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DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS FOR MOUNTAIN BROOK

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DECLARATION OF
RESTRICTIVE AND PROTECTIVE COVENANTS
FOR MOUNTAIN BROOK

KNOW ALL MEN BY THESE PRESENTS, that MOUNTAIN BROOK PARTNERS, LLC, a North Carolina limited liability company (hereinafter referred to as "Developer" or "Declarant"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Catheys Creek Township, Transylvania County, North Carolina, and more particularly described as being all of Lots 1-14, 36-44 and 46-62 of Mountain Brook as shown on a plat thereof recorded in Plat File 11, Slides 966-971, Records of Plats for Transylvania County.

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

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

ARTICLE 1
LAND USE AND STRUCTURE TYPE

All numbered lots in the Development shown on the recorded plat hereinabove referred to are hereby designated single-family residential as to their permissible uses. No trade or business of any kind may be conducted on any lot, nor may any trade

materials or inventories be stored upon any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, together with a porch, terrace, and either an attached garage or carport for not more than three cars or a detached garage for not more than two cars.

Each dwelling constructed, erected or situated on a lot shall have a fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage, carport or other areas not enclosed by the main structure) which shall contain not less than 1,600 square feet of fully enclosed floor area at ground level, and in the case of two or two and one half (2½) story buildings, shall contain not less than 1,200 square feet of fully enclosed floor area on the main floor at ground level. However, the Architectural Control Committee hereinafter provided for in this Declaration may grant variances from these square footage requirements when in its judgment the topography of a lot and the location of setback lines make it impractical or impossible to construct on such lot a building which conforms to the minimum square footage requirements set out herein.

ARTICLE 2
ARCHITECTURAL CONTROL

A. Architectural Control Committee.

In order to ensure that all houses and other structures are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for the Architectural Control Committee full architectural control in order to achieve these objectives. Accordingly, the Board of Directors of Mountain Brook Property Owners Association, Inc., (sometimes hereinafter referred to as "the Association"), shall appoint annually an Architectural Control Committee consisting of three or more competent persons to serve as members until their successors are appointed. A majority of said committee may also designate a representative to act for it.

The Architectural Control Committee shall prepare and, on behalf of the Association, shall promulgate design guidelines and application procedures. The standards and procedures shall be those of the Association, and the Architectural Control Committee shall be responsible for preparing and amending the standards and procedures. It shall make both available to owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Development or in making any modifications, additions or alterations to any existing improvements located in the Development who shall conduct their operations strictly in accordance therewith.

B. Procedure.

The Architectural Control Committee's approval or disapproval as required by these covenants shall be in writing. Such approval shall not be unreasonably withheld and shall be given or denied by the Committee in writing within thirty days after any such plan and other required information has been properly submitted to the Committee. Denial or approval of the plans, location, specifications and other matters requiring the

approval of the committee may be based by it upon any reasonable grounds, including purely aesthetic considerations. In the event that the Architectural Control Committee fails to approve or disapprove within thirty (30) days after proper plans and specifications and other required information have been properly submitted to it, or in any event, if no suit to enjoin any construction for which the Architectural Control Committee's approval is required under this Article has been commenced prior to the completion thereof, approval will not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully complied with provided that proper plans and specifications and other required information were properly submitted to the Architectural Control Committee at least thirty (30) days prior to the commencement of such construction.

C. Activities either Prohibited or Requiring the Architectural Control Committee's Approval.

No single-family dwelling, patio, porch, terrace, private garage, carport, driveway, dog house, fence, wall or structure of any kind shall be constructed, erected, situated or altered on any lot until the construction plans and specifications and a plan showing its location on the lot have been approved by the Architectural Control Committee as to quality of workmanship and materials, appearance, harmony of external design and external color with existing structures and the natural environment and as to location with respect to topography, its effect on the view from structures already constructed in the Development and finish grade elevation. In no event shall any fence be constructed in front of a house nor shall any chain link fence be constructed on any portion of a lot other than that portion located to the rear of the house which is located on such lot, or any building containing exposed cement or cinder block be erected on any lot, or any vinyl or aluminum siding be placed on any building, or the roof pitch on the main roof on any authorized structure be less than six feet in twelve feet. However, subject to the approval of the Architectural Control Committee, stucco will be acceptable on foundations. Natural drainage shall not be changed without the approval of the Architectural Control Committee. The Architectural Control Committee shall not be responsible for any drainage problems affecting any lot.

No permission or approval shall be required to repaint in accordance with an originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her residence or to paint the interior of his or her residence any color desired.

D. Variances.

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

The Architectural Control Committee may authorize variances from compliance with any of the provisions of the design

guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall be effective unless in writing, be contrary to the restrictions set forth in the body of this Declaration except to such extent as may be specifically authorized in specified circumstances by the provisions of this Declaration, or estop the Architectural Control Committee 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 financing shall not be considered a hardship warranting a variance.

E. Indemnification.

Neither the Architectural Control Committee, the Association, nor Declarant or any of its employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In such events, the members of the Architectural Control Committee shall be defended and indemnified by the Association in the same manner and to the same extent as officers and directors are indemnified under the provisions of the Articles of Incorporation and the Bylaws of the Association.

ARTICLE 3
TEMPORARY STRUCTURES

No motor vehicles or structures of a temporary character, including, but not limited to, any trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home/modular home, basement, tent, shack, garage, carport, shed or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

With the exception of those vehicles owned or being utilized by Developer and any corporation or business owned and operated by Developer or employed by Developer, which shall have such right at any time when Developer or such corporation or business is engaged in the construction or repair of any building or any improvement on any portion of the property which is subject to this Declaration, and the further exception of those trucks, construction vehicles and any commercial vehicles being utilized by any lot owner in connection with the construction or repair of any improvement on such owner's lot (which has been properly approved pursuant to the appropriate articles of this Declaration) which may be parked in spaces designated by Developer or the Architectural Control Committee, during such times and for such periods of time that may be designated by Developer or the Architectural Control Committee, there shall be no outside storage or parking upon any lot or upon any road in the Development which is owned and maintained by Developer or by the Association, or upon any common area of any commercial vehicle, truck (other than pickup trucks owned by such lot owner), trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home, or bus, nor shall any tent, shack or any other type of structure, whether temporary or permanent, not specifically authorized by these covenants or any amendment thereto, be placed or erected on any lot.

ARTICLE 4
BUILDING LOCATION

Subject to the limitation set out in Article 2 of this Declaration that the location of buildings and other proposed improvements on each lot must be approved by the Architectural Control Committee, each lot is subject to the further restriction that no building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 50 feet from all road right of way lines; (b) 35 feet from rear lot lines and streams; (c) 35 feet from interior lot lines other than rear lot lines; and (d) 75 feet from lakes and ponds.

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

ARTICLE 5
NUISANCES

It shall be the responsibility of each lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any plant, substance, animal, thing, device or material be kept upon any lot that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the lot. Construction of improvements on any lot, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed and not rebuilt within ninety (90) days, shall be deemed nuisances. The Association may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

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

wheels), (5) the operation of unlicensed motor vehicles in the Development (including specifically trail motor bikes with two, three or more wheels), (6) the operation of motor vehicles by unlicensed persons on any roads in the Development or any motorcycle, moped or motor bike riding in the Development other than as a means of transportation to and from the home of a resident lot owner to the state road, (7) offensive displays of public sexuality, (8) public drunkenness, (9) significantly loud electronic music distractions or vibrations which extend beyond property lines, (10) the discharge of fireworks, (11) the assembly and disassembly of motor vehicles and other mechanical devices which might tend to create disorderly, unsightly or unkempt conditions, (12) parking or storing any junked, inoperable or unlicensed automobiles, trucks or heavy equipment on any lot or road in the Development, or (13) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the lots in the Development.

ARTICLE 6
MAINTENANCE OF LOTS

All lots whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent them from becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the lot. Neither the Association, nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work.

ARTICLE 7
PETS

No swine, cattle, poultry, horses, ponies or other animals other than a reasonable number of dogs and cats may be kept on any lot in the Development at any time, provided that any such dogs and cats are not bred or maintained for commercial purposes and that whenever such dogs and cats are not inside of the single-family dwelling, garage or authorized dog house on the lot on which they are kept, they are either restrained by a leash which is held by the individual accompanying them or are kept within a fence. While being kept within a fence, no authorized pets shall be chained or restrained by a leash during any time when the lot owner or some other person is not present with them. All fences and other structures in which animals are kept or confined must be designed, constructed, erected, installed, cleaned and maintained in a manner which has been approved by the Architectural Control Committee.

Any pet shall be muzzled which consistently barks, howls or makes other disturbing noises which might be reasonably expected to disturb any other lot owner or his tenants or guests. The breach of any of these restrictions, obligations and duties shall be a noxious and offensive activity constituting a private nuisance.

ARTICLE 8
SEWERAGE DISPOSAL

No sewerage system shall be permitted on any lot except such system as is located, constructed, and equipped in accordance with the minimum requirements of the State Board of Health.

Approval of such system shall be obtained from the health authority having jurisdiction.

ARTICLE 9
LIMITED ACCESS

There shall be no access to any lot on the perimeter of the Development except from designated streets or roads within the Development as shown on the recorded plats of the Development without the express written consent of Developer which must be recorded in the Office of the Register of Deeds for Transylvania County, North Carolina.

ARTICLE 10
RESUBDIVISION OF LOTS

Except as set out below, no lot or parcel, with the exception of those lots or parcels owned by Developer, shall be further divided, however, Developer shall have the absolute right, in Developer's sole discretion, to combine and divide or redivide any lots or parcels owned by Developer and to place on record plats of any such combined, divided or redivided lots or parcels and to submit or withdraw said lots or parcels from the provisions of these covenants without the consent or joinder of the owners of the other lots and parcels in the Development.

Lot owners other than Developer may only divide a lot or parcel by dividing it in such a manner that it is either completely absorbed by one or more of the adjoining lots or parcels thus creating one or more adjoining lots or parcels which are larger than when originally platted and shown on recorded subdivision plats, or it is partially absorbed by one or more of the adjoining lots or parcels and the remaining portion thereof forms a lot which is not less than nine acres in size.

ARTICLE 11
PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any lot not owned by Developer, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

Any grading or other land use which creates erosion runoff into streams or other lots is prohibited. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity as defined in Article 5 of these covenants.

ARTICLE 12
FIREARMS AND OTHER PROJECTILE PROPULSION DEVICES

The discharge of firearms in the Development, including rifles, guns and pistols of any kind, caliber, or type and any other devices which propel bullets and other projectiles through the air utilizing any method of propulsion except pursuant to Article 13 of these covenants or by security personnel in the course of their duties is prohibited. Notwithstanding anything hereinabove set forth to the contrary, it is specifically

understood that the term "firearms" does not include BB guns or pellet guns and that the use of such guns and bows and arrows by property owners on their lots is not prohibited under the provisions of these covenants.

ARTICLE 13
WILLFUL DESTRUCTION OF WILDLIFE

No hunting shall be allowed in the Development except under controlled conditions approved by the Association and appropriate governmental wildlife authorities for the purpose of protecting property owners, the public and other animals against health hazards, disease and other anomalies resulting from species over-population, significant wildlife predation and outbreaks of contagious wildlife diseases. Since the Development is not intended to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this article.

ARTICLE 14
CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.

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

ARTICLE 15
TREE REMOVAL, SITE CLEANING, UNDER BRUSHING AND BURNING

No trees, brush or shrubs, including, but not limited to, mountain laurel, wild azaleas and rhododendron, shall be trimmed on or removed from any lot prior to proper approval of such trimming or removal by the Architectural Control Committee or such other committee which may be delegated the right to make such approval by the Association. Such approval shall not be unreasonably withheld and shall be given or denied by the committee having the authority to give or deny such approval in writing within thirty (30) days after written plans showing such proposed trimming or removal and any other information requested by such committee relating to such trimming or removal have been submitted to such committee. Denial or approval of such trimming or removing may be based by such committee upon any reasonable ground, including purely aesthetic considerations. In the event such committee or its designated representative fails to approve or disapprove any matter involving the trimming or removal of trees, brush or shrubs from any lot which is properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of these covenants specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with. No open burning of any kind shall be done

before the lot owner has obtained the written permission of such committee

ARTICLE 16
SIGNS

With the exception of those lots owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, no signs shall be placed on any lot. Notwithstanding anything hereinabove set forth to the contrary, the Association shall have the right to erect reasonable and appropriate signs on the common area, and each lot owner shall have the right to erect a mailbox on his or her lot with the property address inscribed thereon provided that the type of mailbox, the manner that the property address has been inscribed thereon and the support post for such mailbox has been approved by the Architectural Control Committee which shall have the right to specify uniform standards for mailboxes and support posts which shall be applicable to all lots.

ARTICLE 17
OUTDOOR LIGHTING

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

ARTICLE 18
AERIALS AND ANTENNAS

With the exception of one satellite dish not greater than two feet in diameter which is not visible from any road in the subdivision which may be erected behind the residence or garage on a lot, no radio, television or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure or support thereof shall be erected, installed, placed or maintained on any lot unless so erected, installed, placed or maintained entirely within the enclosed portion of the individual residence or garage.

ARTICLE 19
UTILITY LINES

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

ARTICLE 20
ENERGY CONSERVATION EQUIPMENT

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

ARTICLE 21
AIR CONDITIONING UNITS

Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed in any house or other structure which is located on any lot.

ARTICLE 22
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURES AND SIMILAR ITEMS

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

ARTICLE 23
IRRIGATION

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

ARTICLE 24
POOLS

No above ground pool shall be erected, constructed or installed on any lot and no other type of pool shall be erected, constructed or installed on any lot without the express written permission of the Architectural Control Committee which shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

ARTICLE 25
EASEMENTS

The following easements over each lot or parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to Developer, Developer's successors, assigns or licensees:

A. Utilities. A ten (10) foot wide strip running along the inside of all lot lines other than those lot lines which extend along the center of streams; however, where lot lines run along the center of roads or along road right-of-way lines, such strips shall, at the option of Developer, run along either the inside or the outside of the road right-of-way line, but Developer, after having located said ten foot wide strip on a particular lot, may not thereafter relocate said strip on said lot without the express written consent of the owner of said lot. Said strips shall be used for the installation, maintenance and operation of public, quasi-public or private utility lines or other devices which provide utility or similar services, including, without limitation, electric light, power, telephone and cable service lines, storm water drains, land drains, public and private sewers and pipelines supplying gas and water, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation. Developer shall have the right to enter and to permit others to enter upon said reserved strips.

B. Roads. An easement on, over and under all roads in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder; for the purpose of drainage control; for access to any lot or parcel or any other lands owned by Developer located outside of the Development; and for the purpose of maintenance of said roads.

C. Sight Easements. Such sight easements, if any, of the sizes and locations as may be shown on recorded plats of portions of the Development are reserved for the purpose of ensuring that visibility at road intersections shall be unimpeded. No fence, wall, hedge, tree or shrub which obstructs sight lines at elevations between two (2) and eight (8) feet above roadways shall be placed or permitted to remain within sight easements.

D. Other Easements. Any other easements shown on recorded plats of portions of the Development.

E. Use of and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owners of such lots, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owners of said improvements except those for which a public authority or public authority or utility company is responsible.

ARTICLE 26
MOUNTAIN BROOK PROPERTY OWNERS ASSOCIATION, INC.

A. Membership

Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any lot that is subject to this Declaration shall be deemed to have a membership in Mountain Brook Property Owners Association, Inc. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold interests merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one membership per lot owned. In the event that a owner of a lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in the bylaws and rules and regulations of the Association.

B. Voting

The Association shall have two classes of membership, Class A and Class B, as follows:

(a) Class A members shall be all owners with the exception of the Class B members, if any. Class A members shall be entitled on all issues to one vote for each lot in which they hold the interest required for membership by Section 1 hereof; however, there shall be only one vote per lot regardless of the number of persons or other entities owning an interest in a particular lot.

(b) The Class B member shall be the Declarant or any successor of the Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B member shall originally be entitled to 176 votes on all issues on which the Class B member is entitled to vote; this number shall be decreased by one vote for each Class A member existing at any one time. The Class B membership shall terminate and become converted to Class A membership upon the happening of the earlier of the following: (i) when the total outstanding Class A votes equal or exceed 75; (ii) January 1, 2010; or (iii) when, at its

discretion, the Declarant so determines. From and after the happening of these events, whichever occurs sooner, the Class B member shall be deemed to be a Class A member entitled to one vote for each lot in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the bylaws of the Association for special meetings, advising the membership of the termination of Class B status.

C. Assessments

Each lot in the Development is served by roads which connect the Development with the public road. The owner of each lot, with the exception of Developer, shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to the Association an annual assessment or charge for the purposes stated within this article to be fixed, established, and collected on a lot by lot basis as hereinafter provided. Said annual assessment or charge shall be due on a date to be established by the Association and pursuant to reasonable advance notice given in writing to all lot owners. Upon demand, the Association shall furnish to any owner or mortgagee a certificate showing the assessments or charges or installments thereof due as of any given date. Each lot made subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge when due.

The funds collected from said assessments may be used for any or all of the following purposes: maintaining the entrance and gate and landscaping the entrance, maintaining, operating, improving and replacing roads within the Development; protection of property from erosion; maintaining lots as provided in Article 5 herein; maintenance, improvement and lighting of common areas and facilities including recreational facilities within the development; employing watchmen and security personnel; enforcement of these restrictions; paying taxes and other indebtedness of the Association, including insurance premiums, governmental charges of all kinds and descriptions; legal and accounting fees; and, in addition, doing any other things necessary or desirable in the opinion of the Association to maintain the Development in neat and good order and to provide for the health, welfare and safety of owners and residents of the Development.

In addition to the foregoing, Declarant, until such time as the Association has been organized and incorporated by Declarant, and thereafter, the Association, shall have the power to, and be obligated to, levy special assessments, at such times, for such amounts and for such purposes as may be specified in any amendment or supplemental declaration to this Declaration or in any deeds from Declarant to purchasers of lots and/or parcels in the Development.

The amount of each assessment levied pursuant to the provisions of this Declaration shall constitute a personal obligation of the lot owner against whom such assessment is levied and shall be paid to the Association on or before the date specified by the Association at the time that it levies such assessment.

D. Enforcement Procedures

Upon the failure of the owner of any lot to pay any assessment or charge when due, the Association shall have the right to collect the amount thereof by an action at law against the owner as for a debt, and may bring and maintain such other

suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Association and the lien of such charge shall be deemed to run with the land; and the successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been levied against the property and all assessments or charges or additional assessments which shall become a lien thereon during their ownership. Any assessment or charge levied against a lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that lot when a claim of lien (sometimes herein referred to as a "Notice of Assessment and Lien") setting forth the name and address of the Association, the name of the record owner of the lot at the time the lien is filed, a description of the lot and the amount of the lien claimed is filed of record in the office of the Clerk of Superior Court for Transylvania County. Upon the filing of any such lien pursuant to the authority granted under this Declaration, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. All liens levied pursuant to the provisions of these Covenants shall include the amount of any unpaid assessments, plus any other charges thereon, including a late charge consisting of the greater of Twenty Dollars ($20.00) per month or ten percent (10%) of any assessment installment unpaid to cover administrative expenses, interest at one and one-half percent (1½%) per month from the due date, costs of collection, including attorneys' fees, document preparation and recordation charges and all other charges which are allowable under the provisions of North Carolina General Statutes Section 47-3-102. Each Notice of Assessment and Lien shall be signed by the Association or such other person or legal entity to whom the Association may assign the authority to file Notices of Assessments and Liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County. Such lien shall be prior to all other liens recorded subsequent to the filing of such Notice of Assessment and Lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association, or such other person or legal entity to whom the Association may assign the authority to file Notices of Assessments and Liens, the right and power to bring all actions against said owner personally for the collection of such charges set out in said Notice of Assessment and Lien as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement for real property. The lien provided for in this Article shall be in favor of the Association and it shall have the power to bid on the lot in any foreclosure proceeding or to acquire, hold, lease, mortgage, or convey the lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged damage, inconvenience or discomfort arising from the completion by the Association of repairs or improvements or removal of nuisances pursuant to the provisions of Article 5 of these Covenants or for any maintenance performed by the Association pursuant to the provisions of Article 6 of these Covenants. All payments shall be applied first to costs and attorney fees, then to late charges, then to interest, then to delinquent assessments. Upon payment of all assessments and other charges, costs and fees provided for in a particular Notice of Assessment and Lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating satisfaction and the release of the lien thereof.

E. Period of Declarant Control

As provided for in the bylaws of the Association, the directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class B membership exists, as set forth in this Declaration, unless the Declarant shall earlier surrender this right to select directors. The directors selected by the Declarant need not be owners or residents in the Development. After the period of declarant appointment, all directors must be members of the Association.

ARTICLE 27
NO POLLUTION OF STREAMS, PONDS AND LAKES

No lot owner shall pollute any stream, pond or lake in the Development nor shall any lot owner cause or allow any stream in the Development which may flow across his lot to be diverted in part or in whole from its natural direction and course of flow. No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses.

ARTICLE 28
PARKING OF VEHICLES

Except as may be permitted on a limited basis for certain vehicles under the provisions of Article 3 of these covenants, no trailer, tractor trailer, bus, truck, tractor, recreational vehicle, camper trailer, boat trailer or any other transportation device other than an automobile or a pickup truck may be parked on any road or street in the Development.

ARTICLE 29
AMENDMENT

Prior to the termination of the Class B membership in the manner provided for in subsection (b) of Section B of Article 26 of the Declaration, this Declaration may be amended unilaterally at any time and from time to time by Declarant. This Declaration may also be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association of Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any owner's lot unless any such lot owner shall consent thereto in writing. The signatures appearing on amendments executed by Developer shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

This Declaration may also be amended at any time and from time to time either by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of at least sixty-seven percent (67%) of the lots in the Development, and also by Developer so long as Developer shall own any lots which are subject to this Declaration, or by the recordation in said office of a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to the declaration set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association and, if the Developer shall still own lots which are subject to this Declaration, such document shall also be signed by Developer. The signatures appearing on such documents shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

Notwithstanding anything hereinabove set forth to the contrary, no amendment may remove, revoke or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

ARTICLE 30
SUPPLEMENTAL DECLARATIONS

Developer reserves the right to record supplemental declarations which add additional property to that covered by this Declaration. Any such subsequent supplemental declaration may, but is not required to, impose expressly or by reference, additional restrictions and obligations on the land submitted by that supplemental declaration to the provisions of this Declaration, or modify or limit the extent to which the provisions of this Declaration shall be applicable to such additional property.

ARTICLE 30A
ACQUISITION OF ADDITIONAL COMMON AREA

Developer may convey to the Association additional real estate, improved or unimproved, located within the Development which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all of its members. This article may not be amended without the written consent of Developer so long as Developer owns any property which is subject to this Declaration.

ARTICLE 31
TERM

All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity. However, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision(s) shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, II, Queen of England.

ARTICLE 32
GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and all amendments thereto, and to the jurisdiction, rights, powers, privileges and immunities of Developer and the Association herein provided for. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Developer and the grantee or purchaser of each other lot or parcel to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration, and all amendments and supplemental declarations thereto.

ARTICLE 33
SUSPENSION OF RESTRICTIONS

The provisions of this Declaration which are applicable to improvements, use and occupancy shall be suspended as to any lot, parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot, parcel or area for the purposes for which it was acquired or leased. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such owner shall not have rights as a member of the Association nor shall it be liable for any Association assessments.

ARTICLE 34
ENFORCEMENT

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

ARTICLE 35
SEVERABILITY

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 36
DEVELOPER'S RIGHTS

Developer's rights under this Declaration may be assigned at any time, in whole or in part, to any other person, persons or legal entity including, but not limited to, the Association.

ARTICLE 37
WETLANDS

Nothing shall be constructed, nor may any activities be conducted on any portion of a lot on which wetlands are located

which would be in violation of federal and state rules regulating the use of wetlands.

ARTICLE 38
USE OF COMMON AREA

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

IN WITNESS WHEREOF, the Developer has executed this Declaration, this 8th day of December, 2006.

MOUNTAIN BROOK PARTNERS, LLC,
a North Carolina limited liability company

By: Arthur G. Fisher (SEAL)
ARTHUR G. FISHER, Member-Manager

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

I, a Notary Public of said State and County, do hereby certify that ARTHUR G. FISHER personally appeared before me this day and acknowledged that he is a member-manager of MOUNTAIN BROOK PARTNERS, LLC, a North Carolina limited liability company, the limited liability company described in and which executed the foregoing instrument; that he executed said instrument in the name of said limited liability company by subscribing his name thereto; and that the instrument is the act and deed of said limited liability company.

WITNESS my hand and Notarial Seal, this the 8th day of December, 2006.

Wanda A Bryson
Notary Public

My Commission Expires: 9-29-08.

WANDA A. BRYSON NOTARY PUBLIC TRANSYLVANIA COUNTY, N.C.

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