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AMENDED AND RESTATED

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

FOR

GLENLAUREL PRESERVE,

A PLANNED COMMUNITY

**THIS DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF POLITICAL SIGNS.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF THE FLAG OF THE UNITED STATES OF
AMERICA OR STATE OF NORTH CAROLINA.**

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STATE OF NORTH CAROLINA)
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)
 COUNTY OF TRANSYLVANIA) **AMENDED AND RESTATED**
) **DECLARATION OF COVENANTS,**
) **CONDITIONS AND RESTRICTIONS**
) **FOR GLENLAUREL PRESERVE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENLAUREL PRESERVE (this “Declaration”) is made this _____ day of September, 2017 by GLEN LAUREL PARTNERS, LLC, a North Carolina limited liability company (“Declarant”).

WITNESSETH:

WHEREAS, Brevard Partners, LLC, as declarant, executed that certain Declaration of Covenants, Conditions and Restrictions for GlenLaurel Preserve, a Planned Community dated July 28, 2008 and recorded in Book 467 at Page 674 in the Transylvania County Public Registry (the “Original Declaration”);

WHEREAS, Brevard Partners, LLC executed in favor of Glen Laurel Partners, LLC that certain Assignment of Special Declarant’s Rights under Declaration of Covenants, Conditions and Restrictions for GlenLaurel Preserve, a Planned Community, dated August 11, 2011 and recorded in Book 583 at Page 733 in the Transylvania County Public Registry, which assigned to Glen Laurel Partners, LLC all of Brevard Partners, LLC’s rights, powers, easements and reservations in its capacity as declarant under the Original Declaration and all rights pursuant to the Bylaws and Articles of Incorporation of the GlenLaurel Preserve Homeowners Association, Inc. (the “Association”);

WHEREAS, pursuant to Section 11.10 of the Original Declaration, Declarant has the unilateral right, in its sole and absolute discretion, to make any amendments or modifications to the Original Declaration which Declarant deems necessary or desirable;

WHEREAS, Declarant is the owner of that tract of land located in Transylvania County, North Carolina, which is described in Exhibit A attached hereto and incorporated herein (the “Property”), and Declarant is the owner or may become the owner of adjacent property described in Exhibit B attached hereto (the “Additional Land”) which may become part of the Property pursuant to the provisions of Article X;

WHEREAS, Declarant subdivided or intends to subdivide the Property into residential lots, common areas and private rights-of-way, and to create from the Property, and such Additional Land as may be subjected to this Declaration pursuant to Article X below, a planned community to be known as GlenLaurel Preserve (the “Community”);

WHEREAS, Declarant desires to impose certain restrictive and protective covenants upon the Property to protect and to promote the beneficial ownership, use and enjoyment of all residential lots and units located within the Community; and

WHEREAS, Declarant desires to amend and restate the Original Declaration as set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions herein contained, and other good and valuable consideration, the legal sufficiency of which are hereby acknowledged, Declarant hereby amends and restates the Original Declaration in its entirety as follows:

THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), the Declarant hereby executes this Declaration to create GlenLaurel Preserve, a North Carolina Planned Community, and declares that henceforth all portions of the Property shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Property and which shall be binding upon all owners of any portion of the Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

ARTICLE I.

Application of the North Carolina Planned Community Act.

The terms and provisions of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community and the Property.

ARTICLE II.

Definitions.

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

2.1. "Annexation Declaration" shall mean an instrument recorded in the Transylvania County Registry that subjects Additional Land to this Declaration.

2.2. "Approved Builder" shall mean and refer to: (i) any person or entity acquiring a Lot from Declarant or any affiliate thereof, or any successor Declarant, for the express purpose of constructing a Dwelling on the Lot and selling such Dwelling or who has entered into a contract with an Owner of a Lot pursuant to which such person will construct a Dwelling on said Lot for said Owner, and (ii) who has been identified from time to time by Declarant or the Board of Directors as an Approved Builder. MountainSide Homebuilders, LLC is an Approved Builder.

2.3. "ARC" shall mean the Architectural Review Committee established pursuant to the provisions of Article V below.

2.4. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association.

2.5. "Association" shall mean the GlenLaurel Preserve Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

2.6. "Assessments" shall mean, unless the context otherwise requires, Base Assessments, Specific Assessments, Special Assessments, and Townhome Assessments as described herein.

2.7. "Base Assessment" shall mean the assessment levied on all Lots subject to assessment under Article IX below to fund Common Expenses, as determined in accordance with Article IX below.

2.8. "Board of Directors", "Board" or "Executive Board" shall mean the executive board of the Association, as defined by the Planned Community Act and as created by the Bylaws.

2.9. "Bylaws" shall mean the bylaws of the Association as they now or hereafter exist and as they may be amended from time to time.

2.10. "Common Area" shall mean all property, and any improvements thereon, wherever located, exclusive of any streets, easements or public rights of way dedicated or assumed by a public utility or authority, owned or leased by the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members. Common Area shall include all water and sewer lines (and related pump stations and water tanks) serving more than one Lot and located outside any public rights-of-way or utility easements. Common Area shall include any drainage easements, storm water pipes, detention and retention facilities serving more than one Lot and not accepted by any governmental authority for maintenance.

2.11. "Common Expense" shall mean, except as otherwise specifically provided in the Governing Documents, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Common Area, and otherwise for the benefit of all Owners.

2.12. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community or the minimum standards established pursuant to this Declaration, Rules and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

2.13. "Declarant" shall mean GLEN LAUREL PARTNERS, LLC, a North Carolina limited liability company, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant, the authority for such designation or assignment shall rest solely with the assigning Declarant and the Person agreeing to such assignment or designation.

2.14. "Declarant Control Period" shall mean the period of time during which Declarant holds a fee interest or contractual right in any portion, however small, of the Property or during which Declarant holds a fee simple interest or contractual right in any portion, however small, of the Additional Land which Declarant is allowed to annex into the Community in accordance with the provisions of this Declaration.

2.15. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for GlenLaurel Preserve, and any supplements or amendments hereto or restatements hereof.

2.16. "Dwelling" shall mean a building constructed on a Lot designed for year-round habitation, including bathroom and kitchen facilities, and designed for or used as a residence by a family or household unit.

2.17. "Governing Documents" shall mean, collectively, this Declaration, any applicable Supplemental Declaration, Annexation Declaration, the Articles of Incorporation, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

2.18. "Lot" shall mean any separate parcel of land (including a Townhome Lot) within the Community designated for separate ownership or occupancy and residential use. Any Lot that has a driveway connection to the common streets and roads of the Community shall be by definition a Lot, and subject to the terms and conditions herein for all such Lots.

2.19. "Master Plan" shall mean the master land-use plan, if any, for the development of the Community approved by Transylvania County.

2.20. "Member" shall mean and refer to every person or entity entitled to membership in the Association as provided in Article III below.

2.21. "Membership" shall mean all Members, as a group.

2.22. "Mortgage" shall mean a deed of trust recorded in the Transylvania County Public Registry that is a lien against any Lot. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. A "First Mortgage" shall be a Mortgage having priority over all other Mortgages encumbering a Lot. "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.

2.23. "Owner" shall mean and refer to an owner of record of a fee simple interest in any Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be no more than four Owners of any single Lot. No "timeshare" or "timeshare units", as defined in Chapter 93A of the North Carolina General Statutes, may be created as to any Lot or structure.

2.24. "Person" is defined as any natural person, corporation, partnership, limited liability company, association, trust or other legal entity.

2.25. "Property" shall mean and refer to all that real property described in Exhibit A attached hereto along with those portions of the real property described on Exhibit B attached hereto which may, in the future, be subjected to this Declaration by the recording of an Annexation Declaration in the Transylvania County Public Registry.

2.26. "Political Sign" shall mean a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

2.27. "Recorded Document" shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of Transylvania County, North Carolina.

2.28. "Rules and Regulations" shall mean the initial rules and regulations for use and occupancy of the Lots and Common Area set forth in Exhibit C as they may be supplemented, modified, restated or superseded pursuant to Article IV below.

2.29. "Special Assessments" shall mean assessments levied in accordance with Section 9.2 and any other related sections below.

2.30. "Specific Assessments" shall mean assessments levied in accordance with Section 9.2 and any other related sections below.

2.31. "Townhome Assessment" shall mean the assessment related only to the Association's maintenance and other obligations which are provided solely to Townhome Lots.

2.32. "Townhome Committee" shall mean a committee of the Board of Directors, consisting of not less than three (3) nor more than five (5) Owners of Townhome Lots, who are elected by the Owners of the Townhome Lots in accordance with the Bylaws.

2.33. "Townhome Expenses" shall mean and refer to all expenses that the Association incurs, or expects to incur, in connection with its maintenance and other obligations relating only to the Townhome Lots or in providing other benefits and services to the Townhome Lots, including any operating reserve or reserve for repair and replacement.

2.34. "Townhome Lot" shall mean and refer to any Lot upon which a Dwelling constructed thereon shall have one or more common party walls with adjoining Dwellings. Townhome Lots may also be identified as such on a recorded map of a portion of the Property. Buildings constructed on Townhome Lots may sometimes be referred to herein as "Townhome Building" or "Townhome Buildings".

ARTICLE III.

GlenLaurel Preserve Homeowners Association, Inc.

Every person who is an owner of a fee or undivided fee simple interest in any of the Lots shall be a Member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The Association shall be organized and governed as follows:

3.1. Purposes. The purposes of the Association shall be:

(i) To maintain and preserve all Common Areas, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;

- (ii) To provide services and perform duties relating to the Townhome Lots which will be paid for out of the Townhome Assessment;
- (iii) To enforce the provisions of the Governing Documents;
- (iv) To perform all duties and functions allotted to owners' associations pursuant to Article 3 of the Planned Community Act;
- (v) To promote and to protect the enjoyment, beneficial use and ownership of the Lots; and
- (vi) To promulgate and enforce the Rules and Regulations and administrative rules and regulations for the use of the Common Area and for the use and occupancy of the Lots.

3.2. Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owners' associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Declaration.

3.3. Voting Rights and Meetings. On matters of Association business submitted to vote of the Membership, there shall be two classes of membership:

Class A. Every Person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Members shall be entitled to one (1) vote per Lot. No more than one (1) vote per Lot may be cast by Class A Members, regardless of the number of Owners of a given Lot.

Class B. The Declarant shall be the Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to ten (10) votes for each Lot it owns. The Class B membership shall cease and shall be converted to Class A membership at the first of the following events to occur:

- (i) Within one hundred twenty (120) days after the date that seventy-five percent (75%) of the total number of Lots shown on the Master Plan for the Community are conveyed to Class A Members; or
- (ii) Fifteen (15) years from the date this Declaration is recorded in the Office of the Register of Deeds of Transylvania County, North Carolina; or
- (iii) Written notice of consent to such conversion by the Declarant is filed in a Recorded Document executed by the Declarant.

Unless otherwise provided herein or in the Planned Community Act or the Bylaws, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the Bylaws. The Members shall meet as provided by the Bylaws.

3.4. Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Association, which Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents, invitees, and assigns.

ARTICLE IV.

Use and Occupancy of Lots and Common Areas.

4.1. Fundamental Restriction on Use. The Lots and Common Area shall be used for residential, recreational and related purposes only, subject to and consistent with the Governing Documents; provided that Declarant may maintain a business or management office within the Community, and provided that Declarant and/or any brokers or Approved Builders approved by Declarant for operation within the Community and approved for the maintenance of an office within the Community may, during the Declarant Control Period and for so long as new homes are available for sale, maintain information centers, model homes and/or sales offices within the Community. Notwithstanding the above, home business use ancillary to the primary residential use of a Lot is permitted, subject to the Rules and Regulations and all applicable laws and ordinances of governmental authorities.

4.2. Fundamental Restriction on Occupancy. All occupants of a single Lot shall be members of a Single Housekeeping Unit. For purposes of this Declaration, a Single Housekeeping Unit is defined as a single family and not more than two (2) unrelated persons. The number of occupants on each Lot shall also be reasonably limited by the Lot's size and facilities and by a policy against disproportionate use of the Common Areas,

4.3. Additional Restrictions on Use and Occupancy of Lots. Use and occupancy of all Lots shall be restricted as follows:

4.3.1. *General Restriction; Residential Use; Square Footage; Integration of Additional Land; Completion of Construction.*

A. Any construction, erection, placement, or modification of any structure, permanently or temporarily, on any Lot or other portion of the Land, whether such Lot or portion is improved or unimproved, shall not be allowed except in strict compliance with the provisions of Article V of the Declaration.

B. Aside from those structures temporarily used by Declarant or Approved Builders for sales and marketing as set forth herein, all Lots shall be used for single-family residential purposes only (including single-family attached dwellings, paired townhomes and single-family detached dwellings). No structure erected, altered, placed or permitted to remain on any Lot shall exceed three stories in height.

C. All Dwellings (except for those on Ferncliff Court and those within Townhome Buildings) shall contain not less than a minimum of 1,800 square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings. Dwellings on Ferncliff Court and Dwellings within Townhome Buildings shall contain not less than a minimum of 1,600 square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings. Dwellings of one and one-half (1½) story or more shall contain not less than a minimum of 1,000 square feet of heated floor area on the first floor of such Dwelling.

D. The foregoing notwithstanding, the Declarant shall have the absolute right, in the event any Additional Land is added to the Community pursuant to Article X, to use any Lot(s) for purposes of roadway and/or other vehicle or pedestrian access, ingress, and egress, for purposes of integrating the Additional Land into the Community. Nothing herein shall be interpreted to limit the Declarant's rights to use any Lot(s) for roadway purposes, in the event Additional Land is added to the Community.

E. Construction of a Dwelling on a Lot must commence within thirty-six (36) months after such Lot is conveyed by Declarant. If construction of a Dwelling is not commenced within the required thirty-six-month (36) time period, Declarant shall have the option to repurchase the property as specified in Section 17.2 below. Once construction of a Dwelling is commenced, such construction must be prosecuted diligently and must be completed within twelve (12) months of its commencement, unless otherwise approved in writing by Declarant.

F. A violation of any provisions or restrictions of this Declaration, the Rules and Regulations and/or a failure to obtain prior approval of the ARC may result in (1) removal of any such improvements or correction of such violations by Declarant, the Board (or ARC acting for the Board) and the cost thereof assessed against the Owner of that Lot as a Specific Assessment; and/or (2) legal or equitable action filed against the violating Owner by Declarant or the Board in order to compel enforcement of the terms of this Declaration or the Governing Documents with both the pre-filing costs and the costs of the action itself assessable against the violating Owner as a Specific Assessment; and/or (3) fines assessed by Declarant or the Board as Specific Assessments against a violating Owner in order to compel compliance. Any reference below to the removal of violations, assessment of the charges of removal against the violating Owner or the like shall in no way limit the Declarant or Board's authority under this section or any other section of this Declaration or the other Governing Documents to address violations of the provisions or restrictions hereof; such statements are included below to reiterate this power of the Declarant or Board (or ARC acting for the Board).

4.3.2. *Subdivision of Lots.* No Lot shall be subdivided except that Declarant shall be permitted to subdivide or re-plat Lots it owns; however, Owners of adjoining

Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances and with this Declaration, and provided that such adjustment is consented to by Declarant during the Declarant Control Period and thereafter by the Association.

4.3.3. *Sign, Flags and Political Signs.* No commercial signs of any kind shall be displayed to public view on any Lot. This provision shall not apply to marketing or informational signs of reasonable design and size placed on any Lot by Declarant or an Approved Builder. This provision shall not apply to signs used to advertise a Lot for sale or rent, provided that no such sign shall be larger than 18" x 24" and such sign shall only be placed on an Owner's Lot; there shall be no directional signs or other signs placed at intersections, along roadways or streets within the neighborhood, within Common Areas, or otherwise outside the affected Owner's Lot. No Political Signs shall be permitted on any Lot. No flags shall be permitted on any Lot unless displayed in conformity with duly adopted rules and regulations, as defined in Section 2.28 hereof.

4.3.4. *Refuse Storage.* All trash, garbage and refuse stored outside of a Dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any street or any other Lot except as reasonably necessary for garbage pick ups. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot.

4.3.5. *Storage of Building Materials and Fuels.*

A. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes, unless otherwise approved by Declarant, shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used, but in no event, longer than twelve (12) months from the start of construction of a Dwelling on the Lot.

B. On-site storage of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

4.3.6. *Temporary Structures.* There shall be no structure of a temporary nature on any Lot; all structures erected shall have a permanent foundation and shall be approved by Declarant or the ARC prior to construction, placement or erection on a Lot. No trailer, shed, tent, garage or any other similar structure shall be used as a residence. Provided, however, this paragraph shall not be construed to prevent Declarant or a Builder from using sheds or other temporary structures during construction, or as on site management and sales offices. However, no outbuilding structure on any Lot may be used as a temporary or permanent residence

4.3.7. *Parking and Vehicle Storage.* Only licensed, tagged and operative vehicles, classified as passenger cars, SUVs, station wagons, passenger pick-up trucks or

passenger vans may be regularly parked in driveways; however, no passenger vehicle with commercial lettering, logos or any other commercial information and/or advertising shall be parked on a Lot other than in an enclosed garage with the door down except for entrance and exiting purposes. No boats or boat trailers shall be kept on a Lot other than in an enclosed garage with the door down. No vehicle of any type will be permitted to be parked regularly on any roadway within the Community; however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. Campers and recreational vehicles shall not be placed or allowed to be placed on any Lot or within any part of the Community. No vehicle located on a Lot may be used as a Dwelling, even temporarily.

4.3.8. *Offensive or Dangerous Activities Prohibited.* No noxious or offensive activity shall be conducted upon any Lot or Common Area or any other portion of the Community, nor shall any activity be conducted thereon tending to cause malodorous emissions, embarrassment, discomfort, annoyance or nuisance to the neighborhood or tending to disturb the peace or endanger the safety of Owners or occupants of any Lot. Examples of the foregoing may include, without limitation:

A. Pursuit of hobbies or other activities, which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot, including but not limited to the maintenance and repair of vehicles;

B. Outside burning of trash, leaves, debris, or other materials;

C. Use or discharge of any radio, car stereo, loudspeaker, horn, whistle, bell, wind chimes, or other sound device whether once or on a consistent basis so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes. It is understood that Declarant intends to construct an "amphitheater" on a portion of the Common Area for the use and benefit of the Owners, which use shall be regulated by the Board. The provisions of this Section 4.3.8(C) will not be applicable to activities approved by the Board and conducted at the amphitheater prior to 10:00 p.m.;

D. Hanging of sheets, towels, clothes or laundry in windows or anywhere on a Lot so as to be visible from any roadway or any other Lot (subject to Section 4.3.16 below);

E. Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, or elsewhere within the Community, except that organic fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site.

F. Accumulation of weeds, vegetation, rubbish, debris, garbage, or other waste materials which would render a Lot unsanitary, unsightly, or

offensive, as determined by Declarant during the Declarant Control Period and the Association thereafter.

4.3.9. *Underground Utilities.* All utility lines serving structures located on Lots shall be placed underground.

4.3.10. *Mobile Homes and Manufactured Housing; New Construction Only.*

A. No mobile home, trailer or manufactured housing shall be located on any Lot with the exception of construction trailers or temporary sales offices of the Declarant or approved Builder as set forth herein.

B. Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting it into a dwelling unit in the Community.

4.3.11. *Screening.* Satellite dishes, antennae, patios, arbors, and the like shall not be located on a Lot so as to be visible from any roadway. In advance of any construction of same, the design and location of all such items shall be submitted for approval to Declarant or the ARC. Failure to obtain prior approval of the ARC may result in removal of any such improvements, and the cost thereof assessed against the Owner of that Lot as a Specific Assessment.

4.3.12. *Animals.* Raising, breeding or keeping animals, livestock or poultry of any kind shall be prohibited except that a reasonable number of dogs, cats and other animals generally recognized as household pets may be permitted on a Lot as set forth in the Rules and Regulations. Any animal which makes objectionable noise or, in the Board's judgment, constitutes a nuisance or inconvenience to the occupants of other Lots, shall be removed by the owner upon the Board's request after a notice and opportunity to be heard. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside a Dwelling. Owners shall clean up behind any pet while walking such Pet on any Common Property and shall additionally clean up behind such pet if such pet leaves droppings on another Owner's Lot. Pets shall be registered, licensed, and inoculated as required by law. All pets must be maintained inside the Dwelling located on the Lot. No outside pet enclosures or pens shall be allowed on any Lot.

4.3.13. *Firearms and Hunting.* Discharge of firearms except in the event of emergency is prohibited; provided, the Board shall have no obligation to take action to prevent or stop such discharge. Discharge of explosives and fireworks of any type is prohibited unless conducted by the Declarant or the Association. Capturing, trapping, or killing of wildlife or other animals within the Community is prohibited, except in circumstances posing an imminent threat to the safety to a particular Owner or to persons within or using the Community.

4.3.14. *Pools.*

A. In-ground pools only shall be permitted upon Lots if the Owner has received the approval from the ARC of the submitted plans for the pool design, location and landscaping. Any application by an Owner for the construction of an in-ground pool shall be accompanied by engineering plans prepared and sealed by an engineer licensed by the State of North Carolina. Generally, pool plans should reflect that the pool is located behind the Dwelling on each Lot, and shall be screened from view in a manner consistent with the overall architecture and landscaping plans of the Dwelling currently located on the Lot. No pool (or any related fence or screen) may be erected without first obtaining approval from Declarant or the ARC, as with all other improvements.

4.3.15. *Water Flow.* Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

4.3.16. *Clotheslines, Window Treatments, Lawn Maintenance, General Upkeep of Lots, Etc.* No clothesline may be erected or maintained on any Lot. All stored materials, lawn mowers, tools and similar equipment shall be kept in an enclosed garage, the Dwelling or other approved, enclosed structure. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted. Each Owner shall keep his grass, hedges, shrubs, vines and mass planting of any kind trimmed or cut so as to appear neat and attractive, and shall promptly remove any dead trees, vines, shrubs or plants on his property. Failure to adhere to this Section 4.3.16 may result in removal of such items and the cost associated therewith assessed to the Owner and against the Owner's property as a Specific Assessment until paid, including any fines or penalties that may apply for such violations (which are also assessable as Specific Assessments).

4.3.17. *Antennas and Satellite Dishes.* No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on any Lot, unless first applied for and approved by the Declarant or ARC, subject to any restrictions or screening requirements placed upon such antennas, etc. by this Declaration, by Declarant or the ARC not in contravention of any applicable federal law.

4.3.18. *Walls, Fences and Hedges.* No fence, hedge, wall or rock wall, including any retaining wall, shall be erected, placed or altered on any Lot without written approval from the Declarant or the ARC.

4.3.19. *Setbacks.* No building shall be located nearer to the front, rear or side property line than the building setback lines as shown on the recorded maps, except as approved by the ARC prior to the start of construction. Any building or structure added after the initial dwelling has been constructed on a Lot must be approved in advance by the Declarant or ARC.

4.3.20. *Basketball Goals and Mailboxes.*

A. No Basketball goals shall be permitted on any Lot without written approval from the Declarant or the ARC.

B. Only mailboxes approved by Declarant or the ARC, as applicable, shall be permitted, and all mailboxes within the Community shall be identical, or if no identical mailbox is available, shall be substantially similar.

4.3.21. *Patios and Decks.* No Patios, railings, decks, balconies and supports thereof shall be erected or placed on any Lot without written approval from the Declarant or the ARC.

4.3.22. *Activities Affecting Insurance.* No Owner shall do or permit anything to be done or kept within the Community or fail to fulfill an obligation which will or does result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any law or the Governing Documents. Should an Owner engage in such activity or omission, such Owner shall be responsible for and may be assessed as a Specific Assessment any increase in the Association's insurance premiums caused by that Owner's activities or omissions; should more than one Owner engage in such activities or omissions, each Owner shall be jointly and severally liable for any increase in insurance premiums. In addition, any cancellation of insurance caused by any Owner's activities or omissions shall result in a Specific Assessment of any actual loss to the Association by virtue of such cancellation, and when such loss is incurred by the action or omission of more than one Owner, such Owners shall be jointly and severally liable for same. No waste shall be committed on the Common Area, except as may be necessary to enable the Declarant, the Association or other Person to exercise any rights reserved to them hereunder, or except as may be necessary to enable the Association to perform its functions and provide services under this Declaration, or except as may be reasonably necessary in connection with the exercise by the County or City, as applicable, or any Person of an easement over, under or through the Common Area.

4.3.23. *Local Law.* Owners shall comply with all local laws and ordinances applicable to any part or all of the Community, including applicable zoning ordinances and building codes.

4.3.24. *Emergency.* There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

4.3.25. *Stream Buffer Disturbance.* No stream buffer area, if any, within the Community shall in any manner be disturbed by any Owner (or his lessee, guest, contractor, etc.) and should any such disturbance occur, the disturbing Owner shall cause the disturbed area to be promptly restored to its prior condition to the fullest extent practicable and such Owner shall bear the sole cost thereof. Should the Association cause such work, or portion thereof, to be performed, the costs thereof shall be assessable

against such Owner as a Specific Assessment and there shall be joint and several liability for such costs in the event of more than one violating Owner.

4.3.26. *Outdoor Furniture.* No household furniture intended for interior use may be kept, stored or used outside of a Dwelling or on any portion of the Common Area.

4.3.27. *Motorized Vehicles.* No Owner(s) of any Lot shall operate or permit to be operated by those under their control, or by those who ought to be under their control motorcycles, three wheelers, four wheelers, ATV's, off-road vehicles or similar vehicles within the boundaries of the Community, except for legitimate purposes of transportation to and from work into and out of the Community. It is the intention of this restriction to prohibit sport riding or joy riding upon motorcycles and similar vehicles within the boundaries of the Community.

4.3.28. *Inflatable Displays.* No inflatable displays of any type shall be inflated or kept upon any Lot except for such holiday or seasonal displays as are permitted in the Rules and Regulations.

4.3.29. *Declarant Exception.* Notwithstanding any other provision of this Declaration or any other Governing Documents, during the Declarant Control Period the restrictions contained in this Article and the Rules or Regulations of the Association with respect to matters addressed in this Article; (i) shall not prohibit or restrict the Declarant from developing any infrastructure (for example, water lines, sanitary sewer lines, streets, street lights and sidewalks) in the Community; and (ii) shall not prohibit or restrict the Declarant (or any Builder with the Declarant's consent) from marketing or selling any part or all of the Community.

4.4. Rules and Regulations. In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Lots and Common Areas. The initial Rules and Regulations are set forth in Exhibit C attached hereto and incorporated herein. In order to adapt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be amended, supplemented and/or rescinded and restated as set forth in this Section 4.4.

4.4.1. *Declarant's Authority.* During the Declarant Control Period, the Declarant shall have the unilateral right to amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Association or to other Owners.

4.4.2. *Board Authority.* The Board may amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail to all Members concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable

opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.4.1 above.

4.4.3. *Members' Authority.* Members representing more than seventy-five percent (75%) of the total votes in the Association, at an Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

4.4.4. *Conflicts.* Nothing in this Article shall authorize the Board to modify, repeal or expand any provision of this Declaration. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control. In the event of a conflict between the Bylaws and this Declaration or any Annexation Declaration, the Declaration or Annexation Declaration shall control.

4.5. Limitations. The right and ability of the Declarant and the Board to amend, supplement or restate the Rules and Regulations shall be limited as follows:

4.5.1. *Activities in Dwellings.* No rule established pursuant to this Article shall interfere with the activities carried on within the confines of Dwellings, except that the Association may restrict or prohibit any activities that create costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise, traffic or use of parking facilities, that create unsightly conditions visible outside the dwelling or that otherwise violate the provisions of this Declaration or any applicable governmental law, ordinance or regulation.

4.5.2. *Alienation.* No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Lot or require consent of the Association or Board for leasing or transfer of any Lot; provided, however, that the leasing of a Dwelling on a Lot shall be subject to the provisions of Section 18.7 hereof and related provisions in the Rules and Regulations.

4.5.3. *Abridging existing rights.* No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule and which was in compliance with all provisions of this Declaration and all Rules previously in force. This limitation shall apply only for the duration of such Owner's ownership of the Lot, and this right shall not run with title to any Lot. The limitations stated in this subsection shall not apply to amendments to this Declaration.

4.6. Common Area Use. The Board may promulgate and enforce administrative rules and regulations governing use of the Common Areas without notice to the Members or any hearing. Examples of such administrative rules and regulations shall include, but not be limited to, setting hours of operation of a recreational facility or allocating or reserving use of a facility by particular individuals at particular times.

4.7. Lot Purchasers. All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Governing Documents, as they may be amended, expanded, and otherwise modified as set forth in each Governing Document. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use,

enjoyment and marketability of his or her Lot shall be affected by the Governing Documents which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

ARTICLE V.

Architecture and Landscaping.

5.1. General. No structure or improvement of any sort, including but not limited to homes, walls, fences, additions to homes and/or other items set forth in Section 4.3.1, shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on such Lot except pursuant to a written contract with an Approved Builder. No such structure or improvement, (including any landscaping, driveways, and tree removal), shall take place on such Lot except pursuant to approval by the ARC and in compliance with this Declaration. The removal of any tree with a diameter of six inches (6") or more as measured at an elevation of three feet (3') above ground level shall require ARC approval.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of a Dwelling located on his or her Lot without approval; provided that modifications to the interior of a Dwelling visible from outside the structure shall be subject to approval by the ARC.

Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Board or its designee in its sole discretion.

This Article shall not apply to Declarant's activities during the Declarant Control Period or to the Association's activities during the term of this Declaration.

5.2. Architectural Review.

5.2.1. *By Declarant.* Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the developer and Owner of real estate within the Community, Declarant has a substantial interest in the quality and appearance of improvements within the Community, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his or her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted, granted with conditions, withheld, or delayed pending receipt of more information in Declarant's or its designee's sole discretion.

Declarant's rights reserved under this Article shall continue during the Declarant Control Period and for so long as Declarant has the right to expand the Community pursuant to Section 10.1., unless earlier terminated by Declarant by a Recorded Document.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may, but shall not be obligated to, delegate from time to time all or some of its reserved rights under this Article to any other Person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other Person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

Moreover, Declarant shall have the authority to delegate its reserved rights hereunder to the ARC described below and shall have the authority during the Declarant Control Period, unless otherwise relinquished in a Recorded Document, to appoint all or some members of the ARC in its sole and absolute discretion.

5.2.2. *Architectural Review Committee.* Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the entity charged with protecting the interests of the Community and as an Owner of real estate in the Community, the Association has a substantial interest in the quality and appearance of improvements within the Community. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Declarant during the Declarant Control Period and thereafter by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three (3), but not more than seven (7), natural Persons who shall serve and may be removed and replaced in the Board's discretion. During the Declarant Control Period, the members of the ARC need not be Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time. Upon and after the end of the Declarant Control Period, the ARC shall be composed solely of Owners.

5.3. Reviewer. For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.4. Guidelines and Procedures.

5.4.1. *Architectural Guidelines.* Declarant may, at its sole discretion, prepare Architectural Guidelines applicable to Lots and/or other portions of the Property which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to Lot size, location, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Transylvania County or as set forth in the International Building Code.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in Exhibit A or has a right to expand the Community pursuant to Article X, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines.

Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to, or removal of structures previously approved, once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Owners for inspection and copying upon reasonable notice during the Association's business hours; Reviewer may also make the Architectural Guidelines available to prospective purchasers of Lots. In Declarant's or the Association's discretion (as applicable), such Architectural Guidelines may be recorded in the Transylvania County Public Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

5.4.2. *Procedures.* No activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Reviewer may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding

structures and environment. Also, decisions may be based solely on aesthetic considerations. Note that the Reviewer may also deny an application based solely on the chosen Builder and that Builder's history of non-compliance with the Governing Documents and/or history of non-compliance with the similar documentation and approvals of other communities. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith, in accordance with the procedures described in this Article, and in accordance with the provisions of North Carolina law.

The Reviewer shall make a determination on each application within thirty (30) days ("Response Period") after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

If the Reviewer requests further or additional information pursuant to the foregoing paragraph, the running of the Response Period shall be suspended until all of such requested information is received; if there were more than ten (10) days remaining in the Response Period on the date such information was requested, then upon the receipt of all requested information the Response Period shall continue with the same number of days remaining as on the day the information was requested; if there are less than ten (10) days remaining in the Response Period when the information is requested, then the Response Period shall end ten (10) days from that date upon which all information is received.

If Declarant is not the Reviewer, then until expiration of Declarant's rights under this Article, the Reviewer shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have fifteen (15) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant and no such application, regardless of the Reviewer's recommendation or approval, shall be deemed to be approved until the Declarant approves the application in writing, waives its right to do so in writing or fails to exercise its veto power within the fifteen-day (15) time frame. In the event that the Declarant fails to respond in a timely manner or waives its approval right, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.6 below and Declarant has consented to the variance during the existence of Declarant's rights hereunder.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service or the date upon which an e-mail or confirmed receipt fax of such response is forwarded to the applicant at the internet address or location provided to the Reviewer by the applicant. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Unless a variance is granted in writing, if construction does not commence on a project for which plans have been approved within two (2) months after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within twelve (12) months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

Declarant or the Board may, whether upon recommendation of the ARC or not, by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

5.5. Waiver of Future Approval. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6. Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.7. Limitation of Liability. The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community, but they do not create any duty to any Owner or other Person. Review and approval of any application pursuant to this Article may be based on any consideration the Reviewer deems

appropriate, including aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring Lot Owners; (d) that views from any other Lots or the Common Area are protected; or (e) that no defects exist in approved construction.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify Declarant, the Board, the ARC, and any members thereof as provided in the Bylaws.

5.8. View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

ARTICLE VI.

Maintenance and Repair.

6.1. General. All areas within the Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the Community-Wide Standard, and to all other standards stated in the Governing Documents. The Association and the individual Owners shall be responsible for such maintenance, as provided in this Article VI.

6.2. Association Responsibility for Common Area Maintenance. The Association shall maintain the following:

- (a) All landscaped rights-of-way and all entry features;
- (b) All streets and roadways within any easement or licenses owned or held by the Association, unless such streets or roadways are maintained by some governmental authority;
- (c) All Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon, including all "amenities";
- (d) All ponds, streams and culverts located on the Property which serve as part of any drainage and storm-water retention system; and

(e) The water and sewer systems serving the community until such time as ownership of same shall have been transferred to some governmental authority.

All costs of the Association in meeting its responsibilities pursuant to this Section shall be Common Expenses.

6.3. Other Maintenance and Service Responsibilities of the Association.

6.3.1. *Maintenance and Service Obligations Benefiting the Townhome Lots Exclusively.* The Association shall provide the following for the benefit of the Townhome Lots:

A. Lawns/Landscape. The Association shall provide ordinary lawn care and maintenance on and for each Townhome Lot, the scope of which shall be determined by the Association but shall require the approval of the Townhome Committee. Such lawn care and maintenance on Lots may include, without limitation, the maintenance or replacement of any grass, trees, bushes and shrubs planted by the Association (or by an Owner with the approval of the Association). The Association shall not be responsible for the maintenance of any landscape improvements unless the Association has expressly assumed such maintenance obligations.

B. Exterior Maintenance. The Association shall provide routine maintenance and repair services for the exterior of each Townhome Building. Such services shall include maintenance and repair of all exterior surfaces including roofs, siding, trim, gutters and downspouts, porches, stoops, patios, railings, decks, light fixtures, driveways, walkways and the exterior surfaces of exterior doors, provided the same were originally provided with the Townhome Building. Provided, however, it shall be the duty of each Owner and not the Association to maintain the following: glass surfaces, light bulbs, window and door screens, weather-stripping, and all exterior improvements, including trees, plants, flowers and other landscaping not originally provided by the original builder of the Townhome Building or by the Association. The Association shall provide the aforesaid maintenance as it determines in its sole discretion in order to uphold the aesthetic quality and property values of the Townhome Buildings, but in any event, upon a regular written schedule. A blanket easement over each Townhome Lot and the exterior of each Townhome Building is hereby reserved for the Association and its contractors to perform such maintenance at all reasonable times.

C. Association to Maintain Insurance on Townhome Lots. The Association shall maintain property insurance covering each Townhome Lot and the Townhome Building which is located thereon once each such Lot has been conveyed to the initial Owner, and thereafter. The insurance shall name the Board of Directors of the Association as trustee for the Lot Owners and their respective Mortgagees, as their respective interests may appear. The insurance shall cover not less than one hundred percent (100%) of the replacement cost of each

Townhome Building and Dwellings located therein, but not including the cost of the land, driveway, foundation, excavations and other such commonly excluded items. The insurance shall afford coverage against all risks of direct physical loss, including fire and other hazards covered by the standard extended coverage endorsement, as well as such other risks as may be advisable in the Board's discretion. The insurance shall include the following provisions:

(i) That the Lot Owner is an insured person under the policy to the extent of his or insurable interest;

(ii) That the insurer waives its right of subrogation against the Lot Owner or member of his household;

(iii) That no act or omission by the Lot Owner, unless acting within the scope of his actual authority on behalf of the Association, will preclude recovery under the policy;

(iv) That the policy may not be cancelled or significantly modified without at least thirty (30) days prior written notice to all insureds, including any mortgagees named therein;

(v) That the policy shall be considered the primary policy should there be other insurance in the name of the Lot Owner covering the same loss; and

(vi) Any loss covered by the insurance shall be adjusted with the Association, but the proceeds for any loss are payable as directed by the Association and not to any Mortgagee. Proceeds shall be held in trust for the benefit of Lot Owners and lienholders as their interests may appear. Proceeds shall be disbursed first for restoration and repair of the damaged property, and Lot Owners and lienholders shall not be entitled to any portion of the proceeds unless there is a surplus after completing restoration and repair.

6.4. Owner's Responsibility. To the extent not provided by the Association pursuant to the foregoing Section 6.3 which relates to the Associations maintenance responsibilities for Townhome Lots, each Owner shall maintain his Lot and all unimproved Common Area along the boundaries of his Lot (e.g., area between lot line and curb, if any). Each Owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his Lot. Each Owner's maintenance of his Lot shall include but not be limited to:

(a) Keeping all areas free and clear of all litter, trash, miscellaneous personal property refuse and wastes;

(b) Mowing lawns on a weekly basis during the growing season and otherwise, as needed. Such need shall be determined by the Board, in its sole discretion;

(c) Pruning trees and shrubs;

- (d) Watering lawns;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping lawn and garden areas alive;
- (g) Removing and replacing any dead plant material;
- (h) Keeping vacant land well maintained and reasonably free of weeds;
- (i) Keeping driveways in excellent repair;
- (j) Complying with all governmental health and police requirements;
- (k) Repainting of all structures;
- (l) Repair of exterior damage to all structures; and
- (m) Keeping all garbage receptacles of any kind stored within a closed garage or behind a structure approved by Declarant.

6.5. Right to Perform Owner's Responsibility. If any Owner or occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail addressed to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, or shall be deemed to be delivered on the date personally delivered, or shall be deemed to be delivered on the date such notice is forwarded to the Person's e-mail address on file with the Association), 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 Declarant or the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12%) per annum from the date(s) such amounts are expended until repaid to the 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 the Association or the Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). In addition, the Declarant or Association may choose to not enter upon the affected Lot and first choose to retain the services of legal counsel in connection with seeking the compliance of such Owner(s) with his duties and responsibilities hereunder, and such Owner(s) shall reimburse the Association for all costs and expenses of same, plus interest at the foregoing rate, (in addition to any subsequent costs and expenses, plus interest at the foregoing rate, of entering the Lot and having the care and maintenance performed). If such Owner(s) shall fail to reimburse the 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 the

Association or Declarant, the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

ARTICLE VII.

Insurance.

7.1. General. The Association shall obtain and continue in effect the following types of insurance, if reasonable available, or if not reasonable available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket property insurance for all insurable improvements on the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section;

(b) Commercial general liability insurance on the Common Area. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Common Area. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insured, Declarant, any property manager, the Association, the Board, the officers of the Association, the ARC, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Common Area;

(c) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(d) Directors' and officers' liability coverage;

(e) Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth (1/4) of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board, in its business judgment determines advisable.

7.2. Premiums. Except for Premiums for insurance related to Townhome Lots which are Townhome Expenses, premiums for all insurance shall be Common Expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

7.3. Periodic Review. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with replacement costs in the Transylvania County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

7.4. Deductible Amount and Cost. The policies may provide for a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment pursuant to Article IX below.

7.4.1. All insurance coverage obtained by the Board shall:

A. Be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate and carries a Best rating of AA or better;

B. Be written in the name of the Association as trustee for the benefited parties. (policies on the Common Areas shall be for the benefit of the Association and its Members);

C. Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

D. Contain an inflation guard endorsement;

E. Include an agreed amount endorsement, if the policy contains a coinsurance clause;

F. Provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving any Owner any interest in the Common Area other than that of a Member);

G. Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Declarant (during the Declarant Control period) and Association to cure the defect or violation and allowance of a reasonable time to cure; and

H. Include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.

7.4.2. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured for claims arising in connection with the ownership, existence, use or management of the Common Area and provide:

A. A waiver of subrogation as to any claims against the Association's Board of Directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests;

B. A waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

C. An endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

ARTICLE VIII.

Repair and Reconstruction of Association Property.

The Association shall have the authority and the duty to repair or reconstruct Common Area or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing at least eighty percent (80%) of the total vote of the Association vote not to repair or reconstruct.

Except as otherwise provided in this Section, the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by the Board. While such construction is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section 9.2 may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amounts of any such Special Assessments shall constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Lots in proportion to the contributions made by each Owner to the Association.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests. While such clearance and restoration is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

ARTICLE IX.

Association Finances.

9.1. Preparation of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for the Townhome Lots reflecting the estimated Townhome Expenses that the Association expects to incur for the benefit of the Townhome Lots in the coming year.

(b) The estimated expenses in each budget shall including, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Townhome Expense, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replace cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

(c) Each budget shall also reflect any surplus or deficit as of the end of the current year, the sources and estimated amounts of funds to cover anticipated expenses, including income expected from sources other than Assessments.

9.1.2. Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years, and any income anticipated from sources other than Assessments against the Lots shall be allocated equally among all Lots which are subject to assessment and levied as a Base Assessment.

9.1.3. Calculation of Townhome Assessments. The total Townhome Expense budget, less any surplus in such budget from prior years, shall be allocated equally among all Townhome Lots which are subject to assessment and levied as a Townhome Assessment. Unless otherwise specified, Townhome Assessments shall be set at a uniform rate per Townhome Lot, except that any portion of the Townhome Assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Townhome Lot Owners in proportion to the benefit received, as the Board may reasonably determine.

All Townhome Assessments collected by the Association shall be held in trust for and expended solely for the benefit of the Townhome Lots for which they were collected and shall be accounted for separately from the Association's general funds.

9.1.4. Notice of Budget and Assessment; Ratification of Budget. The Budgets are subject to ratification by the Owners at a meeting. Within thirty (30) days of its adoption of a proposed budget, the Board shall send a summary of the proposed budget and notice of the meeting to consider ratification of the budget to the Owners or, in the case of budget for Townhome Expenses, to the Owners of the Townhome Lots. The meeting shall be held not less than ten (10) days nor more than sixty (60) days from the date of such notice. A quorum need not be present at the meeting and the notice to Owners shall include a statement that the budget may be ratified without a quorum being present. The Common Expense budget shall be ratified unless, at the budget meeting the Owners representing at least eighty percent (80%) of the total votes in the Association and the Declarant, if any, disapprove the budget. A Townhome Assessment budget shall be ratified unless, at the budget meeting, the owners of at least eighty percent (80%) of the Townhome Lots disapprove the Townhome Assessment budget. In addition, the Townhome Assessment Budget is subject to approval by the Townhome Committee elected by the Owners of the Townhome Lots in accordance with the Bylaws.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by ten percent (10%), shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base or Townhome Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in this subsection above.

The initial Base Assessment shall be an amount established by the Board. The initial Townhome Assessment shall be an amount established by the Board.

9.1.5. Association Monies. All monies collected by the Association shall be treated as the separate property of the Association. As monies for any Assessments are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners, provided, however, that Townhome Assessments shall be segregated from other Assessments.

9.2. Other Authorized Assessments.

9.2.1. Special Assessments. The Association may levy Special Assessments to cover unbudgeted Common Expenses or Townhome Expenses in excess of those budgeted. Any such Special Assessment may be levied against all Owners. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board and the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board.

9.2.2. Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot as follows:

A. To compel compliance with the Governing Documents by a particular Owner by imposing a uniform fine not to exceed one hundred dollars (\$100.00) per day or such higher amount as may be authorized under the Planned Community Act, which shall be in the nature of and treated for all purposes as a Special Assessment, after notice to such Owner and an opportunity to be heard;

B. To cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the services listed in Section 6.3); and

C. To cover costs incurred in seeking to have a Lot brought into compliance with the Governing Documents, including any related administrative and collection costs in addition to reasonable attorney fees, and/or to cover the costs of physically bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and, if required by this Declaration or the Bylaws, an opportunity for a hearing before levying any Specific Assessment under this subsection 9.2.2(C).

9.3. Authority to Assess Owners: Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy all Assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day following the later of: (a) the closing on the sale of a Lot to a Person other than Declarant or an Approved Builder, or (b) the issuance of a certificate of occupancy for

a residential Dwelling on such Lot. The first annual Assessments levied on each Lot shall be prorated according to the number of days remaining in the fiscal year at the time Assessments commence on a Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year, and billed and collected monthly (in the discretion of the Board).

9.4. Liability for Assessments. Each Assessment levied by the Association, together with interest, late charges, administrative fees and the costs of collection thereof, including reasonable attorney fees and filing fees or other court costs (all of the foregoing costs and fees, excepting assessments, being "Additional Costs"), shall be the joint and several personal obligation of each Owner of a Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the Assessment and Additional Costs. If the Assessment remains unpaid for a period of thirty (30) days after the date of mailing of the notice that it is due, the Association may impose reasonable charges for late payment of Assessments, not to exceed the greater of twenty dollars (\$20.00) per month from the date of mailing of the notice or ten percent (10%) of any Assessment installment unpaid, and the Assessment, together with Additional Costs shall constitute a lien on the delinquent Lot when a claim of lien is filed by the Association against the Lot in the Office of the Clerk of Superior Court of Transylvania County. The lien may be foreclosed by the Association as provided in the Planned Community Act and other provisions of North Carolina law.

No Owner may exempt himself from liability for Assessments by non-use of Common Area, abandonment of his or her Lot or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action of the Board.

The sale or transfer of any Lot shall not affect the Assessment lien, or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage shall extinguish the lien as to any installments of such Assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section; provided, that the personal obligation of the Owner for the payment of Assessments and Additional Costs being foreclosed upon shall continue despite such foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to that Owner's acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment under Section 9.2, including the subsequent Owner of the foreclosed Lot.

9.5. Deficits During Declarant Control Period. During the Declarant Control Period, Declarant may (but shall not be required to):

(a) Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Townhome and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt; and/or

(b) Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan.

9.6. Statement of Account. Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot, the amount of the current periodic Assessment and the date on which such Assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by regular mail to the Member's address on file with the Association or at the address provided by such requesting Mortgagee or prospective Mortgagee. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall bind the Association in favor of persons who rely upon it in good faith as of the date noted on the statement.

9.7. Exempt Property. The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:

(a) All Common Area; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

9.8. Property Subject to Reduced Assessments. Assessments on the following property shall be in an amount equal to ten percent (10%) of the respective Assessments:

(a) Any and all property owned by the Declarant; and

(b) Any Lot owned by an Approved Builder.

9.9. Capitalization of Association and Assessment on Property Transfer. Upon acquisition of title to a Lot by an Owner other than Declarant, or an Approved Builder, and upon each transfer of title thereafter, a contribution shall be made by or on behalf of the purchasing Owner to the Association in order to provide for the continued operation and of maintenance of the Association properties including, but not limited to, construction or re-construction, repair or replacement of capital improvements upon the Common Area as follows:

(a) One thousand dollars (\$1,000.00) at the Closing of the acquisition by an Owner of a vacant Lot, with an additional one thousand dollars (\$1,000.00) payable with

respect to such Lot upon the first to occur of the issuance of a certificate of occupancy, or the actual occupancy of a residence constructed on said Lot.

(b) One thousand five hundred dollars (\$1,500.00) at the Closing of the acquisition by an Owner of a Townhome Lot.

(c) Two thousand dollars (\$2,000.00) at the Closing of the acquisition of title to a Lot upon which a completed residence has been constructed.

For the purposes of this section "Resale" is defined as any transfer, after the property's initial transfer to an Owner other than Declarant or an Approved Builder, of legal or equitable title to all or any portion of a Lot for valuable consideration, other than by gift, inheritance, or mortgage foreclosure where said transfer occurs subsequent to the initial sale by the Declarant or an Approved Builder.

ARTICLE X.

Expansion of the Community.

10.1. Expansion by Declarant. Until the earlier of the expiration of the Declarant Control Period or twenty (20) years after the recording of this Declaration, Declarant reserves the right, but not the obligation, to unilaterally subject all or any portion of the Additional Land to the provisions of this Declaration. Declarant may transfer or assign this right to subject portions of the Additional Land to this Declaration, provided that the transferee or assignee is the developer of such Additional Land, and provided that the transfer or assignment is evidenced by a document recorded in the Transylvania County Public Registry.

Declarant shall subject Additional Land to this Declaration by recording an Annexation Declaration describing the property being subjected. Such annexation and/or the recording of an Annexation Declaration shall not require any Member's consent or the consent of the Association but shall require the consent of the owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the recording of such Annexation Declaration unless otherwise provided therein. Such expansion by Declarant and the recording of an Annexation Declaration shall not be deemed an amendment to this Declaration requiring a Membership vote in any manner whatsoever.

10.2. Expansion by the Association. Upon expiration of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, if authorized by the affirmative vote of Members representing sixty-seven percent (67%) of the total existing votes in the Association.

The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Any such Annexation Declaration shall be executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

ARTICLE XI.

Declarant Rights.

11.1. Reasonable Rights To Develop. Declarant and/or its contractors or transferees may construct improvements to or within the Community including to the Lots. The completion of such construction and the said or other disposal of the Lots is essential to the establishment and welfare of the Community. Therefore, during the Declarant Control Period, nothing in this Declaration or the other Governing Documents shall be construed to:

(a) Prevent Declarant, Approved Builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Community;

(b) Prevent Declarant or its representatives from erecting, constructing, and maintaining anywhere in the Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing GlenLaurel Preserve as a residential Community and disposing of the Lots by sale, lease, or otherwise;

(c) Prevent Declarant from maintaining such signs and conducting such activities in any part of the Community owned by Declarant or the Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Lots; or

(d) Prevent Declarant from placing and utilizing on Lots or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

11.2. Marketing and Sales Activities. During the Declarant Control Period and as previously described herein, Declarant and Approved Builders authorized by Declarant may construct, relocate, maintain and carry on upon any Lot Declarant owns or upon portions of the Common Area, such facilities and activities as may be reasonably required, convenient or incidental to the construction, marketing or sale of Lots, as determined in Declarant's sole opinion and subject to Declarant's prior approval. Such facilities and activities may include, without limitation, business offices, signs, model homes, and sales offices. There shall be no limit on the number or size of such facilities except as determined by Declarant. Declarant and authorized Approved Builders shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Common Area upon termination of its rights under this Section.

11.3. Construction of Improvements. During the Declarant Control Period, Declarant and its employees, agents and designees shall have a right of access and use and an 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.

11.4. Approve Additional Recorded Documents. During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or

similar instrument affecting any portion of the Community without Declarant's prior written approval. Any instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

11.5. Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights or obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under the Governing Documents. No such transfer or assignment shall be effective unless evidenced by a Recorded Document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.6. Exclusive Rights to Use Name of Development. During the Declarant Control Period, no person or entity shall use the name "GlenLaurel Preserve" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "GlenLaurel Preserve" in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Association shall be entitled to use the words "GlenLaurel Preserve" in its name.

11.7. Right to Approve Changes in Community Standards. During the Declarant Control Period, no amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without Declarant's prior written approval.

11.8. Easement to Inspect and Right to Correct.

11.8.1. *Easement.* During the Declarant Control Period, Declarant reserves for itself and such other persons as it may designate perpetual non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of accessing, inspecting, testing, redesigning or correcting any portion of the Community including Lots and Common Area. Declarant shall have the right to redesign or correct any part of the Community, including Lots owned by Declarant and Common Areas.

11.8.2. *Right of Entry.* During the Declarant Control Period, Entry onto a Lot shall be after reasonable notice, except in an emergency. Entry into a structure on a Lot shall be only after Declarant notifies the Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Lot to perform such activities.

11.9. Appointment or Removal of Members of the Board and Officers. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall have the sole authority to appoint or elect as well as to remove and replace all members of the Board, all officers of the Association and all members of any Association committees (including the ARC) unless Declarant assigns such right to the Membership or Association prior to the termination of the Declarant Control Period.

11.10. Amendment to Declaration by Declarant. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant, without obtaining the approval

of any Association member, or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto: (i) which are correctional in nature and do not involve a change which materially adverse affects the rights, duties or obligations specified herein and (ii) which are necessary to cause this Declaration or any Annexation or Supplemental Declaration to comply with the requirements of FHA, VA, Fannie Mae, or other governmental agency.

11.11. Review of Design and Construction. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall have the right to control the design, quality, installation and construction of improvements within the Community as provided in Article V above.

ARTICLE XII.

Easements

12.1. General Provisions.

12.1.1. *Owners' Easements of Enjoyment.* Except as limited by this Declaration, the Planned Community Act or by action of the Board in enacting a suspension, every Owner shall have a right of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with, the title to every Lot. Except as limited by this Declaration and the Planned Community Act, any Owner may delegate his rights of use and enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Property, or his guests. Such delegation right may be eliminated when the delegating Owner's rights to use and enjoyment of the Common Area have been suspended.

12.1.2. *Walks, Drives, Parking Areas, and Utilities.* All areas of the Community shall be subject to such easements for private streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all storm water control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of the Property or Additional Land designated to be the Common Area to the Association, and the Association shall have the power and authority to grant and establish further easements upon, over, under, and across the Common Area.

12.1.3. *Encroachments and Declarant's Easement to Correct Drainage.* All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Common Area to the extent that such initial improvements actually encroach, including, without limitation, such items as

overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. During the Declarant Control Period and for the benefit of the Association thereafter, the Declarant reserves a blanket easement and right-of-way on, over, and under the ground within the Community to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant or Association, as applicable, shall restore the affected Property to its original condition to the extent practicable. Declarant or Association, as applicable, shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant or Association, as applicable.

12.1.4. *Easement for Entry Features.* There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot and all Common Area. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features, the right to grade the land under and around such entry features and the right to take action necessary to maintain any entrance sign or monument.

12.1.5. *Construction and Sale Period Easement.* Notwithstanding any provisions contained in the Governing Documents, until Declarant's right to unilaterally subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any Builder or developer approved by Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Community, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Community. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Community as well as any Lot in the Community; (ii) the right to tie into any portion of the Community with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Common Area; (v) the right to carry on sales and promotional activities in the Community; (vi) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant and any Builder or developer authorized by Declarant, may use residences, offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational

facilities available for use by the Community as a sales office or for marketing purposes without charge. However, neither Declarant nor any Builder may maintain a permanent sales office or other business office within the community – that is, such offices shall be for the purpose of marketing and selling new homes for construction in the Community so that all Lots shall be sold to Class A Owners other than Declarant and Builder whose intent is to use the Lot for residential purposes, and that once such Declarant or Builder exhausts its inventory (if not earlier) the sales offices should be sold to prospective Owners who intend to use the property for residential purposes. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole expense. During the Declarant Control Period, this section shall not be amended without the Declarant's express written consent.

12.1.6. *Irrigation.* There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water, if any, located within the Community for irrigation purposes.

12.1.7. *Fence Easement.* There is hereby reserved to Declarant and the Association an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans; governmental regulation, rule, ordinance, or plan approval requirement; or which is deemed to be in the best interests of the Community by the Association.

12.1.8. *Easement to Government.* An easement is hereby established for municipal, State or public utilities serving the area, their agents and employees, over all Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, garbage collection, mail delivery, police and fire protection.

12.1.9. *Easement and Right of Entry for Repair Maintenance and Reconstruction.* If any Dwelling is located closer than four feet (4') from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his home. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work as is reasonably practicable.

12.1.10. *Pedestrian Easements.* To the extent that they are not maintained by the Owners of those portions of the Community on which they are located, the Association shall maintain all pedestrian access easements required to be located on any portion of the Community pursuant to approved subdivision plan approvals and/or pursuant to plats of the Community recorded in the register of deeds of the county in which the Property is

located, and/or pursuant to written maintenance agreements with the municipal or county authorities.

12.2. Restrictions on Improvements or Interference with Easements. No improvement shall be built in such a way upon any Lot, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein. No Owner shall have any right to remove, destroy, damage or impede any improvement placed in any valid easement.

ARTICLE XIII.

Mortgagee Provisions.

The following provisions are for the benefit of holders, insurers, and guarantors of First Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1. Notices of Action. An institutional holder, insurer, or guarantor of a First Mortgage which provides a written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder", shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage or such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days of receiving notice of such violation;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

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

ARTICLE XIV.

Changes to Common Area.

14.1. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty-seven percent (67%) of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and Members representing at least eighty percent (80%) of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VIII regarding funds for restoring improvements shall apply;

(b) If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

14.2. Transfer, Partition or Encumbrance of Common Area.

(a) Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the Common Area be otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing one hundred percent (100%) of the total votes in the Association, and the consent of Declarant, if during the Declarant Control Period.

ARTICLE XV.

Fines and Suspension of Privileges or Services.

The Board may impose fines on an Owner as a Specific Assessment and/or suspend an Owner's right and privilege to use certain Common Area for failure of that Owner, his lessees,

agents or invitees, to abide by this Declaration, the Rules and Regulations or the administrative rules and regulations governing Common Area. The Board shall not impose any such fine or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Board and notice of the Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured. The provisions of this Article shall not be applicable to Declarant.

ARTICLE XVI.

Dispute Resolution and Limitation on Litigation.

16.1. Consensus for Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of Board members representing at least sixty-seven percent (67%) of the total votes of the Board. This Section shall not apply, however, to (a) actions by the Association to enforce the Governing Documents (including, without limitation, the imposition of fines, the suspension of privileges or services or the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect in the Community or any improvement constructed thereon, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Members or the particular Member, and to access, inspect, correct the condition of or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the Builder who constructed such improvements prior to retaining any other expert witness or for other litigation purposes.

16.2. Alternative Method for Resolving Disputes. Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration, any Builder within the Community, and any Person not otherwise subject to the Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Section 16.3 ("Claims") using the procedures set forth in Section 16.4 ("Mandatory Procedures") hereof.

16.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements in the Community (other than matters of aesthetic judgment under Article V, which shall not be subject to review) shall be subject to the provisions of Section 16.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 16.4:

- (a) Any suit by the Declarant and/or Association against any Bound Party to enforce the provisions of this Declaration;
- (b) Any suit by the Declarant, Association or any Owner to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the party's ability to enforce the provisions of this Declaration;
- (c) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) Any suit in which any indispensable party is not a Bound Party; and
- (e) Any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 16.4.1 unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 16.4.

16.4. Mandatory Procedures.

16.4.1. *Notice.* Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- A. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- B. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- C. Claimant's proposed remedy; and
- D. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

16.4.2. *Negotiation and Mediation.*

- A. The Parties shall make reasonable efforts to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If

requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

B. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under an independent agency providing dispute resolution services in Transylvania County or surrounding areas.

C. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

D. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

E. Within five (5) days after the Termination of Mediation, the Claimant shall make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand, if the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

16.4.3. *Failure to Settle.* Should the Parties be unable to reach a mutually acceptable settlement after adhering to the procedures set forth above, each Party may pursue its available legal, equitable and administrative remedies pursuant to the Governing Documents or applicable law.

16.4.4. *Allocation of Costs of Resolving Claims.* Each Party shall bear its own costs of the Mandatory Procedures set forth in this section, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

16.5. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 16.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without

the need to again comply with the procedures set forth in Section 16.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

ARTICLE XVII.

Option to Repurchase and Right Of First Refusal

17.1. Applicability. Except for sales and conveyances by Declarant (or any successor, affiliate or assignee of Declarant), no unimproved Lot may be sold by any Owner except in compliance with this Article.

17.2. Option to Repurchase. If construction of a Dwelling on a Lot does not commence within the required thirty-six-month (36) time period specified in Section 4.3 above, Declarant shall have the option to repurchase the Lot from its Owner at a price equal to: (1) the contract price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date that is thirty-six (36) months thereafter, in the Consumer Price Index, All Urban Consumers, United States, All Items (1982.84=100) issued by the United States Bureau of Labor Statistics (the "CPI"), less (2) the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. Declarant may issue a written exercise of its repurchase option hereunder at any time following the conclusion of the aforementioned 36-month period.

17.3. Right of First Refusal. Before any "unimproved Lot" (as hereinafter defined), or ownership or interest therein, may be sold to any Person other than Declarant or its successors, the Owner(s) of such unimproved Lot shall first offer in writing to sell the unimproved Lot to Declarant or its successors at the same price and on the same terms as said Owner(s) obtained in a bona fide offer of purchase from such independent third party purchaser. For the purposes of this Article, a Lot shall be considered an "unimproved Lot" unless and until any proposed improvements to such Lot have been approved by the ARC and the good faith commencement of the construction of such improvements (i.e., at a minimum, completion of the footings and foundation of the approved residence and bona fide evidence of total expenditures for improvements to the Lot of \$50,000.00) shall have occurred. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the unimproved Lot for sale to Declarant pursuant to this right of first refusal. Owner(s) shall provide Declarant with all requested supplementary information concerning such proposed sale requested by Declarant. If Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owner(s) of such unimproved Lot shall have the right to sell the Lot to the third party making such bona fide offer, without any further additional obligation to offer the unimproved Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for the purchase of an unimproved Lot. Any Owner who buys an unimproved Lot from another Owner shall be governed by the provisions of this Article and the waiver of the right of first

refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any unimproved Lot. Provided, however, the right of first refusal reserved by Declarant pursuant to this Section shall be valid and enforceable with respect to any unimproved Lot only for a period of fifteen (15) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant, and upon the expiration of said fifteen-year (15) period, the Owner(s) of such Lot shall have the right to sell the unimproved Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Section shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on an unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase an unimproved Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Section and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section and shall also be entitled to any other rights and remedies available at law or in equity for a violation of this Section.

17.4. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article.

17.5. Transfers to Declarant. In the event that Declarant exercises its option to repurchase under Section 17.2 or its right of first refusal under Section 17.3, the closing of the conveyance of such Lot shall occur within ninety (90) days after the receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its option to repurchase or its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price described in Section 17.2 or Section 17.3, as applicable, in cash or cash equivalent. The Owner shall deliver to Declarant a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of the Lot.

17.6. No Further Documentation Required. The option to purchase and the right of first refusal reserved by Declarant in this Article shall run with the title to each Lot and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this

Article shall constitute record notice to all purchasers of Lots in GlenLaurel Preserve of the option to repurchase and the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots subject to the provisions of this Article.

ARTICLE XVIII.

Miscellaneous.

18.1. Parties Bound. All persons and entities acquiring any interest in any of the Lots, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

18.2. Duration. The provisions of this Declaration shall run with and bind the Property perpetually, unless and until the Community is terminated pursuant to N.C.G.S. § 47F-2-118.

18.3. Amendment. Except as provided in Section 11.10 above, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Lots, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded in the Transylvania County Public Registry to be effective.

18.4. Enforcement. Subject to the provisions of Article XVI above and in addition to the powers granted to the Board or Declarant under Section 4.3.1(F) above, the Declarant, any Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Declaration. Subject to the provisions of Article XVI above, the Declarant, the Association or any Lot Owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration. The Declarant, the Association and/or any Owner shall be entitled to recover reasonable attorney's fees and costs incurred in bringing and prosecuting such action from the breaching or violating Owner(s), in addition to recovering any pre-action fees and costs pursuant to this Declaration. All of the foregoing attorney fees, costs and other fees and costs associated with enforcing this Declaration or the other Governing Documents shall be assessable as a Specific Assessment hereunder.

18.5. Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

18.6. Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be memorialized by a Recorded Document executed by the Declarant, a copy of which shall be promptly provided to the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and

duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

18.7. Sale or Lease. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Association may reasonably require. Upon acquisition of a Lot, each new Owner or Lessee shall give the Association, in writing, the name and mailing address of the Owner or Lessee and such other information as the board may reasonably request. Provided, however, that no Dwelling shall be occupied by a Tenant but pursuant to a written Lease, a copy of which has been approved by the Declarant or the Board. Any such Lease shall include provisions requiring the Tenant to abide and be bound by the Governing Documents, and the Owner shall not be relieved of such Owner's responsibilities under the governing documents. No Dwelling shall be leased for a term of less than ninety (90) days, and a Dwelling owned by an investor shall not be leased for a term of less than one (1) year. For the purposes hereof, an "Investor" is a person who owns, but does not occupy the Dwelling at least sixty (60) days during each calendar year. An Owner may not lease an unimproved Lot. The Board may adopt Rules and Regulations further regulating the leasing of Lots.

18.8. Variances. Notwithstanding anything to the contrary contained herein, the Declarant and/or the Association or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if the Declarant or the Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community and would not be inconsistent with the Declarant or Association's duties to the Community and the Association.

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

18.10. Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

18.11. Law Controlling. This Declaration shall be construed and governed pursuant to the laws of the state of North Carolina.

18.12. References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

18.13. Joinder of Declarant's Lender. Frederick D. Judson, Beneficiary, and Gayle E. Ramsey, Trustee, join in the execution of this Declaration for the purpose of acknowledging and agreeing that the lien of the Deed of Trust recorded in Book 672, Page 432 in the Transylvania County Public Registry (the "Deed of Trust") is and shall be subject and subordinate to the terms of this Declaration with respect to all portions of the Property subject to such Deed of Trust, such

that, upon any foreclosure or deed or other proceeding in lieu of foreclosure of said Deed of Trust, this Declaration shall remain in full force and effect with respect to all such portions of the Property described therein.

18.14. Best Interest Decisions. In addition to the authority to grant variances under Section 18.8 above and notwithstanding anything to the contrary contained herein, the Declarant (and/or the Association or its designee) reserves the right, of its own accord, to make any decision whatsoever that, in its sole discretion, it believes to be appropriate for the overall aesthetics and usage of the Community, regardless of whether such decision conflicts with any provision of this Declaration, the Bylaws and/or any rule, regulation, or use restriction promulgated pursuant thereto.

*[Remainder of Page Intentionally left Blank]
(Signatures on Following Pages)*

IN WITNESS WHEREOF, Glen Laurel Partners, LLC, as the Declarant hereunder, has caused this instrument to be executed by its duly authorized Manager, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

GLEN LAUREL PARTNERS, LLC

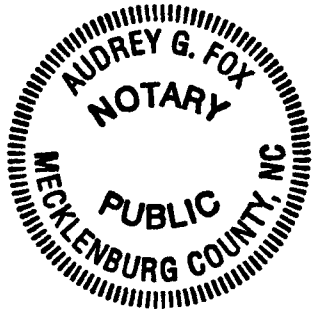
By: *F. D. Judson*
Frederick D. Judson, Manager

STATE OF NORTH CAROLINA)
)
COUNTY OF Mecklenburg)

I certify that the following person(s) personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: FREDERICK D. JUDSON.

Dated this 31st day of October, 2017.

[SEAL]



Audrey G. Fox
Audrey G. Fox, Notary Public
[Type/Print Name of Notary]

My Commission Expires: 6/18/2021

CONSENT OF FREDERICK D. JUDSON

IN WITNESS WHEREOF, FREDERICK D. JUDSON has executed this Consent to be executed this 31st day of October, 2017, evidencing his consent to the terms hereof as referenced in Section 18.13 above.

[Handwritten Signature]

FREDERICK D. JUDSON

STATE OF NORTH CAROLINA)

COUNTY OF Mecklenburg)

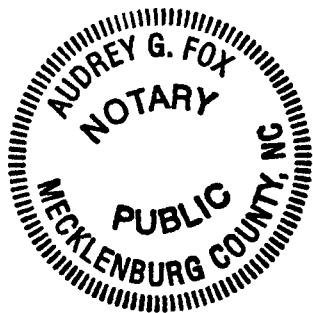
I certify that the following person(s) personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: FREDERICK D. JUDSON.

Dated this 31st day of October, 2017.

[Handwritten Signature]
_____, Notary Public
[Type/Print Name of Notary]

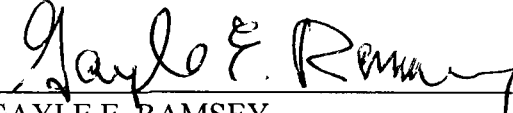
My Commission Expires: 6/18/2021

[SEAL]



CONSENT OF GAYLE E. RAMSEY, TRUSTEE

IN WITNESS WHEREOF, Gayle E. Ramsey, Trustee under that Deed of Trust recorded in Book 672, Page 432 in the Transylvania County Public Registry has caused this Consent to be executed this 16th day of November, 2017, evidencing his consent to the terms hereof as referenced in Section 18.13 above.

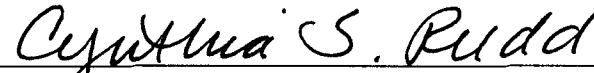


GAYLE E. RAMSEY

STATE OF NORTH CAROLINA)
)
COUNTY OF TRANSYLVANIA)

I certify that the following person(s) personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Gayle E. Ramsey.

Dated this 16th day of November, 2017.



Cynthia S. Rudd, Notary Public
[Type/Print Name of Notary]

My Commission Expires: 6/23/2020

[SEAL]

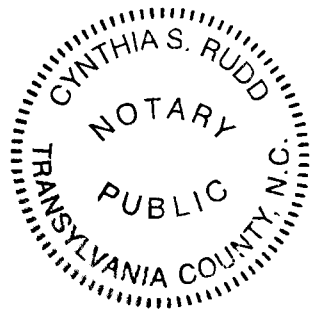


EXHIBIT A

Legal Description

TRACT I:

Being all of Lots 1 - 11 of Phase 1 of Glen Laurel Preserve as shown on a plat thereof recorded in Plat File 12, Slides 681-683, Records of Plats for Transylvania County.

TRACT II:

Being all of Lots 12 - 17, 19 - 27, 29 - 37, 62, 162 and 163 of Phase 1 of Glen Laurel Preserve as shown on a plat thereof recorded in Plat File 16, Slides 544-545, Records of Plats for Transylvania County.

TRACT III:

Being all of Lot 28 of Phase 1 of Glen Laurel Preserve as shown on a plat thereof recorded in Plat File 15, Slide 435, Records of Plats for Transylvania County.

EXHIBIT B

Additional Land

Any real property adjacent to or within one mile of the Property described on Exhibit A.

EXHIBIT C

Initial Rules and Regulations