

FILED
ASHE COUNTY
SHIRLEY B. WALLACE
REGISTER OF DEEDS

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Prepared by: Deal, Moseley & Smith, LLP, P. O. Box 311, Boone, NC 28607
NORTH CAROLINA
COUNTY OF ASHE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ELK CREEK MOUNTAIN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
("Declaration"), made on this 28 day of November, 2006 by WMHH, LLC, a North
Carolina Limited Liability Company, hereinafter referred to as the "Declarant;"

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Paragraph 1 of
this Declaration of Restrictions and is desirous of subjecting said real property to the
protective covenants hereinafter set forth, each of which is for the benefit of such property
and for each owner thereof, and each and every tract or parcel thereof, and shall apply to and
bind the successors in interest and any owner thereof.

NOW, THEREFORE, the Declarant hereby declares that all the real property
described in and referred to in Paragraph 1 is and shall be held, transferred, sold and
conveyed subject to the protective covenants set forth below.

1. The real property which initially is and shall be held, transferred, sold and
conveyed subject to these protective covenants set forth in the paragraphs of this Declaration
of Restrictions is located in Watauga County, North Carolina, and is more particularly
described as follows:

THAT CERTAIN TRACT OF LAND AS DESCRIBED IN EXHIBIT A
ATTACHED HERETO AND INCORPORATED HEREIN BY
REFERENCE.

2. The real property described in Paragraph 1 hereof is subjected to these protective
covenants and restrictions. Declarant reserves for itself and its successors and assigns the
right to subject additional property to the provisions of this Declaration in the manner
hereinafter provided. No property of the Declarant presently owned or hereafter acquired
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shall be subject to these restrictions except that property now or hereafter made subject hereto as provided in these restrictions.

3. Declarant has established a general plan of development for the Property in order to enhance all Owners' quality of life and collective interests, to protect the natural environment and to encourage a vitality and sense of community within the Development subject to the Board of Director's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the Development. It is the Declarant's desire to insure the best use and most appropriate development and improvements of said property; to preserve, so far as practicable, the natural beauty; to encourage and secure the erection of appropriately located and proportioned, attractive structures; to insure the use of proper and suitable materials and harmonious color schemes; to maintain high quality improvements on said property; and to protect the Owners against improper use of surrounding properties thereby enhancing the value of investments made by purchasers of parcels therein.

4. The Properties are subject to the land development, architectural and design provisions set forth herein, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

POLICY STATEMENT

It is the principle behind these restrictions and the desire of Declarant to assure that the real property is aesthetically pleasing and maintained in a high-grade manner for the protection of all lot owners, balancing the interests of all lot owners, and other considerations of Declarant. Declarant has intentionally reserved in this Declaration of Restrictions broad powers to direct and control the development and use of lands within the Properties, and the relationship of lands within the Properties to lands outside of the Properties, including the power to freely amend these restrictions. It is the intention of Declarant that any ambiguity about the extent of Declarant's authority in this regard be construed and resolved in favor of Declarant, and each lot owner, in purchasing a Lot, hereby contractually agrees to such principle.

ARTICLE 1

DEFINITIONS

Section 1.1. "Additional Property" shall have the meaning set forth in Section 2.2 below.

Section 1.2. "Architectural Committee" shall mean and refer to a committee of up to three (3) Persons, appointed by the Board (subject to the following sentence) and charged with reviewing and approving the design of proposed Buildings and other Structures, as described in Article VIII below.

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Section 1.3. "Architectural Prints" shall mean:

(a) A detailed architectural drawing of the exterior design, including roof pitch of a dwelling and the location, size, design and number of garage doors, decks, porches, patios, breezeways, driveways, trash enclosure, and any buildings to be detached from the residence;

(b) Complete set of building plans including but not limited to site plan, foundation plan, floor plan, elevations, mechanical and electrical plan, plumbing and drainage plan, construction details, and landscape plan;

(c) Complete specifications covering the type and quality of interior and exterior (including foundation) materials and color of exterior walls, trim, porches, patios, breezeways, decks and roofs;

(d) a plot plan showing the first floor elevation of all buildings and appurtenances and the location of all buildings, drives, parking areas and appurtenances relative to the Lot lines;

(e) A detailed and to scale schematic plot plan.

Section 1.5. "Association" shall mean and refer to the Elk Creek Mountain Property Owners Association, Inc., a North Carolina non-profit corporation formed, or to be formed by Declarant, together with its successors and assigns.

Section 1.6. "Board of Directors" or "Board" shall mean those persons elected or appointed and acting collectively as the Directors of the Association, unless a contrary intent is evident. The Board shall constitute not less than two (2) persons.

Section 1.7. "Building" shall mean and refer to any residential structure, constructed or erected on a Lot

Section 1.8. "Building Guidelines" shall mean a document prepared by the Declarant or Architectural Committee which is kept on file in the Sales Office of allowable and/or prohibited building materials, colors and other construction guidelines that can be periodically updated.

Section 1.9. "Bylaws" shall mean and refer to the bylaws of the Association, as they may now or hereafter exist and may change from time to time.

Section 1.10. "Common Area" shall mean and refer singularly or collectively, as applicable, to all land, improvements and other properties now or hereafter owned by or in the possession of the Association or Declarant and being specifically designated by Declarant by plat, supplemental declaration, deed or other written instrument as Common Area for the Properties, such land, improvements and other properties being subject to this Declaration and/or any applicable supplemental declaration, and being subject to control and maintenance assessments by the Association.

Section 1.11. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve. Common Expenses are all expenses, which may be found to be necessary and appropriate by the Board acting under the authority of this Declaration and the Bylaws. Common Expenses shall not include

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any expenses incurred for construction or installation of infrastructure, capital improvements, or other construction or development undertaken by the Declarant unless approved by a majority of the total Class A votes in the Association.

Section 1.12. "Construction Agreement" means a document prepared by the Declarant or Architectural Committee that describes Builders responsibilities while working in the Development. The Builder will sign this Agreement after the permitting process is complete and prior to the beginning of any work.

Section 1.13. "Declarant" shall mean and refer to WMHH, LLC, a North Carolina Limited Liability Company, and those successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 1.14. "Declarant Control Period" shall mean and refer to the period commencing on the date of recordation of this Declaration and continuing until the earlier of (a) December 31, 2011; or (b) The date upon which Declarant voluntarily terminates the Declarant Control Period.

Section 1.15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and all subsequent valid amendments thereto.

Section 1.16. "Landscape Plans" shall mean:

(a) A drawing showing the location of all Landscaping, fences, walls, and fixtures of all kinds and the configuration of planting beds relative to the location of structures and the boundaries of the Lot and,

(b) Specifications detailing and identifying the genus, species and size of all plants shown on the drawing, and the design of all landscape structures and the type, quality and color of all materials to be used in the construction thereof.

Section 1.17. "Lot" shall mean and refer to any numbered plot or plat of land designated by Declarant as intended to be used as a home site shown upon any recorded map of a portion of the Properties with the exception of the Common Area and area designated as open space.

Section 1.18. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 1.19. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including sellers under contracts for deed, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.20. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity

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Section 1.21. "Properties" shall mean and refer to that certain real property described on Exhibit A hereto, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 1.22. "Structure" shall have the meaning set forth in Section 8.2 below.

Section 1.23. "Supplemental Declaration" shall have the meaning set forth in Section 2.2 below.

Section 1.24. "Vehicles", as used herein shall include without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles.

ARTICLE 2

PROPERTIES; ANNEXATION OF ADDITIONAL PROPERTIES

Section 2.1. Property Made Subject To Declaration. The Properties are hereby made subject to this Declaration and (subject to the right of Declarant to, as hereinafter described, amend and/or supersede in whole or in part, this Declaration by Supplemental Declarations) the Properties shall be owned, held, leased, used, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2.2. Annexation of Additional Property. If Declarant is the owner from time to time of any property adjacent to the Properties ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record a "Supplemental Declaration" (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant, in its sole and absolute discretion, gives written consent thereto and if such consent is given, such property shall be considered Additional Property.

The rights reserved hereunder by the Declarant to annex Additional Property shall constitute unilateral rights that shall not require the consent or approval of any other owners. As long as the controls, covenants, conditions, restrictions, and easements applicable to the Properties subjected to this Declaration are not changed, the Declarant may unilaterally amend the provisions of this Declaration to reflect the different character of any such Additional Property.

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The rights reserved hereunder to subject Additional Properties to the Declaration shall not impose any obligation upon Declarant to subject any of such Additional Properties to this Declaration.

Section 2.3. Contents of Supplemental Declaration. Supplemental Declarations may set forth the controls, covenants, conditions, restrictions, easements, building guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, building guidelines, charges and liens may contain such additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant, in its sole and absolute discretion. In no event shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, building guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the original Properties or to previously added portions of Additional Property.

Section 2.4. Conveyance of Common Area Upon Annexation. Subsequent to recordation of the Supplemental Declaration by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the Additional Property annexed as such Common Area, if any, is developed, as set forth in Article V, Section 5.4 of this Declaration.

ARTICLE 3

MEMBERSHIP

Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make rules relating to the proof of ownership of a Lot.

ARTICLE 4

VOTING RIGHTS

Section 4.1. Voting Classes. The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one Person holds such interest in any Lot, all such Persons shall be Members, and the vote for such Lot shall be

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exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

(b) Class B. The Class B Member shall be the Declarant or its assignee. The Class B Member may appoint the members of the Board of Directors during the Declarant Control Period. Additional rights of the Class B Member, include the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles of Incorporation and specified in the relevant sections of this Declaration, the Bylaws and the Articles

The Class B Membership shall terminate upon the earlier of: (i) expiration of the Declarant Control Period as defined in this Declaration; or (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument. Upon termination of the Class B Membership, the Declarant shall be a Class A Member entitled to Class A votes for each Lot which it owns.

Section 4.2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations as they may now or hereafter exist and may change from time to time.

ARTICLE 5

PROPERTY RIGHTS

Section 5.1. Members' Easements of Enjoyment. Unless otherwise stated in a recorded instrument (i.e., by plat or deed), every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress, and such easement shall be appurtenant to and shall pass with the right to every Lot, subject to each of the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Common Area, or any portion thereof, provided the rights of such mortgagee in said Common Area Properties shall be subordinate to the rights of the Owners hereunder.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area for utility, drainage, pedestrian walkway, cable television and other easements and other similar purposes.

(c) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Area and their Amenities (including limiting the time of use and the number of guests of Members who may use the Common Area) subject to limitations established by Declarant on such right to impose regulations.

(d) The right of the Association to take such steps as is reasonably necessary to protect the Common Area within the jurisdiction of the Association against foreclosure.

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(e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities and other Amenities on the Common Area within the jurisdiction of the Association.

(f) Actions contemplated under subparagraph (a) and (b), above shall not be taken without the consent of the Declarant. The instrument effecting such dedication, transfer, conveyance or mortgage shall be sufficient if executed by an appropriate officer of the Association and the Declarant.

Section 5.2. Declaration of Use. Any Member may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property and to his guests and invitees.

Section 5.3. Suspension of Rights of Use. Any Member's right to use and enjoyment of Common Areas may be suspended during any period in which that Member is in default in payment of any annual or special assessment levied by the Board of Directors, as provided in the Bylaws. Such rights may also be suspended for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area.

Section 5.4. Title to the Common Area. Declarant may (at Declarant's sole option) dedicate and convey to the Association (by deed without warranty) the fee simple title to the Common Area, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other encumbrances and mineral interests outstanding and of record in Watauga County, North Carolina. Common Area may be conveyed by Declarant to the Association in whole or in part from time to time.

Section 5.5. Leases. No Owner shall allow that Owners' Lot to be occupied by persons other than the Owner and the Owners' immediate family, without first notifying the proposed Lessee or occupant in writing that the use of the premises is subject to this Declaration. The Owner shall secure from the Lessee a written agreement to abide by all of the covenants, conditions and restrictions contained in this Declaration and the Owner shall furnish the Association an executed copy of such written agreement upon written request. Costs to enforce to be paid by Owner.

Short term rentals are specifically permitted, provided that all rental agreements shall have a minimum term of one week. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. Any lease on any Living Unit shall provide that the Lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

Section 5.6. Notice of Sale. In the event an Owner sells such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale, the name of the purchaser of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably request.

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ARTICLE 6COVENANT FOR ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. Every Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association

- (a) Annual assessments or charges which are common expenses;
- (b) Special assessments for capital improvements; and
- (c) Special assessments for amounts incurred by the Declarant or the Association for Lot Owner's non-compliance with this Agreement.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall constitute a lien upon the Lot and improvements thereon when filed of record in the appropriate office of Ashe County. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The Owners of each Lot shall share all assessments equally, except as otherwise provided in this section.

Section 6.2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration applicable to the Properties and promoting the enjoyment and welfare of the Owners of Lots, and in particular, but without limitation, for the (i) development and maintenance of the Common Area; (ii) payment of premiums for hazard insurance in connection with the Common Area, and any Amenities thereon and public liability and other insurance of such Association; (iii) paying the costs of labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Common Area; (iv) carrying out the duties of the Board of such Association, as set forth in Article 8; and (v) carrying out the purposes of such Association as stated in its Articles of Incorporation, Bylaws, and as stated herein or in any applicable Supplemental Declaration.

Section 6.3. Amount of Annual Assessment

(a) Declarant's Obligation for Assessments. During the Declarant Control Period, Declarant shall be obligated to pay the difference between the amount of annual assessments levied on all Lots not owned by Declarant subject to assessments and the amount of actual

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common expenses incurred by the Association during the fiscal year. Upon termination of the Declarant Control Period, Declarant shall pay any assessments levied on Lots which it owns pursuant to the terms and provisions of this Article.

(b) Computation of Annual Assessments. The Association may set the annual assessment at such amount as it deems reasonable, including an amount sufficient to enable the Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of annual assessments for common expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

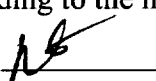
Based upon the initial budget for the Association, the initial annual assessment for all Lots for the fiscal year beginning July 1, 2007 shall be in the amount of \$750.00. During the Declarant Control Period, the annual assessments may not be increased by an amount greater than 10% per year. As provided for above, during the Declarant Control Period, Declarant shall be obligated to pay the difference between the amount of annual assessments levied on all Lots subject to assessment and the amount of actual expenses incurred by the Association during the fiscal year.

(c) Decrease of Annual Assessment. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the Amenities, and the necessary fixtures and personal property related thereto; provided that during the Declarant Control Period, no special assessment shall be valid unless approved by the (i) members entitled to cast a majority of the total Class A votes in the Association and by the (ii) Declarant. Following termination of the Declarant Control Period, any special assessment levied by the Association shall automatically become valid and effective unless vetoed by a simple majority of the total Class A votes and the Class B votes in the Association. Special assessments shall be payable in such manner and at such times as the Board may determine, and may be payable in installments extending beyond the fiscal year in which the special assessment is levied. Special assessments shall be levied equally on all Lots.

Section 6.5. Rate of Assessments. The annual assessment and special assessments shall be fixed at a uniform rate for all Lots.

Section 6.6. Date of Commencement of Annual Assessments. Unless postponed by the Declarant, as provided in section 6.2 of this Article, the annual assessments provided for herein shall commence as to any Lot on the first day of the first month following the subjection of the Lot of this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall

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fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto not later than thirty (30) days following each establishment thereof. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certification in writing signed by an officer of Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

With respect to Declarant, during the Declarant Control Period, Declarant shall not be obligated to pay assessments but rather shall be obligated to pay the difference between the amount of annual assessments levied on all Lots not owned by Declarant subject to assessment and the amount of actual common expenses incurred by the Association during the fiscal year. Upon termination of the Declarant Control Period, Declarant is obligated to pay assessments for each Lot owned by Declarant.

Section 6.7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments that are not paid when due shall be delinquent. The assessment shall constitute a lien upon the subject Lot until paid. If the assessments are not paid within thirty (30) days after the due date, assessments shall bear interest from the date of delinquency at the lesser of (i) the highest lawful rate or (ii) twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 6.8. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. A sale or any transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot to a party unrelated to the subject Owner pursuant to foreclosure of a first mortgage or deed of trust or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof.

Section 6.9. Management of Funds. The Association, subject to the provisions of this Declaration, shall manage all funds collected through Assessments. Disbursement of funds collected from Lot Owners shall be as directed by the Board of Directors.

ARTICLE 7

MAINTENANCE OF PROPERTIES

Section 7.1. Maintenance of Common Areas. Maintenance of Common Areas, and all Amenities and structures located therein shall be supervised by the Association. Funds for such maintenance shall be supplied from the annual assessment.

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Section 7.2. Maintenance of Lots. If in the opinion of the Board, an Owner fails to maintain the Owner's Lot in a neat and orderly condition or otherwise neglects his property and allows unsightly conditions to develop, the Board, after thirty (30) days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to; the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting or repair of structures located on the property. The Board may bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Upon failure to pay said bill, the Board shall have a lien against said property and enforce said lien by action at law. Alternatively, or in addition to the above, the Board shall have all remedies available at equity to require the specific performance of an Owner's obligation to maintain that Owner's Lot in a neat and orderly condition.

Section 7.3. Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the recordation of any other instrument subjecting any land in the Properties to protective covenants, conditions or restrictions or other provisions shall obligate or require (i) Declarant to grant any right, power, duty or privilege of any nature or kind to the Association or to any other entity except as expressly set forth herein, or (ii) Declarant to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

ARTICLE 8

GENERAL POWERS AND DUTIES OF THE BOARD; ARCHITECTURAL CONTROL AND INSPECTION

Section 8.1. Powers and Duties of the Board of an Association. In addition to those rights and duties set forth in Article V, the Board of the Association, for the mutual benefit of the Owners of such Association, shall have the following powers and duties:

(a) To improve, maintain or cause to be maintained the Common Areas, including, but not limited to, planting, mowing, pruning, fertilizing, preservation and replacement of the landscaping, and the upkeep and maintenance of the road system located within the development, together with the signs, lighting, and planting boxes located in such Common Area.

(b) To protect the view rights of the Owners and residents of the Lots

(c) To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Area;

(d) To make reasonable rules and regulations for the use and operation of the Common Area and the Lots, and to amend them from time to time, provided that if such amendment is proposed prior to January 1, 2014, such amendment must also be approved by Declarant before it may become effective;

(e) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Area;

(f) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Area

(g) To borrow funds to pay costs of operation of such Association, which borrowings may be secured by assignment or pledge of rights against Owners who are in default in

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regard to the payment of assessments due to the Association or by liens on other Association assets, if the Board of the Association sees fit;

h) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(i) To sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(j) To make available to each Member of the Association within ninety (90) days after the end of each year an annual report and, upon the written request of the Members of the Association holding at least three-fourth (3/4) of the eligible votes of the Association at such time, to have such report audited (at the expense of such Association) by an independent certified public accountant, which audited report shall be made available to each Member of the Association within thirty (30) days after completion;

(k) Subject to the terms hereof, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members of the Association in proportionate amounts to cover the deficiency;

(l) To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws of the Association, or the Articles of Incorporation of the Association to the Association and not reserved to the Members of such Association or Declarant by other provisions of this Declaration any applicable Supplemental Declaration, the Bylaws of such Association or the Articles of Incorporation of such Association

(m) To declare the office of a Member of the Board of the Association to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of such Board;

(n) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as the Board of such Association may deem necessary, and to prescribe their duties and to set their compensation;

(o) To retain the services of legal and accounting firms; (p) To enforce the provisions of this Declaration, and any applicable Supplemental Declaration and any rules made hereunder or under any such applicable Supplemental Declaration and to enjoin and/or, in its discretion, seek damages or other relief from any Member of such Association for violation of such provisions or rules;

(q) To contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of such Association, of services which the Association is otherwise required to perform pursuant to the terms hereof or pursuant to any applicable Supplemental Declaration, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board of the Association may deem proper, advisable and in the best interest of such Association;

(r) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or under any applicable Supplemental Declaration, for the operational protection of the Association or for the enforcement of the controls, covenants, conditions, restrictions and development standards contained herein; and

(s) To set assessments, whether annual or special, as provided herein.

Section 8.2. Architectural Control. Declarant or the Architectural Committee may establish and from time to time modify architectural standards for the control of the design

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and materials of all Structures and other work within the Properties. Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, Buildings, outbuildings, garages, carports, gazebos, swimming pools, tennis courts, fences, walls, screen (whether by plants or structures) and other structures (individually a "Structure" and collectively "Structures"), shall be undertaken upon the Properties unless the site plans, building plans, and specifications therefore, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to Declarant or, at such time as it is established, to the Architectural Committee or its agent, and expressly approved in writing. No grading, excavation, tree removal (except as provided herein) or change of exterior color or other work which in any way alters the exterior appearance of any Structure or Lot shall be done without the prior approval of Declarant. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Declarant or the Architectural Committee. All exterior paint and stain finishes and combinations and prefinished exterior materials must receive the prior written approval of Declarant or the Architectural Committee.

As long as the Declarant owns a Lot, or until Declarant relinquishes its authority hereunder, the Declarant shall have jurisdiction over all construction and landscaping decisions. The Declarant shall review plans and specifications for all proposed construction and landscaping projects, shall be the conclusive interpreter of the Building Guidelines, and may, but shall not be obligated to, promulgate additional design standards and review procedures as it deems appropriate.

The extent of discretion reserved to Declarant in approving and rejecting Architectural Prints is broad and will cover not only matters treated elsewhere in these restrictions, but other matters deemed by Declarant to be appropriate from time-to-time, including considerations that are aesthetic and subjective, to assure a proper mix, coordination and blending of house design, exterior material and color treatments, and placements of houses on Lots within the Properties, and to maintain height and view control.

Initially, the Architectural Committee shall have jurisdiction over those responsibilities, if any, delegated to it by the Declarant. After the Declarant relinquishes its authority hereunder, the Architectural Committee shall assume jurisdiction over all construction and landscaping decisions. As the Declarant's successor, the Architectural Committee shall review plans and specifications for all construction, modifications, landscaping and shall become the conclusive interpreter of these Building Guidelines, and may promulgate additional design standards and review procedures consistent with these Building Guidelines. Until the Declarant relinquishes its authority, the Declarant will appoint the members of the Architectural Committee. Neither the members of the committee nor the designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. While "Building Guidelines" are intended to provide a framework for construction and modifications, they are not all-inclusive. In review process, the Architectural Committee may consider the quality of workmanship and design, compatibility of design to existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Reviewer decisions may be based on purely aesthetic considerations.

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Each Owner shall, prior to the commencement of any construction, submit in sequence to the Architectural Committee the following materials: "Architectural Prints", "Landscape Plans", and Construction Schedule. Other information, data and drawings as may be reasonably requested including, without limitation, irrigation systems, drainage, lighting and other features. Owners shall obtain from Declarant or Association the current "Building Guidelines" describing specifics of prohibited materials, colors, etc. All construction shall meet Federal, State, County and City specifications.

Declarant or the Architectural Committee, as may be appropriate, shall, in writing, within sixty (60) days after actual receipt (acknowledged by certified mail or acceptance in writing of hand delivery) of each fully completed and adequate required submittal which it deems complete, approve, reject or approve, subject to change, such Architectural Prints, Landscape Plans and Construction Schedule, as are submitted to it as required above. After approval, any change in location, plot plan, exterior colors or exterior materials must be re-submitted for approval. Failure to obtain approval of Declarant or the Architectural Committee, as may be appropriate, of all such Architectural Prints, Landscape Plans and Construction Schedule shall be deemed a material breach hereof and Declarant or the Architectural Committee shall then have the right, in addition to any other rights permitted by law or in equity, to proceed in the courts to obtain a mandatory injunction requiring any construction done without said approval to be torn down or removed forthwith.

At the time the Owner makes its initial submittal to Declarant or the Architectural Committee as provided above, Declarant or the Architectural Committee shall require that the Owner submit a refundable damage deposit in an amount reasonably established by Declarant or the Architectural Committee, which amount shall not exceed \$ 1500.00. This deposit, which shall be placed in the account of the Association, shall be used to repair any damage caused by the Owner's construction activities to streets or adjoining common areas. If any damages caused by the Owner's construction activities including without limitation damaged street paving and/or damaged foliage, the Owner shall be responsible to pay for any repairs, and such payments may be made from the Owner's damage deposit.

If any damage is caused by a Owner's construction activity to streets or adjoining Common Area amenities, including without limitation, damaged curbs, damaged street paving, and/or damaged foliage, the Owner is responsible to pay for any repairs.

In general, no exterior alterations or additions to Buildings or other Structures shall be considered for approval unless such alterations or additions are in harmony with existing Structures, as to style, shape, color and size. The architectural plans for such alteration or addition must be drawn and sealed by a registered architect or engineer. However, this section shall not be construed to mean that Declarant or the Architectural Committee shall have to approve a proposed alteration or addition that meets the above criteria.

In general, the construction of fences, walls and other Structures and the planting of screens will not be permitted if in the opinion of Declarant or the Architectural Committee such construction or planting constitutes an unreasonable obstruction of the view of another Owner.

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In the event that Declarant or the Architectural Committee fails to approve or disapprove the Architectural Prints, Landscape Plans and Construction Schedule within sixty (60) days after said documents have been submitted and actually received (with the Owner having the burden of proving actual receipt), such requested level of approval will be deemed granted, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by Declarant or the Architectural Committee if they contain erroneous data or fail to present adequate information upon which Declarant or the Architectural Committee, as the case may be, can arrive at a decision. Receipt of the plans should be acknowledged by FedEx or certified, or a signed receipt of some kind.

The Declarant and/or the Architectural Committee shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials. Each Owner within thirty (30) days of completion of construction shall file with association a complete "As Built" survey prepared by a North Carolina registered surveyor or engineer, locating thereon all improvements (including, but not limited to, sewer, water and all drainage improvements), Lot lines, easements, rights of way, and dedications, if any, to verify conformity with the approved plans.

Variances may be granted where circumstances, including but not limited to, topography, natural obstructions, environmental considerations, or hardship, require deviation from the Building Guidelines. Such variances shall be limited in scope and number, allowing no more deviation from the Building Guidelines than is necessary to circumvent the obstacle to the proposed design. No waiver shall be effective unless in writing.

Declarant's or the Architectural Committee's review of plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Declarant nor the Architectural Committee assumes liability or responsibility therefore for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Committee, the Board, nor officers, directors, members, employees, and agents of any of them shall be held liable or responsible for damages to anyone submitting plans to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans. Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against Declarant, the Association, the Architectural Committee, the Board or the Officers, Directors, Members, Employees and Agents or any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and cause of action not known at the time the release is given.

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Section 8.3. Liability Limitations. Neither Declarant, nor any Member nor any Board nor any directors on any Board (or any one of them) nor the officers (if any) of Declarant or of the Association nor any Member of the Architectural Committee and/or any other committee established by the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of an Association or otherwise. Neither Declarant, the Association, nor the directors, officers, agents or employees of either thereof shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements of portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board of the Association and all Members of the Architectural Committee from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of the Association and/or such Architectural Committee of their duties and obligations, except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person.

Section 8.4. Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Association, as the same may be amended from time to time, are fully incorporated into this Declaration by reference.

Section 8.5. Declarant Rights in the Association. For so long as the Declarant owns one or more Lots in the Properties, the Board shall have no authority to, and shall not undertake any action, without the prior written consent of the Declarant or its agent expressly authorized for such purpose, which shall:

(a) Prohibit or restrict in any manner the sales and marketing program of the Declarant or restrict or limit in any manner the use by the Declarant of any portion of the Properties for the sale and/or resale of Lots or improvements thereupon;

(b) Decrease the level of maintenance services of the Association provided by the Board so long as Class B voting rights exist;

(c) Make any special or individual assessment or impose any fine upon the Declarant's Lots or the Declarant;

(d) Modify, amend or alter the recorded plats of the Properties;

(e) Terminate or cancel any contracts of the Association entered into by the Board during the period which any Class B voting membership exists;

(f) Terminate or waive any rights of the Association under this Declaration;

(g) Convey, lease, mortgage, alienate or pledge any easements or any part of the Common Area;

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(h) Accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;

(i) Terminate or cancel any easements granted hereunder or by the Association;

(j) Terminate or impair in any fashion any easements, powers, or rights of the Declarant hereunder;

(k) Restrict the Declarant's right of the use, access, and enjoyment of any the Properties;

(l) Cause the Association to default on any obligation under any contract or this Declaration;

(m) Change or amend any of the rules governing the Common Areas or the Lots;

(n) Restrict in any respect the use by the Declarant of any office or other facility in the Properties for any purpose, including managing or operating the Association.

Section 8.6. Notice of Meetings. Notice of all Association meetings shall be provided to all Members by hand delivery or U.S. Mail not less than ten (10) days or more than sixty (60) days in advance of the applicable meeting. Each Member shall be responsible for insuring that the Member has provided the Association with the Member's current notice address.

ARTICLE 9

RULES AND REGULATIONS

Section 9.1. Common Area. The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a book of resolutions that shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 9.2. Rules and Regulations for Parking of Vehicles. The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce rules and regulations concerning the parking of any type of vehicle on the Properties, including Common Areas. Said rules may provide, without limitation, the following:

(a) A definition of a "recreational vehicle" and regulations covering the parking of recreational vehicles on public and private streets, roads, avenues, ways, parkways, thoroughfares cul-de-sacs etc. and

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(b) That campers, motor scooters, motorcycles, motorbikes, aircraft, (including lighter than air craft), boats, trailers, trucks and commercial vehicles of any kind that the Board designates cannot be parked on a private street or streets, etc., within the development, or in any Common Area or on any Lot, except in areas designated for that purpose, if any; and

(c) That major vehicle repairs are prohibited and minor repairs must be completed within 24 hours and that repaired vehicles may not remain parked longer than a 24-hour period. Also, all motor vehicles parked on private streets or in Common Area are to have currently valid license plates issued by a state in the United States and insurance coverage which satisfies North Carolina Department of Transportation requirements for insurance coverage of motor vehicles licensed in the State of North Carolina.

ARTICLE 10

MAINTENANCE REQUIREMENTS AND USE RESTRICTIONS

Section 10.1. Lot Size and Setbacks. A Lot shall have a width and the minimum building set back line and an area that meets the minimum requirements of the applicable municipal or county ordinances. Adjustments may be made in the line between two Lots so long as the area of any Lot is not reduced by more than ten percent (10%), the adjustments do not violate the applicable municipal or county ordinances, and other restrictions herein set forth are observed. Upon any recombination of Lots, the setbacks and side line clearances from new Lot lines shall be applicable and set backs from former Lot lines shall no longer be required. No combination of Lots shall increase the number of Lots above the number existing before recombination, except as hereinafter set forth.

Unless otherwise modified or amended with the consent of the Declarant, the setback requirements for all structures placed on Lots shall comply with Ashe County standards with respect to single family subdivisions.

Section 10.2. Land Use. No Lot shall be used except for residential purposes; provided, however, that nothing herein shall prevent the conversion of portions of Lots to public or private streets. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two (2) stories in height and outbuildings incidental to residential use, provided, however, that Declarant reserves the right to use any dwelling located on a Lot as an office and/or model which may be shown to prospective purchasers of units. All buildings and other structures must be in compliance with the Declaration.

Section 10.3. Leasing. Dwellings located on Lots may be leased for single family residential purposes or may be leased on a short term rental basis. Provided, that short term rentals shall have a minimum term of one week. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association. The lease shall obligate the tenant to comply with the foregoing.

Section 10.4. Dwelling Size and Height. No dwelling shall be permitted on any Lot unless the dwelling has, exclusive of decks, porches, breezeways, steps, and garages, at least

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2,000 square feet of heated space, with a minimum of 1,500 square feet above the basement level of the dwelling.

For purposes of computing the square feet area, the area of the building that is completely enclosed, under roof and protected from weather and is intended as the living quarters of the home shall be considered as measured from outside surfaces of the enclosed walls. All garages, carports, entrance ways, exterior walkways, covered, open-air porches and patios, etc. shall not be considered in computing the square footage of the ground floor area.

Section 10.5. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear 15 feet of each Lot and along 15 feet of each side Lot line. In the event that the Owner of any Lot shall acquire land adjacent to and in the rear of such Lot, such Lot Owner, with the Declarant's consent, may relocate the easement herein established over the rear line to conform to the increase in the size of his Lot, provided that alteration in drainage does not thereby adversely affect the drainage of any other Lot or interfere with the rights of the Owners of other property within this subdivision to services rendered by the easement herein created. Such relocated easement shall be the same width as the original easement. A map of such relocated easement shall be recorded at the Ashe County Register of Deeds Office.

Section 10.6. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, Owners may permit a temporary construction trailer to be located on the Lot during construction activities, provided that a permit has been obtained from the Association, and such trailer shall be removed within five (5) days following completion of construction. Such permits shall require renewal every 3 months.

Section 10.7. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other usual and common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All animals when off the applicable Owner's Lot shall be kept on a leash of not more than six (6) feet at all times. Further, the owner of such animal shall be responsible for curbing their animal when the animal is off their Lot. Pets must be maintained in such a manner that the pets do not make an unreasonable amount of noise. At no time shall a pet create a health or safety hazard or unreasonably interfere or inconvenience other Owners. All pets are to be vaccinated, registered and licensed with the County.

Section 10.8. Utility Yard. Garbage cans and maintenance equipment of any kind shall be kept in a screened utility yard and not visible from the street or an adjacent Lot.

Section 10.9. Obstruction to Sight Lines. No fence, sign, wall, planted hedge or shrub which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot or tract within the triangular area formed by the street property lines and the line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight lines limitations shall

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apply on any Lot or tract within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of intersections unless the foliage line is maintained at sufficiently low height to prevent obstruction of such sight lines.

Section 10.10. Signs. No sign of any kind, except an owner and street number identification, of no more than five (5) square feet in size shall be displayed to the public's view on any Lot. During construction, not more than two (2) professional signs of not more than five (5) square feet will be allowed with prior written approval of the Declarant or Architectural Committee.

Section 10.11. Lighting. All exterior lighting shall either be indirect or of such controlled focus and intensity so as not to disturb residents of adjacent or nearby Lots, as determined by Declarant. All Owners and residents are hereby advised that all exterior lighting, ornamental post lights and other ornamental yard decorations located or proposed to be located on any Lot are subject to the prior written approval of Declarant in its sole discretion.

Declarant reserves the right to have street lights installed in the development, and the service charges and maintenance associated with said street lights shall be a common expense of the Association, in addition to, and separate from the Assessments.

Section 10.12. Duty of Maintenance. The Owner of each Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep that part of the Properties owned by such Owner, including Structures thereon, ground and drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of this Declaration (to the extent applicable) and of any applicable Supplemental Declaration and in a first-class, well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste; including prompt restoring of trash containers left out for pick-up;
- (2) Lawn mowing on a regular basis;
- (3) Tree and shrub pruning
- (4) Keeping lawn and garden areas alive and well maintained, watering by means of a lawn sprinkler system and/or adequate hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order;
- (6) Removing and replacing any dead plant material within thirty (30) days;
- (7) Keeping vacant land well maintained and free of trash and weeds;
- (8) Keeping parking areas and driveways in good repair;
- (9) Complying with all governmental health and police requirements;

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(10) Repainting of Structures

(11) Repair of exterior damage to Structures; and

(12) Lot Owners to maintain the property all the way to the road or street including mowing and leaf removal.

Section 10.13. Tree Cutting. Unless located within fifteen (15) feet of a main residential Building or accessory building or within fifteen (15) feet of an approved Structure site, no trees, shrubs, bushes or other vegetation having a trunk caliper of twelve (12) inches or more at a point two feet above the ground level may be cut, pruned, mutilated or destroyed at any time without the prior written approval of Declarant or, if designated, the Architectural Committee. Dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the Owner thereof after such dead or diseased condition is first brought to the attention of Declarant or the Architectural Committee and written permission for such cutting and removal has been obtained. Absolutely NO burning of brush or removed trees, etc. is allowed.

It is the intention of Declarant, for the benefit of all owners of Lots, to maintain as many trees as possible. Provided, that it is also the intention of Declarant that lot owners shall be entitled to cut trees in order to clear a view on their property, provided that any trees having a trunk caliper of twelve (12) inches or more at a point two feet above the ground may not be cut without the prior written approval of Declarant. Accordingly, except as necessary for the construction of improvements on the Lot, no tree currently existing or hereafter planted shall be cut without the consent of Declarant; provided, however, trees which are diseased shall be treated, if practical, or removed by the Lot owner.

Section 10.14. Construction: Commencement, Rules, Completion of Construction Activity and Bond Requirement. Prior to the commencement of construction activity at a Lot, the contractor shall provide to Declarant or Architectural Committee

- (a) proof of a valid North Carolina General Contractor's license and
 - (b) proof of insurances, including but not limited to, general liability insurance and workman's compensation and
 - (c) shall place a dumpster on the Lot for the receipt of trash and construction debris.
- In no event shall the contractor or Owner burn any trash or construction debris.

All construction shall be conducted between the hours of 8:00 am and 6:00 pm and shall not be carried out so as to create noise in excess of the levels reasonably and necessarily created by residential construction activities. Construction may be carried out on weekend days and holidays only with the prior approval of the Declarant. Each general contractor, contractor, builder or other person or entity which is contracted with, hired or otherwise retained by or on behalf of any Lot Owner, to construct a residence on any Lot must be approved in advance by Declarant, and must sign and adhere to all regulations in the Construction Agreement.

The exterior of all Buildings, Structures or other improvements must be completed within one (1) year after commencement of construction, except where, in the sole discretion of the Board, such completion within one (1) year is not possible or would result in great hardship to the Owner or builder due to strike, fire, national emergency or natural calamity.

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To ensure the timely completion of construction and the compliance with the terms of this Declaration, the Architectural Committee may require in its discretion, as a condition of Architectural Committee approval of submitted plans, that the Owner provide a construction bond, in form and content satisfactory to the Architectural Committee.

Section 10.15. Electronic Monitoring Systems. In order to preserve the tranquility and peacefulness for all of the Owners, no audible siren, horn, bell, or other noisemaking device shall be permitted in connection with an electronic monitoring or alarm system. All electronic monitoring or alarm systems shall use silent or inaudible alarms (i.e. electronic notice to a central station). No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

Section 10.16. Colors. No exterior colors on any Structure shall be permitted that in the sole judgment of Declarant or the Architectural committee would be inharmonious or discordant or incongruous. The Architectural Committee must first approve any future exterior color changes desired by an Owner.

Section 10.17. Factory Built Structures. No structure of any kind of what is commonly known as "factory built", "modular", "mobile home", "Butler", or "Morton" type construction shall be erected on any Lot.

Section 10.18. Log Homes. It is the intention of Declarant that log homes shall be permitted, subject to architectural approval as provided for in Article VIII of this Declaration.

Section 10.19. Underground Utility Lines. All electric, telephone, gas, cable television and other utility lines shall be installed underground.

Section 10.20. Trucks, Commercial Vehicles, Recreation Vehicles, Mobile Homes, Boats, Campers & Trailers.

(a) No commercial truck, van or other commercial vehicle of any kind shall be permitted to be parked on any Lot for a period of more than twenty-four (24) hours unless such vehicle is necessary in the actual construction and/or maintenance activities taking place on that Lot.

(b) No truck, pick-up truck, "el Camino" type truck, recreation vehicle, van or vehicle other than a non-commercial four (4)-wheel passenger automobile, shall be permitted to be parked overnight on any Lot unless same is fully enclosed inside a Structure.

(c) None of the aforementioned vehicles shall be used as a domicile or residence, either permanent or temporary.

(d) Paragraphs (a) through (c) shall not be deemed to prohibit any temporary facility otherwise permitted pursuant to this Declaration.

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(e) The use of all-terrain vehicles, three-wheelers, mopeds and motorized dirt-bikes on any Lot and on the Common Areas shall be prohibited.

(f) Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of garage parking spaces serving their Lot, all vehicles shall be parked within such garage parking spaces. All parking shall be subject to such rules and regulations as the Board may adopt.

(g) No towed vehicle, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, truck with camper top, truck (except sport utility vehicles), commercial vehicle, motorcycle, minibike, scooter, go-cart or similar recreational vehicle shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than forty-eight (48) consecutive hours. The intent of this provision is that the aforementioned vehicles may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from a Lot to break the continuity of the forty-eight (48) consecutive hours shall not be sufficient to establish compliance with this restriction. Any such vehicle shall be considered a nuisance and may be removed from the Community by an Association Officer.

(h) Trucks or other vehicles with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be subject to the restrictions contained in this paragraph provided such vehicles are used on a regular basis for transportation and the camper is stored out of public view and inside an enclosed structure upon its removal from the vehicle.

(i) No house trailer, mobile home, camper, boat trailer, or similar wheeled vehicle shall be stored or parked on any Lot except in a closed garage or within the fence, wall or enclosed portion on such Lot and any such fence, wall or other enclosure shall be subject to approval by the Architectural Control Committee, with the exception of reserved rights of the Declarant.

Section 10.21. Casualty Destruction to Improvements. In the event that a Structure or other improvement is damaged or destroyed by casualty loss or other loss, then within a reasonable period of time after such incident, as determined by Declarant, the Owner thereof shall either commence to rebuild or repair the damaged Structure or improvement and diligently continue such rebuilding or repairing until completion or properly clear the damaged Structure or improvement and restore or repair the Lot in a manner aesthetically satisfactory to Declarant. As to any such reconstruction of a destroyed Structure or improvement, the same shall only be replaced with Structures or improvements as are approved by Declarant or the Architectural Committee as provided herein. In addition to and without limiting rights provided Declarant and the Association in Section 12.1 below, in the event any Owner fails to repair or raze any damaged Structure, the Declarant and the Association may, at their discretion, secure such damaged structure to prevent a health and safety concern and/or may screen such damaged structure to the extent practical. The owner absorbs the full cost of replacement and must begin rebuilding within 30 days of the receipt of the proceeds.

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Each Owner shall be obligated to maintain a hazard insurance policy in an amount equal to no less than the full cost of replacement of all improvements on the Lot and shall be obligated to furnish proof of said insurance to Declarant and the Association.

Section 10.22. Quiet Enjoyment. No noxious activity, trade or business of any sort shall be carried on upon any Lot that might cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Nor shall anything be done that will cause any noise nor other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. This would include but not be limited to any behavior disrespecting the rights of others, flashing and excessively bright lights, racing, loud vehicles, significantly loud electronic music, wind chimes, distractions or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of Property by others who are not participating in such activities.

No behavior shall be permitted which is inconsistent with both the reasonable pleasurable use of the property by owners and their reasonable expectations of vacationing, year-round living, studying or working free from noisy behavior disrespecting the rights of others, flashing and excessively bright lights, racing, loud vehicles, significantly loud electronic music distractions or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of Property by others.

The use of power lawn movers, tractors, grass trimmers, chain saws and other electric and/or gasoline-powered engines used for lawn maintenance shall be prohibited before 8:00 am and after 8:00 pm or sundown, whichever is sooner. Garage and yard sales are expressly prohibited.

Section 10.23. Parking. Parking on streets, roads, and rights-of-way shall be strictly prohibited. Vehicles shall not be parked on any portion of a Lot other than the driveway and the garage. All parking shall be subject to such rules and regulations as the Board may adopt.

Section 10.24. Drainage. It shall be the obligation of the property Owner to provide, install and maintain adequate culvert and drainage pipe beneath dwelling as it crosses the ditch line at the back, front or side of Owner's Lot in order that the natural flow of drainage will not at any time be blocked along the street. The culvert or drainage pipe must be of sufficient size to accommodate the flow of surface water in the ditch and in no instance shall the drainage pipe be less than twelve (12) inches in diameter. No property owner shall interfere with or divert the natural flow of drainage of any creek, stream or river.

Section 10.25. Firearms and Hunting. The use of firearms in the community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bows and arrows, fireworks, slingshots and firearms of all types. No hunting, trapping or fishing will be allowed within the property or within the adjacent property owned by the Declarant under any circumstance. No willful destruction of fish and wildlife and natural resources will be tolerated.

Section 10.26. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to the terms and provisions of this Article, and to inspect for the

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purpose of insuring compliance with the terms and provisions of this Article, the Declaration, Bylaws, and rules and regulations, which right may be exercised by any member of the Board of Directors, the Association, officers, agents, employees, and managers. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition that may increase the possibility of a fire or other hazard.

Section 10.27. No Implied Waiver. The failure of Declarant to object to an Owner or another person's failure to comply with the covenants and restrictions contained herein shall in no event be deemed a waiver by Declarant, or any other Person having an interest herein, of its rights to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

Section 10.28. Subdivision and Replatting of Property. No Lot shall be subdivided, or its boundary line changed, without the written consent of Declarant. Declarant here reserves to itself, its successors or assigns, the right to replat any Lot shown on the plat of any subdivision prior to its sale in order to create a modified building Lot or Lots. The covenants herein shall apply to any of said modified Lots resulting from said subdivision as if the resulting Lots had been originally platted in such manner. No Lot shall be used as access to any other property not a part of the Properties, except as approved by Declarant.

In the event an Owner of more than one Lot desires to combine two or more Lots in order to build a Structure, Declarant reserves to itself and to its successors and assigns to approve said combination. In the event said combination is approved, upon issuance of the certificate of occupancy (CO) for the Structure, the modified Lot shall constitute one (1) Lot for purposes of voting rights and shall be assessed one (1) full assessment.

Section 10.29. Road and Street Access. It is contemplated that the Declarant may construct private drives which will serve as access to two or more Lots and shall be for the exclusive use and benefit of the Lots served by said private drive. In such case, maintenance and repair of the private drive shall be the responsibility of the Owners served by the private drive, and each Owner shall share equally in the costs of maintaining and repairing the private drive.

Section 10.30. Retail, Wholesale, or Repair Service. There shall not be any type of retail, wholesale, or repair service allowed to be operating out of an owner's home.

Section 10.31. Flag Poles. One flagpole is permitted, maximum height of 20 feet with a maximum of two (2) flags or pennants.

Section 10.32. Satellite Dishes. Satellite Dishes shall be permitted, provided that the satellite dish shall not exceed 18" in width, a provided further that the location and placement of the satellite dish shall be approved by the Architectural Committee.

ARTICLE 11

RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Initials 

Any institutional holder of any mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, (g) be furnished with a copy of any insurance policy owned by the Association, and (h) be furnished with at least one copy of the annual financial statement and report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses. The Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to mortgage holders pursuant to this Article.

ARTICLE 12

GENERAL PROVISIONS

Section 12.1. Enforcement. In addition to rights granted elsewhere herein, if any Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration (to the extent applicable) or in any applicable Supplemental Declaration, then the Board of the Association or Declarant may give such person written notice of such failure and such person must within ten (10) business days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered,) perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance otherwise to any person. The Owner of Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by such Association or the Declarant in performing such work computed at the highest lawful rate from the date(s) such amounts are expended until repaid to such Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder and shall reimburse such Association or the Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse such Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by such Association or the Declarant, then, without limitation of any other rights of such Association or Declarant, such Association may issue a special assessment against such Owner.

In addition to the above, and without limiting any similar rights herein granted, the Board may impose fines against any Owner for a violation of the terms and covenants set

Initials nt

forth in this Declaration. The procedures and imposition or assessment of said fines shall be in accordance with the North Carolina Planned Community Act. The fines shall not be construed to be exclusive and shall exist in addition to all of the rights and remedies that the Association may otherwise be entitled. The Board may impose a fine for a violation of the terms and covenants of the Declaration, said violations to include, without limitation, violations of the rules and regulations of the Architectural Committee, violations of the Declaration regarding the proper procedures for obtaining architectural approval, failure to construct any Structure in accordance with the approved plans or in the timely manner required hereunder, or failure to properly maintain the Structures or landscaping on one's Lot.

Section 12.2. Insurance. In the event the Association becomes the owner of any buildings, or other improvements, or personal property, located within the Common Area, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use.

The Board of Directors shall also procure and maintain public liability, errors and omission and property damage insurance, insuring each Member of the Board of Directors; the manager, if any; the Declarant and the Association against any liability to the public or to homeowners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Area and facilities, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The Board of Directors shall determine the amount of such public liability insurance, but in no event shall it be less than \$1 million per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage, as the Board of Directors shall determine from time to time to be desirable and necessary. The Board of Directors as a common expense of the Association shall pay premiums upon insurance policies purchased by the Board of Directors.

Section 12.3. Severability. Invalidation of any one or more of the covenants, conditions or restrictions of this Declaration by judgment or court order by a court of competent jurisdiction shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect to the full extent under applicable law.

Section 12.4. FHA/VA Approval. Notwithstanding any provisions in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of the Properties for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration: Annexation of

Initials MB

additional properties, amendment of the Declaration of Covenants, Conditions and Restrictions, merger and consolidations, dissolution and exchange of Common Areas.

Section 12.5. Term of Declaration; Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded in the Ashe County Registry, after which time they shall be automatically extended for an unlimited number of successive periods of ten (10) years each, unless the Members, by a two thirds (2/3) vote, elect not to so continue the Declaration and record an instrument to that effect. This Declaration may be amended at any time only with both (i) the affirmative vote of a majority of the members of the Association, as described in Article IV, and (ii) so long as Declarant owns any property subject to this Declaration or has an option to subject additional property to this Declaration, only with the consent of the Declarant.

Furthermore, the Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the Owners and hereby reserves the right to act on behalf of the Owners to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any units therein for mortgage or improvement loans made, guaranteed or insured by a governmental agency, including, without limitation, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Housing and Urban Development and Federal Home Loan Mortgage Corporation, or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in units by such agency. A letter from any such agency stating that a change is desired or necessary in order to qualify the Properties or any units for loans eligible to be guaranteed by, insured by or purchased by such agency, shall be sufficient authority for the amendment of this Declaration.

No amendment may remove, revoke or modify any right or privilege of, nor directly or indirectly change the status or rights of, the Declarant without the written consent of the Declarant or its assignee of such right or privilege.

Any amendment shall become effective upon recording in the Ashe County Public Registry; 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 challenge of conditions or circumstances operate to amend any provisions of this Declaration.

Section 12.6. Prohibition Against Association Entering Into Long Term Contract While Declarant in Control of the Board of Directors. Until such time as the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after the occurrence of one of the above events, upon not more than 90 days notice to the other party

Section 12.7. Notice. Whenever notice to an Owner (including Declarant) is required hereunder, such notice shall be in writing and shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If

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notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not.

Section 12.8. Titles. The titles, headings and captions, which have been used throughout this Declaration, are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 12.9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or of the Common Area.

Section 12.10. Statutory Authority. To the extent specific statutory authority for the making of this Declaration shall be deemed necessary, this Declaration shall be construed in accordance with Chapter 47F of the North Carolina General Statutes. Liens for assessments would be asserted as a lien under N.C.G.S. 47F-3-116 if statutory authority is deemed necessary.

Section 12.11. No Reversionary Interest. No provision hereof shall be deemed to vest in Declarant or any other person any reversionary interest in any Lot.

Section 12.12. Reservation of Rights. Declarant reserves the right to determine at Declarant's sole discretion that any rule or restriction contained herein is unreasonable as applied to a certain Lot and Declarant may waive application and enforcement of such rule or restriction. Further, Declarant retains the right to modify the property lines of any Lot while Declarant owns such Lot.

ARTICLE 13

EASEMENTS

Section 13.1. Easements Reserved by Declarant. In addition to other easements indicated herein or on recorded plats or other documents, easements for installation, maintenance, repair and removal of utilities and drainage facilities are reserved by Declarant for itself, its successors and assigns, over, under and across the Lots (other than the portions thereof used as building sites). Full right of ingress and egress shall be had by Declarant at all times over the Lots (other than the portions thereof used as building sites) for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies.

Section 13.2. Easements Appurtenant to Lots. All Common Area, shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Initials mk

Section 13.3. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any condition which arises upon any Lot and that endangers any building or portion of the Common Area.

Section 13.4. Easement for Governmental Agencies. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, public utilities companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 13.5. Emergency Vehicle Access. Neither the Association nor Members shall restrict emergency vehicle access.

Section 13.6. Easements for Use of Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration and any other covenants and easements applicable to such property;

(b) Any easements, restrictions or limitations contained or referenced in the instrument creating the Association's interest in such property;

(c) The Use Restrictions and Rules, which may include rules regulating guest use of the Common Area;

(d) The right of the Association to encumber, transfer or dedicate all or any part of the Common Area;

(e) The right of the Declarant and the Association to grant easements over and otherwise permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests, including, without limitation, resort guests, upon such terms and conditions as the Declarant or the Association deems appropriate; provided, any permanent easement benefiting property outside of the Properties shall contain arrangements for the users to share in a portion of the costs of maintaining and operating the facilities which are subject to such easement;

(f) The right of the Association to limit the number of guests or visitors within the Properties, to require authorized guests or visitors to wear or carry guest passes or similar identification, or otherwise to restrict guest or visitor access to the Properties at certain times preceding and during special events, upon prior notice to the Owners; and

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

Any Owner may extend his or her right of use and enjoyment to the occupants of his Lot and guests, subject to reasonable regulation by the Association. Any Owner who leases his Lot in accordance with the terms of this Declaration shall be deemed to have assigned all

Initials MB

such rights to the lessee of such Lot, subject to the terms of this Declaration and the Use Restrictions and Rules.

Section 13.7. Declarant's Reservation. There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or may become subject to this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of the Declarant, in connection with the orderly development of the Property.

Section 13.8. Common Area in New River Crossing Subdivision. Declarant is the owner of two parcels of land located in New River Crossing Subdivision designated as Tract A containing 1.16 acres and Tract B containing 3.24 acres as shown on that certain plat recorded in Plat Book 6, Page 392, Ashe County, North Carolina, Public Registry. Declarant is also the Declarant under the terms and provisions of the Declaration of Covenants, Conditions and Restrictions for New River Crossing recorded in Book 353, Page 2018, Ashe County, North Carolina, Public Registry. Pursuant to the terms and provisions of said Declaration, Declarant has reserved the right to dedicate and establish Tracts A and B as common area to be used in common between lot owners in Elk Creek Mountain Subdivision and lot owners in New River Crossing Subdivision. It is Declarant's intention to deed Tracts A and B to the Association and dedicate Tracts A and B as common area for Elk Creek Mountain Subdivision and New River Crossing Subdivision, with said common area to be maintained pursuant to an agreement between the Association and the New River Crossing Property Owners Association, Inc.

ARTICLE 14

DECLARANT'S RIGHTS

Any right of consent, review or approval of or by Declarant under this Declaration shall be determined by Declarant in its sole discretion and may be unreasonably withheld. Any or all of the special rights and obligations of the Declarant set forth in this Declaration may be transferred or assigned in whole or in part 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. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant.

The Declarant and builders authorized by the Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and builder that it may authorize shall have easements for access to and use of such facilities.

The Declarant and its employees, agents and designees shall also 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.

Initials MT

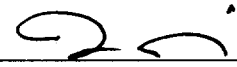
No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

In addition to its specific rights hereunder, the Declarant shall have the right to enforce the provisions of the Governing Documents in the same manner as the Association. Any entry upon a Lot for such purpose or for the purpose of inspecting to verify compliance shall not be deemed a trespass.

Notwithstanding any contrary provision of the Declaration, no amendment to or modification of any rules and regulations or Building Guidelines shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any property that is subject to or may become subject to this Declaration.

This Article may not be amended without the written consent of the Declarant. The right contained in the Article shall terminate upon the earlier of (a) 30 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity within the Properties has ceased.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be duly executed the day and year first above written.

DECLARANT: 
PROPERTIES
WMHH/LLC,
a North Carolina Limited Liability
Company
By: 
Its: 

STATE OF NORTH CAROLINA

COUNTY OF Watauga 

I, a notary public of said County and State, do hereby certify that Mark Hamill personally appeared before me this day and acknowledged that they are Member-Managers of WMHH/LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the LLC the foregoing instrument was signed and sealed in its name by them as its Member-Managers.

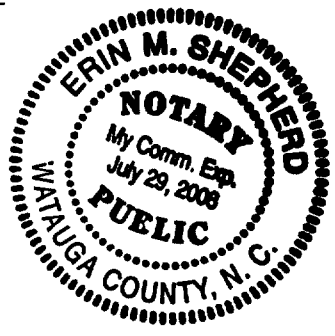
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WITNESS my hand and official seal this the 28 day of November, 2006.

Erin M. Shepherd
Notary Public

My commission expires:

NOTARIAL SEAL:



Initials ms

EXHIBIT A

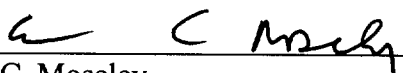
BEING all of Lots 1 through 29, Phase One, Elk Creek Mountain, and located in Elk Township, Ashe County, North Carolina and more particularly shown on Map or Plat No. 06147 entitled "Final Plan of Phase One Lot 1 through Lot 29 of Elk Creek Mountain" dated October 16, 2006 and revised November 2, 2006 prepared by Russell C. Shaw, PLS No. L-2899, and recorded in Plat Book 6, Page 437, of the Ashe County, North Carolina Public Registry, reference to which is hereby made for a more complete description of the property.

This conveyance is made subject to the following exceptions:

1. Declaration of Restrictions recorded in Book 357, Page 644, Ashe County, North Carolina, Public Registry.

BK: 00358 PG: 0904

The undersigned, Allen C. Moseley, who drafted this instrument, has corrected an obvious typographical or other minor error in the same, initialed the correction and re-recorded the instrument pursuant to the provisions of N.C.G.S. 47-36.1, this 15th day of December, 2006.



Allen C. Moseley

BK: 00371 PG: 1882

FILED
ASHE COUNTY
SHIRLEY B. WALLACE
REGISTER OF DEEDS

FILED	Sep 11, 2007
AT	03:29:43 pm
BOOK	00371
START PAGE	1882
END PAGE	1884
INSTRUMENT #	06697

PREPARED BY AND RETURN TO: Deal, Moseley & Smith, LLP, P. O. Box 311,
Boone, NC 28607

NORTH CAROLINA

ASHE COUNTY

SUPPLEMENTARY DECLARATION OF
RESTRICTIONS FOR ELK CREEK MOUNTAIN

THIS SUPPLEMENTARY DECLARATION OF RESTRICTIONS, made this 7th day of
September, 2007, by WMHH Properties, LLC, hereinafter called "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant previously filed that certain Declaration of Restrictions for Elk Creek Mountain, which Declaration is recorded in Book 357, Page 644 and re-recorded in Book 358, Page 869, Ashe County, North Carolina, Public Registry; and

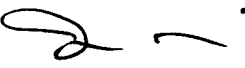
WHEREAS, paragraph 1-2 of the above-referenced Declaration provided that additional land within the area described in Exhibit A of said Declaration may be annexed to the Property submitted to the terms and provisions of said Declaration without the consent of the Members; and

WHEREAS, Declarant now desires to submit additional property described in Exhibit A to the Declaration to the terms and provisions of said Declaration; and

NOW, THEREFORE, Declarant hereby exercises its right pursuant to the Declaration of Restrictions for Elk Creek Mountain to annex all of that certain property described in Exhibit A attached hereto and incorporated herein by reference. Declarant does hereby declare that all of the property described in Exhibit A shall be sold and conveyed subject to the terms and provisions of the Declaration of Restrictions for Elk Creek Mountain recorded in Book 357, Page 644 and re-recorded in Book 358, Page 869, Ashe County, North Carolina, Public Registry, which terms and provisions are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the property described in Exhibit A attached hereto and in the property described in Exhibit A of the Declaration of Restrictions for Elk Creek Mountain recorded in Book 357, Page 644 and re-recorded in Book 358, Page 869, Ashe, County, North Carolina, Public Registry, and they shall inure to the benefit of each owner thereof.

IN WITNESS WHEREOF, the Declarant has executed this Supplementary Declaration of Restrictions the day and year first above written.

PROPERTIES
WMHH/LLC, a North Carolina Limited Liability Company

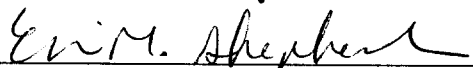
By:  (SEAL)
Mark Harrill, Member-Manager

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, Erin M. Shepherd, notary public of said County and State, do hereby certify that Mark Harrill personally appeared before me this day and acknowledged that he is the Member-Managers of WMHH/LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the LLC the foregoing instrument was signed and sealed in its name by himself as its Member-Manager.

WITNESS my hand and official seal this the 11 day of September, 20 07


Notary Public

My commission expires:

NOTARIAL SEAL:

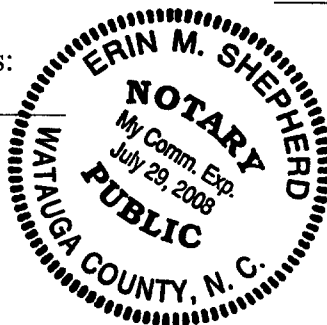


EXHIBIT A

BK: 00371 PG: 1884

BEING all of Lots Lots 30, 31, 32, 33, 34, 36, 37, 38, 45, 46, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 of Elk Creek Mountain located in Elk Township, Ashe County, North Carolina and more particularly shown on Map or Plat No. 07074 entitled "Final Plat of Phase II Elk Creek Mountain" dated June 19, 2007 prepared by Russell C. Shaw, PLS No. L-2899, and recorded in Plat Book 6, Page 647, of the Ashe County, North Carolina Public Registry, reference to which is hereby made for a more complete description of the property.

G:\Linda\CORP\Elk Creek Mountain\SupplementalDec.PhaseII.wpd

BK: 00425 PG: 0847

FILED
ASHE COUNTY
SHIRLEY B. WALLACE
REGISTER OF DEEDS

FILED	Dec 21, 2011
AT	12:31:08 pm
BOOK	00425
START PAGE	0847
END PAGE	0850
INSTRUMENT #	05710

Prepared By and Return To: Allen C. Moseley, Deal, Moseley & Smith, LLP,
P. O. Box 311, Boone, NC 28607

NORTH CAROLINA

ASHE COUNTY

AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR ELK CREEK
MOUNTAIN

THIS AMENDMENT TO DECLARATION is hereby made and entered into this 19 day of December, 2011, by Elk Creek Mountain Property Owners' Association, Inc., a North Carolina non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, the Elk Creek Mountain Planned Community was created and established pursuant to the terms and provisions of that certain Declaration of Covenants, Conditions and Restrictions for Elk Creek Mountain, recorded in Book 357, Page 644, and re-recorded in Book 358, Page 869, Ashe County, North Carolina, Public Registry (hereinafter the "Declaration"); and

WHEREAS, pursuant to the terms and provisions of the Declaration, Elk Creek Mountain Property Owners' Association, Inc., a North Carolina non-profit corporation (the "Association"), was created and established by the filing of Articles of Incorporation on February 2, 2007; and

WHEREAS, pursuant to Section 12.5 of the Declaration and in accordance with the terms and provisions of the By-Laws of the Association, and upon approval and recommendation by the membership of the Board of Directors, at a meeting of the members of the Association duly held on December 9, 2011, by an affirmative vote of the members of the Association owning at least two-thirds of the lots subject to the Declaration, the members of the Association approved the following amendment for the purpose of extending the Declarant Control Period as defined in Section 1.14 of the Declaration and for the purpose of modifying and amending the dwelling size as set forth in Section 10.4 of the Declaration.

NOW, THEREFORE, the undersigned Secretary of the Association does hereby certify that the following amendment to the Declaration was voted on and approved by the members of the Association owning no less than two-thirds of the lots in the development subject to the Declaration at a meeting of the members held on December 9, 2011:

1. Section 1.14 of the Declaration, which includes the definition of "Declarant Control Period" is modified and amended as follows:

Section 1.14: "Declarant Control Period" shall mean and refer to the period commencing on the date of recordation of this Declaration and continuing until the earlier of (a) December 31, 2016; or (b) the date upon which Declarant voluntarily terminates the Declarant Control Period.

2. Section 10.4, entitled "Dwelling Size and Height", is deleted in its entirety and the following is substituted in lieu thereof:

Section 10.4: "Dwelling Size and Height". No dwelling shall be permitted on

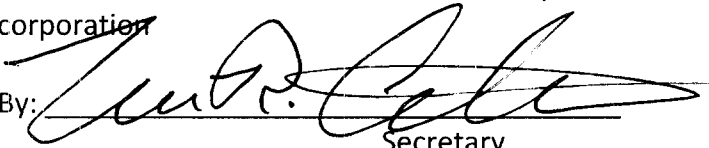
any Lot unless the dwelling has, exclusive of decks, porches, breeze ways, steps, and garages, at least 1,500 square feet of heated space, with a minimum of 1,000 square feet on the main level of the dwelling.

For purposes of computing the square feet area, the area of the building that is completely enclosed, under roof and protected from weather and is intended as the living quarters of the home shall be considered as measured from outside surfaces of the enclosed walls. All garages, carports, entrance ways, exterior walkways, covered, open-air porches and patios, etc. shall not be considered in computing the square footage of the ground floor area.

3. Except as expressly modified herein, all other terms and provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Secretary of the Association has caused this Amendment to be duly executed the day and year first above written.

ELK CREEK MOUNTAIN PROPERTY OWNERS'
ASSOCIATION, INC., a North Carolina non-profit
corporation

By: 

Secretary

STATE OF NC

COUNTY OF Watauga

I, Allen C Moseley, Notary Public, certify that William R. Carter
personally came before me this day and acknowledged that he/she is _____ Secretary of Elk
Creek Mountain Property Owners' Association, Inc., a corporation, and that he/she, as _____
Secretary, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 19 day of December, 2011.

Allen C Moseley
Allen C. Moseley, Notary Public
Notary's Printed or Typed Name

My commission expires:

