretion. The Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities. During the Development Period, Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3. Improvements to Properties. The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion. The Declarant and its employees, agents and designees shall also have a right and easement over and upon each and every Unit, the boundary line or lines of which form a portion of the perimeter of the Properties for the purpose of constructing and installing a fence or wall along all or a portion of the perimeter of the Properties, if deemed appropriate by the Declarant, in its sole discretion.

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 13.6, may conflict with the Declaration, By-Laws or Articles.

13.5. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" membership shall be effective during the Development Period without prior notice to and the written consent of the Declarant. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

13.6. Additional Covenants and Easements by Declarant. The Declarant may unilaterally subject any portion of the Properties 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 General or Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently 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. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

#### ARTICLE 14: GENERAL PROVISIONS

##### 14.1. Duration.

(a) Unless terminated as provided in this Section, or unless otherwise limited by North Carolina law, this Declaration shall have perpetual duration. If North Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, 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 survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by North Carolina law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Properties, which instrument is recorded in the Public Records; *provided, however,* regardless of the provisions of North Carolina law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least seventy-five percent (75%) of the Units and by the Declarant, if the Declarant owns any portion of the Properties.

(c) Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### 14.2. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Department of Veteran Affairs, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant. 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.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

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 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.

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the total

Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.6. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.7. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

14.8. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations, and the Association may, but shall not be required to, enforce such additional covenants, conditions, and provisions; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.9. Use of the Words "Avery Park". No Person shall use the words "Avery Park" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Avery Park" in printed or promotional matter where such terms are used solely to specify that particular property is located within Avery Park and the Association shall be entitled to use the words "Avery Park" in its name.

14.10. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.4.

14.11. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board 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 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, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.12. Exhibits. Exhibits A and B attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit C is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 20<sup>th</sup> day of April, 2000.



BK 2265 PG 033

LAND RESOURCE GROUP OF NORTH CAROLINA,  
LLC, a North Carolina limited liability company

By:

Tim Enterkin  
Name: Tim Enterkin

Its: Attorney-in-Fact  
Title:

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Phyllis S. Fitzgerald, a Notary Public for said County and State, do hereby certify that TIM ENTERKIN, attorney in fact for LAND RESOURCE GROUP OF NORTH CAROLINA, LLC, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said LAND RESOURCE GROUP OF NORTH CAROLINA, LLC, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Buncombe, State of North Carolina, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said TIM ENTERKIN acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said LAND RESOURCE GROUP OF NORTH CAROLINA, LLC.

Witness my hand and official seal, this the 20 day of April, 2000.

Phyllis S. Fitzgerald  
Notary Public



My Commission Expires: 09/15/2003

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of

Phyllis S. Fitzgerald

a Notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 20<sup>th</sup> day of April, 2000 at 3:07 P.M.

Otto W. DeBruhl  
OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

Karen A. Talbot  
By: Asst./Deputy/Register of Deeds

## EXHIBIT A

**BEING** a tract of land consisting of 286.328 acres, more or less, made up of the following three tracts: (1) a portion of the property deeded to M. Martha Kilfoil in Deed Book 2073 at Page 198, Buncombe County Registry (consisting of 1.752 acres, more or less); (2) a portion of the property deeded to Larry D. Graham and wife, Victoria R. Graham in Deed Book 2002 at Page 684, same Registry; and (3) all of the property of Evangeline and Kathryn E. Hall as described in Deed Book 1405 at Page 680, same Registry (less and except the 5.00 acre tract previously deeded to the Grahams, referenced above, and less an approximate one and one-half (1 ½) acre tract deeded to Grahams). The overall 286.328 acre tract is more particularly shown on a survey entitled "Boundary Survey for: Avery Park" by Alpine Land Surveying, Inc., dated December 3, 1999, Map No. 9623-00-07, as follows:

**BEGINNING** at U.S. Forest Service Monument "20" which is located in the Southwestern corner of the Kilfoil property referenced above; thence with the line of the U.S. Forest Service property, and the Western line of the Kilfoil property, the following two courses and distances:

- (1) North 08 deg. 49 min. 18 sec. East 133.93 feet; and
- (2) North 04 deg. 29 min. 52 sec. East 540.77 feet to a railroad rail in the Southwestern corner of property currently or formerly owned by Randall S. Smith and Sally W. Smith (Deed Book 1742 at Page 229, same Registry);
- (3) thence with the Southern line of the referenced Smith property, South 87 deg. 04 min. 18 sec. East 174.71 feet to a ½ inch threaded rod in the Southeastern corner of the Smith property and in the Western line of property currently or formerly owned by French M. Lance, Jr. and Barbara M. Lance (Deed Book 953 at Page 255, same Registry);
- (4) thence with the Southwestern line of the referenced Lance property, South 32 deg. 04 min. 18 sec. East 155.00 feet to a point in the Northwestern line of property currently or formerly owned by Steven D. Lance and Darlene E. Lance (Deed Book 1883 at Page 747, same Registry);
- (5) thence with the Western line of the referenced Steve and Darlene Lance property, and crossing the terminus of Avery Creek Road (SR. 3486) South 28 deg. 25 min. 42 sec. West 147.31 feet to a point;
- (6) thence along a curve to the left, in a Northwestern direction, with a radius of 177.50 feet, an arc length of 88.32 feet, and a chord bearing and distance of North 71 deg. 14 min. 50 sec. West 87.41 feet;
- (7) thence along a curve to the left, in a Southwestern direction, with a radius of 77.50 feet, an arc distance of 121.74 feet, and a chord bearing and distance of South 49 deg. 29 min. 52 sec. West 109.60 feet to a point;
- (8) thence South 04 deg. 29 min. 52 sec. West 232.03 feet to a point;
- (9) thence South 08 deg. 49 min. 26 sec. West 131.87 feet to a point in the Northern line of the Hall property referenced above;
- (10) thence with the Northern line of the Hall property, South 86 deg. 06 min. 10 sec. East 88.15 feet to a point in the Northwestern corner of a tract, consisting of 2.00 acres, more or less, being conveyed to Larry D. Graham and wife, Victoria R. Graham;
- (11) thence with the Western line of the Graham 2.00 acre tract, South 17 deg. 52 min. 31 sec. East 549.16 feet to a point in the Southernmost corner of the 2.00 acre tract;
- (12) thence with the Southern line of the 2.00 acre tract, North 76 deg. 24 min. 29 sec. East 167.34 feet to a 1 inch iron pipe in the Northwestern corner of property currently or formerly owned by Swayngim (Deed Book 1671 at Page 257, same Registry);
- (13) thence with the Western line of the referenced Swayngim property, South 17 deg. 49 min. 31 sec. East 498.57 feet to a rebar in the Southernmost corner of the referenced Swayngim property;
- (14) thence with the Southeastern line of the referenced Swayngim property, North 58 deg. 56 min. 34 sec. East 241.56 feet to a ¾ inch iron pipe in the Southernmost corner of property currently or formerly owned by Graham (Deed Book 994 at Page 215, same Registry);

(ATTACHMENT)

BK 2265 PG 035

- (15) thence with the Southeastern line of the referenced Graham property, North 59 deg. 30 min. 15 sec. East 220.29 feet to a ¾ inch iron pipe in the Southernmost corner of property currently or formerly owned by Naber (Deed Book 1592 at Pages 3 and 11, same Registry);
- (16) thence with the Southeastern line of the referenced Naber property, the following two courses and distances: North 60 deg. 57 min. 02 sec. East 148.79 feet; and
- (17) North 55 deg. 18 min. 59 sec. East 124.03 feet to a 10 inch maple at a fence corner in the Southernmost corner of property currently or formerly owned by McGuire (Deed Book 960 at Page 559, same Registry);
- (18) thence with the Southeastern line of the referenced McGuire property, North 60 deg. 16 min. 52 sec. East 930.36 feet to a ¾ inch pipe in the Southernmost corner of property currently or formerly owned by Hyatt (Deed Book 960 at Page 567, same Registry);
- (19) thence with the Southeastern line of the referenced Hyatt property, North 60 deg. 16 min. 52 sec. East 112.06 feet to fence post in the Western line of property currently or formerly owned by Whitaker (Deed Book 1442 at Page 100, same Registry);
- (20) thence with the Western line of the referenced Whitaker property, South 04 deg. 15 min. 52 sec. West 1,354.29 feet to a iron rod in the Southwestern corner of the referenced Whitaker property;
- (21) thence with the Southern line of the referenced Whitaker property, South 77 deg. 09 min. 14 sec. East 491.89 feet to an iron rod in the Southwestern corner of property currently or formerly owned by Sanderson (Deed Book 1764 at Page 336, same Registry);
- (22) thence with the Southern line of the referenced Sanderson property, South 76 deg. 56 min. 02 sec. East 345.48 feet to a hub in the Southwestern corner of property currently or formerly owned by Padgett (Deed Book 872 at Page 337, same Registry);
- (23) thence with the Southern line of the referenced Padgett property, the following two courses and distances: South 80 deg. 08 min. 49 sec. East 15.25 feet to an iron pipe; and
- (24) South 76 deg. 27 min. 17 sec. East 270.93 feet to a rebar in a corner of property currently or formerly owned by Butler Estate (Plat Book 63 at Page 45, same Registry);
- (25) thence with the Southern line of the referenced Butler Estate, South 76 deg. 27 min. 17 sec. East 110.68 feet to a point;
- (26) thence with the Western line of the referenced Butler Estate property, South 35 deg. 47 min. 24 sec. West 130.35 feet to a Forest Service monument;
- (27) thence with the line of property currently or formerly owned by United States of America (U.S. Forest Service Tract V-1) the following ten courses and distances:
  - (28) South 35 deg. 47 min. 24 sec. West 1602.54 feet to a 2 inch iron pipe (broken off at ground level);
  - (29) South 12 deg. 33 min. 09 sec. East 240.90 feet;
  - (30) South 02 deg. 56 min. 51 sec. West 181.50 feet;
  - (31) South 06 deg. 04 min. 51 sec. West 176.22 feet;
  - (32) South 06 deg. 49 min. 09 sec. East 100.98 feet;
  - (33) South 09 deg. 34 min. 09 sec. East 161.04 feet;
  - (34) South 10 deg. 47 min. 09 sec. East 59.40 feet; and
  - (35) South 06 deg. 58 min. 51 sec. West 173.58 feet to a 4 inch chestnut oak;
  - (36) North 85 deg. 23 min. 22 sec. West 1,670.83 feet to a 2 inch iron pipe; and
  - (37) North 85 deg. 15 min. 33 sec. West 1,289.69 feet to a railroad rail in the Eastern line of property currently or formerly owned by United States of America (U.S. Forest Service Tract V-12;
  - (38) thence with the line of the referenced U.S Forest Service Tract V-12 the following four courses and distances: North 04 deg. 16 min. 17 sec. East 1,675.46 feet to a railroad rail;
  - (39) North 84 deg. 08 min. 01 sec. West 676.74 feet to a railroad rail;
  - (40) North 04 deg. 12 min. 53 sec. East 2,250.19 feet to a rebar; and
  - (41) South 87 deg. 58 min. 07 sec. East 1,042.26 feet to the point and place of BEGINNING.

TOGETHER WITH AND SUBJECT TO easements, restrictions and rights of way of record.

BK 2265 PG 036

EXHIBIT B

Additional Property

Any property located within a three (3) mile of the perimeter boundary of the land described on Exhibit A attached hereto.