

**DECLARATION OF COVENANTS
AND RESTRICTIONS**

THIS DECLARATION, made this the 5th day of July, 1982, by and between BILLY. B. BOYETTE, MARY FRANCES HECHT, ROBERT KYSER and wife, MARQUERITE B. KYSER, ANNETTE SCHNEIDER, A. J. SPENDER and wife, JOANNE M. SPENDER, HILLIARD T. SMITH, JR. and wife, EDITH B. SMITH, RONALD BOSHART and wife, JUDITH A. BOSHART, FRANKLIN WARD and wife, KATHLEEN R. WARD, A. H. STALEY, NANCY S.BARNES, BERNICE B. SINGLETARY, HARVEY RUDICH and wife, CHRISTIE RUDICH, DAVID H. PHILLIPS and wife, BARBARA D. PHILLIPS, TIMOTHY J. PARSCH, DAVID H. PARSCH and wife, SUSAN G.PARSCH, LAVON BASS and wife, GAIL BASS, DAVID DAVIS and wife, MYRNA DAVIS, CARL F.KUNZE, JR. and wife, KATHY KUNZE, J. C. BARFIELD, JR. and wife, SHERRY BARFIELD, STEVE J. PALENCER, ROBERT LEWIS GREEN, DONALD W. CROPP and wife, JOE ANNE CROPP, RICHARD ALLEN ELBRACHT, ROBERT MOODY, DONALD MERRICK and wife, CAROLYN MERRICK, and EDGAR L. LAVINE and wife, being all of the property owners (hereinafter called the "Owners") in the Subdivision known as Valley Vista, Maggie Valley, Ivy Hill Township, Haywood County, North Carolina, described in Plat Book L, page 18, Haywood County Registry.

W I T N E S S E T H:

WHEREAS, the Owners desire to provide for the maintenance of roads, water, and other amenities within the Subdivision and desire to subject the real property and the Owners thereof within the Subdivision to the covenants, restrictions, easements, conditions, charges, and liens hereinafter set forth, each and all of which is and are for the purpose of protecting the value and desirability of the property within the Subdivision, to insure the use of the property for attractive residential purposes only, to prevent nuisances and to maintain the desired-tone of the community; and

WHEREAS, Apple Hill Corporation, the developer of the Subdivision, deems it desirable for the maintenance and administration of water within the Subdivision, agrees to transfer to the Association hereinafter named, part of Lot No.40;

NOW, THEREFORE, the Owners declare that the real property in Valley Vista is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, and be binding on all parties having any right, title, or interest in the Subdivision or any part thereof, their heirs, successors, and assigns, and that shall inure to the benefit of each owner thereof. The provisions of this declaration shall create mutual and equitable servitudes, reciprocal rights, and privity of contract, and an estate upon each lot and lot owner in the Subdivision in favor of all other lots and lot owners.

ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to The Valley Vista Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(b) "By Laws" means the Bylaws of the Subdivision.

(c) "Common Areas" means all roadways, easements for public and private utilities, pedestrian and recreation easements, and any other property (real, personal, or mixed) or interest therein that the Owners declare to be a common area or that the Association acquires and accepts as such.

(d) "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions.

(e) "Improvements" means all buildings, out-buildings, including detached garages or carports, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennas, and any other structure of any type or kind or land clearing.

(f) "Lot" means any plot of land shown upon the recorded plat of the Subdivision.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

(h) "Owners" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any lot situated within the Subdivision, including

contract sellers, but excluding those having any interest merely as security for the performance of an obligation. Owner shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and until such mortgagee or holder of deed of trust has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

(i) "The Properties" shall mean and refer to all such existing properties and additions thereto, as are made subject to this Declaration or to any Supplemental Declaration.

(j) "Subdivision" shall mean Valley Vista.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold conveyed, occupied, and used subject to this Declaration is Valley Vista, Maggie Valley, Ivy Hill Township, Haywood County, North Carolina, as per survey and plat dated July, 1973, by V. A. Edwards, P.E., recorded in Plat Book L, page 18, Haywood County Registry.

ARTICLE III

PROTECTIVE COVENANTS

This Article is meant to supersede and not supplement the Restrictive Agreement recorded in Deed Book 264, page 836, and' the Amendment thereto found in Deed Book 315, page 243, Haywood County Registry.

SECTION 1. Residential Use. Each lot, except for any lots or parts thereof designated by Declarant for use as common areas, recreational areas, roadways, water system sites, and the like, shall be used exclusively for single family, private residential purposes, recreational purposes incidental thereto, and no more than one residence shall be located on any one lot. A single family for this purpose shall be a group of one or more persons each related by blood marriage, or adoption, together with their domestic servants, or a group or one or more persons (not to exceed three in number) not so related, together with their domestic servants, who maintain a common household. All lots in said Subdivision shall be known and described as residential lots and no part of said lots shall be used for any type of

business or store. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling and a private garage for not more than two cars. By way of example and without limiting the generality of the foregoing the following uses of any portion of the property are specifically prohibited; apartment houses, hospitals, infirmaries, boarding houses, stores, offices or hotels. Nothing herein shall restrict an Owner's right to lease a residence for residential purposes.

SECTION 2: No Business. No manufacturing nor commercial enterprise, or business, or enterprises of any kind for profit shall be maintained on, in front of, or in connection with any lot in this Subdivision, nor is such property in any way to be used for other than strictly residential purposes; provided, however that this restriction shall not prohibit any person from engaging in a business or occupation which would normally be conducted from the home, or from a home office, provided such business or occupation does not require any of the following:

Any advertising on the premises, any employees other than the owner, any parking facilities other than normal residential parking facilities, the use of or delivery by commercial delivery vehicles, the visible alteration of the dwelling's appearance as a dwelling, or the visitation by patrons or customers on a regularly scheduled basis.

Section 3. Setbacks. No structure shall be placed or erected upon any lot that shall lie within thirty feet of any front lot and no nearer than 10 feet to any side lot line.

Section 4. Minimum Dwelling Size. No single family dwelling shall have less than one thousand square feet of ground floor space (exclusive of any basement area, open porches or garages whether the same be enclosed and heated).

Section 5. Construction. No building shall be moved on to, any lot and all construction shall be new construction. No temporary living quarters may be erected or placed upon any lot to specifically include but not be limited to house trailers, modular homes, prefabricated or sectional units, or Quonset huts. Basements or partially complete houses will be considered temporary and may not be inhabited. The exterior

of any dwelling constructed on any lot must be completed within six months from commencement of construction of said dwelling. Improvements not completed within six months after commencement of construction or which have been totally destroyed or partially destroyed and not rebuilt within six months shall be deemed to be nuisances, and the Association may remove any nuisance or repair or complete the same at the costs of the owner of the lot upon which the nuisance exists.

Section 6. Trees. The Subdivider reserves to itself, its successors and assigns, the right to top or cut such trees on any lots as block or obscure the view from other lots.

Section 7. Vehicles. Motor vehicles not carrying a current license tag, mobile homes, and house trailers shall not be permitted within the Subdivision. Trucks, boats, campers, trailers, trailers, recreational vehicles, and or other vehicles may be kept on a lot if parked in screened areas which conceal them from view from the streets and from adjoining lots.

Section 8. Right of Way The rights of way and easements as shown on the plat shall be reserved for the use and benefit of the property owners within the Subdivision for roadway purposes. No building or structure shall be erected on or within any of the said rights of way. No lot owners without written consent of the Association shall alter or extend any roadway shown on the plat or grant any other easement or right of way except for the use and benefit of any other lot owner within the Subdivision.

Section 9. Maintenance of Lots. All lots, whether occupied or unoccupied, and all improvements placed thereon, shall at all times be maintained in a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. They may, of course, remain in their natural state. If not so maintained, the Association shall have the right, through its agents or employees, to rectify the offensive situations, and the cost of the undertaking shall be added to and become a part of the annual assessment to which a lot is subject. Neither the Association nor its agents, employees, or contractors shall be liable for any damage that may result from the performance of any services herein authorized.

Section 10. Waste Water Disposal. No outside toilet shall be constructed on any lot. Each dwelling constructed shall be served by an adequate septic tank, and all plumbing fixtures, dishwashers, toilets, or sewerage disposal systems shall be connected to said septic tank or other form of sewerage disposal system approved by the Haywood County Health Department or other appropriate governmental authority. No waste disposal shall be placed within one hundred feet of any water well serving as part of the water system for the Subdivision.

Section 11. Signs. No signs, billboards, or advertising devices of any kind may be erected or displayed on a lot except for the purpose of advertising the lot for sale or rent (which sign shall not exceed five square feet in size) and except a small identification sign placed upon the lot which gives the family name of the owner or the name of the house that has been designated by the owner.

Section 12. Animals. No livestock or poultry of any kind shall be raised, bred, or kept on any lot, other than dogs, cats, and other domestic household pets, and then only when they are reasonable in number and not maintained or bred for any commercial purpose and when proper restraint and control are used in the keeping of them.

Section 13. Nuisances. An owner, his family, or lessees, shall not do or keep and shall not cause anything to be done or kept on his lot that will constitute a nuisance under the laws of the State of North Carolina or that will obstruct or interfere with the rights of other owners or the Association or among other owners by unreasonable noises, odors, or otherwise; nor shall any owner, his family, or lessees, commit or permit any nuisance, immoral, or illegal act within the Development.

Section 14. Garbage; Litter. No owner shall burn trash, garbage, or other like household refuse without a permit from the Association. Storage, collection, and disposal of trash shall be in compliance with the rules set from time to time by the Association. No owner shall accumulate on his lot any form of junk, inoperable vehicle, litter, refuse or other garbage, and will at all times keep his garbage receptacles

covered and hidden from sight from any street. No lot shall be used or maintained as a dumping ground for rubbish, and trash and garbage or other waste shall not be kept hereon except in sanitary receptacles provided for that purpose.

Section 15. Streams; Drainage Ditches. No streams found within a lot ~~may-be dammed or the water~~ there from impounded, diverted, or used for any purpose without the prior consent of the Association. Each lot owner shall keep drainage ditches and wells located on his lot free and unobstructed and in good repair and shall provide for the installation of lot culverts upon his lot as may be reasonably required for proper drainage.

Section. 16. Resubdivision. Except with the express written and recorded consent of the Association, no lot shall be further sub-divided or the lines of any lot rearranged, moved, or relocated.

Section 17. Mining. No refining, quarrying, or other mining operation of any kind shall be permitted on any lot.

Section 18. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2013, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of those persons then owning a two-thirds of said lots are agreed to change, said covenants in whole or in part.

Section 19. Violations. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said Subdivision as shown on said plat to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

Section 20. Translator. Notwithstanding any provision hereinbefore or hereinafter appearing, a television translator station, including a tower, guy wires, and small building for housing television translator equipment, may be located on Lot No. 60 in said Subdivision.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee, or undivided fee, interest in any lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and not separate from ownership that is subject to assessment.

Section 2. Voting Rights. Every lot within the Subdivision shall have one (1) vote notwithstanding its manner of ownership.

ARTICLE V
PROPERTY RIGHTS IN THE ASSOCIATION AREAS

Section 1. Members' Easement of Enjoyment to the Common Properties. Subject to the provisions of Section 3, every member shall have a right and easement for ingress and egress to and from and for the enjoyment and use of the Common Properties and Association Areas and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Properties. The Developer shall convey to the Association legal title to the water area, and part of Lot No. 40 subject to

- (a) the documents governing the use and enjoyment thereof inducing these covenants and restrictions;
- (b) real estate taxes for the year of conveyance;
- (c) zoning;
- (d) survey; and
- (e) easements, reservations, and restrictions of record.

Section 3. Extent of Members' Easements to the Common Properties and Use of Water. The rights, and easements of enjoyment created hereby shall be subject to the following:

(a) The Association is expressly authorized and empowered to levy assessments against all lots in the development. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Subdivision and for the improvement and maintenance of roads, water systems, common areas, recreation of facilities, and the like; and

(b) Once the Association acquires title to the Common Properties, the Association has the right to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said property. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited, to a right after taking possession of such properties, to charge admission and other fees until the mortgage debt is satisfied; and

(c) The right, but not the obligation, of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and

(d) The right of the Association to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days from any infraction of its published rules and regulations; and

(e) The right of the Association to charge reasonable fees for the use of the Common Properties; excepting, however, that any lending institution that has acquired title by foreclosure or by deed in lieu of foreclosure shall not be charged any rent, admission, or other fees while title is vested in the lending institution and the lot is not rented or is unoccupied. When rented or occupied, however, the lot shall bear its proportionate charge or admission fee for the use by occupants of the Common Properties; and

(f) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be

effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the owners agreeing to such dedication, transfer, purpose, or condition, and unless written notice of the proposed agreement and action thereunder is sent to every owner at least ninety (90) days in advance of any action taken, and unless such has been approved by first mortgages holding two-thirds (2/3) of all mortgages on lots.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation and Collection of Lien. The Owners for each lot owned within the Subdivision, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it is so expressed in the deed, is deemed to covenant and agree to pay to the Association:

(a) an annual assessment of Twenty Dollars (\$25.00) per empty lot; and

(b) an annual assessment of One Hundred Dollars (\$100.00) where there is a house, due and payable April 1 of each year. The annual assessment may be changed from time to time as determined by the Association. Those lots which have homes of occupancy by January 1 of each year shall pay a full share and those lots that are vacant as of January 1 of each year shall pay a one-fourth (1/4) share. The fee and assessments (hereafter referred to simply as "assessments"), together with interest at a rate of eighteen percent (18%) per annum, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which the assessment is made. If any assessment is not paid within thirty (30) days after the due date, the Association may file a notice of the lien with the Clerk of Superior Court of Haywood County (and the notice shall be filed not later than one hundred twenty (120) days from the due date of the assessment). In such instance, the services rendered by the Association for the benefit of the lot for which an assessment is levied shall be deemed to have been performed on the due date of the assessment and to "improve" the lot or create an "improvement" to the lot as defined in Chapter 44A, Article 2, Part 1, of the General Statutes of

North Carolina; the lien arising therefrom shall constitute a "lien of mechanics, laborers, and material men dealing with the owner" and the lien may be perfected and enforced pursuant to the provisions of Part 1. The lien created hereby shall not, however, be superior to any institutional mortgage or deed of trust recorded prior to the filing of the notice of claim of lien or any statutory lien having priority or otherwise provided by law. Any action to enforce the lien may, at the Association's option, include a prayer for collection of, assessments levied against the lot after the filing date of the notice of claim of lien. The Association may purchase the property at any sale thereof contemplated under Chapter 44A-14 of the General Statutes of North Carolina. The Association may, at its election, simultaneously pursue each and every other remedy that it may have available to it for the enforcement and collection of any delinquent assessments.

Section .2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Subdivision and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Association Areas and to the lots situated in the Subdivision, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof. The assessment may include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Association Areas, that must be replaced on a periodic basis, such reserve shall be a part of the regular "annual assessment" paid annually.

Section 3. Estoppels and Proof of Payment. Upon request, the Association shall furnish to any member a written statement certifying the amount of assessments levied against the member's lot and the balance of assessments then due. The written statement shall estop the Association from making any contrary claims against any person or entity (other than the requesting member) who takes affirmative action and detrimental reliance upon the statement.

Section 4. Suspension. The Association shall not be required to transfer membership on its books, or to allow the exercise of any rights or privileges of membership on account thereof to any owner or to any persons claiming under an owner unless all fees and assessments to which they are subject have, been paid in full.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement-of a capital improvement including the necessary fixtures and personal property related hereto, provided that any such assessment must have the assent of simple majority of the vote of the members of the Association who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. The due date of any special assessment hereof shall be fixed in the resolution authorizing such assessment.

Section 6. Quorum. The quorum required for any action authorized by Section 5-hereof shall be as follows:
At the first meeting called, as provided in Section 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast fifty percent (50%) of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 5 and the required quorum at any such subsequent meeting shall be one-half (1/2) of, : the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. At the annual meeting the Association shall elect a President, Vice President, Secretary/Treasurer and three (3) members of the Board of Directors who shall act at the Executive Association during the current year.

Section 7. Commencement. The annual assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the calendar year in which made and shall become due and payable on the day fixed for commencement. The assessments for any year after the first year shall become due on the first day of April of said year. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the original annual assessment as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the Subdivision now subject to assessment at a time other than the beginning of any assessment period.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the annual assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand, at any time furnish to any, Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment thereon stated, to have been paid.

Section 9. Effect of Non-Payment of Assessment. Assessments not paid on the date when due shall thereupon become, delinquent and, together with such interest thereon and cost of collection thereof as herein provided, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, grantees and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

Section 10. Subordination of the lien to Mortgages. The lien of any assessments provided for herein, whether annual or special, shall be subordinate to the lien of any mortgage or mortgages of any institutional lender now or hereafter placed upon the properties subject to assessment. Said lien shall become effective from and after the time of recording in the Public Records of Haywood County, North Carolina, a claim of lien stating the description of the Lot, the name of the record Owner, the amount due and date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid.

Section 11. Special Construction Assessment. Special construction assessment will be imposed in the amount of \$100.00 during construction that will help defray costs for road maintenance during the time of construction.

ARTICLE VII **EASEMENTS**

Section 1. Utility Easements. A five-foot wide easement running along the inside of all lot lines (except those lot lines coincident with street rights of way) is reserved for the installation, maintenance, and operation of utilities, including electric lines, water lines, and radio and television transmission cables, and the ancillary right to locate guy wires, braces, or anchors, and to cut, trim, or remove trees and plantings, if necessary in connection with the installation, maintenance, and operation.

Section 2. Use and Maintenance by Owners. Areas of a lot affected by reserved easements shall be maintained by the lot owner, but no structures, plantings, or other materials shall be placed or permitted to remain, or other activities undertaken thereon, that may damage or interfere with the use of the easements. The easement area of each lot and all improvements in it shall, be maintained continuously by the owner of the lot, except for those improvements for which a public authority, utility company, or other such person is responsible.

Section 3. Resubdivision. As any lots are combined into single ownership or as any lots are resubdivided that this easement along the property lines shall terminate on any

former interior lot lines or combined or resubdivided lots unless an easement is reserved and this easement shall attach to any new property lines which may result from combination and/or resubdivision of any lots.

ARTICLE VIII MORTGAGES

The following shall be covenants in favor of the holder of a first mortgage on any lot, are in addition to all other rights of mortgagees and may be enforced by such mortgagee as follows:

Section 1. Right to Acquire Title. ~~No right on the part of the Association or any owner of a lot shall in any way impair the rights of a first mortgagee to:~~

(a) Foreclosure on a lot or take title thereto pursuant to the terms of the mortgage;

(b) Accept a deed (or assignment) in lieu of foreclosure;

(c) Sell or lease a lot acquired by such mortgage.

Section 2. Prior Charges.. No such mortgagee who has obtained title to a lot pursuant to the remedies provided in the mortgage or by deed in lieu of foreclosure will be liable for or required to pay any assessments, due or charges which accrued prior to the acquisition of title to such lot by such, mortgagee.

Section 3. Approval of Mortgagees. Unless at least two-thirds (2/3) of the first mortgagees (based upon one (1) vote for each mortgage owned) and owners (other than the developer) of the individual lots have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned by the Association (the granting of easements for public utilities or for other public purposes consistent with the I intended use of such Association Areas by the Owners shall not be deemed a transfer within the meaning of this provision)

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

Section 4. Information. Upon request, the Association will provide to an institutional first mortgagee a list containing the name and permanent residence address of each individual or entity which owns or is under contract to purchase a lot.

Section 5. Notice of Default. Upon request, the Association shall furnish written notification to an institutional first mortgagee of any default in the performance of any obligation under this Declaration of Covenants and Restrictions or other governing documents by an Owner of a lot upon which such mortgagee has a mortgage when such default has not been cured after sixty (60) days.

Section 6. Amendments Any amendment of the Declaration of Covenants and Restrictions which would affect the lien, security or value of security of any institutional first mortgagee, or the salability of a first mortgage on the secondary market, shall require the joinder and consent of all institutional first mortgagees.

ARTICLE IV

The developer shall be responsible for the construction, maintenance, and repair of roads paralleling and above Lots 43 and 42. However, once these lots are sold the property owner shall pay their proportionate share as provided herein.

ARTICLE X **REMEDIES**

Section 1. Enforcement. Owner and each person to whose benefit this Declaration inures, including the Association, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any of the provisions of this Declaration, and the court in that action may award the successful party reasonable expenses in prosecuting the action, including attorney's fees. Failure by the Association or any owner to enforce any covenant or restriction herein contained, regardless of how long such failure shall continue

shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Suspension of Privileges. The Association may suspend all voting rights, if any, of any owner and all rights of the owner to use the Association's common areas, water system and roadways, for any period during which the Association's assessment against the owner remains unpaid, or during the period of any continuing violation of the provisions of this Declaration by an owner after the existence thereof has been declared by the Association. .

Section 3. . Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy of law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver of that party of any right available to him upon the reoccurrence or continuation of the violation or the occurrence of a different violation.

ARTICLE XI

SEVERABILITY

Each provision of this declaration is hereby declared to be: independent of and severable from every other provision hereof. If any provision is held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XII

ZONING RESTRICTIONS

Zoning ordinances, restrictions, and regulations of Haywood County, North Carolina, and its various agencies applicable to the property shall be observed. In the event of conflict between any provisions of this Declaration and such ordinances, restrictions or regulations, the mere restrictive provisions shall apply.

ARTICLE XIII

PREVENTION OF EROSION

In order to implement effective and adequate erosion control and protect the purity and beauty of the property, the Association and its agents shall have the right to enter upon any lot for the purpose of performing any grading work or constructing and maintaining erosion prevention devices. Such entries shall, however, be made only after construction of improvements have commenced on such lot or the soil thereof has been graded. Provided, however, that prior to exercising its right to enter upon a lot for the purpose of performing any grading work or constructing or maintaining erosion prevention devices, the Association shall give the Owner of that lot the opportunity to take any corrective action required by giving said Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by the Owner if said Owner fails to take the specified corrective action immediately, the Association may then exercise its right to enter upon the lot in order to take the necessary corrective action. The costs of such erosion prevention measures when performed by the Association shall be kept as low as reasonably possible. The cost of such work when performed by the Association shall be paid by said Owner of the lot on which the work is performed. The provisions of this paragraph will not be construed as an obligation on the part of the Association to perform grading work or to construct or maintain erosion prevention devices.

ARTICLE XIV CAPTIONS

Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

ARTICLE XV

TERM

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Subdivision until January 1, 2013 A.D., after which time the same shall be extended for successive period of ten years each upon the

affirmative vote of two-thirds (2/3) of the voting members of the Association.

ARTICLE XVI **AMENDMENT**

This Declaration may be amended by the affirmative vote of a majority of the owners of all lots in the Subdivision entitled to vote and by the subsequent recordation of an amendment to this Declaration duly executed by

(a) the requisite number of the owners required to effect the amendment or

(b) by the Association, in which the amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of the owners to effect the amendment, certified by the secretary of the Association.

IN WITNESS WHEREOF, Declarants have executed this Declaration on the day and date first above written.

BILLY B. BOYETTE	
_____	(SEAL)
MARY FRANCES HECHT	
_____	(SEAL)
ROBERT KYSER	
_____	(SEAL)
MARQUERITE. B. KYSER	
_____	(SEAL)
ANNETTE SCHNEIDER	
_____	(SEAL)
A.J. SPENDER	
_____	(SEAL)
JOANNE M. SPENDER	
_____	(SEAL)
EDITH E. SMITH	
_____	(SEAL)
RONALD BOSHART	
_____	(SEAL)
JUDITH A. BOSHART	
_____	(SEAL)
FRANKLIN WARD	
_____	(SEAL)
KATHLEEN R. WARD	