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Prepared by: Gayle E. Ramsey
and Lake Toxaway Property
Owners Association, Inc.

**DECLARATION
OF
RESTRICTIVE AND PROTECTIVE COVENANTS**

KNOW ALL MEN BY THESE PRESENTS, that LAKE TOXAWAY CO. (hereinafter referred to as "Developer"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Hogback Township, Transylvania County, North Carolina, and more particularly described as being all of Lots 48, 49 and 50 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 727, Records of Plats for Transylvania County.

Developer intends to sell and convey the lots and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels in the Development are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the owners of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

**ARTICLE I
LAND USE AND STRUCTURE TYPE**

Each lot shall be used for residential purposes only. No trade or business of any kind may be conducted on any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant, however, all provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all occupants of any residential lot which is subject to this Declaration. Furthermore, while residences may be leased for residential purposes only, all leases shall require, without limitation, that the tenant acknowledge receipt of a copy of each of the following documents: this Declaration and all applicable amendments thereto, the bylaws of the property owners association or associations to which the lot on which the residence is constructed is subject, all use restrictions and rules and regulations to which such lot and the occupants of said lot are subject. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant and/or the Board of Directors of Lake Toxaway Property Owners Association, Inc., in addition to any other remedies available to it/them, may evict the tenant on behalf of the owner of said lot and specifically assess all costs associated therewith against such owner and the owner's property.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed three (3) stories in height and a private garage.

Notwithstanding anything hereinabove set forth to the contrary, Developer reserves the right to record supplemental declarations converting one or more lots or portions of lots owned by it in the Development into common area with the use of any such lot or portion of a lot subsequent to the

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filing and recordation of any such supplemental declaration in the office of the Register of Deeds for Transylvania County to be governed by the provisions of Article 36 of this Declaration rather than by the provisions of Article 1.

ARTICLE 2 ARCHITECTURAL CONTROL

In order to ensure that all driveways located on lots are attractively designed and are properly constructed and that all houses and other structures are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for itself and any architectural control committee which Developer may appoint, full architectural control in order to achieve these objectives. Accordingly, no driveway, building, dock, fence, wall, garage or structure of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans for such improvements, including the specifically proposed design and location thereof on the lot, appearance, quality and manner of construction and/or installation of exterior trim, roofs, flashing, piping, foundations, windows, colors of buildings and other proposed improvements shall have been submitted in writing to and approved by Developer or by any architectural control committee which Developer may appoint. Such approval shall not be unreasonably withheld and shall be given or denied by Developer or by such committee in writing within thirty (30) days after any such plans and other required information have been properly submitted to Developer or to such committee. Denial of approval of plans, location, specifications and other matters requiring the approval of Developer or such committee may be based by Developer or such committee upon any reasonable ground, including purely aesthetic considerations.

No single-family dwelling situated on any lot shall contain less than 1,000 square feet of fully enclosed floor area on the main floor nor shall any such dwelling contain less than 1,500 square feet of fully enclosed living area.

A sketch plan showing the front and rear elevations may be submitted for preliminary approval before house plans are submitted. A plot plan showing the position on a lot of the driveway, house and any other proposed improvements for which approval is being requested must be presented to and approved in writing by Developer or any architectural control committee which Developer may appoint before any clearing is done or trees removed from the lot. In order to ensure that the driveway to be constructed on each lot in the Development will not cause a drainage or erosion problem on the lot on which it is being constructed or elsewhere in the Development, either prior to, during or subsequent to the completion of the construction thereof, no construction of any building, dock, fence, wall, garage or structure of any kind shall be commenced on a lot until either (1) a completed permanent driveway has been constructed thereon and approved by Developer or by any architectural control committee which Developer may appoint, or (2) in the event that a permanent driveway on such lot has not been fully completed in accordance with the plans previously submitted for approval to Developer or to such architectural control committee, the owner of such lot has given Developer or such architectural control committee such guarantee (which may include, but not be limited to, the posting of a cash performance bond) as Developer or such architectural control committee may require in order to ensure that such driveway will be constructed within a manner and within a time period which will be acceptable to Developer or to such architectural control committee.

The exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within one (1) year, shall be deemed nuisances. All construction rubbish, trash and garbage must be regularly removed not less than once a week from any lot on which construction has commenced. Any such rubbish, trash or garbage left on a lot for more than one week shall also be deemed to be a nuisance. Developer or any architectural control committee which Developer may appoint may remove any such nuisances or repair or complete the same, if applicable, at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

During site preparation and the construction of improvements on any lot, all vehicles

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conveying materials, equipment and laborers to the work site must enter and leave the Development by Cold Mountain Road and drive to and from the construction site by the most direct route feasible.

**ARTICLE 3
ARCHITECTURAL CONTROL COMMITTEE**

Developer reserves the right to appoint annually an Architectural Control Committee consisting of three or more competent persons as members to serve until their successors are appointed. A majority of said committee may also designate a representative to act for it. The committee's approval or disapproval as required by Articles 2 and 4 of these covenants shall be in writing. Any approval or disapproval given or deemed to have been given pursuant to the provisions of this Declaration by said committee when acting within the scope of the authority herein granted to such committee shall likewise be deemed pursuant to the provisions of this Declaration to have been given by Developer. In the event that Developer or, if applicable, the committee or its designated representative, fails to approve or disapprove any matter properly submitted for approval hereunder within thirty (30) days after proper plans and specifications and any other required information have been submitted, or in any event, if no suit to enjoin any construction or improvement required to be submitted for approval hereunder and properly submitted and started after the expiration of said thirty (30) day period has been commenced prior to the completion thereof, approval shall not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully complied with.

**ARTICLE 4
BUILDING LOCATION**

Subject to the limitation set out in Article 2 of this Declaration that the location of buildings and other proposed improvements on each lot must be approved by Developer or by an architectural control committee which Developer may appoint, each lot is subject to the further restriction that no building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 40 feet from the front lot line; (b) 30 feet from the rear lot line; and 30 feet from side lot lines.

Notwithstanding anything set out to the contrary in Article 2 of these covenants, in the event that Developer or, if applicable, the Architectural Control Committee, shall determine that application of the minimum setbacks specified in the preceding paragraph of this Article 4 of these covenants to a particular lot would unreasonably limit the use thereof by the owner and effectively deprive him of an appropriate construction site upon said lot, Developer or, if applicable, the Architectural Control Committee, shall have the authority to grant a variance to the owner of said lot from the provisions of the minimum setback restrictions specified in the preceding paragraph of this Article 4.

**ARTICLE 5
TEMPORARY STRUCTURES**

No structures of a temporary character, including, but not limited to, any travel trailer, mobile home or trailer, motor home, camper, camper trailer, tent, basement, shed, shack, garage, boat house or other outbuilding shall be used on a lot at any time as a residence, either temporarily or permanently.

With the exception of Developer and any subsidiary corporation or business owned and operated by Developer, which shall have such right at any time when Developer or any such subsidiary corporation or business owned and operated by Developer is engaged in the construction or repair of any building or any improvement on any portion of the property which is subject to this Declaration, and the further exception of those trucks, construction vehicles, and any commercial vehicles being utilized by any lot owner in connection with construction or repair of any improvement on such owner's lot (which has been properly approved pursuant to the appropriate

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articles of this Declaration) which may be parked in spaces designated by Developer or any architectural control committee which Developer may appoint, during such times and for such periods of time that may be designated by Developer or such architectural control committee, there shall be no outside storage or parking upon any lot outside of any garage or boat house which may be located thereon or upon any road in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc., or upon any common area of any commercial vehicle, truck (other than pickup trucks owned by such lot owner which may be parked on such lot owner's lot during such times when construction, repairs or improvements are actually being carried out), tractor, travel trailer, mobile home or trailer (either with or without wheels), motor home, camper, camper trailer, or tent nor shall any overnight camping be permitted on any lot.

**ARTICLE 6
SEWERAGE DISPOSAL**

No sewerage system shall be permitted on any lot unless such system is located, constructed and equipped in accord with the minimum requirements of the appropriate governmental regulatory agencies having jurisdiction over the construction and operation of such system. Approval of such system shall be obtained from the governmental authority having jurisdiction. In the event that any body politic makes a public sewerage system available to a lot, sewerage disposal thereon shall be by said public sewerage system.

**ARTICLE 7
CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.**

All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other lots, streets and areas in the Development outside of the lot on which such items are located or from any other area owned by Developer which may be located outside of the Development. All rubbish, trash, and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon. Furthermore no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any lot in the Development in such a manner as to be visible from any street, or other lot or area located in the Development or from any area owned by Developer which may be located outside of the Development.

**ARTICLE 8
NUISANCES**

It shall be the responsibility of each lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any plant, substance, animal, thing, device or material be kept upon any lot that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the lot.

Noxious or offensive activity shall include but shall not be limited to (1) a public nuisance or nuisance *per se*, (2) any behavior which is inconsistent with both a reasonable pleasurable use of the properties of the owners of lots in the Development, their tenants and guests, and their reasonable expectation of vacationing, year-round living, studying, working and recreating, free of excessively noisy behavior grossly disrespecting the rights of others, (3) flashing or excessively bright lights, (4) racing vehicles (regardless of the number of wheels), (5) offensive displays of public sexuality,

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(6) public drunkenness, (7) significantly loud electronic music distractions or vibrations which extend beyond property lines, (8) the discharge of fireworks, or (9) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the lots and other areas within the Development.

**ARTICLE 9
MAINTENANCE OF LOTS**

All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer shall have the right, through its agents, employees and contractors to do so, the cost of which shall be recoverable from and charged against the owner of the lot. If any such cost is not paid within 45 days after a written, itemized request for payment has been submitted to such owner by Developer, the cost may be levied by Developer as an assessment against the owner of such lot. Neither Developer nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work performed.

**ARTICLE 10
LIVESTOCK AND POULTRY**

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot at any time with the exception of a combined total of not more than two dogs, cats or other household pets which may be kept on a lot, provided that they are not bred or maintained for commercial purposes, and that they are kept within a fence or restrained by a leash at all times.

**ARTICLE 11
LAKE PRIVILEGES**

No lot owner shall have any privileges in and to the use of Lake Toxaway by virtue of owning a lot in the Development and each lot owner's use of Lake Toxaway shall be limited to the rental of boats from a marina operated on the shores of Lake Toxaway, subject to availability.

**ARTICLE 12
WATER LEVEL AT LAKE TOXAWAY**

Developer reserves the right at all times to designate and regulate the water level of Lake Toxaway.

**ARTICLE 13
BOATS ON LAKE TOXAWAY**

Operation of boats on Lake Toxaway will be controlled by rules and regulations from time to time established by Developer. A noisy boat will not be tolerated under any circumstances.

**ARTICLE 14
STORAGE OF BOATS AND OTHER WATER CRAFT**

All boats, floats, rafts and other water craft and/or boat trailers which may be located on any lot shall be placed in such a manner so as to not be visible from any area outside of said lot which is located within the Development or from any other area owned by Developer which may be located outside of the Development.

**ARTICLE 15
PROHIBITION OF SKATEBOARDING AND ROLLER SKATING**

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No skateboarding or roller skating shall be allowed on any road located in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc.

**ARTICLE 16
MAILBOXES**

All mailboxes and their support posts shall conform to the approved design(s) supplied by Developer.

**ARTICLE 17
TREE REMOVAL, SITE CLEANING, UNDER BRUSHING
AND BURNING**

No trees, brush, or shrubs, including, but not limited to mountain laurel, wild azaleas, and rhododendron shall be trimmed on or removed from any lot or any portion of any other lands subject to this Declaration which may be designated as common area, prior to the proper approval of such trimming or removal by Developer. Such approval shall not be unreasonably withheld and shall be given or denied by Developer in writing within thirty (30) days after written plans showing such proposed trimming or removal and any other information requested by Developer relating to such trimming or removal have been submitted to Developer. Denial or approval of such trimming or removing may be based by Developer upon any reasonable ground, including purely aesthetic considerations. In the event that Developer, or its designated representative, fails to approve or disapprove any matter involving the trimming or removal of trees, brush or shrubs from any lot which is not designated as a common area properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of these covenants specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with. No open burning of any kind shall be done before the lot owner has obtained the written permission of Developer or, if applicable, the Architectural Control Committee.

**ARTICLE 18
SIGNS**

With the exception of those lots owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, no signs shall be allowed on any lot without the written permission of Developer. In no event shall any property identification sign or signs exceeding a combined total of more than three (3) square feet be erected on any lot without written permission of the Developer.

**ARTICLE 19
OUTDOOR LIGHTING**

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by Developer who shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other lot owner and such other lot owner's use and enjoyment of his lot at any time.

**ARTICLE 20
AERIALS AND ANTENNAS**

No radio or television or other aerial, antenna, dish, tower, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained on any lot unless so

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erected, installed, placed, or maintained entirely within the enclosed portion of the individual residence or garage.

**ARTICLE 21
POOLS**

No pool shall be erected, constructed or installed on any lot without the express written permission of Developer who shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

**ARTICLE 22
UTILITY LINES**

No overhead utility lines, including lines for cable television, shall be permitted on any lot without the written approval of Developer.

**ARTICLE 23
ENERGY CONSERVATION EQUIPMENT**

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of Developer.

**ARTICLE 24
FIREARMS**

The use of firearms within the Development is prohibited. The term "firearms" includes BB guns, pellet guns, and other firearms of all types, regardless of size.

**ARTICLE 25
SUBDIVISION OF LOTS**

No lot shall be subdivided or its boundary lines changed except with the prior written approval of Developer. Developer, however, hereby expressly reserves the right to replat any lot prior to conveyance of such lot by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**ARTICLE 26
EASEMENTS AND RIGHTS OF WAY**

An easement and right-of-way for travel of all kinds and with all types of vehicles are hereby expressly reserved by Developer in and over all existing access roads which extend across platted lots and an easement and right-of-way are also hereby expressly reserved by Developer over and across a strip of land ten (10) feet in width along each side of the rear line, side lines, and front line of each lot for the construction and maintenance of public, quasi-public or private utility lines or other devices which provide utility or similar services, including, without limitation, electric light, power and telephone service lines, storm water drains, land drains, public and private sewers and pipelines supplying gas and water. Developer shall have the right to enter and permit others to enter upon said reserved roads and strip.

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ARTICLE 27
OPTION TO PURCHASE

In consideration of the agreement by Developer to restrict other lots sold by it in the Development, each lot owner agrees that if he/she/it should desire to sell the lot owned by that lot owner or any interest therein, and receives a bona fide satisfactory offer therefor, the lot owner shall, before accepting said offer, submit to Developer, in writing by certified mail, return receipt requested, the terms of said offer, the name(s) and addresses of the offeror(s) and an offer to convey the lot to Developer at the same price and terms. Developer shall have a period of fourteen (14) days after receipt of said written notice within which to exercise its right to accept said offer and shall have an additional period of not less than twenty (20) days within which to complete said transaction. In the event that Developer does not elect to purchase within said fourteen (14) day period, the lot owner making such offer may sell said lot to the offeror(s) named in said notice. Acceptance of said offer by Developer shall be in writing by certified mail, return receipt requested, to the lot owner making such offer at the address given in said notice. This option to purchase shall run with the land and be binding on all parties and all persons claiming under them for so long as Reginald D. Heinitsh, Jr., shall live and for 21 years from the date of his death unless sooner rescinded.

ARTICLE 28
(DELETED)

ARTICLE 29
MEMBERSHIP IN ASSOCIATION;
ASSESSMENTS FOR ROAD MAINTENANCE AND OTHER PURPOSES

A. **MEMBERSHIP IN ASSOCIATION.** Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any lot that is subject to this Declaration shall be deemed to have a membership in Lake Toxaway Property Owners Association, Inc. (sometimes hereinafter referred to as "the Association"). Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold interests merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one membership per lot owned. In the event that a owner of a lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in the bylaws and rules and regulations of the Association including the obligation to pay dues of the Association, and such assessments for lot maintenance, road maintenance and other proper expenditures as shall be levied by the Board of Directors of said Association. Road maintenance assessments shall include such sums as the Developer, or the Board of Directors of the Association, as the case may be, shall, from time to time, determine as being such lot owner's fair share of the cost of repairing, maintaining and replacing those roads which provide such lot owner's property with access to the public road.

B. **ASSESSMENTS.** Each lot in the Development is served by roads which are currently owned and maintained by Developer to the extent of road assessments collected by Developer and which connect the Development with Cold Mountain Road and U.S. Highway # 64. The owner of each lot, with the exception of the Developer, shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to the Developer or to the Association, as the case may be, an annual assessment or charge for the purposes stated within these Articles to be fixed, established and collected on a lot by lot basis as hereinafter provided. Said annual assessment or charge shall be due on a date to be established by the Developer or Association and pursuant to reasonable advance notice given in writing to all lot owners, provided that the Developer or Association may make provision for payment thereof in installments. Upon demand, the Developer or Association shall furnish to any owner or mortgagee a certificate showing the assessments or charges or installments thereof, due as of any given date. Each lot subject to these Restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge (or installment thereof) when due.

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Such assessment or charge shall be an amount to be fixed from year to year by the Developer or Association, which may establish different rates from year to year as it may deem necessary and may establish different rates for various general classifications of lots according to the use or location of said lots. The Developer or Association may, from time to time, levy additional assessments as it deems necessary to meet the needs of the Development.

The funds arising from said assessment or charge or additional assessment or charge may be used for any or all of the following purposes: maintaining, operating, improving and replacing roads within the Development; protection of property from erosion; maintaining lots as provided in Article 9 herein; maintenance, improvement and lighting of common areas and facilities including recreational facilities within the Development; employing watchmen and security personnel; enforcement of these Restrictions; paying taxes, indebtedness of the Association; insurance premiums, governmental charges of all kinds and descriptions; legal and or accounting fees; and, in addition, doing any other things necessary or desirable in the opinion of the Developer or Association to maintain the Development in neat and good order and to provide for the health, welfare and safety of owners and residents of the Development.

Upon the failure of the owner of any lot to pay such assessment or charge, additional assessment or installment when due, the Developer or Association shall have the right to collect the amount thereof by an action at law against the owner as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Developer and Association and the lien of such charge shall be deemed to run with the land; and the successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been levied against the property and all assessments or charges or additional assessments as shall become a lien thereon during their ownership. Any assessment or charge levied against a lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that lot when a claim of lien (sometimes herein referred to as a "Notice of Assignment and Lien") is filed of record in the office of the Clerk of Superior Court for Transylvania County. The party filing any such lien pursuant to the authority granted under this Declaration may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. All liens levied pursuant to the provisions of these Covenants shall include the amount of any unpaid assessments, plus any other charges thereon, including a late charge of TWENTY-FIVE DOLLARS (\$25.00) to cover administrative expenses, interest at one and one-half percent (1 1/2%) per month from the due date, and costs of collection, including attorneys' fees. Each Notice of Assessment and Lien shall be signed by the Developer or Association or such other person or legal entity to whom Developer or Association has assigned the authority to file Notices of Assessment and Liens pursuant to a document filed in the office of the Clerk of Superior Court for Transylvania County. Such lien shall be prior to all other liens recorded subsequent to the filing of such Notice of Assessment and Lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Developer or the Association or such other person or legal entity to whom the Developer or Association has assigned the authority to file Notices of Assessments and Liens the right and power to bring all actions against said owner personally for the collection of such charges set out in said Notice of Assessment and Lien as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement for real property. The lien provided for in this Article shall be in favor of the party filing the lien and the party filing such lien shall have the power to bid on the lot in any foreclosure proceeding or to acquire, hold, lease, mortgage, or convey the lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged damage, inconvenience or discomfort arising from the completion by Developer or Association of repairs or improvements or removal of nuisances pursuant to the provisions of Article 2 of these Covenants or for any maintenance performed by Developer or Association pursuant to the provisions of Article 9 of these Covenants. All payments shall be applied first to costs and attorney fees, then to late charges, then to interest, then to delinquent assessments. Upon payment of all assessments and other charges, costs and fees provided for in a particular Notice of Assessment and Lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further Notice stating satisfaction and the release of the lien thereof.

The monies collected by virtue of the assessments or charges or additional assessments, of the lien provided by this section, shall be paid to the Developer or the Association as the case may

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be to be used in such manner and to the extent as the Developer or Association may determine, in accordance with the provisions of these Articles for the benefit of the lot owners in the Development. The judgement of the Developer or the Association in the making of assessments or charges or additional assessments and the expenditure of funds shall be final.

The Developer or the Association shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Developer or the Association shall not be obligated to apply any such surplus to the reduction of charges in the succeeding year.

The Developer or the Association shall have authority, in its discretion, to borrow money to expend for the purposes set forth in these Articles upon such terms and security and for such periods as it may determine, and to repay said borrowings and the interest thereon from the assessments or charges or additional assessment provided for in this Article. (*This Article prepared under the supervision of Lake Toxaway Property Owners Association, Inc.*)

ARTICLE 30 TERM

With the exception of the option to purchase reserved by Developer in Article 27 of this Declaration which shall terminate on the date specified therein, all of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity. However, if any of the covenants, conditions, restrictions or other provisions of this Declaration other than the provisions of Article 27 shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such other provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, II, Queen of England.

ARTICLE 31 AMENDMENT

These restrictions may be amended at any time and from time to time by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of a majority of the lots in the Development and by Developer, so long as Developer owns any lot which is subject to this Declaration or owns any roads which are either located in the Development or serve as a primary means of access to the Development from Cold Mountain Road or U. S. Highway 64. The signatures of such lot owners shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

ARTICLE 32 ENFORCEMENT

Developer and each person to whose benefit these restrictions inure, including Lake Toxaway Property Owners Association, Inc., and other lot owners in the Development, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

ARTICLE 33 SEVERABILITY

Invalidation of any one of these restrictions by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

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**ARTICLE 34
DELEGATION OF USE**

Any lot owner may delegate in accordance with the bylaws of any property owners association to which he may belong by virtue of owning a lot, and subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, his or her right of enjoyment to any common areas or other facilities which he is entitled to use by virtue of being a lot owner and/or a member of any such association or associations, to the members of his or her family, tenants and social invitees and shall be deemed to have made a delegation of all such rights to the occupant of any leased building which may be situated on a lot which is subject to this declaration.

**ARTICLE 35
ASSIGNMENT OF DEVELOPER'S RIGHTS**

Developer's rights under these restrictions may be assigned at any time, in whole or in part, to any other person, persons or legal entity, including, but not limited to, Lake Toxaway Property Owners Association, Inc.

**ARTICLE 36
USE OF COMMON AREA OTHER THAN
CONSERVATION EASEMENT AREA**

No planting or gardening shall be done upon any portion of any area within the Development which may be designated as common area in any supplemental declaration placed on record in the office of the Register of Deeds for Transylvania County by Developer pursuant to the provisions of Article 1 of this Declaration or upon any portion of any area within the Development which may be designated as common area on any of the recorded plats referred to on Page 1 of this Declaration except for such as may be approved by Developer or its designated representatives, nor shall any fences, hedges, or walls be erected or maintained upon any common area except in accordance with the initial construction of the improvements located thereon or as approved by Developer or its designated representatives. Except for the right of ingress and egress, the owners of lots may use the property outside their respective lots only in accordance with such reasonable regulations as may be adopted by Developer or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this article is for the mutual benefit of all owners and is necessary for the protection of all owners.

**ARTICLE 36A
USE AND MAINTENANCE OF CONSERVATION EASEMENT AREA
DESCRIBED IN BOOK 426, PAGE 48, RECORDS OF DEEDS
FOR TRANSYLVANIA COUNTY**

The tract of land containing 45.95 acres, more or less, which was subjected to a Conservation Easement and Declaration of Restrictions and Covenants in an instrument dated December 23, 1997, and recorded in Book 426, page 48, Records of Deeds for Transylvania County, is hereby declared to be a common area which is held by Developer for the common use and enjoyment of the owners of the following lots: Lots 7, 8, 9, 10, 11, 30, 31 and 36 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 496, Records of Plats for Transylvania County; Lot 41 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 495, Records of Plats for Transylvania County; Lot 40 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 436, Records of Plats for Transylvania County; Lots 37, 38 and 39 (Revised) of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 584, Records of Plats for Transylvania County; Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Section F of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 731, Records of Plats for Transylvania County; Lots 42, 43 and 44 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 717, Records of Plats for Transylvania County; Lots 9, 10, 11, 12, 13, 14 and 15 of Section F of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 176, Records of Plats for Transylvania County; Lot 16 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 219, Records of Plats for Transylvania County; Lots 23 and 24 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat

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File 8, Slide 268, Records of Plats for Transylvania County; Lots 12, 13, 14, 15, 25 and 26 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 218, Records of Plats for Transylvania County; and Lots 1, 2, 3 and 4 of Toxaway River Trail as shown on a plat thereof recorded in Plat File 8, Slide 175, Records of Plats for Transylvania County; Lots 48, 49 and 50 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 727, Records of Plats for Transylvania County, and the owners of such other lots and parcels to whom Developer may grant similar rights in and to the use thereof. The use and enjoyment of said conservation easement area shall be subject to the terms and conditions of said Conservation Easement and Declaration of Restrictions and Covenants and to such additional rules and regulations as may be adopted from time to time by Developer in the exercise of the rights reserved by it as owner pursuant to the provisions of Article C of said Conservation Easement and Declaration of Restrictions and Covenants.

Developer shall have the right to assess, as an additional assessment pursuant to the provisions of Article 29 of this Declaration, each lot or parcel owner (including Developer) entitled to use said conservation easement area on a per lot (or parcel) basis, for such lot or parcel owner's prorata share (based on the total number of lots and parcels entitled to utilize such conservation easement area) of the annual cost of operating and maintaining said conservation easement area in the manner provided for in said Conservation Easement and Declaration of Restrictions and Covenants and in the manner required by Developer in its exercise of the rights reserved by it as owner pursuant to the provisions of Article C of said Conservation Easement and Declaration of Restrictions and Covenants.

**ARTICLE 36B
USE AND MAINTENANCE OF CONSERVATION EASEMENT AREA
DESCRIBED IN BOOK 1028, PAGE 594, RECORDS OF DEEDS
FOR JACKSON COUNTY**

The tract of land containing 14.02 acres, more or less, which was subjected to a Conservation Easement and Declaration of Restrictions and Covenants in an instrument dated December 21, 1998, and recorded in Book 1028, page 594, Records of Deeds for Jackson County, is hereby declared to be a common area which is held by Developer for the common use and enjoyment of the owners of the following lots: Lots 7, 8, 9, 10, 11, 30, 31 and 36 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 496, Records of Plats for Transylvania County; Lot 41 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 495, Records of Plats for Transylvania County; Lot 40 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 436, Records of Plats for Transylvania County; Lots 37, 38 and 39 (Revised) of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 584, Records of Plats for Transylvania County; Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Section F of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 731, Records of Plats for Transylvania County; Lots 42, 43 and 44 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 7, Slide 717, Records of Plats for Transylvania County; Lots 9, 10, 11, 12, 13, 14 and 15 of Section F of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 176, Records of Plats for Transylvania County; Lot 16 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 219, Records of Plats for Transylvania County; Lots 23 and 24 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 268, Records of Plats for Transylvania County; Lots 12, 13, 14, 15, 25 and 26 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 218, Records of Plats for Transylvania County; and Lots 1, 2, 3 and 4 of Toxaway River Trail as shown on a plat thereof recorded in Plat File 8, Slide 175, Records of Plats for Transylvania County; Lots 48, 49 and 50 of Meadow Ridge Subdivision as shown on a plat thereof recorded in Plat File 8, Slide 727, Records of Plats for Transylvania County, and the owners of such other lots and parcels to whom Developer may grant similar rights in and to the use thereof. The use and enjoyment of said conservation easement area shall be subject to the terms and conditions of said Conservation Easement and Declaration of Restrictions and Covenants and to such additional rules and regulations as may be adopted from time to time by Developer in the exercise of the rights reserved by it as owner pursuant to the provisions of Article C of said Conservation Easement and Declaration of Restrictions and Covenants.

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Developer shall have the right to assess, as an additional assessment pursuant to the provisions of Article 29 of this Declaration, each lot or parcel owner (including Developer) entitled to use said conservation easement area on a per lot (or parcel) basis, for such lot or parcel owner's prorata share (based on the total number of lots and parcels entitled to utilize such conservation easement area) of the annual cost of operating and maintaining said conservation easement area in the manner provided for in said Conservation Easement and Declaration of Restrictions and Covenants and in the manner required by Developer in its exercise of the rights reserved by it as owner pursuant to the provisions of Article C of said Conservation Easement and Declaration of Restrictions and Covenants.

**ARTICLE 37
AIR CONDITIONING UNITS**

Except as may be permitted by Developer, no window air conditioning units may be installed in any house or other structure which is located on any lot which is subject to these covenants.

**ARTICLE 38
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS**

No artificial vegetation shall be permitted on any lot. Exterior sculptures, fountains, flags, and similar items must be approved in writing by Developer before being placed on any lot.

**ARTICLE 39
PLAYGROUND**

Any playground or other play areas or equipment furnished by Developer or erected within the Development shall be used at the risk of the user, and Developer shall not be held liable to any person for any claim, damage, or injury occurring thereon or related to use thereof.

**ARTICLE 40
DRAINAGE**

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves a perpetual easement across each lot for the purpose of altering drainage and water flow.

**ARTICLE 41
IRRIGATION**

No sprinkler or irrigation systems of any type which draw upon water from wells, community water systems, creeks, streams, rivers, lakes, ponds, canals, or other waterways within the Development shall be installed, constructed, or operated within the Development unless prior written approval has been received from Developer.

**ARTICLE 42
PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING**

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any common area or upon any lot not owned by Developer, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection

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therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

ARTICLE 43
PROHIBITION OF MOTORCYCLES

No motorcycles other than mopeds (or other motor powered bicycles) less than or equal to one horsepower shall be permitted on private roads within the Development. Mopeds with less than or equal to one horsepower shall be limited to operation only on the paved roads designed for automobile traffic within the Development and on trails specifically designated for moped use by Developer and the use of such mopeds on bicycle trails, nature trails and recreation areas is prohibited.

ARTICLE 44
WILLFUL DESTRUCTION OF WILDLIFE

No hunting shall be allowed in the Development. Any violation of this provision with respect to common areas shall constitute both a breach of these covenants and a trespass against property owned by Developer. Since the Development is not intended to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this section.

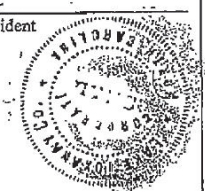
IN WITNESS WHEREOF, LAKE TOXAWAY CO. has caused this instrument to be signed in its name by its (Vice) President and its corporate seal to be hereto affixed and attested by its (Assistant) Secretary, all by order of its Board of Directors duly given, this the 17 day of June, 2000.

LAKE TOXAWAY CO.

By: [Signature]
(Vice) President

ATTEST:

[Signature]
(Assistant) Secretary



STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, Keitha W. Landreth, a Notary Public of said State and County, do hereby certify that R.D. Heintz, Jr. personally appeared before me this day and acknowledged that he is the (Vice) President and that Robin M. Morrow is the (Assistant) Secretary of LAKE TOXAWAY CO., a corporation described in and which executed the foregoing instrument, that he knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by its (Vice) President and that the said (Vice) President and (Assistant) Secretary subscribed their names thereto and the said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and Notarial Seal, this the 17 day of June, 2000.

[Signature]
Notary Public



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STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

The foregoing certificate of Keitha W Landreth, Notary Public, is certified to be correct. This instrument was presented for registration and recorded in this office in Book 14, page 343.
This 8 day of June, 2000, at 1:55 o'clock P.M.

Vickie L Edmonds
Register of Deeds
By: Beth A Sales
Deputy Register of Deeds

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