

Rules and Regulations
for
Avery Park Community
Association, Inc.

January 1, 2018 (Original Edition)

FOREWORD

Paragraph 10.2 of Article 10 of the Declaration of Covenants, Conditions, and Restrictions for Avery Park, Inc. grants the following authority to the Association Board of Directors (hereafter referred to as the Board):

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

Under the authority granted by paragraph 10.2 of Article 10 of the Declaration, the Board promulgates the following Rules and Regulations for the Avery Park community, effective January 1, 2018.

All previous policies separately promulgated by the Board with the exception of the Architectural Design Standards are no longer valid, except as incorporated into these Rules and Regulations.

Where these Rules and Regulations may conflict with Association Governing Documents, North Carolina State Statutes, or local ordinances or laws, the Rules and Regulations shall remain subordinate.

A copy of these Rules and Regulations shall be available for review and download from the Association's official website as well as the Association's Community Management Company's official website for Avery Park, if such website exists.

The Board of Directors
Avery Park Community Association, Inc.
January 1, 2018

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ARTICLE I - RULES AND REGULATIONS – APPLICABILITY

1. The following rules and regulations apply to all Owners and Tenants of Avery Park, their immediate family members who reside with them, and all guests who may visit them. Owners and Tenants are responsible for ensuring that their family and guests are aware of and comply with the rules and regulations contained within this document.

ARTICLE II - RULES AND REGULATIONS DEFINITIONS

The following terms used in these Rules and Regulations are defined as follows:

1. "ARB" means the Architectural Review Board of the Avery Park Community Association, Inc., as described in Article 9 of the Declaration of Covenants, Conditions, and Restrictions for Avery Park, Inc.
2. "Articles" means the Articles of Incorporation of Avery Park Community Association, Inc.
3. "Association" means the Avery Park Community Association, Inc., a North Carolina not-for-profit corporation.
4. "Avery Park Website" means the official website maintained by the Board for the Avery Park Community Association located at <http://www.averyparknc.com>.
5. "Board" means the Board of Directors of the Avery Park Community Association, Inc.
6. "By-Laws" means the By-Laws of Avery Park Community Association, Inc.
7. "Common Area" means all real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights for the common use and enjoyment of the Owners.
8. "Common Expenses" means 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 Association's Governing Documents.
9. "Community" or "Properties" means the Avery Park Community, as described on Exhibit A of the Declaration and its amendments and as the same may be shown on the Community maps as recorded from time to time.
10. "Community Manager" means the lead person at the Association's Community Management Company who is responsible for assisting the Board in the day-to-day management activities of the Association.
11. "Community Website for Avery Park" means the website maintained by the Association's management company. This website provides Avery Park Owners and Residents access to their accounts and other information about the management of the Association. The Community Website for Avery Park is located at:
https://www3.senearthco.com/index.cfm?fuseaction=home.sign_in&mgtCompanyName=ipm&association=.
12. "Community-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Board and the ARB shall determine such standard.
13. "Declaration" means the Declaration of Covenants, Conditions, and Restrictions for Avery Park, Inc.
14. "Design Guidelines" or "Design Standards" means the architectural and construction guidelines and application and review procedures applicable to all or any portion of the Community promulgated and administered pursuant to Article 9 of the Declaration.

15. "Firearms" means, without limitations, "B-B" guns, pellet guns, pistols, rifles, and any other type of weapon deemed by the Board to be a firearm.
16. "General Assessment" means an assessment levied on all Lots subject to assessment under Article 8 of the Declaration to fund Common Expenses for the general benefit of all Owners.
17. "Governing Documents" means the Declaration, By-Laws, Articles of Incorporation, all Design Guidelines, the rules and regulations of the Association, and all additional covenants governing any portion of the Community or any of the above, as each may be amended from time to time.
18. "Guest" or "Visitor" means any person who is not an Owner, Tenant, or a member of an Owner or Tenant's immediate family that resides with the Owner or Tenant in the Community.
19. "Lot" means any numbered Lot designated on the Plat, 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. A Lot may also be referred to as a Unit in some of the Association's Governing Documents.
20. "Owner" means one (1) or more persons who hold the record title to any Lot. 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.
21. "Recreational vehicle" means any motor home, mobile home, boat, "jet ski" or other watercraft, trailer, other towed vehicle, motorcycle, mini-bike, motor scooter, go-cart, golf cart, camper, bus, camper truck and camper van, without limitation.
22. "Resident" means an Owner or Tenant living in the Community on a developed Lot.
23. "Residential Use" means a Lot or residence on a Lot may only be used for residential purposes of a single family, or for ancillary business or home office uses, as described in Article 10 of the Declaration.
24. "Special Assessment" means an assessment levied on all Lots subject to assessment under Article 8 of the Declaration to cover expenses not budgeted for or in excess of those budgeted for in the Annual Budget.
25. "Specific Assessment" means an assessment against one (1) or more particular Lots as authorized under Article 8 of the Declaration to cover costs Incurred in bringing the Lot(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 Lot, their agents, contractors, employees, licensees, invitees, or guests.
26. "Tenant" means a person who has the right to occupy a dwelling for Residential Use through a lease with the Owner.

ARTICLE III - RULES AND REGULATIONS GOVERNING ENTRY TO AVERY PARK

1. Entry to and from Avery Park is through the Community access gates. The gates to the Community will normally be closed 24/7.
 - A. A request to open the gates for a real estate open house, social function, or private party at a resident's home should be coordinated directly with the Community Manager at least 48 hours prior to the event.
 - B. The Community Manager and the Resident requesting the gates be opened should make every reasonable effort to minimize the total time the gates are actually open (e.g., if a resident is holding a private function at their residence from 12:00 – 5:00 pm and expect all guests to arrive by 2:00 pm, then the gates should only be opened from 12:00 to 2:00 pm, since no code is required to exit the Community).
 - C. The Community Manager will send an email to all residents notifying them of the date/times the gates will be open.
2. Owner Access:
 - A. The Community Manager will provide all Owner/Residents with a gate access code that can be used at the entrance call box. The gate code consists of the pound (#) symbol and four digits. The code may change periodically, and the Community Manager will notify Residents prior to the change occurring.
 - B. THE OWNER GATE ACCESS CODE IS ONLY FOR THE USE OF RESIDENTS AND THEIR IMMEDIATE FAMILY. THE OWNER ACCESS CODE SHOULD NOT BE GIVEN TO ANYONE WHO DOES NOT RESIDE IN AVERY PARK.**
 - C. Owners and Residents who have never received or forgotten the access code should call the Community Manager to get the code and ensure their correct email address is on the Community Manager's notification email list. Owners/Residents can also find the current access code on the Avery Park Website.

3. Visitor Access:

- A. The Community Manager will provide all Residents with a separate Visitor gate access code for all visitors, including visiting family members, guests, contractors, service providers, and realtors that need to come to a resident's home. The Visitor Code, consisting of the pound (#) symbol and four digits, can be used at the entrance call box.
- B. The Visitor Code will be changed monthly on the first day of each month. If the first day of the month falls on a weekend or holiday, the new code will become effective on the next business day. The Community Manager will distribute the new Visitor Code by email at the end of every month.
- C. Owners and Residents who do not receive or who forget the Visitor Code should call the Community Manager to get the code. Owners/Residents can also find the current access code on the Avery Park Website.
- D. Visitors who have not been provided a Visitor Code can use the entrance call box to call and talk to a Resident. Once a Resident ensures the Visitor is calling from the entrance call box and knows who the visitor is, he/she can depress the number nine (9) on his/her home phone. This will disconnect the Resident from the call box and open the entrance-side gate. It is the responsibility of Residents to provide the Community Manager with their home phone numbers so they can be programmed into the call box.
- E. Real estate agents shall use the Visitor Code for access to the community, and the code shall NOT be published in the MLS.
- F. **NO OWNER, TENANT OR GUEST SHALL PERMIT ENTRANCE TO ANY PERSON FOR THE PURPOSE OF SOLICITATION OR TO PERSONS UNKNOWN TO THEM.**

4. Remote Gate Operation Using Transmitters or HOMELINK Systems:

- A. The Community Manager will provide one (1) remote transmitter for the gate to each Owner at no cost, when requested. Additional remote transmitters may be purchased from the Community Manager at a cost of \$25 each. **ONLY THE REMOTE TRANSMITTERS PROVIDED BY THE COMMUNITY MANAGER WILL OPERATE THE GATE.**

B. A Resident whose vehicle has a HOMELINK System should be able to program it to remotely open the gate. Instructions for programming a HOMELINK System are located on the Avery Park Website.

5. Exiting Avery Park:

A. Vehicles exiting Avery Park trigger a sensor under the road that automatically opens the exit-side gate.

B. Residents wanting to exit by foot or bicycle can enter an Exit Code into the Exit Keypad located just before the gate on the right side of the road as you exit the community. The Community Manager will provide Residents the Exit Keypad Code and notify them when the code changes.

C. Several remotely viewable cameras are installed at the entrance gate to the community. These cameras are especially useful to check on conditions at the gate during snowstorms or other inclement weather. Instructions for how to access and view these cameras are provided on the Avery Park Website.

ARTICLE IV - RULES AND REGULATIONS GOVERNING USE OF AVERY PARK ROADS

1. General:

- A. The Avery Park neighborhood is a private, gated community with only one point of vehicle ingress/egress. The community roads are mountainous in nature with many horizontal and vertical curves, steep cut and fill slopes, and relatively narrow widths. Many Owners/Residents, including children, enjoy walking on the roads in the community; however, there are no sidewalks or other provisions for pedestrians along the roads. In addition, the abundance of wildlife in the community poses the real possibility of deer, bear and other animals crossing the roads at all hours of the day or night.
- B. The motor vehicle laws of the State of North Carolina shall apply as rules and regulations with respect to roads within the Community along with the additional rules and regulations contained in this Article.
- C. Owners and other permitted users of the Community's private roads pursuant to Section 2.2 of the Declaration shall be obligated to refrain from any actions, which would deter from or interfere with the use and enjoyment of the roads by other authorized users. Prohibited activities shall include without limitation obstruction of any of the Community's roads.
- D. The maximum posted speed limit in the community is 25 mph, but due to the nature of the mountainous roads and many areas of limited sight distance, SPEEDS WELL BELOW 25 MPH ARE OFTEN REQUIRED TO ENSURE SAFETY, ESPECIALLY IN INCLEMENT WEATHER AND ON STEEP, CURVING AREAS OF THE ROAD.
- E. No vehicle shall pass another moving vehicle on Community roads.
- F. Speed humps have been placed along the community roads to help minimize speeding. Owners/Residents and their family and guests should use caution when driving over the speed humps.

2. Vehicle Parking:

- A. No automobile or non-commercial truck or van that is unlicensed or in a condition such that it is incapable of being operated on the public highways may be left upon any part of the Community, except in a garage. Such vehicles will be considered a nuisance, and may be removed from the community.
- B. Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the ARB.

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

3. Recreational Vehicles:

A. Recreational vehicles belonging to Owners or occupants of the Lots shall be parked only in garages serving the Lots 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.

B. Guests of an Owner or Resident may park a motor or mobile home on the driveway serving the Owner's or Resident's lot for a period not to exceed seven (7) days each calendar year.

C. 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 Community. Fees and costs for removal and storage under this provision shall be assessed against the Lot as a Specific Assessment.

4. Winter Road Maintenance:

A. The Avery Park roads are narrow winding "mountain" roads subject to all winter weather conditions that may occur from time to time. It is not possible to predict when conditions will change, and it is not reasonable to expect that the roads will be free of snow and ice at all times. Drivers using Avery Park Roads during winter conditions must use good judgment, safe driving practices, and lower speeds. Snow tires or chains may be required from time to time.

B. Gate Operation. The gates will be opened whenever there is a threat of or a winter weather event that creates ice or snow conditions at the gates or the approach to the gates. The gates will remain open until it is safe to close them. Drivers approaching the gates must use caution at all times.

C. Snow and Ice Removal Operations.

i. When the forecast predicts a snow event of 4 to 5 inches or more, snow removal will commence after the accumulation of 4 to 5 inches of snow. Depending on the predicted and experienced snow accumulation, one or more plowings may occur before a final cleanup at the end of the storm.

- ii. Roads will be plowed to an approximate width that will allow two cars to pass. Roads will not be plowed to their full width (edge of pavement to edge of pavement) in order to protect the landscape areas adjacent to the road.
- iii. Ice areas on road surfaces will be treated with road salt and/or sand. Residents are to notify the Community Manager of road areas where ice has accumulated.
- iiii. Residents are responsible to clear snow between the end of their driveway and the plowed road, and to provide access to their mailbox for the postman. The snow removal company will not clean these areas.

D. Roads to be Cleared of Snow:

- i. All roads will be cleared of snow except dead-end roads where there are no homes unless requested by a lot owner on the road.
- ii. The community parking lot adjacent the gates will be plowed to the extent possible depending on vehicles parked in the lot.
- iii. The drive to the pool and tennis court will not be cleared, as these facilities are seasonal.

E. Parking on Roads and Abandoned Vehicles:

- i. It is a common practice to park vehicles at the end of driveways during inclement weather. Vehicles must not be parked on Avery Park road pavement and must not interfere with the plowing of roads.
- ii. If the weather conditions or roads are such that a resident cannot make it to their residence, the preferred parking location is at the entrance parking lot. If a vehicle must be abandoned on a road, park the vehicle as far off the road as possible on the right hand shoulder so as to allow access for snow removal equipment. If you abandon your vehicle notify the Community Manager or a Board member of the location as soon as you are able. As soon as conditions warrant, remove the vehicle.
- iii. Abandoned vehicles that block the road will be towed at the owner's expense.

ARTICLE V - RULES AND REGULATIONS GOVERNING GENERAL ACTIVITIES

1. No offensive activities or conduct shall be permitted within the Community. Any activities or conduct which may bring disrepute upon the Association or which interferes with or limits the enjoyment of the Common Areas by others are not permitted.
2. Loud noises that cause disturbances to others are not permitted.
3. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person within the Community.
4. No 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 Community may be maintained within the Community
5. Littering of any area within the Community is prohibited and is considered a violation.
6. Solicitation of funds for commercial or charitable purposes within the Community is prohibited except by mail or telephone contact. This does not apply to activities that have been approved in advance by the Board.
7. The killing or trapping of wild or domestic animals and birds (other than rats, mice, or other destructive pests) within the Community without prior written approval of the Board is prohibited.
8. The carrying of any firearm within the Community is prohibited unless the bearer has a proper permit. Under no circumstances, however, can any firearm be carried on the common areas or within any Association buildings including but not limited to the cabana, pavilion, etc. Discharging of any firearm within the Community for any reason is prohibited. The only authorized exception to this rule is for the transportation of a firearm via community roads.

9. Hunting is not permitted within Avery Park at any time.
10. No advertising shall be permitted in the Community, except as approved by the Board. The Association shall not participate in or intervene in any political campaign on behalf of any candidate for public office, nor shall the Association allow the posting of any material so designated. Open house signage is allowed as described in Article VII, paragraph 4.E of these Rules and Regulations.
11. If all the Residents of a Lot will be absent from the Community for several days or more, the Owner/Tenant is encouraged to provide emergency contact information (email address and/or telephone number) to the **Community Manager** so she/he can be reached in the event of an emergency.
12. Trash collection in Avery Park: Trash collection occurs weekly, typically every Tuesday.
 - A. Owners shall place trash neatly in receptacles or bags along the road near their property for pickup. **Trash shall not be placed along the road for collection prior to the morning of trash pickup** to minimize the possibility of bears being attracted by food waste in the trash and breaking open the trash containers/bags and strewing trash on the common areas and other residents' properties. Prompt pickup of any trash disturbed and strewn by a bear or other wild animal is the sole responsibility of the Owner whose trash was disturbed.
 - B. **Empty trash receptacles shall be removed from the roadside by no later than the day following trash collection.**
 - C. Trash collection contracts are between individual owners and their trash collection companies, and any problems with trash collection should be reported to the trash collection company and NOT the Board, unless the problem has an adverse affect on the Association.
13. Common Areas:
 - 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 Board, except as specifically provided in these Rules and Regulations.

- B. Owners and Residents, as well as their guests and pets shall refrain from any actions, which deter from the enjoyment by other Residents of areas within the Community designated as Common Area or Recreation Area. Prohibited activities shall include without limitation:
- i. Maintenance of dogs or other pets under conditions that interfere with the use of the specified areas by other Residents.
 - ii. Playing of loud radios or musical instruments.
 - iii. Holding of large gatherings without advance approval of the Board.
 - iv. 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.
- C. With the prior written approval of the Board, 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.
- i. Any Owner or Owners who reserve a portion of the Common Area 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.
 - ii. 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.
- D. Encroachment of structures into, over, or across any Common or Recreation Areas shown on any recorded subdivision plat of the Community is strictly prohibited. Landscaping installed by Owners in these areas is subject to removal in the reasonable discretion of the Board in the ordinary course of maintenance of these areas.
- E. Any damage or destruction of any property owned by the Association caused by an Owner or the Owner's family, Guests, Tenants, and/or other visitors shall be repaired or replaced at the expense of the Owner.

14. Drones or other remotely operated devices may be used on or over common areas; but to ensure privacy rights of Residents, a drone operator must obtain permission from a Resident prior to operating a drone or other remotely operated device on or over the Resident's property.
 - A. The Board may authorize use of a drone to capture video of the community for use by the Association. When such drone use is authorized, the Board will notify the community by Broadcast Notice or Newsletter Email of the dates/times the drone will be flying.
 - B. In an emergency situation such as a fire in the Community, a vehicle crash, etc., an Owner/Resident may use a drone to more quickly assess the emergency condition and assist in providing or expediting response to the emergency. In such emergencies, the requirement to obtain permission from Residents prior to operating a drone over their property is not required.
 - C. Any damage or personal injury caused by the operation of a drone or other remotely operated device is the sole responsibility of the device's operator.
15. Any suspicious or unusual event should be reported to proper authorities (i.e., Sheriff's Office, Fire Department, Emergency Medical Responders, the Community Manager, etc.). This includes suspicious individuals, storm damage, washouts, injuries, sudden serious illness, etc.
16. All fires should be reported immediately to the Buncombe Emergency Communications number of 911. The caller should give his/her name, Avery Park Community, and the appropriate address or relative location from which the fire was observed.
17. Community Management Company: As allowed by Article 3 of the By-Laws, the Board has employed a Community Management Company to assist in the day-to-day management of the Association.
 - A. Community Manager: The Community Management Company shall provide a qualified employee to serve as the Avery Park Community Manager.
 - i. The Community Manager is the primary point of contact for all management support including maintaining all Association documents, handling all Association financial accounts (including operating funds, reserve funds, individual Owner accounts, assessments, and contracts), liaising with all Association service contractors, supporting all Association meetings, and maintaining a website for the Community.

- ii. The Community Manager's name and contact information shall be located on the Avery Park Website and the Community Management Company's community website for Avery Park, if such website exists.
- iii. Owners/Residents should contact the Community Manager on all matters regarding keys to the cabana area, remote gate transmitters, and gate access codes for Owners/Residents and Visitors.
- iv. All suggestions and/or complaints involving policies, facilities, or the activity of any service providers contracted by the Association (i.e., lawn service, road maintenance, etc.) through the Community Manager should be made to the Community Manager. Under no circumstances should the conduct of any contracted service provider be the subject of personal reprimand, harassment, or physical or verbal abuse by any Owner, Resident, or their Guests.

18. Community Websites:

- A. The Association maintains an official community website accessible to the public and all Owners/Residents, at <http://www.averyparknc.com>. The public pages on the website provide general information about the community and what it offers to potential new owners and residents. The non-public Owner/Resident Only Pages are password protected and contain valuable information about the Community. New Owners/Residents can register on the website to receive a password for logging onto the Owner/Resident Pages of the website. If you have any problems or questions about the Avery Park Website, contact the Webmaster. The Webmaster's name and contact information is available on the site Homepage.
- B. The Community Manager maintains a Community Website for Avery Park. This is another official Avery Park website at which Owners/Residents can access their individual Association accounts, pay their assessments, and access the Community Directory as well as other information about the Community. **OWNERS/RESIDENTS SHOULD CONTACT THE COMMUNITY MANAGER TO SET UP THEIR USER ACCOUNT FOR THIS WEBSITE.**

C. Avery Park Confidential Facebook Group: The Avery Park Confidential Facebook Group was started and is maintained by Residents of Avery Park, and is not an official site for Association business. The Facebook Group is, however, a great way of networking with other neighbors in the community. The Avery Park Confidential Facebook Group is located at: <https://www.facebook.com/groups/1528646864071268/>. The first time you go to this URL, you will need to click on “Join” - access should be granted within 24 hours.

19. Community Notifications and Newsletters.

A. Owners will receive notification of Owners Meetings, proposed amendments to Governing Documents requiring voting by all Owners, and other official notifications required by the Guiding Documents through the U.S. Postal Service (and by a Broadcast Email to those who have provided their email addresses to the Community Manager).

B. The Community Manager will periodically send out Broadcast Notice emails to all Owners/Residents on topics that concern all Owners/Residents such as changes to access gate codes, periods of time when the entry gates will be open, etc.

C. The Board will also occasionally send out newsletter or other informational emails to advise Owners/Residents of upcoming community events, community policies, or other issues of concern to the community. Newsletters for the past two years will be accessible on the Avery Park Website.

D. Owners can receive notification of an emergency situation from the Community Manager and/or the Board via phone (voice/text) and email.

E. **TO GET EMERGENCY NOTIFICATIONS, THE COMMUNITY MANAGER’S BROADCAST NOTICES, AND THE BOARD’S NEWSLETTERS AND OTHER EMAILS, OWNERS/RESIDENTS MUST PROVIDE THEIR PHONE NUMBERS AND EMAIL ADDRESSES TO THE COMMUNITY MANAGER.**

ARTICLE VI - RULES AND REGULATIONS GOVERNING SALE OR RENTAL OF LOTS

1. Sale of Lots:

- A. Any Owner desiring to sell or otherwise transfer title for a developed or undeveloped Lot, shall provide written notice to the Board at least seven (7) days' prior to the date of sale/transfer. The written notice shall include:
 - i. Name and address of the purchaser or transferee,
 - ii. The date of such transfer of title,
 - iii. Emergency contact information (phone and/or email address) for the purchaser (this emergency contact information will not be provided to anyone other than the Community Manager and the Board).
- B. 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.

2. Rental of Homes in Avery Park:

- A. Developed lots may be leased for single-family residential purposes only. Leases will typically be for a twelve-month period, and under no circumstances will a developed lot be leased for a period of less than six months.
- B. Any Owner intending to rent his or her residence in the Community shall notify the Board in writing, via the Community Manager, at least one week prior to the effective date of the lease. Notification will include:
 - i. The date the lease will begin and the duration of the lease.
 - ii. Name(s) of the lessee(s) and all family members who will reside at the residence.
 - iii. Contact phone number for the lessee.
 - iv. A copy of the lease or a statement that the lessee has, as part of the lease, acknowledged receipt of a copy of the Association's Declaration, By-Laws, and Rules and Regulations; and that the lease obligates the tenant to comply with the foregoing.

- C. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, and Rules and Regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing documents. Copies of these documents can be obtained as follows:
- i. Download copies of the documents from the Avery Park Website
 - ii. Provide written request to the Community Manager to provide printed copies of the documents (printing is subject to a printing fee).
- D. **OWNERS MAY NOT RESIDE IN THE HOME WHILE IT IS BEING LEASED.**

E. Owners are responsible for providing Tenants with any Cabana keys, entry gate transmitters, and the current Owner and Visitor gate codes.

F. **OWNERS MAY NOT RESIDE IN THE HOME WHILE IT IS BEING LEASED.**

ARTICLE VII - RULES AND REGULATIONS GOVERNING THE USE AND MAINTENANCE OF LOTS

1. General:

- A. Lots 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 Lot.
 - ii. The activity conforms to all zoning requirements for the Community.
 - iii. The activity does not involve door-to-door solicitation of residents of the Community.
 - iv. The activity does not increase traffic or include frequent deliveries within the Community.
 - v. The activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.
- B. No other business, trade, or similar activity shall be conducted upon a Lot 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 (1) such activity is engaged in full or part-time, (2) such activity is intended to or does generate a profit, or (3) a license is required.
- C. The leasing of a Lot shall not be considered a business or trade within the meaning of this Article of the Rules and Regulations.
- D. No garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Lot without the prior written consent of the Board.

- E. No dwelling erected upon any Lot 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 Buncombe County has issued a certificate of occupancy.
- F. Tents and overnight camping are not permitted on any undeveloped Lot.
- G. Every Owner shall maintain her/his Lot including, but not limited to, the home, all structures, walls, fences, landscaping (including fallen tree removal), etc., in good condition and repair.
 - i. If, in the opinion of the Association, any maintenance is required to be performed, the Owner will receive written notice of such requirement with a timeframe in which to accomplish the maintenance.
 - ii. In the event an Owner fails to properly perform this/her maintenance responsibility, the Association may, after proper notice, perform such maintenance responsibilities and assess all costs incurred by the Association against the Property/Lot and the Owner as a Specific Assessment.
- H. Owners shall not install irrigation systems that draw upon ground or surface waters nor from any stream or other bodies of water within the Community without the prior written approval of the ARB.
- I. No streams that run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board.
- J. 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 Lot unless required by law. Any siren or device for security purposes shall contain a device or system that causes it to shut off automatically.

2. Storage of Materials:

- A. 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 Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB.
- B. All garbage cans shall be located or screened so that they are concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.
- C. 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 Community, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.
- D. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Lot, except as may be permitted during any period of construction or improvements to a Lot
- E. Lots shall not be used, in whole or in part, for the storage of any property or thing that will cause such Lot 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.

3. 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 re-channel 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 his/her Lot, and for controlling the natural and man-made water flow from its Lot. 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.
- C. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Community with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. The Association bears no responsibility for remedial actions to any Lot.
- D. No person shall alter the grading of any Lot without prior approval pursuant to Article 9 of the Declaration. The Association reserves a perpetual easement across the Community 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 Lot without the Owner's consent.

4. Signs:

- A. No sign of any kind shall be erected by an Owner or occupant within any portion of the Community, including Common Area or Lots, without the prior written consent of the ARB, except for the following:
- B. Legal Proceeding Signs: Any signs required by legal proceedings may be displayed.
- C. Security Signs: Not more than one (1) professional security sign of such size deemed reasonable by the ARB, in its sole discretion, may be displayed on a Lot.
- D. For Sale Signs: An Owner or an Owner's realtor may display no more than one (1) professional "For Sale" sign on a Lot (two signs may be installed, one on each street, if the property is bordered by two streets).
 - i. The sign must be placed on the property and not in the right of way, which would hinder ground maintenance functions. An information tube should be attached with handouts that further describe the property for sale.

- ii. "For Sale" signs must be 12 X 18 inches, and made of a durable corrugated plastic. The background color is a walnut brown with ivory letters. The signage consists of the AP emblem and "FOR SALE", and the option of including Owner's or selling agent's telephone number below. The stand shall be black metal. It is the Lot Owner's or Broker's responsibility to purchase and maintain the sign(s).
- E. Open House Signs. Open house signage is limited to "Open House" directional sign(s) and a standard sign by the owner's realtor. These signs may be placed 1 hour prior to the event and must be removed within 1 hour after the event.

ARTICLE VIII - ARCHITECTURAL DESIGN STANDARDS AND THE ARCHITECTURAL REVIEW BOARD (ARB)

1. General:

- A. Architectural Review Board: In accordance with Article 9 of the Declaration, an Architectural Review Board (ARB) has been established to enhance consistency, compliance and equity in the implementation of policies, plans, the Declaration, and other documents pertaining to the physical development of Avery Park. The ARB serves as an arm of the Board to ensure compliance with protective restrictions, and the compatibility of construction, design, and maintenance of each Property/Lot. The names and contact information for members of the ARB can be found on the Avery Park Website.
- B. Architectural Standards: The Association's Architectural Design Standards set forth the policies and procedures to assist the ARB, Owners, their Architects and Contractors through the Architectural Review Process. The Board strongly believes that the only way the natural beauty of Avery Park can be protected and preserved while developing an attractive and desirable community to live in is by the consistent administration and strict adherence to these Architectural Design Standards and the Architectural Review Process. **IT IS IMPERATIVE, THEREFORE, THAT THE DESIGN STANDARDS BE THOROUGHLY READ AND UNDERSTOOD BY EACH OWNER PRIOR TO THE COMMENCEMENT OF ANY DESIGN WORK.** The standards and all forms required by the ARB can be found on the Avery Park Website.
- C. Review Process: The Architectural Review Process for new home construction and/or other prominent structures consists of a Preliminary Plan Review, a Final Construction Plan Review and specified on-site Construction Reviews to verify that the actual construction is in conformance with the approved Final Construction Plans. The Architectural Review Process nears conclusion after the construction, including all proposed and required landscaping, is completed and the Association makes its Final Review. If the project is in compliance, the Final Review is signed off as approved with written notification of completion being sent to the Owner and the process is concluded. If the project is found to be incomplete or is not in compliance with the approved plans, the Association will take whatever action it deems necessary, including the imposing of fines, to ensure completion and/or compliance of the project as described in Article 4, paragraphs 4.5 and 4.6,

of the Declaration. Owners are strongly encouraged to work with an Architect who is knowledgeable and experienced in mountain home design and construction.

D. Owners shall maintain their individual Lots in a neat and orderly condition throughout construction of a residential dwelling or accessory structure.

i. The Owner (or builder) for any Lot on which construction is in progress must inspect the lot 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.

ii. The Owner (or builder) for any Lot on which construction is in progress shall keep roadways, easements, swales, and other portions of the Community clear of silt, construction materials, and trash from construction activities at all times.

iii. Trash and debris during construction shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot.

2. Unit Exterior Structure or Improvements: No exterior structure or improvements shall be placed, erected, installed, or made upon any Lot, or adjacent to any Lot, without first going through the Architectural Review Process (described in detail in the Architectural Design Standards) and obtaining written approval from the ARB. This includes, but is not limited to the following:

A. New home construction, decks, patios, driveways, retaining walls, fences, gates, columns, statuary, fountains, swimming pools, basketball backboards, mailboxes, paint/stain color proposals or changes, landscape, hardscape, etc.

B. All mechanical/electrical equipment such as HVAC equipment, swimming pool and/or spa equipment, waterfall pumps, exterior lighting, etc.

C. Well, septic and drainage systems.

D. Changes to topography including cut, fill and other grade changes.

3. Exterior Lighting: Exterior lighting visible from the street shall not be permitted except for:
 - A. Approved lighting as originally installed in a Unit;
 - B. One approved exterior post light;
 - C. Pathway lighting;
 - D. Seasonal decorative lights during the usual and common season.
4. Fences: The following types of fences do not require ARB approval:
 - A. Split rail,
 - B. Stacked locust rail,
 - C. Living fence, or
 - D. Invisible fence.
5. Flags: Flags that meet the following criteria may be displayed without ARB approval:
 - A. Flagpoles attached to the home or garage must not exceed 6 feet in length and the flag must not exceed 3 feet by 5 feet in size. The flag must blend with the existing color scheme of the dwelling or be natural wood.
 - B. Ground installed flagpoles must be 20' or less in height with a flag no larger than 4 feet by 6 feet.
 - C. A maximum of 1 flag on the front side and 1 flag on the rear side of a home will be allowed.
 - D. Flags that become faded, torn, or otherwise deteriorated must be removed or may be replaced with a new flag.
6. Tree Removal: No clear-cut tree removal or topping of trees is allowed. Prior written approval of the ARB is required for the removal of any tree except for the following conditions:
 - A. Trees that are less than six inches in diameter at a point two feet above the ground may be removed without prior written approval by the ARB.

- B. Any trees, regardless of their diameter, that are located within ten 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 prior written approval by the ARB.

ARTICLE IX - RULES AND REGULATIONS GOVERNING OPEN BURNING IN AVERY PARK

1. General: Fire is the most serious safety threat to our community. Avery Park's burn policy was developed based on recommendations by the North Carolina Divisions of Air Quality (DAQ) and Forest Resources (DFR) and by our local Forest Ranger and Fire Marshall. Our burn policy is in compliance with State and County statutes and regulations for open burning. **All open burning within Avery Park is prohibited, except for what is allowed by this policy.**
2. Restricted Burning: Open burning of small, vegetative yard waste that is hand piled, including leaves, branches, grass clippings, stumps and logs less than 6 inches in diameter, and other plant waste, is allowed only if all of the following conditions are met:
 - A. Only between the hours of 8 am and 6 pm from June 1 to October 15. Fires must be extinguished with no active coals remaining prior to 6 pm.
 - B. Only if the day of burning has been designated an open burning day by the Western North Carolina Regional Air Quality Agency, and a ban on burning has not been declared by the N.C. DFR or the Buncombe County Fire Marshall for that day.
 - C. The burning is actively managed/tended by the resident, with a sufficient water source and tools (such as rakes or shovels) within 10-15 feet of the fire, and smoke from the burning does not impede traffic on any Avery Park road or otherwise create a nuisance for other residents.
 - D. A burning permit has been obtained if required.
3. Year-round Burning: Except when specifically prohibited by appropriate State and County officials, the following burning is allowed year-round: outdoor barbecues, recreational fires, and fire pits. All burning must comply with appropriate State and County open burning regulations.
4. Prohibited Burning:
 - A. **Except for the "restricted" and "year-round" burning described above, all other open burning in Avery Park is prohibited.** This includes but is not limited to: trash, garbage, lumber, pallets, treated wood, tires, newspapers and other paper products, wire, plastics and synthetics, asphalt shingles, paints and chemicals

B. BURNING OF LAND CLEARING DEBRIS IS SPECIFICALLY PROHIBITED. Burning of vegetative waste on undeveloped property (a lot with no completed home construction) is considered the equivalent of burning for land clearing, and is specifically prohibited in Avery Park.

5. Required Permissions:

A. Residents in Avery Park will generally not require a burn permit for “restricted burning” as defined by this policy.

B. A burn permit will be required by residents conducting “restricted burning” greater than 100 feet from the resident’s dwelling house and within 500 feet of State protected woodlands (NOTE: the Pisgah National Forest is considered equivalent to a State protected woodland). Properties in Avery Park that may require a burn permit prior to conducting “restricted burning” are listed in Appendix A. These properties abut or are otherwise within 500 feet of the Pisgah National Forest.

C. If required, an online burn permit may be completed/submitted by using this link: http://www.ncforestsservice.gov/burn_permits/burn_standard.asp.

6. Fire Policy Violations: In addition to the consequences stated in ARTICLE XVI of these Rules and Regulations, violations of restricted burning will be reported to the NC Department of Air Quality, NC Department of Forest Resources, and/or County Fire Marshall as appropriate, and could result in civil penalty assessments of up to \$25,000 per documented violation.

7. Restricted Burning Alternatives: Prior to conducting open burning of small, vegetative yard waste, residents should consider alternatives, such as composting yard waste and chipping tree limbs, or having someone haul the yard waste away.

ARTICLE X - RULES AND REGULATIONS GOVERNING ASSESSMENTS

1. General: To minimize the Association's loss of revenue, the procedures of this Article shall be used for any assessments imposed by the Board and to deal with any delinquent accounts in a timely manner. As described in this Article, collections of delinquent accounts approved by the Board (and acting through the Community Manager) will be referred to the Association's attorney to pursue.
 - A. The Board shall levy certain charges against property owners in accordance with the provisions in the By-Laws and Article 8 of the Declaration.
 - B. The Board reserves the right to waive or alter the following collection procedures if exigent circumstances exist and upon resolution by the Board.
 - C. An owner's account will be charged all costs incurred by the Association in collection of past due accounts.
2. Assessment Due Dates:
 - A. General (annual) Assessments shall be paid in two equal installments due on the first day of January and the first day of July.
 - B. Special Assessments and Specific Assessments are due on the dates specified in the Special or Specific Assessment invoice letters sent to the applicable owners.
3. Delinquent Accounts: The following actions will be taken for an assessment that is not paid on the applicable due date:
 - A. First Notice plus Late Fee (10% of assessment amount) plus 18% interest from due date: A First Notice will be sent to any owner that is 30 days delinquent requesting immediate payment and detailing the interest, late fees & other charges due. Unless the owner disputes the validity of the debt within thirty (30) days after receipt of notice, the debt will be assumed valid.

- B. Second Notice and 30-Day Demand: A Second Notice (30-day demand) will be sent to any owner that is sixty (60) days delinquent. This notice will state that if the account is not paid in full within thirty (30) days, a Notice of Claim of Lien may be recorded and a copy forwarded to any lender with a mortgage against the property. The Second Notice shall state that any request for special consideration of hardship circumstances, must be submitted in writing to the Board BEFORE the assessment becomes ninety (90) days delinquent, and if not so submitted, then such request shall be deemed waived.
 - C. The Board may offer and or approve a payment plan for the property owner such that an account can become current within the following 12 months, including all future assessments within that period. The owner is not required to accept the payment plan. The owner may also propose a payment plan, but the Board is not required to accept it. If both parties accept a payment plan and the owner fails to successfully complete the payment plan, then the Board may declare the payment plan null and void and proceed to collections. Appendix B provides a sample payment plan template.
4. Attorney Collection: The Board may direct the Community Manager to refer any account that remains delinquent thirty (30) days after the Second Notice to the Association's Attorney for all legal remedies available.
- A. Once a delinquent account has been turned over to the Association's Attorney, neither the Community Manager nor Board Members shall have contact with the Owner regarding collection.
 - B. All legal fees and costs incurred in the collection of a delinquent account shall be assessed against the delinquent owner to the extent allowed by North Carolina law and shall be collectible as a Specific Assessment as provided in the By-Laws and Declaration.
5. Special Consideration: An Owner may submit a request for special consideration of hardship circumstances. Such request must be submitted in writing to the Board BEFORE the assessment becomes ninety (90) days delinquent or the Owner's right to submit the request will be deemed waived. The request for special consideration may also include a proposed payment plan (see Appendix B).

6. Member Privilege Suspension: The membership privileges of any Owner whose account is thirty (30) days past due may be suspended at any time at the discretion of the Board. The Board shall provide the member an opportunity to be heard prior to the suspension of privileges.

7. Additional Enforcement Remedies: If after the expiration of the period specified in the Association's Second Notice & 30 Day Demand, an account remains delinquent, the Association's attorneys may be authorized to take such further action as they, in consultation with the Board, believe to be in the best interest of the Association, including, but not limited to:
 - A. Filing suit against a delinquent Owner.

 - B. Filing claim of lien and if necessary, instituting a non-judicial foreclosure of the Association's lien. No lien can be foreclosed on unless the assessment remains unpaid for 90 days or more and the Board of Directors votes to commence the proceeding against a specific property.

 - C. Filing a proof of claim in a bankruptcy.

 - D. Instituting a judicial action for foreclosure of the Association's lien.

ARTICLE XI - RULES AND REGULATIONS GOVERNING USE OF THE CABANA FACILITIES

1. General:

- A. The community's Cabana Facilities are part of the common area; and include the cabana building and the adjacent pavilion and playground areas. When using the Cabana Facilities, an Owner or Tenant must accompany any Guests, and an adult must supervise minor children at all times. Although also adjacent to the cabana, the pool area is considered a separate common area, and the rules and regulations governing the pool area will be discussed in Article XII.
- B. The doors to the main cabana area, the men's and women's restrooms, and the pool mechanical room should remain locked at all times except during pool operating hours, for special community social functions, or for Owner/ Resident private functions.
 - i. The locks on the doors to the main cabana area and the men's and women's restrooms can be opened by the same key.
 - ii. New Owners should contact the Community Manager to get a key issued to them (or get the key from the previous owner, as applicable).
 - iii. Tenants should get their key from the Owner of the home they are renting.
 - iv. **Cabana keys should never be given to a non-resident of the Community.**
- C. Owners/Residents using the Cabana Pavilion should ensure all trash is collected and removed before leaving the area. Owners/Residents using the pavilion grills should ensure the grilling surfaces are cleaned and coals are extinguished before leaving the pavilion area. Ashes should be placed into the ash can next to the grills. The ash can should not be used as a trash receptacle.

- D. The pavilion awning on the side of the pavilion (next to the parking area) can be extended to provide additional shade protection from the sun. Owners/Residents should use care in extending the awning, and the awning should be retrieved with care prior to the last person leaving the pavilion area.
- E. The Playground area adjacent to the Cabana Pavilion is a common area for the use of Owner/Resident children and young guests. An adult should always supervise small children using the playground.
- F. The Cabana is a non-smoking facility.

2. Reserving the Cabana Facilities:

- A. Owners/Residents can reserve use of any or all of the Cabana Facilities for private functions, on a “first-come, first-served” basis. This privilege is not transferable. **A non-refundable, \$25 reservation fee is required.**
- B. Requests to reserve any or all of the Cabana Facilities for a private function should be submitted to the Community Manager by phone or email. The Owner/Resident must complete, sign, and submit both a Reservation Form and a Hold Harmless And Indemnity Agreement (see Appendices C and D, respectively) to the Community Manager such that they are received at least 2 working days prior to the date of the private event. The Community Manager will send out a Broadcast Notice prior to the date of the private event.
- C. Following the private function, the Cabana Facilities must be cleaned, all furniture restored to its original position, and all perishable items and trash removed.
- D. A Board member or a designated representative of the Board shall check the condition of the reserved facilities before and after any private function.

- E. The Owner/Resident reserving the Cabana Facilities accepts all liability for all damages to the facilities and any injuries sustained by his/her guests during the private function. The Association's costs for repair or cleaning of the Cabana Facilities because of any damages occurring during the private event or failure of the Owner/Resident to adequately clean the facilities after use will be assessed promptly to the Owner/Resident who made the reservation.

- F. Owners/Residents who choose to serve alcoholic beverages at their private functions assume total responsibility for the safety of their guests. No alcoholic beverages shall be served to any person under the age of twenty one (21).

- G. Parking of guest automobiles for a private function should be limited to the Cabana Parking Lot and the reserving Owner's driveway, and should never block another Owner's driveway.

ARTICLE XII - RULES AND REGULATIONS GOVERNING USE OF THE SWIMMING POOL

1. General:

- A. The pool and pool area is open to all Owners/Residents and cannot be reserved for private use. The pool season will normally run from Memorial Day weekend through Labor Day weekend. When open for use, the pool hours of operation are from 7:00 am to 10:00 pm daily.
- B. NO LIFEGUARD OR ATTENDANT IS ON DUTY. THEREFORE, USERS SWIM AT THEIR OWN RISK.**
- C. Owners/Residents are responsible for the safety and behavior of any guests they invite to use the pool, including compliance with the rules and regulations of this Article for the use of the pool.
- D. No person under 18 years of age will be permitted to use the pool unless he/she (1) is accompanied and supervised by an adult (18 years or older) who is responsible for that person's safety and behavior or (2) has been granted "young adult pool use privileges" (see Article XII paragraph 3).
- E. The gate to the pool must be kept closed at all times, except to pass through.
- F. Pets of any kind are not allowed in the pool area.
- G. The pool area inside the pool perimeter fence is a non-smoking area.
- H. Owners/Residents using the pool area are responsible for securing the gate, lowering and tying down of umbrellas, removal of personal items and trash when leaving the pool. No toys or other items should be left in the water. The last person to leave the pool area will also ensure that all cabana lights are off and all doors are locked.
- I. Individual property should not be left in the pool area over night. Safeguarding of individual property is the owner's responsibility and the Association is not responsible for lost or stolen property.
- J. Swimmers will insure that they are dried off and wearing footwear before entering the cabana, with the exception of the bathroom facilities through their exterior doors.

- K. Only bathing suits will be worn in the pool. Cut offs, regular shorts, or street clothes are not allowed. Babies and persons who are incontinent must wear leak proof garments when in the pool.
- L. Consumption of food and beverages is restricted to the table areas around the pool or the pavilion area just outside the gate to the pool area. No food or beverages may be taken into the pool. Any food, drink, or other materials spilled within the pool enclosure must be cleaned up immediately and thoroughly by the responsible resident or houseguest.

2. Pool Safety.

- A. Swimming alone is unwise and strongly discouraged.
- B. Since water is a ready conductor of electricity, to avoid risk of death or injury the pool should not be used during an electrical storm. Wait 30 minutes after thunder is heard before entering the pool.
- C. No horseplay will be permitted either on the deck or in the pool. This includes running, wrestling, jumping, dunking, diving, jumping from the deck onto a swimmer(s) in the pool, and all other similar and potentially hazardous activities.
- D. No glass, china, porcelain, or other breakable plates or containers are allowed within or immediately adjacent to the pool.
- E. No one shall tamper with the pool operational equipment or with the pool safety equipment.
- F. Wheeled vehicles such as bicycles, tricycles, skates, skateboards, or wheeled toys are not allowed into the pool area. Strollers, wheelchairs, and wheeled ice chests are allowed.

3. Young Adult Pool Use Privilege.

- A. A young adult family member of an Owner/Resident is defined as someone who is under the age of 18 but has reached the age of 15 years old or will be entering the 10th grade in the coming Fall semester. A parent or legal guardian must approve use of the pool and facilities by a young adult without being accompanied or supervised by another adult. A Parental Permission Verification Form (See Appendix E) must be completed, signed, and submitted to the Community Manager to document the parent's or legal guardian's approval.

- B. The young adult pool use privilege is valid for one (1) pool season, and is granted upon the Community Manager's acceptance of a Parental Permission Verification Form. A new permission form must be submitted for each new season, as applicable.
- C. All young adults, including their guests, must know how to swim, and shall obey the Rules and Regulations for Use of the Swimming Pool.
- D. A young adult may not swim alone in the pool unless an adult (18 years or older) or another authorized young adult is in the pool area. The young adult must exit the water when no adult or other authorized young adult is in the pool area.
- E. If a young adult brings a non-resident guest under 18 years of age to use the pool and facilities, then the guest must be accompanied and supervised by an adult (18 years or older) owner/resident who is responsible for that person's safety and behavior.
- F. The parent or legal guardian giving approval for a young adult to use the pool is responsible for the young adult's behavior as well as the behavior of the young adult's guests.
- G. The Board may withdraw the privilege of using the pool and facilities by a young adult who has violated the Rules and Regulations for Use of the Swimming Pool, or whose behavior is deemed not appropriate, in the sole discretion of the Board.

4. Removal of Pool Privileges:

- A. Owners/Residents who disregard (or whose Guests disregard) the Rules and Regulations for Use of the Swimming Pool may be fined or have their pool use privileges suspended by the Board.
- B. Owners who are delinquent in payment of their assessments to the Association will not be allowed to use the pool or pool area. This includes their Tenants and guests.

ARTICLE XIII - RULES AND REGULATIONS GOVERNING USE OF TRAILS AND PONDS

1. General: The community maintains two ponds and a series of hiking trails throughout the common areas.
 - A. No open fires are permitted, except in the facilities provided for outdoors cooking and then using only charcoal fuel. All such fires must be fully extinguished before the user leaves.
 - B. Trash, rocks, or debris must not be thrown into the ponds or along the hiking trails.
 - C. Camping beside the pond or along the hiking trails is prohibited, except when prior permission is requested in writing and approved by the Board.
 - D. No loud noises, music, etc. are permitted on the trails or by the ponds.
2. Hiking Trails:
 - A. The trails are for pedestrian hiking. No bicycles or motorized vehicles of any kind shall be permitted on trails, paths, or unpaved Common Area except for public safety vehicles or as specifically authorized by the Board.
 - B. Hikers should remain on the common area trails and refrain from trespassing on private property.
3. Ponds: The community's two ponds are the "Main Pond", located down from the Cabana/Pool area, and the "Small Pond", located along one of the trails near the community garden area. The Main Pond has a pavilion, grills, picnic tables and benches for use by Owners/Residents. The Small Pond also has some picnic tables and benches for use by Owners/Residents.
 - A. Swimming: Swimming, wading, or otherwise entering either pond is prohibited except when prior permission is requested in writing and approved by the Board.
 - B. Private Use: Owners/Residents can reserve use of the Main Pond pavilion, grills, and picnic tables for private functions on a "first-come, first-served" basis. Requests to use these facilities for a private function should be submitted to the Community Manager by phone or email. The Owner/Resident must also complete and submit a signed copy of both the Facilities Reservation Form and the Hold Harmless And Indemnity Agreement (see Appendices C and D, respectively) such that the Community Manager receives them in sufficient time to allow a Broadcast Notice to be sent out

- prior to the date of the private event.
- C. The Small Pond along the Trail by the community garden cannot be used for private functions.
4. Fishing: The main pond is stocked with fish, and fishing by Owners/Residents is permitted.
- A. **Any fish caught in the pond must be released back into the pond.**
 - B. Owners/Residents fishing in the pond will not discard fish line or other fish equipment or trash into the pond.
 - C. Fishing is not allowed in the Small Pond.

ARTICLE XIV - RULES AND REGULATIONS GOVERNING USE OF THE TENNIS AND PICKLEBALL COURT

1. Reservations are not required to use the tennis and pickleball court. Play is on a first-come, first-serve basis between the hours of 8 am and sunset.
2. The court shall be relinquished to any waiting players after the players occupying the court have had the opportunity to play for two hours.
3. All players shall wear non-marking court shoes.
4. The court access gate should be kept closed at all times.
5. Smoking, breakable containers, and food are prohibited inside the fenced area. Players should police the area and remove any trash when they finish.
6. A responsible adult must accompany children under twelve (10) years of age in and around the court areas.
7. No pets shall be permitted within the fenced area.

ARTICLE XV - RULES AND REGULATIONS GOVERNING ANIMALS AND PETS

1. General: No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board.
 - A. Up to two (2) horses may be permitted on certain Lots within the Community when requested in writing and approved by the Board.
 - B. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval.
 - C. All animals shall be kept free from infectious, contagious or transmissible diseases.
 - D. If, in the sole opinion of the Board, any animal becomes dangerous, an annoyance or nuisance in the Community or to nearby property, or destructive of wildlife, such animal will be removed from the Community.
2. Household Pets: The owners of a pet are responsible for all of the pet's actions, and shall compensate any person hurt or bitten by any household pet.
 - A. All household pets must meet County and State requirements as to licensing, rabies, inoculations, etc.
 - B. All household pets shall be reasonably controlled by the owner whenever outside the owner's property and shall be kept in such a manner as to not cause or create a nuisance or unreasonable disturbance or noise.
3. The Owner of a household pet or horse shall hold the Association harmless from any claim resulting from any action of the Owner's household pet or horse.

ARTICLE XVI - RULES AND REGULATIONS ENFORCEMENT

1. Any Owner or Resident may file a complaint (notice) of a violation of these rules and regulations by submitting a written letter or email to the Board. The Board will review the letter by no later than its next scheduled regular meeting; and, if applicable, will send a notice of violation to the Resident and/or Owner identified in the original letter or email. The original letter or email must contain the following:
 - A. The violation. Be as specific as possible including a reference to the appropriate paragraph of the appropriate governing document.
 - B. The date and time of the violation, if applicable.
 - C. The violator's Lot number and/or address.
 - D. The complainant's name and Lot number and/or address.
2. Any Owner of a Lot that is identified as in violation of a rule or regulations of the covenants that govern the Association, including the rules and regulations contained in this document, may be fined up to \$100.00 a day for every day of violation.

APPENDIX A

EVERY PARK LOTS THAT MAY REQUIRE A BURNING PERMIT

For the purposes of open burning, the following addresses (lots) in Avery Park have been determined to be completely within 500 feet of the Pisgah National Forest. Residents at these addresses (lots) who intend to burn greater than 100 feet from their dwelling home must obtain an open burn permit from the NC Department of Forest Resources (DFR) prior to conducting “restricted burning” as defined in Article IX, paragraph 2 of the Avery Park Rules and Regulations.

1406 Bear Paw Lane (Lot 217-R)	676 Blue Mist Way (Lot 205-R)
1412 Bear Paw Lane (Lot 217-R)	684 Blue Mist Way (Lot 205-R)
1416 Bear Paw Lane (Lot 216)	692 Blue Mist Way (Lot 205-R)
411 Blue Mist Way (Lot 182)	701 Blue Mist Way (Lot 208)
417 Blue Mist Way (Lot 183)	705 Blue Mist Way (Lot 209)
425 Blue Mist Way (Lot 184-C)	711 Blue Mist Way (Lot 210)
437 Blue Mist Way (Lot 186)	712 Blue Mist Way (Lot 211)
443 Blue Mist Way (Lot 187)	311 Boundary Tree Pass (Lot 13)
451 Blue Mist Way (Lot 188)	312 Boundary Tree Pass (Lot 23-R)
455 Blue Mist Way (Lot 189)	317 Boundary Tree Pass (Lot 14)
461 Blue Mist Way (Lot 190)	325 Boundary Tree Pass (Lot 15)
467 Blue Mist Way (Lot 191)	326 Boundary Tree Pass (Lot 23-R)
471 Blue Mist Way (Lot 192)	328 Boundary Tree Pass (Lot 21)
477 Blue Mist Way (Lot 193)	332 Boundary Tree Pass (Lot 20)
481 Blue Mist Way (Lot 194)	333 Boundary Tree Pass (Lot 16)
485 Blue Mist Way (Lot 195)	334 Boundary Tree Pass (Lot 19)
501 Blue Mist Way (Lot 196-A)	335 Boundary Tree Pass (Lot 17)
509 Blue Mist Way (Lot 198)	336 Boundary Tree Pass (Lot 18)
517 Blue Mist Way (Lot 199)	1356 Double Knob (Lot 104)
523 Blue Mist Way (Lot 200)	1357 Double Knob (Lot 101)
536 Blue Mist Way (Lot 138)	1366 Double Knob (Lot 102)
546 Blue Mist Way (Lot 137)	33 Smokemont Drive (Lot 1)
547 Blue Mist Way (Lot 85)	39 Smokemont Drive (Lot 2)
553 Blue Mist Way (Lot 84)	43 Smokemont Drive (Lot 3)
554 Blue Mist Way (Lot 86)	47 Smokemont Drive (Lot 4)
561 Blue Mist Way (Lot 83)	55 Smokemont Drive (Lots 5 and 6)
579 Blue Mist Way (Lot 80)	59 Smokemont Drive (Lot 7)
585 Blue Mist Way (Lot 79)	65 Smokemont Drive (Lot 8)
595 Blue Mist Way (Lot 77)	69 Smokemont Drive (Lot 9)
643 Blue Mist Way (Lot 72)	75 Smokemont Drive (Lot 10)
644 Blue Mist Way (Lot 71)	79 Smokemont Drive (Lot 11)
650 Blue Mist Way (Lot 201)	81 Smokemont Drive (Lot 12)
656 Blue Mist Way (Lot 202)	141 Smokemont Dr (Lot 179)
662 Blue Mist Way (Lot 203)	133 Smokemont Dr (Lot 180)
663 Blue Mist Way (Lot 73)	895 Stoney Stream (Lot 139)
668 Blue Mist Way (Lot 204)	896 Stoney Stream (Lot 87)

APPENDIX A

For the purposes of open burning, the following addresses (lots) in Avery Park have at least part of the property within 500 feet of the Pisgah National Forest. Residents at these addresses (lots) who intend to burn greater than 100 feet from their dwelling home and within 500 feet of the Pisgah National Forest must obtain a open burn permit from the NC Department of Forest Resources (DFR) prior to conducting “restricted burning” as defined in Article IX, paragraph 2 of the Avery Park Rules and Regulations.

405 Blue Mist Way (Lot 48)
428 Blue Mist Way (Lot 178)
440 Blue Mist Way (Lot 176-R)
450 Blue Mist Way (Lot 174-R)
458 Blue Mist Way (Lot 173)
464 Blue Mist Way (Lot 172)
470 Blue Mist Way (Lot 171)
480 Blue Mist Way (Lot 169-A)
502 Blue Mist Way (Lot 167)
502 Blue Mist Way (Lot 168)
522 Blue Mist Way (Lot 166)
528 Blue Mist Way (Lot 165)
591 Blue Mist Way (Lot 78)
640 Blue Mist Way (Lot 100)
1362 Double Knob (Lot 103)
48 Smokemont Drive (Lot 24)
518 Stoney Stream Lane (Lot 166-A)

APPENDIX B

ASSESSMENT PAYMENT PLAN TEMPLATE

Date: _____

Owner: _____

Lot #: _____

Billing Address: _____

Lot Address: _____

Current Account Balance: _____ Annual Assessment: _____

AGREEM

ENT: I
(we), the
above
named
Property

Total Subject to Payment Plan: \$ _____

Term of Payment Plan (months): _____ Months [May not exceed 12]

Minimum monthly payment due on 1st of each month: \$ _____

Owner, request the Avery Park Community Association to grant a payment plan as outlined above so that I (we) can become current with our Association assessments. I (we) have read and agree with the Terms and Conditions below and further agree to make timely monthly payments to successfully complete this Payment Plan in the stated number of months.

Owner Signature: _____

TERMS AND CONDITIONS:

1. This Payment Plan supersedes any existing payment plan.
2. This Payment Plan expires in the last month of the Term noted above and may not be extended.
3. The Property Owner may prepay amounts due and complete this Payment Plan prior to the end of the Term. Over payments will be credited toward future assessments.
4. Late fees and interest, normally charged to the account during the Term of this Payment Plan, will be waived upon the successful completion of this Payment Plan.
5. The Property Owner understands that upon the successful completion of this Payment Plan, the Property Owner will return to the normal schedule of assessment payments, with payments being made in the full amount when due, unless a new Payment Plan is requested and granted.
6. Should the property be sold or foreclosed on by others prior to the expiration of this Payment Plan, the Property Owner agrees to pay the unpaid balance then due.
7. The Avery Park Community Association will not send payment coupons or reminders to the Property Owner. It is the sole responsibility of the Property Owner to make timely payments and successfully complete this Payment Plan. Payments are to be made through IPM, the Association's management firm. The Property Owner shall keep the Association informed of any changes in their contact information.
8. Should the Property Owner fail to make timely payments or successfully complete this Payment Plan, the Avery Park Community Association may give notice and terminate this Payment Plan and proceed to collection of the unpaid balance plus assessments not included in the unpaid balance, all late fees, interest, administrative charges, attorney fees, court costs, etc.

The Board of Directors of the Avery Park Community Association has granted this Payment Plan on this date: Signature: _____ Date: _____

APPENDIX C

APPLICATION FOR PRIVATE USE OF COMMON AREA FACILITIES

Name of Owner/Tenant: _____

Street Address: _____

I (we) request use of the following Avery Park Community common area facilities for a private event (circle applicable facility):

Cabana *Cabana Pavilion* *Tennis Court* *Main Pond & Pond Pavilion*

Date of event: _____ Day of the Week: _____

Hours – From: _____ To: _____ (Include time for cleanup following the event.)

Type of Event: _____

I (we) have read and understand the applicable Rules and Regulations for use of the common area facilities circled above. I (we) accept personal responsibility for the actions of my (our) guests, and will follow the applicable common area facility scheduling procedures adopted by the Avery Park Community Association Board of Directors.

I (we) understand that a non-refundable, \$25 reservation fee is required to reserve the cabana and/or cabana pavilion.

I (we) also understand that a member of the Social Committee or Board will check the condition of the applicable common area facility with me before and after the event, and that I am liable for any damages to the premises, and/or injuries sustained by my guests arising out of the function.

If any damages occur or the facility area is not properly cleaned, I (we) understand that any costs will be assessed promptly to my property.

Signed: _____ Date: _____ Lot: _____

_____ Date: _____ Lot: _____

Approved: Avery Park Community Association Inc., Board of Directors

By: _____

Date: _____

APPENDIX D

HOLD HARMLESS AND INDEMNITY AGREEMENT (For Owner-Sponsored Events)

This Agreement is entered into on this ____ day of _____, 20__ by and between _____ (Owner(s)) and Avery Park Community Association, Inc. for an owner-sponsored event to be held in the Avery Park Community, located in Arden, NC, on the ____ day of _____, 20__.

The Owner(s), on the Owner(s)'s behalf and on behalf of such Owner's guests or invitees or other persons ("Owner's Guests") using the Avery Park Community Association, Inc. common areas at or during the activity sponsored by the Owner pursuant to this Agreement hereby agrees to indemnify and hold harmless Avery Park Community Association, Inc. its property owners, all of its Board of Directors and Officers, and all of its employees, contractors, affiliates, and related entities thereof, each and every one of them, from and against any and all liability for any injury (bodily or otherwise), damage, loss, claim, causes of action, charge, cost or expense whatsoever, including, without limitation, attorneys' fees and court costs, arising out of, caused by or in any way attributable to any act, failure to act when under a legal duty to do so, or omission on the part of the Owner or the Owner's Guests or any of them, and the Owner further agrees to indemnify and promptly reimburse the Avery Park Community Association, Inc. for the cost of any damage to the Avery Park Community Association, Inc. common areas or its surroundings that is caused by or attributable to any act, failure to act when under a legal duty to do so, or omission of the Owner or the Owner's Guests or any of them including, without limitation, the costs of cleanup of the Avery Park Community Association, Inc. common areas after the activity sponsored by the Owner. Notwithstanding the above, in the event of any such injury (bodily or otherwise), damage, loss, claim, causes of action, charge, cost or expense whatsoever, including, without limitation, attorneys' fees and court costs, as above described, it is understood and agreed that the Avery Park Community Association's insurance carrier shall be authorized and may settle or defend any and all such claims, damages, causes of action, fees, costs or expenses, and such action by Avery Park Community Association's insurance carrier shall not affect the indemnification and agreement to hold harmless of Licensee set forth herein.

Rules. The undersigned agrees to abide by the Homeowners Association rules and regulations. It is understood that any damages caused to the common areas will be repaired by the undersigned. The undersigned further agrees that no alcoholic beverage of any sort will be served to any minor or intoxicated person. The Avery Park Community Association, Inc. common areas must be cleared of all event-related equipment and supplies by noon following the date of this event.

Owner(s):

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Avery Park Community Association, Inc.

APPENDIX D

Signature: _____ Position: _____ Date: _____

APPENDIX E

YOUNG ADULT POOL FACILITY USE PRIVILEGE AND PARENTAL PERMISSION VERIFICATION

1. A "young adult" is a family member of an owner or resident of property in Avery Park who is under the age of 18 and has reached the age of 15 years old or will be entering the 10th grade in the Fall.
2. Parents or legal guardians must approve the use of the pool and facilities by the young adult without an adult being present and are responsible for the young adult's behavior and the behavior of the young adult's guests.
3. The rules and regulations governing the use of the pool and facilities by a "young adult" are in ARTICLE XII, Section 3: Young Adult Pool Use Privilege.
4. This privilege is valid for one (1) pool season and is granted upon the execution of the Permission Verification below. This completed and signed form should be mailed or delivered to the following address, and will be maintained on file by the Community Manager:

Secretary of the Association, c/o IPM Corp., P.O.Box 580, Arden, NC 28704-0580

PERMISSION VERIFICATION

I, the parent or legal guardian of the following named young adult(s), have read and accept the terms of pool facility use as stated above, and accept responsibility for the behavior and compliance with the pool rules and policies of my young adult(s) and the young adult's guests. I hereby approve my young adult's use of the pool facility without an adult being present.

PROPERTY OWNER OR RESIDENT NAME, ADDRESS, AND PHONE NUMBER

NAME _____ TELEPHONE _____

ADDRESS _____

RELATIONSHIP TO YOUNG ADULT _____

YOUNG ADULT(S) NAME, AGE, BIRTH DATE AND GRADE LEVEL IN THE FALL

NAME _____ AGE _____ DOB _____ GRADE _____

NAME _____ AGE _____ DOB _____ GRADE _____

NAME _____ AGE _____ DOB _____ GRADE _____

NAME _____ AGE _____ DOB _____ GRADE _____

PARENT OR LEGAL GUARDIAN SIGNATURE

DATE _____