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No title examination completed or opinion rendered by preparer hereof

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINNACLE AT ARABELLA HEIGHTS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINNACLE AT ARABELLA HEIGHTS, a Neighborhood, made and entered into this the 23rd day of October, 2018 by and between **THE PINNACLE AT ARABELLA HEIGHTS, LLC**, a North Carolina limited liability company, its successors and/or assigns (herein collectively “Declarant” and/or “Developer”), **Lifestyle Homes of Distinction, LLC**, a North Carolina limited liability company, as owner of Lot 16 (herein “Lifestyle Homes”), and all Future Owners of Lots in the **PINNACLE AT ARABELLA HEIGHTS** (herein “Subdivision”).

WITNESSETH:

THAT WHEREAS, Developer is the owner of certain property in Buncombe County, North Carolina, said property being more particularly described in those deeds recorded in Record Book 5352 at Page 717 and Record Book 5356 at Page 1753 and Lifestyle Homes is the owner of certain property described in those deeds recorded in Record Book 5571 at Page 259 and Record Book 5711 at Page 1928, as all such property is shown on that plat recorded in Plat Book 193 at Page 69, of the Buncombe County, NC Register's Office (the property described in said Deed and shown on said Plat being and comprising the “Subdivision”); and

WHEREAS, the Subdivision is a neighborhood and/or subsection of the Waightstill Mountain development pursuant to the Master Restrictions and Master Association as defined herein; and

WHEREAS, Developer, with joinder and consent of Lifestyle Homes, desires to further restrict the Subdivision by this Declaration as provided for herein.

WHEREAS, the Developer desires for the protection and benefit of all persons who may hereafter become owners of lots located within the Subdivision that the Property be developed with limitations,

restrictions and uses.

AGREEMENT:

NOW THEREFORE, the Developer, with joinder and consent of Lifestyle Homes, does hereby make the following declaration as to limitations, restrictions and uses to which the above-described Subdivision shall be and are hereby subjected:

ARTICLE I Definitions

1. “Act” shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.

2. “Association” or “Neighborhood” or “Neighborhood Association” shall mean and refer to the Pinnacle at Arabella Heights Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

3. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

4. “Bylaws” shall mean and refer to the Bylaws of the Association, as amended from time to time.

5. “Clubhouse” shall mean and refer to that clubhouse and/or any other community amenities, including any community trails, designated on the Plat or any other subdivision Plat recorded by Declarant.

6. “Clubhouse Membership” shall mean and refer to a class of membership entitling the owner to rights of use and enjoyment of the Clubhouse and a share in responsibility for the maintenance of the same.

7. “Common Elements” or “Neighborhood Elements” shall mean and refer to (i) private roads designated on the Plat or any other subdivision Plat recorded by Declarant, as well as any other private road constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; (ii) the Clubhouse and/or any other similar community amenity designated on the Plat or any other subdivision Plat recorded by Declarant, (iii) any property designated as such by the Developer, including but not limited to road and Subdivision signage; and (iv) any real estate owned by the Association, other than a Lot.

8. “Common Expenses” or “Neighborhood Expenses” shall mean all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration for the maintenance, repair, improvement, and management of the Common Elements and Limited Common Elements, for any amounts due to the Master Association and/or under the Master Restrictions not assessed directly to the Lot Owners for any reason, and for the maintenance, repair, improvement and management of other property, whether owned by the Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Association has responsibility.

9. “Developer and/or Declarant” shall mean THE PINNACLE AT ARABELLA HEIGHTS, LLC, a North Carolina limited liability company or its successors and/or assigns; including any person or

entity which succeeds to any Special Declarant Rights as set forth herein and/or in the Act.

10. “Directors” shall mean and refer to the members of the Board of Directors of the Association.

11. “Limited Common Elements” shall mean and refer to those portions of the Subdivision designated as being either for (i) the exclusive use by one or more but fewer than all of the Lot Owners, and/or (ii) designated by Developer, in its sole and absolute discretion, as benefitting, either directly or indirectly, one or more but fewer than all of the Lot Owners. Limited Common Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Lot or Lots to which they are assigned.

12. “Lot” shall mean and refer to any parcel of land within the Subdivision as shown on the Plat designated for separate ownership or occupancy by a lot owner.

13. “Lot Owner” and/or “Owner” shall mean and refer to the Declarant or other person who owns fee simple title to any Lot which is part of the Subdivision; but does not include a person having an interest in a lot solely as security for an obligation.

14. “Master Association” shall mean and refer to the Waightstill Mountain Homeowner’s Association, a non-profit corporation organized under the laws of the State of North Carolina, its successors and assigns.

15. “Master Restrictions” shall mean and refer to the Declaration recorded in Record Book 3436 at Page 103 and the Supplemental Declarations recorded in Record Book 3671, at Page 648, Record Book 4212 at Page 1666, Record Book 4365 at Page 1327, Record Book 3436 at Page 103, as all amended in terms of this Subdivision Property in Record Book 5352 at Page 736, and all further amendments and/or supplements thereto recorded in the Buncombe County, NC Register’s Office.

16. “Member” shall mean and refer to each Owner or Owners of a Lot within the Subdivision who shall also then be a member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the member and shall be entitled to only one vote.

17. “Plat” means the plat(s) and/or survey(s) for the Subdivision which is certified and recorded, as may be amended and certified from time to time, with the initial Plat(s) having been filed for record in Plat Book 193 at Page 69 in the Buncombe County, NC Register’s Office.

18. “Restrictions” and/or “Declaration” shall mean and refer to this Declaration of Covenants, Conditions & Restrictions for PINNACLE AT ARABELLA HEIGHTS, as the same may be released, amended or changed; either in whole or part, as provided for herein.

19. “Special Declarant Rights” shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant or any successor Declarant.

20. “Subdivision” and/or “Property” shall mean and refer only to that certain real property shown on the Plat. The Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a

recorded instrument specifically subjecting such property is recorded in the Buncombe County, NC Register's Office. The Declarant specifically reserves the right to subject any other property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein.

ARTICLE II

Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Subdivision: Pursuant and subject to the terms and provisions of the Act, Developer hereby creates a planned community subdivision initially comprised of the Property shown on the Plat. Developer hereby submits all of such Property to the Act and the terms of this Declaration.

2. Name: The name of the subdivision created hereunder is PINNACLE AT ARABELLA HEIGHTS.

3. Designation of Lots and Common Elements: The Developer does hereby designate that real property as shown on the Plat as separate Lots, Common Elements and Limited Common Elements.

4. Reservation of Special Declarant or Developer Rights: Developer hereby reserves unto itself and its successors in interest as Special Declarant or Developer Rights, the following:

- (a) Those Special Declarant or Developer Rights as set forth in the Act;
- (b) The right, during the Developer's Control Period, to modify, amend, change, vary or release all or any part of these Restrictions; and
- (c) The right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer.
- (d) The right of the Developer to add additional portion of Property to any previously platted Lot.

ARTICLE III

Pinnacle Owners' Association

1. Association Creation. The Developer does hereby establish a non-profit corporation which shall be known as the Pinnacle Owners' Association (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and any Common Elements or any other matter or area determined by the Association to be a Common Element or other area of common interest. The Bylaws of Pinnacle at Arabella Heights Owner's Association are incorporated herein by this reference. Developer shall incorporate the Association entity prior to assessing any assessments.

2. Clubhouse Membership. Clubhouse Membership shall be automatically included with the purchase of a Lot in the Subdivision and membership in the Association. The Association shall also be entitled, but not obligated, to offer Clubhouse Membership(s) to Member(s) of the Master Association who own lot(s) within the section of the neighborhood known as Arabella Heights as set forth on the recorded plat(s) for a reasonable price as determined by the Association, in its sole discretion, which shall be formalized pursuant to an Association provided and approved Membership Agreement. The costs for maintenance and repair of the Clubhouse shall be a portion of the Association Budget and assessed to the Owners as Assessments pursuant to Article III hereof and/or pursuant to the respective Membership

Agreement.

ARTICLE IV

Budget, Assessments, Liens and Collections

(separate from and in addition to the Budget of the Master Association)

1. Budget, Assessments and Liens. As a part of its right and obligation to operate, manage and administer the business of the Association, the Association shall have the right, authority, and obligation to establish a budget and provide for the payment of the Common Expenses and any payment due to the Association by levying assessments against the Lots for their proportional share of the Common Expenses which assessments shall be a lien on the Lot against which they are assessed. If any payment thereof becomes delinquent, the lien may be foreclosed and the Lot sold, or a money judgment obtained against the Owner or Owners liable for such assessment, all as provided for herein and in the Bylaws of the Association.

2. Assessment for Common Expenses. The Association is given the authority to administer the operation and management of its business affairs in the best interest of all Owners. To accomplish this and to pay Common Expenses of the Association, the Association is granted the right to make, levy, and collect assessments against the various Lots and Owners, including: (a) annual assessments for Common Expenses assessed by the Board pursuant to this Article; (b) Special Assessments to be established and collected as provided herein and in the Bylaws; and (c) specific assessments against any Lot which are established pursuant to the terms of this Declaration or Bylaws. The Association shall be responsible for the maintenance, upkeep, repair and service of Common Elements; however, Developer shall be responsible for any and all maintenance, upkeep, repair and service of the Common Elements to the extent the assessments paid to the Association by Lot Owners as described in Article III of this Declaration are not sufficient to cover said maintenance, upkeep, repair and service of the Common Elements.

3. Assessments of Common Expenses; Exemption. All assessments will be assessed in equal amounts per Lot, with exception for any Common Expense associated with maintenance, repair or replacement of a Limited Common Element which may be assessed equally against the Lot or Lots to which that Limited Common Element is assigned. Notwithstanding the foregoing during the Control Period, Developer shall have no obligation to pay assessments on Lots owned by it; however, if the assessments against the Owners obligated to pay the same are insufficient to pay the budget costs of the Association, the Developer shall either (i) pay to the Association the regular assessment for each Lot owned by it or (ii) pay the budgetary shortfall between the amount required to satisfy the Association obligations and the amounts of assessments paid to the Association by the Owners obligated to pay the same.

4. Special Assessments. In addition to the annual Assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the vote the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this Paragraph shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all of the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting

shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any Special Assessment shall be deemed levied and due after thirty (30) days notice to the affected Owners.

5. Fiscal Year. The fiscal year for the Association shall be from the 1st of January through the 31st of December; however, the Board may, by resolution and from time to time, change the Fiscal Year to some other period.

6. Budget. The budget of the Association shall be prepared by the Treasurer and adopted by the Board. The budget shall be based upon the estimated costs of the Association.

7. Notice of Budget and Assessment. Within thirty (30) days after adoption of any proposed budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget and such meeting shall be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all Owners rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. The notice provided herein shall serve as the official levy of Assessments.

8. Assessment Levy. Each Owner shall be personally and severally liable for any Assessment, regular or special, levied by the Association as provided for herein and/or by the Master Association pursuant to the Master Restrictions. In the event that any Owner is in default in payment of any assessment or installment of an assessment owed to the Association, all Owners of such Lot shall be personally liable, jointly and severally, for payment of any late charge and/or interest on such delinquent assessment or installment of assessment as above provided for, and for all costs of collecting such amounts including, but not limited to, reasonable attorneys' fees whether suit be brought or not. Failure of the Declarant or the Association to exercise any of its remedies at any particular time shall not be deemed a waiver thereof. All Assessments shall be due in advance, in equal installments payable monthly, quarterly, annually, or as determined by the Board, from time to time. In the event that an Assessment proves to be insufficient, the Board may amend the budget and Assessment rate or mandate a Special Assessment subject to the limitations contained herein. Except as otherwise provided herein, no Owner may exempt himself, herself or itself from liability for any assessment levied against him, her or it or his, her or its Lot by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot or in any other way.

9. Payment of Assessments and Penalties. The payment of any assessment or installment thereof shall be delinquent and the Owner shall be in default if such assessment or installment is not paid to the Association within fifteen (15) calendar days of its due date. Assessments or installment payments of assessments not paid within fifteen (15) calendar days of its due date may be subject to a late payment charge in the amount to be determined by the Board from time to time. In addition, any assessment or installment of an assessment not paid within fifteen (15) calendar days of its due date may be subject to an interest charge at the maximum annual rate allowable by law. The late charge and interest described herein shall be added to and collected in the same manner as the assessment.

10. Payment of Assessments and Liens. Assessments shall be paid within thirty (30) days of the date of levy, or such later time as indicated by notice from the Board. Every Assessment shall constitute a lien upon the applicable Lot so assessed from the date of levy. The first monthly Assessment payable

shall be prorated according to the number of days remaining in the Association's fiscal year after the date on which this Declaration is filed of record. Furthermore, each Owner, upon closing the purchase of a Lot, shall pay a non-refundable reserve deposit in the amount equal to two (2) months of Assessments (the "Reserve Deposit") to the Association to be held as reserve funds.

11. Delinquent Assessments. If an Owner shall fail to timely pay any Assessment or installment thereof, the Association may accelerate any remaining installments of the current year's Assessments. Upon the acceleration of Assessments hereunder, the Board shall cause a notice of default to be transmitted to the delinquent Owner, demanding payment in full upon the date stated in said notice, but not less than fifteen (15) days after the forwarding of said notice to the Owner. Any Assessment or installment thereof which remains unpaid for a period exceeding thirty (30) days after it shall become due shall incur interest computed at the maximum rate permitted by law from the due date. Additionally, a late fee equal to the greater of Twenty and no/100ths Dollars (\$20.00) per month or ten (10) percent of the amount of such Assessment shall be charged for any Assessment installment which remains due and owing, and which remains unpaid for a period of thirty (30) days or longer. In addition to such late charges, delinquent Owners shall be liable for any collection costs and attorney's fees reasonably incurred pursuant to the collection of such unpaid Assessments. All such late fee interest, collection costs, and attorney's fees shall enjoy the same security and priority as the Assessment to which they relate.

12. Enforcement of Assessments: If an Owner shall fail to tender payment of any Assessment, and the Assessment remains unpaid for a period exceeding thirty (30) days after it shall become due, the Association shall have the following rights immediately upon such occurrence:

- (a) Institute legal proceedings to enforce its lien for Assessments. Any failure to pay Assessments shall be enforceable in accordance with the Act. Owners, by acceptance of a deed for any Lot within the Subdivision expressly agree that the Association shall be entitled to enforce the collection thereof under a Power of Sale in a like manner as applied to a mortgage or deed of trust in accordance with the Act. The Association shall appoint a Trustee or Commissioner to conduct a foreclosure sale to collect unpaid, delinquent Assessments, and said Trustee or Commissioner shall be entitled to Trustee's Fees in an amount of five (5) percent of the higher of the foreclosed property's tax assessed value or the sale price, in accordance with the terms of the Act; and
- (b) Issue a notice of delinquency to any mortgagee of the Owner of the delinquency of Assessments. All Owners acknowledge and agree that such notice shall not constitute a violation of any state or federal unfair debt collection laws; and
- (c) The Association shall be entitled to suspend the right of a defaulting Owner to use any Common Elements (except roads, vital utilities, and other access) until the delinquency is cured.

The remedies noted herein shall also include, without limitation, any and all remedies set forth in the Declaration or otherwise available under North Carolina law. Any delay in, or failure of the Association to exercise its enforcement rights hereunder shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such rights in the future, irrespective of the number of breaches thereof that may have occurred by that or any other Owner with respect to Assessments.

13. Assessment Register; Certificates. All Assessments shall be set forth on a register of Lots which shall be available for inspection in the office(s) of the Association, upon reasonable request by Owners, mortgagees, and other security holders and their agents or duly authorized representatives. The

register shall include the amount and rate of Assessment, and a payment history including notation of any unpaid Assessments. The Association shall, upon reasonable request and within ten (10) days of such request, furnish to an Owner, its agent or duly authorized representative a recordable certificate setting forth the amount and rate of Assessment and the amounts of any unpaid Assessments. The Association may charge a reasonable fee for such certificate. All Owners acknowledge that the register and any certificate issued in good faith shall not constitute a violation of any state or federal unfair debt collection laws.

14. Failure to Prepare Budget or Levy Assessment(s). The failure of, or delay of, the Board to prepare any budget or to levy any Assessment shall not constitute a waiver or release of an Owner's obligation to pay Assessments. Until a new budget is adopted or new Assessments levied, the budget and Assessments for the preceding period shall apply. Any deficiencies, failure, or inadequacies in the procedure followed by the Board in preparing and adopting a budget, or the levy and collection of Assessments shall not in any way affect the validity of an Owner's obligation to pay Assessments.

15. Allocation of Common Surplus. Any surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to the Owners nor shall such surplus funds be used as a credit to reduce future Assessments.

16. Priority of Assessment Lien. The lien for assessments provided for in this Article shall be prior and superior to all other liens except (a) liens for ad valorem taxes and (b) liens for all sums unpaid on deeds of trust, mortgages or other encumbrances against the Lot recorded prior to the docketing of the Association's assessment lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina. The sale or transfer of any Lot shall not affect the assessment lien against such Lot or the ability to record, perfect, and enforce such lien pursuant to the provisions of this Article. However, the sale of a Lot pursuant to a foreclosure sale or execution sale instituted by a superior lien holder or the conveyance to a first mortgagee of a deed in lieu of foreclosure shall extinguish the inferior assessment lien against the subject Lot, but such sale or transfer shall not relieve any Owner from liability for any assessment thereafter becoming due for any future lien in connection therewith. Any such extinguishment of the lien shall not in any way do away with the personal liability for such assessment of the Owner(s) of the Lot when such assessment is made. The Association shall be entitled to any applicable excess, if any, realized by the sale of any Lot pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

17. Personal Liability of Transferees, Statements and Liability of Mortgagee.

- (a) The personal obligation for assessments which are delinquent at the time of transfer of a Lot shall pass to the transferee of such Lot. There shall be a lien upon such Lot for the amount of any such delinquent assessments, which lien shall continue and remain in place notwithstanding the conveyance of such Lot.
- (b) Any transferee referred to in subparagraph (a) above shall be entitled to request and obtain from the Association a statement setting out the total of all unpaid assessments levied against a Lot. Such statement shall be executed by an officer of the Association or any other duly authorized person, and the Association shall be bound by such statement. Such transferee's Lot shall not be subject to a lien for any unpaid assessments in excess of the amount set forth on such statement.
- (c) When a mortgagee or holder of a note and deed of trust, or other person claiming through such mortgagee or note holder, pursuant to the remedies provided in a deed of trust, or by foreclosure, or by deed in lieu of foreclosure, obtains title to a

Lot, the liability of such mortgagee or such other person for assessments shall be only for the assessments of installments thereof that will become delinquent, if not paid, after acquisition of title.

- (d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien because of the operation of subparagraph (b) above or resulting, as provided for in subparagraph (c) above, from the exercise of remedies in a deed of trust or by foreclosure thereof or by deed in lieu of foreclosure shall be Common Expenses collectible from all Owners, including the transferee under (b) above and the mortgagee or such other person who acquires ownership as described in (c) above.

ARTICLE V

Usage & Restrictions

1. Uses. All lots in the Subdivision shall be used solely for single-family residential purposes and no business or commercial activity will be permitted on or upon a Lot and no commercial structure or activity of any type shall be placed on any Lot or allowed within the Subdivision. This restriction shall not be construed so as to disallow private home offices. Home offices for private use are allowed so long as the use of such office is pre-approved by the Association and does not generate pedestrian or vehicular traffic in conjunction with such office use.

2. Prohibited Structures. No trailer, tent, shack, garage or other outbuilding on these residential Lots shall be, at any time, used as a residence, either temporarily or permanently, nor shall any residence be moved onto a building Lot within the Subdivision. Specifically, no mobile homes, trailers, manufactured homes, modular homes or structures of similar construction shall be placed on or allowed to remain on any residential Lot.

3. Offensive Activity or Nuisance. No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed. The Association shall have exclusive discretion to determine whether any activity, including but not limited to: (i) to the behavior of dogs or other animals (ii) display of signs and decorations; (iii) emissions of light, noise or odors; and (iv) parking, storage and maintenance of vehicles, shall be considered as obnoxious or offensive hereunder.

4. Prohibitions. The following items are prohibited: all fuel tanks or other similar storage receptacles, or, unless stored in a location screened from the public, vehicles containing decals or other signage for business marketing and/or advertising purposes, motor homes, boats or other recreational vehicles, machines, equipment or any and all other articles or conditions deemed unsightly by the Declarant or the Association after expiration of Declarant Control. In no event shall any pickup truck with a capacity to carry in excess of (1) one ton be kept on any Lot. No trucks other than pickup trucks of less than one (1) tonnage shall be kept on any Lot.

5. Hunting; Motorcycles and Golf Carts. No hunting or discharge of firearms of any kind shall be allowed within the Subdivision. No motorcycles, minibikes, or motorized two-wheel or four-wheel vehicles (such as golf carts) for recreation and/or transportation shall be allowed unless the same are properly licensed and/or are expressly approved by the Association, and all shall be used for transportation purposes within the Development only if properly managed. It is further stipulated that such motorcycles,

minibikes, or motorized two-wheel or four-wheel vehicles (such as golf carts) for recreation and/or transportation which are licensed and/or Association approved shall be allowed to operate within the Subdivision only upon the regularly platted roads thereof. All licensed vehicles kept and operated within the Subdivision shall have properly working mufflers if and as required by the applicable licensing bureau.

6. Fences, Mailboxes and Antennas, Etc.: The Community Association may regulate or prohibit the erection of antennas, ham radio towers, fences (chainlink, stockade-type or otherwise) on any Lot. In no event shall any chain link fencing be installed upon any Lot. Only mailboxes furnished or approved by the Developer or the Association may be used. No satellite dishes larger than one meter in diameter shall be allowed, and if reasonably feasible shall be installed on rear facing eaves or such other location such that it shall not be visible from Subdivision roadways. No outside clothes lines are permitted. No window type heating or air conditioning Lots shall be installed without the approval of Developer or which shall be visible from the street.

7. Garbage and Refuse Disposal. Storage, collection and disposal of trash shall be in compliance with rules set by the Association. The Association may, in its exclusive discretion designate a specific day for trash collection, and any contracts for independent collection of trash shall specify said day for collection. The Association may contract for collection of trash and include the expense thereof in Assessments levied thereby.

8. Parking: No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on any Lot. No overnight parking of any motor vehicles shall be allowed on streets within the Property. All vehicles shall be parked within garages, driveways or designated parking areas. In no event shall any vehicle be parked on any Subdivision streets. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trailbike, go cart, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except as provided in the rules and regulations enacted by the Master Association. In no event shall any vehicle remain parked in parking areas adjacent to the Subdivision Clubhouse for any period in excess of six hours, nor shall any such parking area remain occupied during any time when the Clubhouse is closed.

9. Driveways. Unless the prior written approval of the Association is obtained, all driveways shall be constructed of concrete brick or pavers.

10. Signs. No signs of any kind shall be displayed in public view on any Lot, except one sign of not more than six (6) square feet advertising the property for sale placed in a window, and any signs placed by the Developer. This provision shall not be construed to prohibit political signs and flags displayed in accordance with the North Carolina Planned Community Act.

11. Livestock, Poultry and Other Animals. Only dogs, cats, birds, and fish and such other animals as approved by the Association may be kept and maintained in the dwelling unit on any Lot. The Association shall have exclusive discretion in determining the permissible numbers, size and nature of pets hereunder. When outside, all pets must be on a leash or confined within a fenced enclosure, shall not be left unattended, and shall not become a nuisance. Pet owners are responsible for cleaning up the excrement and waste of their respective pet(s).

12. Rentals: No dwelling unit on any Lot shall be rented for a period of less than six (6) months. Any owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Association. A copy of any lease shall

also be provided to the Association. The Association may grant variances to this rental restriction in cases of hardship.

13. Exterior and/or Yard Lights. No exterior and/or yard lights shall be placed upon a Lot without the prior written consent of the Association.

14. Subdivision of Lot. No Lot in the Subdivision shall be re-subdivided so as to create an additional building Lot.

15. Limitation of Access. Except as to Developer, the private roadways shall not be used so as to provide access to any property except the Lots within the Subdivision or other properties currently vested with rights to utilize such Subdivision rights of ways. No part of a Lot shall be used for any access to any other property which lies outside of the Subdivision. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any Lot Owner to any other person through or over any Lot so as to permit any portion of a Lot or Subdivision property to be used for access to or from any adjoining property. This provision shall not be construed so as to prevent the Developer from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer, subject to the required consent of the Bank as provided herein. The Developer specifically reserves the right to establish such easements or rights of way as Developer deems necessary or desirable for access to adjoining property whether now or hereafter owned by Developer, and such rights of way within the Subdivision shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefited by road rights of way within the Subdivision.

16. Commencement of Construction; Remedy for Failure to Timely Construct. Construction of the residential dwelling upon a Lot shall commence within three (3) consecutive calendar years from the date the Lot is conveyed to an Owner by Developer (herein the "Construction Deadline Date"); the Developer reserves the express right to modify or amend the Construction Deadline Date as Developer in its sole and absolute discretion may determine. "Commencement of Construction" as used herein shall mean (a) the commencement of improvements to a Lot related directly to the principal dwelling approved for construction; and (b) the completion, at a minimum of the footings and foundation of the approved dwelling.

In the event that construction has not commenced, as defined above, as of the Construction Deadline Date, the Owner's failure to so commence shall be construed automatically as an offer by such Owner to the Developer to repurchase ("Offer"), as Developer's option, the Lot at the following price: (i) the contract purchase price (excluding all financing and closing costs related to the purchase) paid by such Owner, if said Owner was the original purchaser from the Developer, less the costs of removing any and all existing liens and/or encumbrances upon the Lot and customary seller's closing costs and fees; or (ii) the contract purchase price paid by the original purchaser of the Lot from the Developer (excluding all financing and closing costs related to the purchase) increased by the percentage increase, from the date of closing of the original purchase from Developer to the Construction Deadline Date, at three percent (3%), less the costs of removing any and all existing liens and/or encumbrances upon the Lot and customary seller's closing costs and fees.

In each instance where an Offer is triggered by an Owner's failure to timely commence construction as provided above, Developer shall determine in its sole discretion and on a case-by-case basis whether to exercise its option to repurchase at the purchase price set forth above, and such determination may be made on such basis and for such reason as Developer in its sole discretion shall choose. In the event that

Developer, in its sole discretion, accepts the Offer, the Owner shall tender to Developer a properly executed and notarized General Warranty Deed and other standard documents conventionally required to complete a property sale (including a title insurance required lien affidavit and IRS 1099S) within ten (10) calendar days of Developer's written notice to Owner agreeing to repurchase the Lot, said tender to occur at a place and time specified by Developer in such notice. In the event that an Owner has purchased more than one Lot from Developer in the same transaction for a single purchase price, each Lot shall be considered separately for the purpose of determining whether commencement of construction has occurred (ie: if construction shall have been commenced on one Lot, it shall not be assumed to have commenced on the other Lot(s) owned by such Owner simply because it has been commenced on the one Lot) and/or for the purpose of determining on which Lot or Lots Developer agrees to exercise its option to repurchase and accept the Offer. In the event that any Owner has purchased more than one Lot from Developer at the same purchase transaction for a single purchase price (which purchase price was not otherwise allocated between each of the Lots purchased by such Owner at the time of such purchase closing), then the original purchase price shall be apportioned between the Lots based upon the acreage of the Lots purchased in the same purchase transaction (*for example*, in the event an Owner purchases Lots 1, 2 and 3, with Lot 1 being 1 acre, Lot 2 being 0.50 acres and Lot 3 being 0.50 acres for a total purchase price of \$200,000 – the value and purchase price for Lot 1 would be \$100,000, the value and purchase price for each of Lots 2 and 3 would be \$50,000). The option to repurchase and Offer provided for in this provision shall automatically expire, if not sooner exercised by Developer, upon the earlier of (a) Commencement of Construction or (b) five (5) years from the date of the first conveyance of such Lot from Developer to an Owner other than Developer. So long as any Lot remains unimproved, the repurchase option as set forth herein remains in effect for the period specified herein.

Notwithstanding the above, if an Owner conveys an unimproved Lot during the five-year time period specified above to anyone other than the Developer, then the Construction Deadline Date shall begin anew and recommenced as of the date of said closing. Further notwithstanding, if the Developer reacquires any unimproved Lot after previous conveyance of said Lot, then the Construction Deadline Date shall commence as of the re-conveyance of the Lot from the Developer to another Owner.

Developer reserves the express right to modify or amend the Construction Deadline Date as Developer in its sole and absolute discretion may determine. Developer's refusal to exercise its Option to repurchase as provided herein shall not be deemed to waive any other remedies that Developer may possess as provided in this Declaration.

17. Approved Builder Program; No Developer Liability. No builder or general contractor may commence construction of a dwelling upon any Lot unless said builder or general contractor have been approved in writing by Developer pursuant to criteria established by the Developer in its sole discretion related to such person's qualifications, licensing and experience. As a result of the potential impact on the Development and/or the property values related to careless workers and/or poor workmanship, each Lot Owner acknowledges the reasonableness of this restriction. Each builder and/or general contractor must apply to Developer for approval prior to submission of any plans for appropriate permitting for the build, and, as a part of that process, the Developer may obtain from said applying builder or general contractor any information related to such applicant's qualifications and construction experience, including, but not limited to, financial information, proceed of intermediate and/or unlimited licensing by the North Carolina Licensing Board for General Contractors, references, proof of liability and workers compensation insurance. Developer shall not unreasonably withhold or delay approval or disapproval, as applicable, if a complete application is provided and Developer's approval shall not be construed in any way as a warranty or guaranty of the competency of the builder and/or general contractor and by conducting the above-described builder approval program, Developer shall not impose upon itself a duty to the applicable Lot

Owner in tort or contract.

18. Conflict with Master Restrictions. To the extent of any direct conflict between the restrictions contained in this Article IV and Declaration and the Master Restrictions, the Master Restrictions shall control.

19. Developer Control. It is understood and agreed, and subsequent grantees expressly agree by acceptance of a deed conveying title to any Lot within the Subdivision, that any portion of this Declaration may be released, changed, modified, amended or varied without the consent or joinder of any Lot Owner solely by (i) the Developer until the sale of the last Lot owned by Developer (other than to a related entity) as shown on the Plat or any subsequently recorded plat adding property as an additional Phase to the Subdivision (herein the "Control Period") or (ii) if after expiration of the Control Period, then by a favorable vote by at least sixty-seven percent (67%) of the then Lot Owners of the Subdivision in accordance with the Act. After expiration of the Control Period, each Lot Owner shall have one vote for each and every Lot then owned by that Lot Owner in the Subdivision. The written and recorded modification of these Restrictions, signed by either the Developer or after the Control Period by at least the required percentage of the Lot Owners in the Subdivision as the case may be, shall be sufficient to constitute an amendment to these Restrictions without further notification to any person or persons.

ARTICLE VI

Easements, Rights of Ways, Utilities

1. Utilities. The Developer reserves the right to subject the Property to a contract or contracts with any selected utility provider for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such utility provider(s) by either some or all of the Owners of Lots within the Subdivision. This right shall also apply to the suppliers of other utility services including telephone and, if available, gas, cable television and/or internet connections. All utility services from a Lot line to the residence shall be installed underground.

2. Road Rights of Way. The Subdivision property is serviced by those certain road rights of ways of the Master Association, including but not limited to Waightstill Drive, leading from the public right of way of Ledbetter Road through the gated entrance on the property of the Master Association to the Subdivision road right(s) of ways as shown on the Plat to and from the various Lots within the Subdivision. Developer does hereby dedicate said rights of way as shown on the Plat as private roadways for the benefit of Lot Owners, Declarant and the Association as to their respective interests, ownership and/or rights in the Subdivision. As such, and pursuant to NCGS §136-102.6, all future Lot Owners acknowledge that the rights of way as shown on the Plat are private road rights of way and may not be developed to North Carolina Department of Transportation specifications. Pursuant to the Master Restrictions, the Master Association shall be responsible for the maintenance, upkeep, repair and service of such road rights of way unless and until such time as the Department of Transportation assumes the obligation for the maintenance of said road rights of way. A Lot Owner shall be responsible for all damage and repairs to the right of way which results from construction trucks or equipment utilized for construction upon that Lot Owner's property. The Developer specifically reserves the right to extend such rights of way beyond the boundary of the Subdivision as shown on the Plat for the benefit of the Developer's adjoining remaining property; whether now or hereafter acquired, subject to the required consent of the Bank as provided herein. Upon conveyance of the Road and other Common Elements to the Association as a part of the expiration on the Developer Control Period, the Road shall be conveyed to the Association and shall be accepted thereby as existing at the time of such conveyance with repairs only for any construction damage caused by Developer.

3. Private Utilities. It is anticipated that the Lots shall be serviced by other utilities, including cable, internet, water and sewer services. In any event, all Lot Owners shall be ultimately responsible for obtaining their own water source for the benefit of a Lot. Furthermore, no individual water well or sewage disposal system shall be permitted on a Lot unless said well or system is approved by Developer and unless the sewage disposal system is designed in accordance with the requirements, standards and recommendations of the Buncombe County Health Department. Approval of such system as installed shall be obtained from Developer and/or such governmental authority, or its successors.

4. Utility Reservation. Unless otherwise noted on any recorded Subdivision plat, easements are reserved for the Developer and the Association in any road right of way or other Common Element and/or Limited Common Element for installation, maintenance and repair of any utility services and drainage facilities.

5. Stormwater. Developer has now or will in the future install an approved stormwater drainage system and related improvements ("Stormwater System") according to plans and specifications prepared and approved by an engineer licensed in the State of North Carolina and pursuant to permits issued by Buncombe County, North Carolina. The Stormwater System and said easements therefore will be shown on a Plat recorded in the Buncombe County, North Carolina Register of Deeds Office. The Association as defined herein will, in the future, be responsible for the cost, expense, maintenance and upkeep of the Stormwater System and is hereby obligated to accept the ownership of the Stormwater System with all appurtenant easements therefore, subject to certain reserved rights of the Developer including but not limited to the right of entry upon the Property whenever reasonably necessary for the purposes of inspecting, maintaining, repairing and replacing said Stormwater System.

ARTICLE VII

General Matters

1. Adjoining Properties and Governmental Actions. All purchasers of Lots do hereby acknowledge that the Developer has not made representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot within the Subdivision, such purchasers do hereby covenant and agree to hold Developer harmless from any and all claims, damages and costs in any way relating to or arising out of any use of any property adjoining the Subdivision. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Subdivision and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot. Furthermore, the Developer hereby discloses that the public rights of way as shown on the Plat may or may not be the subject of a current or future action by the North Carolina Department of Transportation for the purposes of widening such rights of way. The purchaser of any Lot acknowledges that they have investigated on their own accord how such taking may affect the Subdivision and are satisfied that such a taking does not materially or substantially affect the value, use or enjoyment of any Lot.

2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to

exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fees as a part of such action.

3. Amendment and Modification. The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. During the Control Period, the Developer hereby reserves the absolute right to modify and/or to amend these Restrictions in whole or in part in Developer's sole and absolute discretion as the Developer deems proper or appropriate, subject to the required consent of the Bank as provided herein. After the Control Period, an amendment to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the members, sixty-seven per cent (67%) of the members vote in favor of such amendment or as otherwise required by the Act and once made, shall become effective when recorded in the Buncombe County, NC Register's Office. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions, if any.

4. Invalidation. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, then such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

5. Duration. These covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under Developer until January 31, 2046 at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of majority of persons then owning lots within the Subdivision it is agreed to change these covenants in whole or in part.

6. Consent and Subordination of Lienholder(s) to this Declaration. See the Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4 and Exhibit B-5 attached hereto and incorporated herein by reference.

7. Consent and Subordination of Lifestyle Homes to this Declaration. See the Exhibit C attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Developer has set its hand, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, as of the day and year first above written.

[SIGNATURE PAGES FOR DEVELOPER TO FOLLOW]

**DEVELOPER SIGNATURE PAGE FOR
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINNACLE AT ARABELLA HEIGHTS**

THE PINNACLE AT ARABELLA HEIGHTS, LLC,
a North Carolina limited liability company

By: [Signature]
Bruce Alexander, Managing Member

STATE OF North Carolina COUNTY OF Buncombe

[SEAL]

I, a notary public for the State and County aforesaid, certify the following person or persons personally appeared before me this day and acknowledged the execution of the foregoing instrument: Bruce Alexander, as Managing Member of THE PINNACLE AT ARABELLA HEIGHTS, LLC, a North Carolina limited liability company. Witness my hand and official stamp or seal, this the 16 day of October, 2018.



[Signature] Notary Public
Commission Expiration: 3-12-20

EXHIBIT B-1

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIENHOLDER
PINNACLE AT ARABELLA HEIGHTS

CHEROKEE FINANCIAL, LLC, a Pennsylvania limited liability company ("Lender"), as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in **Record Book 5344 at Page 1864** of the Buncombe County, NC Register of Deeds Office, and any recorded modifications thereof (herein the "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Lender is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lender and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee or Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

LENDER:

CHEROKEE FINANCIAL, LLC

By: [Signature]
Name: Anthony Cantor
Title: managing member

STATE OF New Jersey, COUNTY OF Essex

I certify that the following person(s) personally appeared before me this the 6th day of September, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: Anthony Cantor, Managing Member, of Cherokee Financial, LLC.

Notary Public: _____
Commission Expiration: _____

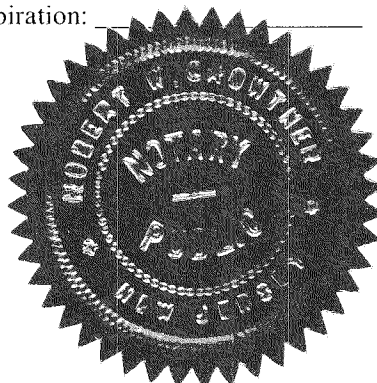
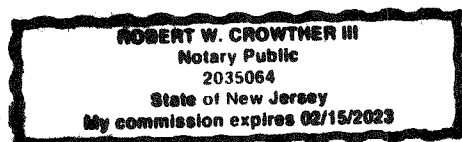


EXHIBIT B-2

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIENHOLDER
PINNACLE AT ARABELLA HEIGHTS

KJK GROUP, LLC, a Delaware limited liability company ("Lender"), as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in **Record Book 5455 at Page 226** of the Buncombe County, NC Register of Deeds Office, and any recorded modifications thereof (herein the "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Lender is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lender and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee or Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

LENDER:

KJK GROUP, LLC

By: David C. Winters
Name: DAVID C. WINTERS
Title: MANAGER

STATE OF GA, COUNTY OF Fulton

I certify that the following person(s) personally appeared before me this the 12 day of September, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: Manager - David Winters, of KJK GROUP, LLC.

Notary Public: Jessica Miller
Commission Expiration: 3-24-20



EXHIBIT B-3

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIENHOLDER
PINNACLE AT ARABELLA HEIGHTS

COUNTRY CLUB FINANCIAL, LLC, a limited liability company ("Lender"), as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in **Record Book 5583 at Page 277** of the Buncombe County, NC Register of Deeds Office, and any recorded modifications thereof (herein the "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Lender is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lender and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee or Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

LENDER:

COUNTRY CLUB FINANCIAL, LLC

By: [Signature]
Name: Anthony Carter
Title: Managing member

STATE OF New Jersey, COUNTY OF Monmouth

I certify that the following person(s) personally appeared before me this the 6th day of September, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: [Signature] of COUNTRY CLUB FINANCIAL, LLC.

Notary Public: [Signature]
Commission Expiration: _____

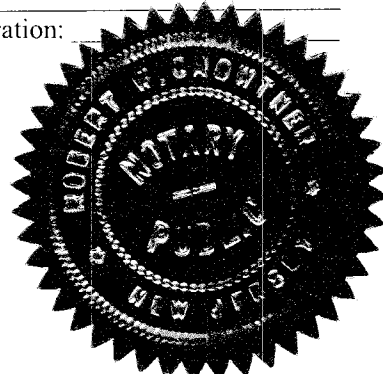
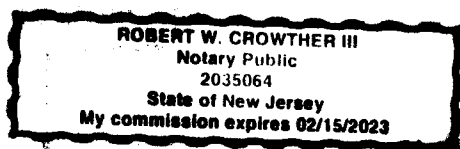


EXHIBIT B-4

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIENHOLDER
PINNACLE AT ARABELLA HEIGHTS

ENTEGRA BANK, a banking corporation ("Lender"), as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in **Record Book 5583 at Page 312** of the Buncombe County, NC Register of Deeds Office, and any recorded modifications thereof (herein the "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Lender is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lender and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee or Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

LENDER:

ENTEGRA BANK

By: [Signature]
Name: Bobby Sanders
Title: VP

STATE OF NORTH CAROLINA, COUNTY OF MACON

I certify that the following person(s) personally appeared before me this the 15th day of OCTOBER, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: BOBBY SANDERS C.V.P. of ENTegra BANK.

[Signature]
Notary Public: JAMES G. SHOPE
Commission Expiration: 3/13/2023

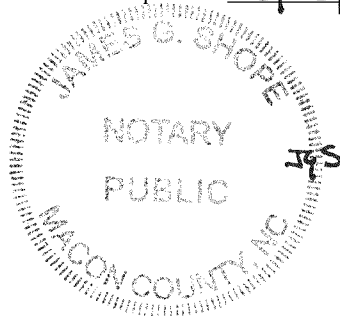


EXHIBIT B-5

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIENHOLDER
PINNACLE AT ARABELLA HEIGHTS

PINNACLE BANK, a banking corporation ("Lender"), as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in **Record Book 5350 Page 425** of the Buncombe County, NC Register of Deeds Office, and any recorded modifications thereof (herein the "Deed of Trust"), which Deed of Trust encumbers all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consent to the recording of this Declaration and subordinates the lien of the Deed of Trust to this Declaration. The execution of this Consent and Subordination by Lender is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lender and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Trustee or Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

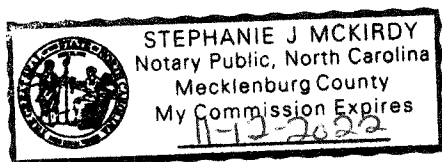
LENDER:

PINNACLE BANK

By: [Signature]
Name: Thad Downs
Title: Sr. Vice President

STATE OF North Carolina, COUNTY OF mecklenburg

I certify that the following person(s) personally appeared before me this the 20 day of September, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: Sr. Vice President, of PINNACLE BANK.



Stephanie J. McKirdy
Notary Public: Stephanie J. McKirdy
Commission Expiration: 11-12-2022

EXHIBIT C

TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE AT ARABELLA HEIGHTS

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

CONSENT & SUBORDINATION OF LIFESTYLE HOMES
PINNACLE AT ARABELLA HEIGHTS

LIFESTYLE HOMES OF DISTINCTION, INC, a North Carolina corporation ("Lifestyle Homes") as fee simple owner of the property described in **Record Book 5571 at Page 259 and Record Book 541 at Page 1928** each recorded in the Buncombe County, NC Register of Deeds Office (herein the "Lifestyle Homes Property"), which includes a portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pinnacle at Arabella Heights (herein "Declaration"), hereby consents to the recording of this Declaration and subordinates and encumbers the Lifestyle Homes Property to this Declaration. The execution of this Consent and Subordination by Lifestyle Homes is solely for the purpose set forth herein and shall not be deemed or construed to have the effect of creating, between Lifestyle Homes and Pinnacle at Arabella Heights, LLC (herein "Declarant"), the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Lifestyle Homes any of the benefits, liabilities, duties or obligations of Declarant under the Declaration.

IN WITNESS WHEREOF, Lifestyle Homes has caused this Consent & Subordination of Lienholder to be executed in its corporate name by its duly authorized officers by authority from its Boards of Directors, the day and year first above written.

LENDER:

LIFESTYLE HOMES OF DISTINCTION, INC.

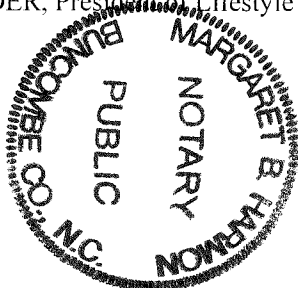
By: 

Name: BRUCE ALEXANDER

Title: PRESIDENT

STATE OF NORTH CAROLINA, COUNTY OF Buncombe

I certify that the following person(s) personally appeared before me this the 16 day of October, 2018, acknowledging to me that he or she signed the foregoing document in the capacity stated above: BRUCE ALEXANDER, President of Lifestyle Homes of Distinction, Inc.




Notary Public: Margaret B. Harmon

Commission Expiration: 3-12-20

BOOK 3436

PAGES 103 - 140

Buncombe County, NC
 Recorded 10/21/2003 04:03:27pm
 No 9999-00241886 1 of 38 pages
 Otto W. DeBruhl, Register of Deeds

Document Prepared by: David R. Payne, P.A.
 218 East Chestnut St.
 Asheville, NC 28801

Return to: David R. Payne, P.A. box 33

STATE OF NORTH CAROLINA
 COUNTY OF BUNCOMBE

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this the 21st day of October, 2003 by Keith and Paula Vinson as current owners of the attached property and Waightstill Mountain Development, LLC, a North Carolina Limited Liability Company, ("Waightstill") as contractual interest holder, (collectively referred to herein as "Declarant") for the benefit of itself and all future owners of those certain portions of the property within the bounds of the tract described in those deeds recorded in the Buncombe County Registry in the following Deed Books and Pages: **Exhibit A = Deed Book 3252 at Page 167, Exhibit B = Deed Book 3222 at Page 494 and Exhibit C = Deed Book 3378 at Page 446** which portions are collectively referred to herein and established in the manner set forth below to be defined as and referenced as **"Waightstill Mountain."**

WHEREAS, Declarant being the owner of all of the property described herein, wishes to establish Waightstill Mountain as residential community with a general scheme of development that Declarant believes will prove beneficial to Waightstill Mountain and Buncombe County, and to the declarant and all its successors in interest in ownership of any or all of Waightstill Mountain; and

WHEREAS, this Declaration is intended to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties, to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method of such Properties as are now or hereafter subjected to this Declaration; and,

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the undersigned parties do hereby make the following Declarations, Covenants and Restrictions of that certain tract of Land known as Waightstill Mountain and any additional property which is hereafter subjected to this Declaration by supplemental Declaration (as defined herein) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value of desirability of and which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successor-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Article I DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 "Architectural Review Committee (ARC)": The Waightstill Mountain committee that shall govern all construction within Waightstill Mountain, pursuant to the Guidelines. The ARC's general purpose is to keep Waightstill Mountain attractive for the owners and to protect property values therein.
- 1.2 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Waightstill Mountain Homeowner's Association, Inc., to be incorporated and filed with the Secretary of State of the State of North Carolina as amended from time to time.
- 1.3 "Association": Waightstill Mountain Homeowner's Association, Inc., to be filed with the Secretary of State of the State of North Carolina, its successors or assigns.
- 1.4 "Base Assessments": Assessments levied on all Lots subject to assessment under Article X to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 10.1 and 10.3.
- 1.5 "Benefited Assessment": An assessment levied in accordance with Section 10.7.
- 1.6 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.
- 1.7 "Builder": Any Person which purchases one (1) or more Lots for the purpose of constructing improvements thereon for later sale to consumers or which purchases one or more parcels of land within the Properties for further subdivision, development, and resale in the ordinary course of such Person's business.
- 1.8 "By-Laws": The By-Laws of The Waightstill Mountain Homeowner's Association, Inc., attached hereto as Exhibit "A" and incorporated by reference, as they may be amended from time to time.
- 1.9 "Class 'B' Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article 3, Section 1 of the By-Laws.
- 1.10 "Common Area": All real and personal property which the Association now or hereafter owns, leases or otherwise hold possessory or use rights in for the use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.
- 1.11 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.
- 1.12 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Board of Directors and the Architectural Review Committee may more specifically determine such standard.
- 1.13 "Construction": The physical disturbance of any Lot, including grading, excavation, or other site preparation thereof, and the location, placement, erection, construction of replacement of any structure, building, house, fence, parking area, driveway or landscaping.

1.14 "Covenant to Share Costs": Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator or such property.

1.15. "Declarant": Keith and Paula Vinson as current owners and Waightstill Mountain, LLC as contractual interest holder which is a North Carolina Limited Liability Corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property for the purpose of development and sale and who is designated as the declarant in a recorded instrument executed by the immediately preceding Declarant.

1.16. "Landscaping": The general care and treatment of green areas, including seeding, reseeding, planting, replanting, trimming, pruning, mowing, edging, watering, fertilizing, thatching, and other care. Removal, maintenance and replacement of green areas, lawns, trees, shrubs, flowers and other vegetation.

1.17. "Lot": Each numbered, platted lot, whether improved or unimproved, shown on any subdivision plat of the Properties, which is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

In the case of a parcel of vacant land which has not been platted, the parcel shall be deemed to contain the number of Lots designated for residential use on the site plan approved by the Declarant until such time as the parcel is shown on a subdivision plat.

1.18. "Master Association": The North Carolina Corporation formed (or to be formed) as Waightstill Mountain Master Association, Inc.

1.19. "Member": A Person entitled to membership in the Association.

1.20. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, security deed, and any and all other similar instruments used for the purpose of encumbering real property as security for the payment or satisfaction of an obligation.

1.21. "Mortgagee": A beneficiary or holder of a Mortgage.

1.22. "Neighborhood": A separately developed residential area within the Property, whether or not governed by a Neighborhood association, in which the Owners of Lots may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each area of development may each constitute a separate Neighborhood. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as described in Article II of this Declaration) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Article II of this Declaration.

1.23. "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Sections 10.1 and 10.4.

1.24. "Neighborhood Association": Any owners association having concurrent jurisdiction with the Association over any part of the Properties.

1.25. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein or in any supplemental Declaration applicable to a particular Neighborhood.

1.26. "Owner": One (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.27. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.28. "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational, commercial and related purpose.

1.29. "Properties": The real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration in accordance with Article IX hereof.

1.30. "Special Assessment": An assessment levied in accordance with Section 10.6.

1.31. "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by the Declarant pursuant to Article II that designates Neighborhoods.

Article II USE OF PROPERTY AND NEIGHBORHOODS

2.1. Common Area. Every owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(c) The right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Section 3.22 of the By-Laws;

(d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.8;

(e) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 14.2; and

(f) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.3.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

2.2. Neighborhoods.

(a) **Creation.** The Declarant, in its sole discretion, may establish Neighborhoods within the Properties. Exhibit "A" to this Declaration and any Supplemental Declaration may assign property described therein or property already submitted to the Declaration to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. If Neighborhoods are established, all Lots not specifically assigned to a Neighborhood shall be deemed assigned to the same Neighborhood.

The Lots within a particular Neighborhood may be subject to additional covenants and/or the Owners within the Neighborhood may be mandatory members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as required by law. Any Neighborhood that does not have a Neighborhood Association may have a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of Owners of Lots in such Neighborhood.

(b) **Modification.** The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to establish or to re-designate Neighborhood boundaries; provided, however, two (2) or more Neighborhoods shall not be combined without the consent of Owners of a majority of the lots in the affected Neighborhoods. If Neighborhoods are established, the Owner(s) of a majority of the total number of Lots within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods. Such petition shall be in writing and shall include a plat of survey of the entire parcel, which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Lots to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(c) **Powers of the Association Relating to Neighborhoods.** The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association, which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community- Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed budget include certain items and that expenditures be made therefore.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Lots in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.7. Such assessments may be collected as a Benefited Assessment hereunder and shall be subject to all lien rights provided for herein.

Since a Neighborhood Committee is a committee of the Association, the Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The authority of the Board shall include, without limitation, the power to veto any action taken or contemplated to be taken by any Neighborhood Committee and to require specific action to be taken by any Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties.

2.3. **Exclusive Common Area.** Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Area may include entry features, landscaped medians and cul-de-sacs, ponds and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned only upon the vote of Members holding a majority of the total votes in the Association, including a majority of the votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned. As long as the Declarant owns any property described on Exhibit "A" for development and/or sale, any such assignment or reassignment shall also require the consent of the Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or Board of Directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

Article III MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event a Lot is owned by more than one (1) Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 3.2 and in the By-Laws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner, which is a corporation, partnership or other legal entity, shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.2. **Voting.** The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) **Class "A".** Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.1; there shall be only one (1) vote per Lot.

In any situation where there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary to the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to one (1) equal vote for each Lot that it owns which is submitted to the Declaration, and such vote shall be weighted equally to the vote allocated to each Class "A" Member. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.2 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and committees as provided in Section 3.3 of the By-Laws. Additional rights of the Class "B" Member are specified elsewhere in the Declaration and the By-Laws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) Two (2) years after expiration of the Class "B" Control Period, which shall be no later than December 31, 2010, or
- (ii) Upon sale of 90% of lots available for sale from the declarant
- (iii) When, in its discretion, the Declarant so determines and declares in a recorded instrument.

Article IV ASSOCIATION FUNCTIONS

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with Community-Wide Standards.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Declarant or its designee may convey to the Association improved or unimproved real estate located within the property described in Exhibit "A", personal property and leasehold and other property interests. Upon conveyance or dedication by the Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions or limitations set forth in the deed of conveyance.

4.3. Rules and Regulations. The Association, through its Board of Directors, may make, modify and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees, if any until and unless overruled, canceled, or modified at a regular or special meeting of the Association by the vote of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

4.4. Enforcement. The Association shall be authorized to impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association, through the Board, in accordance with article 1, Section 6 of the By-Laws, shall have the right to exercise self-help to cure violations and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

4.5. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

4.6. **Governmental Interests.** For so long as the Declarant owns any property described on Exhibit "A", the association shall permit the Declarant to designate sites within the Properties for fire, police, water and sewer facilities, parks, and other public facilities. The sites may include portions of the Common Areas and upon written notice from Declarant, the Association shall execute such documents as may be necessary to convey or dedicate property for such purposes.

4.7. **Indemnification.** The Association, to the fullest extent allowed by applicable law and in accordance therewith, shall indemnify every officer, director, and committee member against any and all damages and expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available.

4.8. **Dedication of Common Areas.** The Board shall have the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity, subject to such approval as may be required by Section 14.2.

4.9. **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be.

Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, the Declarant, nor any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge that the Association, and its Board of Directors, the Declarant, any successor Declarant, and Standards Control and Modifications Committees do not represent or warrant that any entry gate, patrolling of the Properties, or other security system designated by or installed according to guidelines established by the Declarant or the Standards Control or Modifications Committees may not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that entry gate, patrolling of the Properties or other security systems will in all cases provide the detection or protection for which the system is designed and intended.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board of Directors, committees, Declarant, or any successor Declarant are not insurers.

All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board of Directors, committees, the Declarant, or any successor Declarant have made no representations or warranties, or has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representation or warranties, expressed or implied, relative to any entry gate, patrolling of the properties or other security systems recommended or installed or any security measures undertaken within the Properties.

4.10. **Covenant(s) to Share Costs.** So long as the Class "B" membership exists, the Declarant may, but shall not be obligated to, execute and record various declarations, covenants, and deed restrictions which may constitute covenants running with the title to certain parcels of land outside the Properties, assigning to the owners and occupants of such parcels and their members, guests, employees, agents and invitees, as applicable, certain rights to use all or portions of the Common Areas and obligating the owners of such parcels to share in the certain costs incurred by the association which benefit such parcels. Such Covenants to Share Costs may expand the Area of Common Responsibility and provide remedies to the owners of such parcels for the Association's failure to perform. Upon request of the Declarant, the Association shall join in such Covenants to Share Costs. The Association shall comply with the terms of any and all such Covenants to Share Costs.

Article V MAINTENANCE

5.1. **Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to: (1) all landscaping and other flora, parks, scenic overlooks, structures, and improvements, including bike and pedestrian pathways/trails serving the Properties or situated upon the Common Area; (2) any private streets or shared drive access shown on any recorded plat of the Properties serving the Properties or situated upon the Common Area or a Lot; and (3) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any covenant, contract, or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment; provided, however, all costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots within the Neighborhood(s) to which the Exclusive Common Area is assigned.

5.2. **Owner's Responsibility.** Except to the extent otherwise specifically provided above, each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.7. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. There shall be no signage upon a personal residence without written consent of the Property Owners Association to include, but not limited, to Real Estate Signage, for sale, for rent, yard or garage sale etc.

5.3. **Neighborhood's Responsibility.** Upon resolution of the Board or pursuant to additional covenants applicable to the Neighborhood, a Neighborhood may be delegated responsibility for operating, maintaining and insuring certain portions of the Area of Common Responsibility which are the responsibility of the Association within or adjacent to such Neighborhood. This may include, without limitation, maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. The costs of such operation, maintenance, and insurance shall be paid by the Owners within such Neighborhood though either Neighborhood Assessments established by the Board or assessment of the Owners within such Neighborhood by the Neighborhood Association assigned such responsibility.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood fails, in the opinion of the board, to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Section 10.7. In addition, the Association may assume such maintenance responsibility by agreement with the Neighborhood and assess the costs thereof as a Neighborhood Assessment against those Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this paragraph shall not constitute discrimination within a class.

5.4. **Standard of Performance.** Unless otherwise specifically provided herein or in other instrument creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Neither the Association, the Declarant, any Owner nor any Neighborhood shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

5.5. **Party Walls, Party Fences and Party Driveways.**

(a) **Applicability.** Each wall, fence or driveway built as a part of the original construction on the Lots:

(i) Any part of which is built upon or straddling the boundary line between two adjoining Lots; or

(ii) Which is built within four feet of the boundary line between adjoining Lots, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(iii) Which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot; shall constitute a party wall, party fence, or party driveway, respectively (herein referred to as "party structures"). The Owners of each such Lot (the "Adjoining Owners") shall own that portion of the party structure lying within the boundaries of their respective Lots and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining Lot.

(iv) Any common driveway, which is shown on plat and determined for use of more, than one lot.

(b) **Maintenance.** Upon written request of either Adjoining Owner, which request is delivered to the Board with a copy to the other Adjoining Owner, and agreement of the Board that a party structure is in need of maintenance, repair or replacement, the Board shall perform the necessary maintenance, repair or replacement of the party structure on behalf of the Owners. Except as otherwise provided in subsection (c) below, all costs of such maintenance, repair or replacement shall be assessed equally to the Adjoining Owners and their Lots as a Benefited Assessment under Section 10.7.

(c) **Damage and Destruction.** Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Section 6.3., and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

If a party structure is destroyed or damaged by fire or other casualty, the Board shall proceed promptly to repair or restore the party structure and shall assess all costs incurred against the Adjoining Owner who is responsible for insuring the party structure and against his or her Lot as a Benefited Assessment under Section 10.7. If both Adjoining Owners are responsible for insuring portions of the party structure, then such costs shall be assessed equally against the Adjoining Owners and their Lots. However, nothing herein shall prejudice the right of either Adjoining Owner to recover from the other under any rule of law or equity regarding liability for negligent or willful acts or omissions.

Article VI INSURANCE

6.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect property insurance covering "risks of direct physical loss" on a "special form" basis for all insurable improvements in the Neighborhood. If "risks of direct physical loss" on a "special form" basis is not generally available at reasonable cost, then "broad form" Coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the Association on behalf of a Neighborhood shall be charged to the Owners of lots within the Benefited Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability policy on the Area of Common Responsibility, insuring the association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

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

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all persons responsible for handling Association funds in an amount determined by its best business judgment but not less than one-sixth 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 best business judgment, determines advisable.

(g) The Association shall have no insurance responsibility for any part of property of any Private Amenity.

6.2. Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Buncombe County, North Carolina area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

Except as otherwise provided in Section 6.1 with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) Benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood 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 By-Laws, that the loss is the result of the negligence or willful conduct of one of 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 in accordance with Section 10.7.

(a) All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of 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 requires;

(ii) Be written in the name of the Association as trustee for the Benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement if the policy contains a co- insurance clause.

(b) In addition, the Board shall be required to use reasonable efforts to secure insurance policies providing the following:

(i) A waiver of subornation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's right to repair and reconstruct instead of paying cash;

(iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement excluding individual Owners' policies from consideration under any "other insurance" clause;

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

(vi) A cross liability provision;

(vii) Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(viii) List the Lot Owners as additional insured under the policy.

6.3. Owners Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost of his or her Lot, less a reasonable deductible, and liability insurance, unless either the Neighborhood in which the Lot is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising a Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs, which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.4. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Owners holding at least sixty-seven (67%) of the total vote of the Neighborhood Association decide within sixty (60) days after the damage or destruction not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period may be extended for not more than sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.5. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association or the Neighborhood Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

6.6. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Benefited Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

Article VII NO PARTITION OR SUBDIVISION

Except as may be otherwise provided in a conveyance from Declarant, no Lot shall be subdivided by anyone other than Declarant. If due to topography, inadvertent misplacement of improvements or for other good reason, an Owner wishes a lot dividing line to be modified, the consent of the Declarant and the ARC is required, which consent will not be unreasonably withheld or delayed.

Except as is permitted in this Declaration or amendments hereto, the Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

Article VIII 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 upon approval of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A", by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Members holding at least sixty-seven percent (67%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the provisions in Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

Article IX ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Added land. Declarant may, at any time, add property to Waightstill Mountain by filing of a Plat and an amendment hereto describing such area. Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in Buncombe County, North Carolina. Such Supplemental Declaration shall not require the consent of any Owner, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members holding a majority of the votes of the Association represented at a meeting duly called for such purpose and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Buncombe County, North Carolina. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. **Withdrawal of Property.** The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to annex property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

9.4. **Additional Covenants and Easements.** The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than the Declarant.

9.5. **Amendment.** This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A".

Article X ASSESSMENTS

10.1. **Creation of Assessments.** There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 10.9. There shall be four (4) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.6; and (d) Benefited Assessments as described in Section 10.7. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate to be set by the Board (not to exceed the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. In the event of a transfer of title to a Lot, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. However, no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments, which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so elects, assessments may be paid in installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

10.2. Declarant's Obligation for Assessments. The Declarant shall pay assessments on all Lots owned by Declarant which are subject to assessments as set forth in Section 10.9, if any. The Declarant shall pay on the same basis as any other Owner in accordance with this Article X.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for the payment of some portion of the Common Expenses.

10.3. Computation of Base Assessment. It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve and in accordance with a budget separately prepared as provided in Section 10.5.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. The Board shall take into account the number of Lots subject to assessment under Section 10.9 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any amounts due from any party pursuant to a Covenant to Share Costs. The base assessment will be computed from a starting figure of Four hundred & 00/00 Dollars (\$400.00) dollars annually for members in Waightstill Mountain Property Owners association, Inc.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future year, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall cause a copy of the budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Article 3. Section 4 of the By-Laws, which petition must be presented to the Board within ten (10) days after the deliver of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.4. **Computation of Neighborhood Assessments.** It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement for capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood Benefited thereby and levied as a Neighborhood Assessment unless otherwise specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by the Neighborhood in writing to the Board of Directors.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot in the Neighborhood for the coming year to be delivered to each Owner of a Lot in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority vote of the Owner of Lots in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least fifty percent (50%) of the Lots in such Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.5. **Reserve Budget and Capital Contribution.** The Board of Directors shall annually prepare reserve budgets for both general and Neighborhood purposes, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 10.3 and 10.4.

10.6 **Special Assessments.** In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Members holding at least a majority of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

10.7. **Benefited Assessments.** The Board shall have the power to specifically assess expenses of the Association against Lots (a) receiving benefits, items, or services not provided to all Lots within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Lot for specific items or services relating to the lot or (b) that are incurred as a consequence of the conduct of a particular Owner or Owners, occupants of such Owners' Units or their licensees, invitees, or guests (c) for cost of repair or maintaining all wastewater collection systems to include but not limited to: lines, pump stations, force main, and all water related systems. The Association may also levy a Benefited Assessment against any Lot or Neighborhood to reimburse the Association for costs incurred in bringing the Lot or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Benefited Assessments may be levied upon the vote of the Board after notice to the Owner or Neighborhood, as applicable, and an opportunity for a hearing.

10.8. **Lien for Assessments.** The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys fees). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure in accordance with North Carolina law.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot. During the period in which a Lot is owned by the Association following foreclosure: (a) no right of vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorneys fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments, which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 10.9, including such acquirer, its successors and assigns.

10.9. **Date of Commencement of Assessments.** The obligation to pay the assessments provided for herein shall commence as to a Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

10.10. **Failure to Assess.** The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

10.11. **Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Lot for that year as determined by the Board. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12. **Exempt Property.** The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, Special Assessments, and Benefited Assessments:

- (a) All Common Area;
- (b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public schools, public streets, and public parks, if any;

(c) Property owned by a Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

Article XI ARCHITECTURAL STANDARDS

11.1. General.

a. No structure shall be placed, erected, or installed upon any Lot, and no construction or modification (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs) shall take place except in strict compliance with this Article, until the requirements below have been fully met, and approval of the appropriate committee has been obtained pursuant to Section 11.2.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her dwelling or to paint the interior of his or her dwelling any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Lot visible from outside the Lot shall be subject to approval. No permission or 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.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer.

This Article shall not apply to the activities of the Declarant nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Committee, as described below. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

Architectural Review Committee. The Architectural Review Committee shall consist of at least three (3), but not more than five (5), Persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until December 31, 2010 or sooner as determined by the Declarant, the Declarant retains the right to appoint all members of the Architectural Review Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may, at its option, appoint members of the Architectural Review Committee, who shall serve and may be removed at the Board's discretion.

11.3. Guidelines and Procedures.

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use of such portion of the Properties.

The Architectural Review Committee, acting on behalf of the Board of Directors, shall adopt such Design Guidelines at its initial organizational meeting and, thereafter, shall have sole and full authority to amend them from time to time.

The Architectural Review Committee shall make the Design Guidelines available to Owners and Builders who seek to engage in development of or construction upon all or any portion of the Properties and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. Any amendments of the Design Guidelines adopted from time to time by the Architectural Review Committee in accordance with this Section shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved by the Architectural Review Committee or Modifications Committee once the approved construction or modification has commenced.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning, without limitation, irrigation systems, drainage, lighting, fences, outdoor pools, and any other special features of such proposed construction or modification, as applicable, shall be submitted.

In the event that the Architectural Review Committee fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 11.5.

11.4. No Waiver of Future Approvals. The approval of either the Architectural Review Committee or Modifications Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

11.5. Variance. The Architectural Review Committee 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. Such variances may be granted, however, only when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the Architectural Review 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 any financing shall not be considered a hardship warranting a variance.

11.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Architectural Review Committee nor the Modifications Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot.

11.7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, bring such construction, alteration or other work into conformity with this Article to the satisfaction of the Board or remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the Association shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Benefited Lot and collected as a Benefited Assessment pursuant to Section 10.7.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Review Committee and Modifications Committee.

11.8. Size of Homes. The Architectural Review Committee (ARC) reserves the right to establish minimum size requirements for all dwellings constructed on any portion of the Properties. The ARC, in its sole discretion, may increase or decrease the minimum size requirements for future phases of the Properties. The minimum standards for the property platted prior to the date of this Declaration are as follows:

(a) Arabella Heights at Waightstill Mountain. All one-level dwellings or residences are to have no fewer than 2,400 square feet of heated floor space. All two-story homes shall have a minimum of 1,400 square feet of heated floor space on the main level and 1000 square feet of heated floor space on the second level. All residences shall be required to have a two car attached or detached garage or carport all entries and vehicles must be screened from view, unless otherwise approved in writing by the Architectural Review Committee.

(b) Avery's Landing at Waightstill Mountain. Declarant solely will approve the size and design of these townhomes.

(c) Ledbetter Farms at Waightstill Mountain. All one-level dwellings or residences are to have no fewer than 1,400 square feet of heated floor space. All two-story homes shall have a minimum of 1,000 square feet of heated floor space on the main level and 600 square feet of heated floor space on the second level. All residences shall be required to have a two car attached or detached garage or carport all entries and vehicles must be screened from view, unless otherwise approved in writing by the Architectural Review Committee.

(d) Legacy Cove at Waightstill Mountain. All one-level dwellings or residences are to have no fewer than 2400 square feet of heated floor space on the main level. All residences shall be required to have a two car attached or detached garage or carport all entries and vehicles must be screened from view, unless otherwise approved in writing by the Architectural Review Committee.

11.9. General limitations.

(a) Proper Condition. No part of Waightstill Mountain shall be used in any manner, nor shall any condition be allowed to exist thereon, which would constitute a fire hazard, a nuisance or which would produce or allow to emanate therefrom noxious odors or fumes, excessive noise or vibrations. All Lots shall be kept in a generally sightly condition by the Owner thereof, including the areas on which easements provided for herein exist. No unsanitary condition or anything that is hazardous to health shall be permitted to remain on a Lot. All fuel storage tanks and trash receptacles shall be below ground or screened in a manner satisfactory to the ARC. No outside clotheslines or clothes drying shall be permitted within Waightstill Mountain. No boats, trailers, mobile homes, recreational vehicles (including vehicles intended for overnight sleeping or camping) or inoperative vehicles may be placed, stored or kept on any Lot, other than within a closed building (e.g. a garage with the door closed) or at a site approved by the ARC. No rebuilding of vehicles or major mechanical repairs thereto shall take place within Waightstill Mountain, outside of a closed building, and no such work may be done on a commercial basis for which a fee or other remuneration is charged or accepted. All garages must have their doors kept in a closed condition, except during the time of actual entry and exit. No lawn ornamentation of any kind, including but not limited to statuary, windmills, pink flamingos, etc., may be placed anywhere within Waightstill Mountain, unless approved prior to placement by the ARC. No garish, flashing or unsightly signs may be placed anywhere in Waightstill Mountain. Other than a sign with the Lot number or address and/or the surname of the Lot occupant, no signs or other advertising material of any kind shall be placed on a Residential Lot. All signage is subject to the prior approval of the ARC, which shall not be unreasonably withheld or delayed.

(b) **Vegetation.** No vegetation of any kind shall be cut, trimmed or landscaped in any way on any lot other than by the Master Association or the applicable Owners' Association. All vegetation on Lots shall be kept in a sightly condition, being mowed (or trimmed) on a reasonably regular basis, with all dead trees and plants promptly removed, by the Lot's Owner. All Lots in Waightstill Mountain shall be kept in a reasonably natural state, with no live trees on a Lot to be removed, cut or topped, nor any vegetation cut, trimmed or Landscaped, except as otherwise permitted by the ARC.

(c) **Utility Lines.** All utility lines installed by any Owner, other than Declarant, shall be underground, except as may be required by any governmental body having jurisdiction thereof or the utility supplier to the contrary. Any aboveground utility equipment shall be appropriately screened, in the manner approved by Declarant or the ARC.

(d) **Water Courses and Drainage.** No creeks or other water courses within Waightstill Mountain shall be dammed, impounded, diverted or have water taken therefrom without Declarant's permission. No Owner shall unreasonably divert or increase the flow of surface water onto the Lot of another Owner. All Owners shall provide for adequate drainage from their Lots in a reasonable and careful manner, and all such drainage facilities and equipment shall be kept clear and operating by the Owner at all times.

(e) **Plumbing.** All occupied structures on Lots must have plumbing systems which are connected to either a central sewer system operated by a municipal system, or to a septic tank or other approved sewerage disposal system constructed, maintained and operated in accordance with the laws of the State of North Carolina.

(f) **Reception Equipment.** No equipment for the reception or transmission of television, radio or other airborne waves or signals, whether antenna, satellite dish, or otherwise, shall be located on any part of Waightstill Mountain by any Owner, except Declarant and the Master Association may install such items in the Common Areas, with reasonable shielding or camouflaging, and subject to the height limitation below. Notwithstanding the foregoing, individual cellular telephones may be operated within Waightstill Mountain; and Declarant may provide an easement or easements for the installation and location of equipment for the reception and transmission of airborne waves and signals, so long as no such equipment is more than twenty feet in height and all equipment is shielded or camouflaged from public view. As expressly permitted by law, Owners may place one mini-satellite dish (not exceeding thirty-nine inches in diameter) on a Lot, so long as such dish is not visible from the front of the Lot and the location is approved by the ARC, which approval shall not be unreasonably withheld or delayed.

(g) **Animals.** No animal shall be allowed to be kept on a Lot, except a reasonable number of ordinary domestic household pets such as cats, dogs, etc. No dog shall be allowed to run free, and no animal shall be permitted to remain within Waightstill Mountain in a manner, which constitutes a nuisance. All dogs being walked shall be kept on leashes and all dog excrement must be removed and disposed of in a sanitary manner by the person walking the dog. No commercial breeding, storage or treatment of animals shall take place within Waightstill Mountain. The Rules and Regulations shall govern all matters relating to animals, including but not limited to, whether an animal may be kept in Waightstill Mountain. The determinations regarding such matters by the Master Association shall be final and binding.

(h) **Motorized Vehicles.** Except for self-propelled lawn mowing machinery which operates only on a Lot, golf carts which are both approved by the ARC and are legally permitted to be operated on public streets and other licensed vehicles which are operated on public streets for the purpose of access to and from the Lots and public roads outside Waightstill Mountain, no motorized vehicles of any kind shall be operated within Waightstill Mountain (i.e. no "joy-riding" on trails or roads). No improperly muffled vehicle or other vehicle from which emanates excessive noise, smoke or vibration shall be operated within Waightstill Mountain, regardless of whether the same is licensed or operated on a road.

(i) **Temporary Structures.** No mobile home, trailer, tent, shed or other structure of a temporary nature may be occupied as a residence, business or office at any time, except the Lot contractor's trailer may be occupied as an office during the construction period only.

(j) **Recreation Equipment.** All recreation equipment placed on a Lot by someone other than the Declarant, the Master Association or an Owners' Association must be sited in rear lawn areas, be of nature blending colors, be landscape screened, and be approved by the ARC.

(k) **Leasing and timesharing.** No tenant or other non-Owner occupant of a Lot shall be allowed to enter into possession of any Lot except pursuant to a written lease. Except for leases in which Declarant is lessor, no lease shall be for a period of less than thirty days. Copies of leases shall be furnished to the Property Association. No timesharing type occupancy, whether created by deed or otherwise, may be utilized in connection with any Lot.

(l) **Set backs are as follows:**

(i) **Front or side yards (adjoining the street) - 25 feet (min 40 feet from the center of the roadway.**

(ii) **Rear yard (interior boundary) – 20 feet.**

(iii) **Side yard – 7.5 feet from the property line.**

(m) **Fencing will not be allowed in the front yards. Fences must begin at the rear of the house and must be made of natural materials. Fencing can be no higher than 5 feet.**

Article XII USE RESTRICTIONS AND RULES

12.1 **Plan of Development: Applicability: Effect.** Declarant has established a general plan of development for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the properties, all subject to the Board's and the Members ability to respond to changes in circumstances, conditions, needs, and desires within the community. The Properties are subject to Design Guidelines as set forth in Article XI and other restrictions governing land development, architectural control, individual conduct and uses of or actions upon the Properties. This Declaration and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease of any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.2. **Authority to Promulgate Use Restrictions and Rules.**

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules, which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions set forth above. The Board shall send notice by mail to all Owners 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.

Any such rules shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in By-Laws, Section 2.4.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in By-Laws, Section 2.4, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously adopted rules by a vote of Members holding sixty-seven percent (67%) of the total Class "A" votes and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action under subsection (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Lots are given notice that use of their Lots is limited by the Use Restrictions as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions and rules may change from time to time.

12.4. Rights of Owners. Except as may be specifically set forth in the Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owner and occupants to display on their Lot political signs and symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(e) Activities Within Dwelling. No rule shall interfere with the activities carried on within the confines of dwellings on the Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(f) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals, livestock or poultry of any kind for commercial or business purposes.

(g) Allocation of Burdens and Benefits. No rule shall affect the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from designating Exclusive Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(h) **Alienation.** No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot for any period greater than two months; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

(i) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop in accordance with the recorded development plats for the Properties or otherwise.

(j) **Abridging Existing Rights.** Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time.

The limitations in this Section 12.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

Article XIII EASEMENTS

13.1. **Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, and Owner, occupant, or the Association.

13.2. **Easements for Utilities, Etc.** There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association, and the designees of each (which may include, without limitation, Buncombe County, North Carolina and any utility company) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, road, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Without limiting the generality of the foregoing, there are hereby reserved for the water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

All utilities must be underground. All residences shall be connected to the central system for water and sewer.

13.3. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of any additional property the declarant may acquire. Such property shall be subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the newly acquired property.

13.4. Easement for Emergency. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any Lot for emergency, security, and safety reasons. The Association's rights may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.5. Easements for Maintenance and Enforcement. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any portions of the Properties, including any Lot, (a) to perform its maintenance responsibilities pursuant to Article V, and (b) to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules and regulations. The Association's rights may be exercised by the Association's Board of Directors, officers, agents, employees, and managers, in the performance of their respective duties. Except in an emergency situation, entry into a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and the Person causing the damage at its sole expense shall repair damage.

The Association or its duly authorized agent shall also have the power to enter a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

13.6. Access. All Lots within the Properties shall have a non-exclusive, perpetual easement for pedestrian and vehicular ingress and egress over all roads which are now or hereafter designated as Common Areas by the Declaration or any Supplemental Declaration. Said easement shall be effective as to each road or any portion only after the construction thereof is complete.

13.7. Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas of the Properties, including the Common Areas, to be used as recreational bike, pedestrian and/or equestrian pathways and trails ("trail system"). The trail system shall not interfere with or inhibit the residential purposes of the Properties.

The Declarant reserves for itself, the Association, and the members, guests, invitees and licensees of any of the Private Amenities, a nonexclusive, perpetual easement of ingress and egress over the trail system and such portions of the Common Areas which are necessary to travel to and from the trail system.

13.8. Easement for Cemeteries. The Declarant reserves for itself, the Association, the relatives of any deceased person in any cemetery that is located within the boundaries of the Properties, and persons seeking access to any such cemeteries for academic or historical purposes, a nonexclusive, perpetual easement of ingress and egress over such portions of the Common Areas which are necessary to travel to and from such cemeteries.

Article XIV MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides 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"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties 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 of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days;
 - (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;
- and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members holding at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);
- (c) By act or omission waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);
- (d) Fail to maintain insurance, as required by this Declaration; or
- (e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3. No Priority. No provision of this Declaration or the By-Laws 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.

14.4. 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.

14.5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.6. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or NORTH CAROLINA law for any of the acts set out in this Article.

14.7. 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 XV DECLARANT'S RIGHTS

Any or all or the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the By-Laws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and successor and duly recorded in the public records of Buncombe County, North Carolina.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sales of Lots shall continue, it shall be expressly permissible for the Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and rental units. The Declarant and Builders authorized by Declarant shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Declarant and any clubhouse, community center, or other facility which may be owned by the Association, as models, sales offices, or rental units.

In addition, notwithstanding any contrary provision of this Declaration, the By-Laws, or any Association rules, the Declarant shall have the right to re-plat or revise the recorded plats relating to any portion of the Properties without the consent of any Person other than the owner(s) of the property the boundaries of which are altered.

So long as the Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public records.

This Article may not be amended without the express written consent of the Declarant. However, the rights contained in this Article shall terminate upon the earlier of (a) December 31, 2010 or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XVI
PRIVATE AMENITIES (If any)

16.1. **General.** Access to and use of any Private Amenity is strictly subject to the rules and procedures of the respective owners and operators of the Private Amenity and to any contracts entered into by such Private Amenity, and no Person gains any ownership interest in any Private Amenity or any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of Lot. Rights to use each Private Amenity will be granted only to such persons and on such terms and conditions, as determined by such Private Amenity. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of the improvements, or to the continuing ownership or operation, of the Private Amenities. No purported representation or warranty, written or oral, with regard to any Private Amenity shall ever be effective without an amendment hereto executed or joined into by the Declarant and such Private Amenity.

16.2. **Rights of Access and Parking.** The owners and operators of the Private Amenities, and the members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees of each shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel to and from the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of the Private Amenities. Without limiting the generality of the foregoing, members, guests, and invitees of any Private Amenity and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after golf tournaments and other similar functions.

16.3. **Assessments.** No Private Amenity shall be obligated to pay to the Association any assessments as described in Article X hereof. However, each Private Amenity may be obligated to contribute funds to the Association for maintenance of portions of the Area of Common Responsibility in accordance with a Covenant to Share Costs.

16.4. **Limitation on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of this Article of any other provisions of this Declaration, may be made without the prior written approval of the owner or operator of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

16.5. **Jurisdiction and Cooperation.** It is Declarant's intention that the Association and the owners and operators of the Private Amenities cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance of the Area of Common Responsibility. The Association shall have no power to promulgate rules and regulations affecting activities in or use of any Private Amenity without prior written consent of such Private Amenity.

16.6. **Ownership and Maintenance of Waste Water Collection System, Pump Stations, Force Main and Water System.** It is Declarant's intention that the Association reserves the right to maintain the Waightstill Mountain water distribution system, wastewater collection system and any force mains that serve the development. It is further understood that systems may be maintained by outside contractors or municipalities.

Article XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 17.2, shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);
- (b) Any suit by the Association 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 Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions and Rules);
- (c) Any suit between Owners (other than Declarant) seeking redress on the basis of Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00; and
- (d) Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party. Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3. but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i). The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii). The basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

(iii). What Claimant wants Respondent to do or not do to resolve the Claim; and

(iv). That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i). Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii). Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i). If the Parties do not resolve the Claim through negotiation 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 within which to submit the Claim to mediation under the auspices of any Buncombe County dispute resolution center or such other independent agency which may provide similar services upon which the Parties may mutually agree.

(ii). If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, 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; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii). If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate 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 when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv). Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's 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.

(d) Final and Binding Arbitration.

(i). If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii). This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

17.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 17.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 17.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

17.5. **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 17.3, and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award 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 or Award, including, without limitation, attorneys fees and court costs.

Article XVIII GENERAL PROVISIONS

18.1. **Term.** The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties, their respective legal representatives, heirs, successors, and assigns, for a term of twenty - years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

18.2. **Amendment.**

(a) **By Declarant.** The Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure or guarantee mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibit "A" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any substantive right of any Owner unless such affected Owner shall consent thereto in writing.

(b) **By Owners.** Except as otherwise specifically provided herein, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total votes in the Association, and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 9.1. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Effective Date and Validity.** To be effective, any amendment must be recorded in Buncombe County, North Carolina.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

18.3. **Severability.** Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

18.4. **Perpetuities.** 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 provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

18.5. **Litigation.** Except as otherwise specifically provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners holding seventy-five percent (75%) of the total votes of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (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.

18.6. **Cumulative Effect: Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood, and the Association may, but shall not be required to enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens of assessments created in favor of the Association.

18.7. **Compliance.** Every Owner and occupant of any Lot shall comply with all lawful provision of this Declaration, the By-Laws, and the rules and regulations of the Association. Failure to comply shall be grounds for action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

18.8. **Notice of Sale or Transfer of Title.** In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee to all obligations of the Owner of the Lot coming due prior to the date upon which such notice is received by the Board of Directors including assessment obligations, notwithstanding the transfer of title to the Lot.

Each transferee of a Lot shall, within seven (7) days of taking title to a Lot, confirm that the information previously provided by the transferor is complete and accurate.

IN WITNESS WHEREOF, the undersigned Declarant hereby consents to the amendment to the Original Declarations and to the adoption of the foregoing Declaration and the exhibits attached hereto this _____.

DECLARANT:

BY: X [Signature]
Keith Vinson

BY: X [Signature] Attorney in Fact for:
Paula Vinson

WRIGHTSTILL MOUNTAIN, LLC

BY: X [Signature] (SEAL)
KEITH VINSON, MANAGING MEMBER

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Stephanie L. McKendrick, a Notary Public for the aforesaid County and State, do certify that Keith Vinson and Paula Vinson appeared before me this day acknowledged the due execution by them of the foregoing instrument.

Witness my hand and Seal this the 21st day of October, 2003

[Signature]
NOTARY PUBLIC

My Commission Expires: _____
My Commission Expires
August 14, 2006

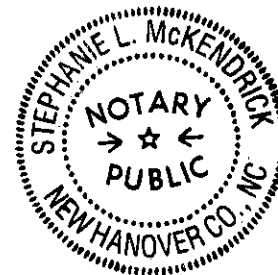
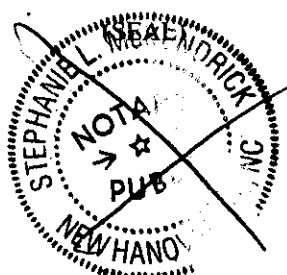
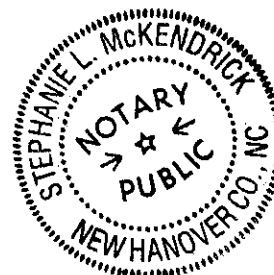
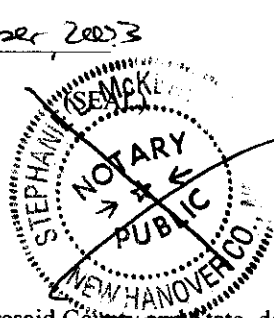
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, STEPHANIE L. McKendrick, a Notary Public for the aforesaid County and State, do certify that KEITH VINSON, MANAGING MEMBER of WRIGHTSTILL MOUNTAIN, LLC A NORTH CAROLINA LIMITED LIABILITY CORPORATION appeared before me this day acknowledged the due execution by him of the foregoing instrument on behalf of such Limited Liability Corporation.

Witness my hand and Seal this the 21st day of October 2003

[Signature]
NOTARY PUBLIC

My Commission Expires: _____
My Commission Expires
August 14, 2006



North Carolina
Buncombe County

I, Stephanie L. McKendrick, a Notary Public for said County and State, do hereby certify that Keith Vinson, attorney in fact for Paula Vinson, personally appeared before me this day, and being by me duly sworn, says that he/she executed the foregoing and annexed instrument for and on behalf of Paula Vinson and that his/her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledge, and recorded in the office of Register of Deeds in the County of Buncombe, State of North Carolina, on the 25th day of October, 2002 in Deed Book 2965 at page 437, and that this instrument was executed under and by virtue of the power of attorney.

Witness my hand and official seal, this the 21 day of OCTOBER, 2003



Stephanie L. McKendrick
Notary Public

My Commission Expires
August 14, 2006

My commission expires: _____

State of North Carolina, County of Buncombe

Each of the foregoing certificates, of Stephanie L. McKendrick

is hereby certified to be correct. Filed for registration on this the 11th day of October, 2003

Otto W. DeBruhl
OTTO W. DEBRUHL, Register of Deeds

By: Deputy Stephanie L. McKendrick

EXHIBIT A

Lying in Avery Creek Township, Buncombe County, North Carolina, being a tract of 92 acres, more or less, and being all of the parcels of land described as Tracts 1, 2 and 3 in that deed recorded in Buncombe County Book 1956 at page 164, but less and excepting therefrom (a) the 10 acre, more or less, parcel described in the deed recorded in Buncombe County Book 1155 at page 611; (b) the parcels of land shown as the Lease Site and the GTE Lease Parcel on Exhibit A, Page 2 of 2 to that Memorandum of Lease and Amendment to Lease recorded in Buncombe County Book 1932 at page 280; (c) the parcels of land described in or shown in those lease documents recorded in Buncombe County Book 2389 at page 574, Book 1959 at page 117, Book 1932 at page 280 and Book 1752 at page 179; (d) the landlord's rights under all of the foregoing leases; and (e) the non-exclusive, perpetual rights of the said 10 acre tract's owner, the Grantor, the tenants of the above-described leases and all their respective heirs, successors and assigns to have access to and from the parcels of land described in all said documents of record over and across the roadways leading thereto, as now existing or as described in any of the foregoing documents, or as shown on any plats, sketches, drawings or maps which are attached to any of said documents, or as are referred to in said documents. Grantor expressly retains all rights of the landlord with respect to all of the properties described in any of said lease documents, as well as retaining the fee title to the demised property and the non-exclusive, perpetual (not merely during the Leases' durations) rights of access to and from said demised or herein reserved property.

[Note to Buncombe County Tax Mapping Department - the parcels retained by the Grantor and the access roadways thereto and to the parcel described in Book 1155 at page 611 are as shown or described on the Exhibit A to the document in Book 1932 at page 280, the attachment to the document in Book 1959 at page 117, the Exhibit A to the document in Book 1752 at page 179, the description in the deed recorded in Book 1155 at page 611 (current deed 2491-324) and Hutchison-Biggs & Associates, Inc. plat (unrecorded) entitled "Survey for G.T.E. - Mobile Net of Southeast, Inc.", dated 11/30/92 revised through 12/16/92 with Drawing No. D92-860]

Exhibit B

LYING IN LIMESTONE TOWNSHIP OF BUNCOMBE COUNTY, NC

BEGINNING at an iron pin on cut bank of road, which iron pin is located South 5 deg. 03' 50" West, 352.51 feet from an old hub located at the Northwestern corner of that tract of land conveyed by Mack H. Young and wife, to Grady G. Ledbetter and wife, by deed recorded in Deed Book 1107 at Page 49 in the Office of the Register of Deeds for Buncombe County, North Carolina, and runs thence from said beginning point and with property of the said Grady G. Ledbetter, as described in said deed hereinabove identified, South 34 deg. 26' 0" East, 229.71 feet; thence South 30 deg. 42' 40" East, 104.09 feet; thence South 54 deg. 46' 30" East, 93.39 feet; thence South 45 deg. 33' 50" East, 281.80 feet; thence South 31 deg. 22' 0" East, 169.66 feet; thence South 21 deg. 16' 20" East, 251.31 feet to an iron pin; thence South 6 deg. 51' 10" East, 81.35 feet to an iron pin located in the center of a thirty foot right of way hereinafter described; thence South 56 deg. 07' 20" West, 84.31 feet to an iron pin; thence South 80 deg. 41' 10" West, 206.56 feet to an iron pin; thence North 67 deg. 30' 20" West, 208.60 feet to an iron pin; thence North 79 deg. 33' 0" West, 278.94 feet to an iron pin in the fence; thence with the Eastern property line of R. M. Reid North 5 deg. 47' 50" East, 610.39 feet to a fence post corner in the Northeast corner of the said Reid tract and the Southeast corner of the A.L. Stevens tract (Deed Book 1103, at Page 321); thence with the Eastern property line of the said A.L. Stevens, North 5 deg. 03' 50" East, 334 feet to the point of Beginning, containing 10 acres, more or less, according to survey of Bruce B. Poehler, R.L.S., dated November 26, 1976, entitled, "Property of Mack H. Young and wife", and being that ten acre tract of land conveyed by Grady G. Ledbetter and wife to Mack H. Young and wife by deed dated August 30, 1974, and recorded in Deed Book 1107, at Page 51 of the Buncombe County Registry.

TOGETHER with a thirty foot road right of way the center line of which is described as follows:

BEGINNING at a point in the center of Ledbetter Road, State Rural Road #3498, which point is located South 57 deg. 56' West, 18.54 feet from a nail which is located in the center of said road, said nail being located two calls from the terminus of the eighth call in that deed from Mack Young to Grady Ledbetter first hereinabove mentioned: South 5 deg. 17' 40" West, 71.74 feet to a stone and South 3 deg. 25' 10" West, 101.79 feet to said nail in the center of said road, the center line of said 30 foot road, the beginning point as hereinabove identified, running as follows, with fifteen feet on each side of center line for the said thirty foot road right of way: North 3 deg. 25' 10" East, 144.54 feet; North 82 deg. 59' 30" West, 344.94 feet; North 37 deg. 29' 50" West, 78.96 feet; thence three calls, a portion of which crossed the CP&L right of way: North 22 deg. 22' 0" West, 63.39 feet, North 75 deg. 08' 40" West, 48.79 feet and South 81 deg. 23' 30" West, 89.77 feet; thence North 73 deg. 14' 20" West, 82.78 feet; North 58 deg. 04' 10" West, 93.47 feet; North 29 deg. 46' 10" West, 93.86 feet; North 22 deg. 10' 30" East, 80.91 feet;

North 62 deg. 24' 20" East, 76.22 feet; North 56 deg. 56' 50" East, 181.66 feet; North 47 deg. 22' 50" East, 197.78 feet; North 41 deg. 53' 40" East, 85.63 feet and North 36 deg. 52' 10" East, 68.62 feet to the Southeast corner of the ten acre tract hereinabove described, the terminus of the seventh call in the description hereinabove set out; said right of way running from said Ledbetter Road across a strip of land acquired by Grady G. Ledbetter from E. L. Stevens by deed dated December 2, 1976, and then across that tract of land described in Deed Book 1107, at Page 49 of the Buncombe County Registry.

Being all that property conveyed to Edwin P. Graham and wife, Gail E. Graham by deed recorded in Deed Book 1219, at Page 39, Buncombe County, N.C. Registry.

Being the same property described in Deed Book 1804, at Page 305.

Exhibit C

BEGINNING at an axle found marking the Northeast corner of the property described in deed recorded in Deed Book 1778 at Page 131 of the Buncombe County, North Carolina Registry, said axle also being the Northeast corner of the property shown on the survey recorded in Deed Book 1469 at Page 138 of the Buncombe County, North Carolina Registry, reference to which is hereby made for a more particular description of said point of BEGINNING; thence running S 7° 41' 48" W passing an iron pin set at 320' for a total distance of 638.13' to a planted stone found; thence running with the Robert M. Reid property, S 79° 8' 43" W 301.37'; thence running with the property described in deed recorded in Deed Book 1885 at Page 393 of the Buncombe County, North Carolina Registry, N 2° 20' 49" W 259.49' to an iron pin set located in the Southern margin of a right-of-way of 30' width; thence running with the Southern margin of said 30' right-of-way S 86° 40' 26" E 63.32' to an iron pin set; thence running with the Eastern boundary of the property described in deed recorded in Deed Book 1469 at Page 140 of the Buncombe County, North Carolina Registry, N 11° 37' 30" E 180.37' to an iron pin set; thence continuing with the last referenced property and running N 14° 23' 47" E 216.31'; thence running with the Alsbaugh property described in deed recorded in Deed Book 1196 at Page 32 of the Buncombe County, North Carolina Registry, N 80° 52' 53" E 143.14' to an iron pin set and N 75° 45' 53" E 100.50' to the point of BEGINNING and containing 4.0 acres, more or less and being all of Lots 2 and 3 as shown on the survey recorded at Deed Book 1469 at Page 138 of the Buncombe County, North Carolina Registry.

WIGHTSTILL MOUNTAIN

PROPERTY OWNERS ASSOCIATION, INC.

PROPOSED RULE PROMULGATED BY THE BOARD OF DIRECTORS

(Article 4.3, 11.9(j) and 12.2 of the Declaration of Covenants)

The following clarification of the Architectural Standards General Limitations 11.9(j) regarding recreation equipment will be enacted by the Board at the Annual Meeting unless rejected by a majority of all Lot owners of Waightstill Mountain Property Owners Association.

Pursuant to Article 4.3 and 12.2 of the Declaration of Covenants for Waightstill Mountain Property Owners Association, Inc., the Board of Directors hereby clarifies and enacts the following rule:

All equipment placed on a Lot by someone other than the Master Association or an Owners' Association must be sited in rear lawn areas, be of nature blending colors, be landscape screened, and be approved by the ARC.

No temporary basketball goals are permitted in any neighborhood if the same can be viewed from the street. No temporary basketball goals may be placed in driveways, on the street or in cul-de-sacs at Waightstill Mountain.

Any homeowner having a temporary basketball goal shall remove the basketball goal from the premises no later than March 1, 2014.

NORTH CAROLINA GENERAL ASSEMBLY MANDATE

NOTICE OF RIGHT TO VOLUNTARY MEDIATION

Pursuant to Section 7A-38.3F of the North Carolina General Statutes, all members are hereby informed that you have a right to initiate mediation pursuant to the terms of the statute to try to resolve a dispute with the Association. Both the homeowner and the Association must agree to mediate the dispute, and each side is responsible for splitting the cost of the mediation, including payment of a professional mediator. The mediation process is an opportunity to reach an agreement to resolve a dispute – neither side gives up their right to go to court to have a judge resolve the dispute if the parties are not able to reach an agreement through mediation. The specific process to initiate voluntary mediation is outlined in Section 7A-38.3F of the North Carolina General Statutes

Effective July 1, 2013.

Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree, is now subject to voluntary prelitigation mediation. Initiation of mediation tolls any statute of limitations or repose with respect to the dispute until 30 days after the date on which the mediation is concluded.

Association Duty to Notify:

Each association shall notify the members in writing, each year, that they may initiate mediation under NCGS 7A-38.3F to try to resolve a dispute with the association. This notice also must be published on the association's website. If the association does not have a website, the association shall publish this notice at the same time and in the same manner as the names and addresses of all officers and board members of the association are published as provided in NCGS 47C-3-103 and NCGS 47F-3-103.

Exceptions are disputes related to failure to pay assessments and fines associated with collection of assessments and disputes that occurred before July 1, 2013.

BYLAWS OF WAIGHTSTILL MOUNTAIN OWNERS' ASSOCIATIONS

ARTICLE I General Matters

Section 1: All terms defined in the Declaration to which these Bylaws are attached, shall be deemed similarly defined herein and shall be used without further definition.

Section 2: These Bylaws are intended to serve as the Bylaws for each Owners' Association. While the above caption does not make reference to a particular Owners' Association, these Bylaws are those of each separate Owners' Association and shall govern each Owners' Association, to the same extent as if the caption was Bylaws of Waightstill Mountain Arabella Heights Owners' Association, Bylaws of Waightstill Mountain Avery's Landing Owners' Association, Bylaws of Waightstill Mountain Ledbetter Farm Owners' Association, or Bylaws of Waightstill Mountain Legacy Cove Owners' Association. While these Bylaws are to be used by all Owners' Associations, except as may be otherwise set forth hereafter, each Owners' Association shall operate and act separately and independently from each other. Each Owners' Association may, but need not, be incorporated as a non-profit corporation pursuant to N.C.G.S. 55A.

Section 3: The provisions of these Bylaws are applicable to the respective Neighborhood's Lots and the occupancy and use thereof.

Section 4: All Owners, invitees, licensees, tenants, agents, or their employees or any other person that occupies or uses any property in the Neighborhood in any manner, are subject to the provisions of these Bylaws and to Rules and Regulations adopted, from time to time, pursuant hereto.

Section 5: The acquisition, rental, occupancy or use of any Lot in the Neighborhood shall constitute acceptance of these Bylaws, the Declaration, the Rules and Regulations and amendments thereto and an agreement to comply therewith.

Section 6: The Owners' Association shall have the responsibility of administering the Lots in such Association's Neighborhood, subject at all times to the control of the Master Association. The Owners' Associations are intended to act as a representative of the Neighborhood's Owners to the Master Association, and to take care of routine non-legal matters that do not affect Waightstill Mountain in general.

ARTICLE II Voting, Majority of Owners, Quorum, Proxies

Section 1: Voting shall be based on Lot ownership (one Lot-one vote). Where a Lot is owned by more than one person or entity, such persons or entities shall designate, by agreement in writing filed with the Owners' Board of the Owners' Association, the person entitled to cast the vote for the Lot.

Section 2: As used in these Bylaws, the term "Owner" refers to an Owner of a Lot in the applicable Neighborhood (e.g. an Arabella Heights Homesite Lot Owner, an Avery's Landing Lot Owner, etc.).

Section 3: Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners at any meeting shall constitute a quorum.

Section 4: Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of any meeting.

Section 5: In the event of deadlock between conflicting interests, the same shall be resolved by mediation. If no formal mediation procedure exists, each interest shall appoint a mediator, a third mediator shall be appointed by the Master Association and the majority decision of the three mediators shall be binding.

ARTICLE III **Administration**

Section 1: The Owners' Association, acting through the Owner's Board shall advise the Master Association regarding the administration of the Owners' Board's Neighborhood. The Master Association's Directors may, from time to time, delegate its powers to manage and enforce the Declaration to the Owners' Board in its Neighborhood. Except as otherwise provided, decisions and resolutions of the Owners' Association shall require approval by its Owners' Board.

Section 2: Meetings of the Owners' Association shall be held at the principal office of Waightstill Mountain or such other suitable place convenient to the Owners as may be designated by the Owners' Board.

Section 3: The first annual meeting of the Owners' Association shall be held on the _____ day of _____, 200__ and shall be chaired by an appointee of Declarant. Thereafter, the annual meetings of the Association shall be held on the first or second Wednesday in November of each succeeding year, unless this shall be a legal holiday, in which case the meeting shall be held on the next business day. At such meetings, the Owners' Board shall be elected by ballot of the Owners, in accordance with the requirements of these Bylaws. The Owners may also transact such other business of the Association as may properly come before them.

Section 4: The President shall call a special meeting of the Owners, if so directed by a resolution of the Owners' Board or by a petition signed by not less than one-third of the Owners and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice thereof, unless by consent of Owners having the right to cast eighty percent of such Neighborhood's votes.

Section 5: The Secretary shall provide a notice of each annual or special meeting stating the purpose thereof as well as the time and place where it is to be held to each Owner at least ten (10) but not more than sixty (60) days prior to such meeting. Notice shall be personally delivered or mailed, postage prepaid, to the Owner's address within Waightstill Mountain or at such other address as an Owner shall have specified to the Owner's Association in writing. A notice mailed shall be deemed delivered the earlier of actual delivery or third day following mailing.

Section 6: If any meeting of Owners does not have a quorum present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight hours from the time the original meeting was called, notice of which shall be provided to all Owners not then present.

Section 7: Robert's Rules of Order shall be used at all meetings of Owners. The order of business at all meetings of the Owners shall be as follows, unless otherwise agreed:

- a. Roll Call
- b. Proof of Notice of Meeting or Waiver of Notice
- c. Reading of minutes of preceding meeting
- d. Reports of Officers
- e. Reports of Committees
- f. Election of Directors (when so required)
- g. Unfinished business
- h. New business

Section 8: The Owners' Association shall make available, within a reasonable time, upon reasonable request therefor, copies of the Declaration, these Bylaws, and the Rules to Owners and Holders. The Owners' Association may charge a reasonable amount to compensate it for the copying costs.

Section 9: While the Master Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or

part thereof, the Owners' Board shall make Master Association aware of the wishes of the Owners with respect thereto. In the event of a taking or acquisition of part of all the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Master Association, for the use and benefit of the Owners as required by the Declaration.

ARTICLE IV **Board of Directors**

Section 1: The affairs of the Owners' Association shall be governed by the Owners' Board, which shall be composed of not less than three persons nor more than five persons. Each member of the Owners' Board shall be either the owner of a Lot, have an interest therein, or be proposed by one of the foregoing.

Section 2: The Owners' Board shall have the powers and duties necessary for it to perform the acts set forth in Article I Section 6 above, to advise the Master Association in its administration of the affairs of the Owners' Association's Neighborhood and may do all such acts and things as are approved by the Master Association, which are not by law prohibited or by these bylaws directed to be done by someone else. In addition, the Owners' Association shall serve as the governing body of the Neighborhood, with the power to do all things necessary to perform such function, unless prohibited hereby, and subject at times to the control of the Master Association.

Section 3: At the first annual meeting of the Owners' Association, the Owners' Board shall be elected with the term of office of at least one director being fixed to expire upon the date of the second annual meeting of the Owners' Association, at least one fixed to expire upon the date of the third annual meeting and one on the fourth annual meeting of the Owners' Association thereafter. No director shall be elected for longer term than three years. At the expiration of the initial term of office of each respective director, his successor shall be elected to serve a term of three years. The directors shall hold office until their successors have been elected.

Section 4: Vacancies on the Owners' Board caused by any reason other than the removal of a director by a vote of the Owners' Association shall be filled by vote of the majority of the then remaining directors even though they may constitute less than a quorum; and each person so elected shall be director until a successor is elected at the next annual meeting of the Owners' Association.

Section 5: At any regular or special meeting of the Owners' Association duly called, any one or more of the directors previously elected by the Owners may be removed, with or without cause, by a Majority of the Owners; and their successors may then and there be elected by a Majority of the Owners to fill the vacancy thus created. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 6: The first meeting of a newly elected Owners' Board shall be held within five (5) days of election, at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order to legally constitute such meeting, providing a majority of the Owners' Board shall be present.

Section 7: Regular meetings of the Owners' Board may be held at such time and place as shall be determined, from time to time, by a majority of directors. Notice of regular meetings of the Owners' Board shall be given to each director, personally or by mail, telephone or telegraph, at least ten (10) days prior to the date named for such meeting.

Section 8: Special meetings of the Owners' Board may be called by the President of the Owners' Association on three (3) days' notice to each director given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinafter provided) and purpose of meeting. Special meetings of the Owners' Board shall also be called by the President or Secretary in like manner and on like notice upon the written request of a majority of the Owners' Board directors. Except for what is set forth in the notice of the special meeting, nothing shall be considered, unless consented to at the meeting by at least two thirds of all elected directors.

Section 9: Before or at any meeting of the Owners' Board, any director may, in writing, waive notice of such meeting and such waivers shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Owners' Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Owners' Board, no notice shall be required and any business may be transacted at such meeting.

Section 10: At all meetings of the Owners' Board, a majority of the directors then in office shall constitute a quorum for the transaction of business and acts of the majority of the directors present at a meeting at which a quorum is present shall be acts of the Owners' Board. If at any meeting of the Owners' Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, and business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11: No member of the Owners' Board shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Owners' Association.

ARTICLE V

Officers

Section 1: The principal officers of the Owners' Association shall be President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Owners' Board. The Owners' Board may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgement may be necessary.

Section 2: The officers of the Owners' Association shall be elected annually by the Owners' Board at the organization meeting of each new Owners' Board, and they shall hold office at the pleasure of the Owners' Board.

Section 3: Upon affirmative vote of a majority of the members of the Owners' Board, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Owners' Board or at any special meeting of the Owners' Board called for such purpose.

Section 4: The President shall be the Chief Executive Officer of the Owners' Association. The President shall also serve as a Director of the Master Association. The President shall preside at all meetings of the Owners' Association and of the Owners' Board and shall have all of the general powers and duties which are usually vested in the office of President of an association, including but not limited to the powers to appoint committees from among the Owners from time to time.

Section 5: The Vice President shall take the place of the President and perform such duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Owners' Board shall appoint some other members of the Owners' Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated by the Owners' Board. Notwithstanding the foregoing, the Vice President shall not take the place of the President as a Master Association Director in the temporary absence of the President.

Section 6: The Secretary shall keep the minutes of all meetings of the Owners' Board and the minutes of all meetings of the Owners' Association; shall have charge of such books and papers as the Owners' Board may direct; and shall, in general, perform all the duties incident to the office of Secretary.

Section 7: The Treasurer shall have responsibility for any Owners' Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Owners' Association, and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Owners' Association, in such depositories as may from time to time be designated by the Owners' Board.

Section 8: All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the Owners' Association shall be executed by any two officers (for the purposes hereof, at attesting officer shall be deemed an executing officer) of the Owners' Association. In no event shall any such document only be signed by one signatory.

Section 9: No officer shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Owners' Association.

ARTICLE VI

Fiscal Management of the Association

Section 1: While the ultimate responsibility for the collection and handling of Assessments and funds is that of the Master Association, the Owners' Association may be delegated the responsibility for some or all the Neighborhood's funds, or may be authorized by the Owners to impose and collect dues or other charges. Reasonable and prudent measures in the receipt, disbursement, and record keeping shall be employed at all times by the Owners' Association in the care of funds. While not anticipated, in the event any insurance or condemnation proceeds are received by the Owners' Association as a result of a taking or an insured casualty, it shall receive and disburse the same as a trustee for the benefit of the affected Owners. Further, in each of the Neighborhoods, the Owners' Board thereof shall levy the Neighborhood Assessment therein, and shall receive and disburse funds in accordance with the provisions of Article V Section 1 of the Bylaws (not the Owners' Bylaws); except that references therein to Directors shall mean the directors of the Owners' Board, and the reserve shall be for the repairs and replacement of the Neighborhood Elements in such Neighborhoods and not of the Common Areas.

ARTICLE VII

Liability of Officers and Directors of the Owners' Association

Section 1: The directors and the officers of the Owners' Association shall not be liable for any mistake of judgement, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the said officers and the directors against all contractual liability to others arising out of contracts made by the said officers or the directors on behalf of the Owners' Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the said officers and the directors shall have no personal liability with respect to any contract made by them on behalf of Waightstill Mountain. If the directors so elect, they may purchase an insurance policy to indemnify themselves and said officers from liability arising out of such service.

ARTICLE VIII

Amendment

Section 1: These Bylaws may be amended by the affirmative vote of not less than sixty percent (60%) of the Owners' Board or by the affirmative vote of not less than seventy five percent (75%) of the Owners of the Lots in such Neighborhood. No amendment hereof shall occur prior to the Release Date without the assent of Declarant. No amendment hereof shall occur without notice of the proposed amendment being provided in the notice of the meeting at which such amendment is to be considered.