

**016390**

BOOK **1748** PAGE **351**

FILED

DATE 10/5/2005  
TIME: 1:59 PM  
BOOK 1748  
PAGE 351  
ELAINE N. HARMON  
REGISTER OF DEEDS  
LINCOLN COUNTY, NC

\$155.00

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TREETOPS AT COWANS FORD

✓ Return to:  
Kennedy & Wulffhorst

**INDEX**

**TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**TREETOPS AT COWANS FORD**

STATEMENT OF PURPOSE	6
ARTICLE I	
DEFINITIONS	
Section 1. "Additional Declaration"	7
Section 2. "Additional Property"	7
Section 3. "Architectural Changes Committee"	7
Section 4. "Architectural Control Committee"	7
Section 5. "Architectural, Landscape and Lake Buffer Guidelines"	7
Section 6. "Articles of Incorporation"	7
Section 7. "Association"	7
Section 8. "Board" or "Board of Directors"	7
Section 9. "Bylaws"	7
Section 10. "Common Area" or "Common Areas"	8
Section 11. "Declarant"	8
Section 12. "Development"	8
Section 13. "Dwelling"	8
Section 14. "Entrance Monument"	8
Section 15. "Guidelines"	8
Section 16. "Improvement"	8
Section 17. "Lot" or "Lots"	8
Section 18. "Map"	8
Section 19. "Member"	8
Section 20. "Mortgage"	8
Section 21. "Mortgagee"	8
Section 22. "Owner"	8
Section 23. "Person"	8
Section 24. "Phase"	8
Section 25. "Property"	8

Section 26. "Roadways"	9
Section 27. "Sewer System"	9
Section 28. "Street Lights"	9
Section 29. "Subdivision"	9
Section 30. "Supplemental Declaration"	9

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property	9
Section 2. Additions to the Property	9

ARTICLE III  
PROPERTY RIGHTS

Section 1. Ownership of Common Areas	10
Section 2. Owners' Rights to Use and Enjoy Common Areas	10
Section 3. Delegation of Use	11

ARTICLE IV  
THE ASSOCIATION

Section 1. Membership	11
Section 2. Classes of Lots and Voting Rights	11
Section 3. Relinquishment of Control	11
Section 4. Availability of Documents	11
Section 5. Management Contracts	11
Section 6. Maintenance	12
Section 7. Reserve Fund	12
Section 8. Liability Limitations	12

ARTICLE V  
COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments	13
Section 2. Purpose of Annual Assessments	13
Section 3. Payment of Annual Assessments; Due Dates	13
Section 4. Maximum Annual Assessment	14
Section 5. Special Assessments for Capital Improvements	14
Section 6. Special Individual Assessments	14
Section 7. Assessment Rate	15

ARTICLE VI  
GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments	15
Section 2. Effect of Nonpayment of Assessments; Remedies of the Association	15
Section 3. Subordination of the Lien to Mortgages	15

ARTICLE VII  
RESTRICTIONS

Section 1. Residential Restrictions	16
Section 2. Dwelling Size	16
Section 3. HVAC Equipment	17
Section 4. Exterior Lighting	17
Section 5. Fences and Walls	17
Section 6. Signs	17
Section 7. Temporary Structures; Structure Materials	17
Section 8. Utilities	18
Section 9. Erosion and Sediment Controls	18
Section 10. Building Envelope	18
Section 11. Waste	18
Section 12. Combination or Subdivision of Lots	18
Section 13. Restricted Activities in Common Areas	18
Section 14. Unsanitary or Unkempt Conditions	19
Section 15. Rules of the Board	19
Section 16. Entrance Monument	19
Section 17. Vehicular Parking	19
Section 18. Public Sewer System; No Septic Tanks	19
Section 19. Nuisances	19
Section 20. Diligent Construction	20
Section 21. Public Water System; No Wells	20
Section 22. Mail and Newspaper Boxes	20
Section 23. Animals	20

ARTICLE VIII  
ARCHITECTURAL, LANDSCAPE AND LAKE BUFFER GUIDELINES

Section 1. General	21
Section 2. Composition of Architectural Control Committee	21
Section 3. Architectural and Landscape Guidelines	21
Section 4. Definition of "Improvements"	22

Section 5. Enforcement	22
Section 6. Failure of the Architectural Control Committee to Act	23
Section 7. Variances	23
Section 8. Fees Required by the Architectural Control Committee	23
Section 9. No Construction Without Payment of Fees and Use of a Featured Builder	24
Section 10. Notices and Submittals	24
Section 11. Separate Committee for Changes to Existing Improvements	24
Section 12. Limitation of Liability	24
Section 13. Miscellaneous	25

ARTICLE IX  
INSURANCE

Section 1. Board of Directors	25
Section 2. Premium Expense	26
Section 3. Special Endorsements	26
Section 4. General Guidelines	26

ARTICLE X  
RIGHTS OF MORTGAGEES

Section 1. Rights of Mortgagees	27
Section 2. Books and Records	27
Section 3. Payments of Taxes and Insurance Premiums	27

ARTICLE XI  
CONDEMNATION

Section 1. Partial Taking Without Direct Effect on Lots	28
Section 2. Partial or Total Taking Directly Affecting Lots	28
Section 3. Notice to Mortgagees	28

ARTICLE XII  
EASEMENTS AND OTHER RIGHTS

Section 1. Easements and Cross-Easements on Common Areas	29
Section 2. Use of Common Areas	29
Section 3. Right-of-Way Over Roadways	29
Section 4. Right of the Association and Declarant to Enter Upon the Common Areas	29
Section 5. Easement for Encroachments	29
Section 6. Maintenance Areas	30
Section 7. Utility and Drainage Easements	30

BOOK 1748 PAGE 356

Section 8. Declarant's Right to Assign Easements; Maintenance of Easement Areas	30
Section 9. Easement Reserved for the Association and Declarant	31
Section 10. Additional Easements	31
Section 11. No Merger of Easements	31

ARTICLE XIII  
GENERAL PROVISIONS

Section 1. Enforcement	31
Section 2. Severability	32
Section 3. Amendment	32
Section 4. Term	32

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
TREETOPS AT COWANS FORD

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 30<sup>th</sup> day of September, 2005, by THE DENVER GROUP, LLC, a North Carolina limited liability company, hereinafter referred to as the "Declarant". All capitalized terms used herein shall have the meanings set forth in Article I, Section 1 or elsewhere in this Declaration.

STATEMENT OF PURPOSE

Declarant is the owner of certain property located in Lincoln County, North Carolina, which is more particularly described on that certain map recorded in Map Book 13 at Pages 309, 310 and 311 in the Office of the Lincoln County Register of Deeds. Declarant desires to provide for the creation (on the property shown on the map together with other contiguous or nearby property hereafter made subject to this Declaration as another Phase as provided herein) of a residential community of single-family residences to be named TREETOPS AT COWANS FORD (the "Development").

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and to enhance the value and amenities of all properties within the Development. Furthermore, Declarant desires to provide for the maintenance and upkeep of certain Common Areas within the Development, including, but not limited to the Roadways (prior to acceptance by governmental authorities for public maintenance). As part of such Common Area, Declarant desires to construct and provide for the maintenance and upkeep of one or more lighted Entrance Monuments to be located at the entrance to the Development, which Entrance Monuments will be for the common use and benefit of all Owners.

Declarant desires to provide for a system whereby all owners will pay for the maintenance and upkeep of the Common Areas. All Owners in the Development will pay the cost associated with leasing the Street Lights and the cost of maintenance and upkeep of the Entrance Monuments, Roadways (prior to their acceptance for public maintenance) and such other Common Areas as such Owners are entitled to use and enjoy.

To these ends, Declarant desires to subject the real property described here in to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are the benefit of said property and each Owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas and amenities.

To that end the Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "A" and incorporated herein by reference TREETOPS AT COWANS FORD HOMEOWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of

BOOK 1748 PAGE 358

exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "B" and incorporated herein by reference.

NOW, THEREFORE, Declarant, by this Declaration, does declare that all of the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, changes and liens set forth in this Declaration, which shall run with the real property described herein and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I DEFINITIONS

Section 1. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Condition and Restrictions filed in the Office of the Register of Deeds of Lincoln County, North Carolina with regard to a certain Phase, section or portion of the Property, as more particularly described in Article II, Section 2 hereof.

Section 2. "Additional Property" shall mean and refer to any additional real estate near or contiguous to the Property, including, without limitation, any real property located within four thousand (4,000) feet of any boundary of the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

Section 3. "Architectural Changes Committee" shall have the meaning set forth in Article VIII, Section 11 hereof.

Section 4. "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Development and to perform certain other functions described in the Declaration.

Section 5. "Architectural and Landscape guidelines" shall have the meaning as set forth in Article VIII, Section 3 hereof.

Section 6. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "A" hereto and incorporated herein by reference.

Section 7. "Association" shall mean and refer to TREETOPS AT COWANS FORD HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 8. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 9. "Bylaws" shall mean and refer to the Bylaws for the Association, attached as Exhibit "B" hereto and incorporated herein by reference.

Section 10. "Common Area" or "Common Areas" shall mean and refer to the Entrance Monument, Street Lights, and the Roadways, including drainage facilities and other improvements located therein (prior to the acceptance for maintenance by the North Carolina Department of Transportation or other governmental entity), collectively, and any other property specifically shown and designated on the Map as "Common Open Area," "Common Open Space" or "COS." The Common Areas shall be owned by the Association (except as otherwise provided herein) for the common use, benefit and enjoyment of the Owners. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision.



Section 11. "Declarant" shall mean and refer to THE DENVER GROUP, LLC, and such of its successors and assigns to whom the rights of Declarant hereunder are transferred by written instrument recorded in the office of the Register of Deeds for Lincoln County.

Section 12. "Development" shall mean and refer to TREETOPS AT COWANS FORD a single-family residential development proposed to be developed on the Property by Declarant.

Section 13. "Dwelling" shall mean and refer to a structure for the use and occupancy as a detached single-family residence. Each Lot shall contain no more than one (1) Dwelling.

Section 14. "Entrance Monument" or "Entrance Monuments" shall mean and refer to the area(s) designated by Declarant over the parcels identified as "Entrance Monument Area" or "COS" (or a similar term) located at the entryway(s) to the Subdivision as shown on the Map, together with the stone monuments, entrance signs, lighting, irrigation systems, landscaping and other improvements constructed or to be constructed within such area(s), all to be used as an entryway or entryways (as the case may be) for the Development and for the purposes set forth in this Declaration.

Section 15. "Guidelines" shall mean and refer to the Architectural and Landscape guidelines.

Section 16. "Improvement" shall have the same meaning as set forth in Article VIII, Section 4.

Section 17. "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Map, which Lots do not include the Common Area.

Section 18. "Map" shall mean and refer to (i) the map of the TREETOPS AT COWANS FORD Subdivision recorded in Map Book 13, Pages 309, 310 and 311 in the Office of the Register of Deeds for Lincoln County, North Carolina, (ii) any map of Additional Property, and (iii) any revision of any such map recorded in such Office.

Section 19. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 20. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 21. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 22. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Development, including the Declarant if it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 23. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 24. "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Map or Maps are recorded in the Office of the Register of Deeds of Lincoln County, North Carolina.

Section 25. "Property" shall mean and refer to the property shown on the Map, exclusive of the public rights-of-way as shown on the Map, which Property includes the Lots and the Common Areas as defined herein and as more particularly shown on the Map.

BOOK **1748** PAGE **360**

Section 26. "Roadways" shall mean and refer to all roads and cul-de-sacs in the Subdivision as shown on the Map, all to be maintained by the Association as more particularly set forth in Article IV, Section 6 of this Declaration until accepted for dedication and public maintenance by the North Carolina Department of Transportation or other governmental entity.

Section 27. "Sewer System" shall mean and refer to that certain sanitary sewer system located within easements or Roadway right-of-way and as described in Article VII, Section 18.

Section 28. "Street Lights" shall mean and refer to those certain street lights which may be constructed upon and over the rights of way of the Roadways and other Common Areas.

Section 29. "Subdivision" shall mean and refer to TREETOPS AT COWANS FORD Subdivision, as the same is shown on the Map.

Section 30. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Lincoln County, North Carolina to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II, Section 2 hereof.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in Lincoln County, North Carolina, and is the Property as defined above and as more particularly described and show on the Map recorded in Map Book 13, Pages 309, 310 and 311 in the Office of the Register of Deeds of Lincoln County, together with any Additional Property.

### Section 2. Additions to the Property.

(a) Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Lincoln County Register of Deeds, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without

BOOK 1743 PAGE 361

the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Lincoln County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association. The Declarant reserves the right to construct within the Common Areas (i) the Entrance Monument(s) to be located at the entrance to the Development; and (ii) the Roadways (including drainage facilities and other improvements), as reflected on the Map, for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recorporation of any Map or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, which shall eventually be accepted for public dedication and maintenance by the North Carolina Department of Transportation or other governmental entity).

Section 2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;
- (b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against said Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas;
- (d) the provisions of Article VIII of this Declaration.

BOOK 1748 PAGE 362

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

#### ARTICLE IV THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws attached as "Exhibit "B" hereto.

Section 2. Classes of Lots and Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

- (a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.
- (b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. Each Class B Lot shall entitle the Owner of said Lot to fourteen (14) votes for each Class B Lot owned by it.

Section 3. Relinquishment of Control. Notwithstanding anything contained herein to the contrary, the Class B membership shall cease and be converted to the Class A membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property (b) the date Declarant shall elect, in its sole discretion that the Class B membership shall cease and be converted to the Class A membership (which election may be made, if at all, upon Declarant giving written notice of the election to the Board); or (c) December 31, 2010. The earliest to occur of (a), (b) or (c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with cause upon ninety (90) days prior written notice to the manager without payment of a termination fee or upon thirty (30) days prior written notice to the manager prior to the expiration of the existing contract.

BOOK 1748 PAGE 363

Section 6. Maintenance. Prior to their acceptance for public maintenance, the Roadways shall be maintained by the Association, provided that the Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the roadways are accepted for maintenance by the North Carolina Department of Transportation or other governmental entity. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance.

The Common Areas, together with all utilities, easements and amenities located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the Association as more particularly described below:

- (a) Maintenance of the Entrance Monument(s) shall include maintenance, repair and reconstruction, when necessary, of the stone monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the stone monuments and signage located thereon.
- (b) All Common Areas, including, but not limited to, the Roadways (prior to governmental acceptance for operation and maintenance), Entrance Monument(s), shall be clean and free from debris and maintained in an orderly condition, together with the landscaping thereon (if any) in accordance with the normal and routine standards for private parks, including any removal and replacement of any landscaping, utilities, or improvements located thereon.
- (c) The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof. The Owners of such Lots shall be solely responsible for same.

Section 7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements located on all Common Areas, and the Roadways (prior to acceptance) and in order to fund anticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments, as hereinafter defined.

Section 8. Liability Limitations. Neither Declarant, nor any Association Member, nor the board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

BOOK 1743 PAGE 364

ARTICLE V  
COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental annual, Special and Special Individual Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessments, Special Assessments and Special Individual Assessments, as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot against which such assessments or charges are made.

Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association against each Lot ("Annual Assessments") shall be used as follows:

- (a) to repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas and any improvements located thereon, including, but not limited to, the Street Lights and Entrance Monuments(s), and to maintain the landscaping thereon in accordance with the normal and routine standards for private parks, including any necessary removal or replacement of landscaping;
- (b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance;
- (c) to pay all costs associated with the lease of the Street Lights, including, but not limited to, monthly lease payments and utility costs;
- (d) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (e) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- (f) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- (g) to maintain contingency reserves for the purposes set forth in Article IV, Section 7 hereof in amounts as determined by the Board of Directors.

Section 3. Payment of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on January 1, 2006. The Annual Assessment for the first full year (i.e., January 1, 2006 through December 31, 2006) shall be \$350.00 per Lot, which amount shall be due and payable in full no later than January 31, 2006. The Annual Assessment for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Article V, Section 4, and shall be due and payable in one annual payment, such payment being due and payable no later than January 31 of each such year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send (by regular mail) or conveyed

electronically) written notice of the amount of the annual Assessment, as well as the amount of the payment due, to each Owner on or before January 4 of such calendar year. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

Section 4. Maximum Annual Assessment

(a) For years following the first full calendar year of Annual Assessments and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index. All Urban Consumers, United States, All Items (1982-84=100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after the first full calendar year of Annual Assessments, the maximum annual assessment may be increased above the maximum amount set forth in subparagraph (a) of this Section 4 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum set forth in Subparagraph (a) of this Section 4 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental annual assessment ("Supplemental Annual Assessment"). In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

Section 5. Special Assessments for Capital Improvements. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the reconstruction of any Common Area improvements which are not originally constructed by Declarant; or (ii) the reconstruction, repair or replacement of the Common Areas, including, but not limited to, the roadways (prior to acceptance for public maintenance), the Entrance Monument(s) and all improvements located thereon, including fixtures and personal property related thereto. Provided, however, any such assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Lot Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including the Roadways (prior to acceptance for public maintenance), Entrance Monument(s), Street Lights, including all improvements located thereon, whether occasioned by any act or omission of such Lot Owner(s), members of such Lot Owner's family, or such Lot Owner's agents, guests, employees or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against

BOOK 1748 PAGE 366

any particular Lot Owner relative to such Lot Owner's failure to comply with the terms and provisions of the Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to the Declaration or the Bylaws. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

#### Section 7. Assessment Rate.

(a) Subject to the exception set forth in subsection (b) below, annual, Supplemental Annual and Special Assessments must be fixed at a uniform rate for all Lots;

(b) Annual, Supplemental Annual and Special Assessments for each Lot owned by Declarant shall be one-third (1/3) of the Annual, Supplemental Annual and Special Assessments beginning with the January 1, 2007 fiscal year.

### ARTICLE VI GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Annual, Special, Special Individual, Supplemental, (or installment thereof) not paid by its due date as set forth herein, or any other assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the Lot), and interest, late payment charges, cost and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by not using the common Areas, or by abandoning such Owner's Lot.

Section 3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in Article V of this Declaration shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Special, Supplemental, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the Maximum Annual Assessment or permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot.



ARTICLE VII  
RESTRICTIONS

Section 1. Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use construction offices and sales/marketing offices (and for related uses) for the Development. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board. Provided, however, the board may permit a business or business activity to be conducted on a Lot as long as such business, in the sole discretion of the Board, does not unduly increase traffic flow or parking congestion on the Property or in the Development. The Board may issue rules regarding permitted business activities. Leasing of a residence on a Lot shall not be considered a business or business activity.

Except those to be utilized by Declarant as described hereinabove, no structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one detached single-family private Dwelling and one private garage for not less than two (2) vehicles and not more than four (4) and only such other accessory structures as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements.

No mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile or manufactured home, including without limitations, any mobile, modular or manufactured house as defined by the building codes or other applicable laws of the state shall be located upon the property.

Section 2. Dwelling Size. The square footage requirement set forth below are for enclosed heated floor area and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and attics, unheated porches of any type, attached or detached garages, porte-cochères and unheated storage areas, decks and patios.

Any Dwelling erected upon any Lot shall contain not less than the following heated floor areas:

	Minimum Total Heated Area	Minimum Ground Floor Heated Area
1 Story	2,200	2,200
1 1/2 story, bi-level, tri-level and others	2,400	1,600
2 story, 2 1/2 story	2,800	1,400

Notwithstanding the foregoing requirements, the Architectural Control Committee shall have the right (but not the obligation), because of restrictive topography, lot dimensions or unusual site related conditions or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirements by granting a specific written variance.

No Dwelling erected upon a Lot shall contain more than two and one-half (2 1/2) stories above ground level; provided, however, the Architectural Control Committee shall have the right (but not the obligation),

**B00K 1748 PAGE 368**

because of steep topography, unique Lot configuration or similar reasons, to allow Dwelling heights greater than two and one-half (2 1/2) stories on rear and side elevations.

Section 3. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of any Dwelling on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from streets by landscape improvements, as more particularly provided in the Guidelines.

Section 4. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Night lighting of recreational facilities on a Lot is not permitted.

Section 5. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such Lot than the rear face of the House constructed on such Lot (unless otherwise approved by the Architectural Control Committee), (ii) in the case of a corner Lot, no sideyard fence shall be located nearer than the side of the house facing the side street line (unless otherwise approved in advance in writing by the Architectural Control Committee) and (iii) shall not exceed six (6) feet in height. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall.

Section 6. Signs. No sign of any kind shall be displayed on any Lot except for sign(s) used to advertise the sale of the property, or approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the power, but not the obligation, to adopt and issue from time to time sign guidelines, as part of the Guidelines, to assist the Architectural Control Committee in reviewing and approving proposed signs to be erected on the Property. Provided, however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Development or portions of either thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas.

Section 7. Temporary Structures, Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used for storage, or for construction or sales offices.

Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings shall not exceed fourteen (14) feet in height nor exceed twelve hundred (1,200) square feet.

Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures shall not exceed one thousand (1,000) square feet in area.

Section 8. Utilities. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Control Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Control Committee in accordance with the provisions of the Declaration.

Section 9. Erosion and Sediment Controls. Prior to any earth-disturbing activity, erosion and sediment control measures shall be implemented and undertaken by the Owner or Owner's builder in accordance with the applicable provisions of the Guidelines.

Section 10. Building Envelope. No building or other improvement on any Lot (including any stoop or porches, patios, decks, terraces, etc.) shall be created or permitted to remain outside of the "Building Envelope" for that particular Lot as established by the Architectural Control Committee (as to each Lot, the "Building Envelope"). The Building Envelope approved for any Lot will be available from the Architectural Control Committee on an unrecorded map. Provided, however, and notwithstanding the foregoing to the contrary, (i) fireplace chimney structures projecting from the side of a Dwelling may encroach no more than eighteen (18) inches into the side yard setback established by the Building Envelope. The Architectural Control Committee shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of such requirements shall conform thereto.

Section 11. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and regulations set forth in the Guidelines.

Section 12. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except in connection with the payment of assessments and except as provided herein) be considered as one Lot for the purposes of this Article VII upon the recordation in the Office of the Register of Deeds of Lincoln County, North Carolina, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee), and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

Section 13. Restricted Activities in Common Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas. There shall be no obstruction of the common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas, without the prior written consent of the Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 14. Unsanitary or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot other than in enclosed garages.

Section 15. Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to

BOOK 1748 PAGE 370

have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorney's fees.

**Section 16. Entrance Monument.** Declarant and the Association shall have the right to construct, install, landscape, maintain, repair and replace the Entrance Monument(s) located at the entranceway(s) to the Subdivision. Further, Declarant or the Association shall erect and maintain within the Entrance Monument area(s) one or more stone monuments with an entrance sign thereon (collectively, the "Entrance Sign") bearing the name of the Development, which Entrance Sign shall be built in accordance with the applicable governmental standards for signs; and Declarant shall erect and maintain lighting for the Entrance Sign, planters and other improvements typically used for an entryway.

**Section 17. Vehicular Parking.**

(a) No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked overnight on any Roadway within the Property.

(b) Commercial-use vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4th) ton, shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(a) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such Lot.

(b) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee.

(c) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee. Provided, however nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

**Section 18. Public Sewer System, No Septic Tanks.** Declarant shall cause to be constructed a sanitary sewer system in order to provide sanitary sewer service necessary to serve the Subdivision (the "Sewer System"). All pipes and other equipment necessary for the operation and maintenance of the Sewer System shall be located within the utility easements described in this Declaration, or within the Roadway rights-of-way. All Owners are required to connect into the Sewer System for domestic sewer service. The Sewer System shall be the sole provider of sanitary sewer service to the Subdivision, and no septic tank may be installed within any Lot for the purpose of providing domestic sewer service.

**Section 19. Nuisances.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthful, unsightly, or unkempt condition on his or her property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material

BOOK 1743 PAGE 371  
 be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Development. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes and grinder pump warning alarm shall be located, installed or maintained upon the exterior in any Lot unless required by law.

**Section 20. Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs or sidewalks or any part of any Common Area or any utility system caused by an Owner or Owner's builder or such builder's contractors or subcontractors shall be repaired by such responsible Owner. Any builder of Improvements (and such builder's contractors and subcontractors) on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Architectural Control Committee, and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by the construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's Lot to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area or utility system, to pay for the cost of cleaning public and private areas, including the roadways, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's contractors or subcontractors during the construction of Improvements.

**Section 21. Public Water System; No Wells.** Declarant shall cause to be constructed a water system in order to provide water supplies necessary to serve the Subdivision (the "Water System"). All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the utility easements described in this Declaration, or within the Roadway rights-of-way. Upon completion of the Water System and all mains, pipes and equipment and other personal property which is part thereof, Declarant or the Association shall use reasonable good faith efforts to dedicate the Water System to Lincoln County or other governmental authority. All Owners are required to connect into the Water System for domestic water service. The Water System shall be the sole provider of water supply to the Subdivision, and no well may be dug or constructed on any Lot for the purpose of providing domestic water supply.

**Section 22. Mail and Newspaper Boxes.** All Mail and Newspaper Boxes shall be constructed or installed on any Lot in accordance with the applicable provisions of the Guidelines.

**Section 23. Animals.** No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. The number of household pets kept or maintained shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under nine (9) months in age. Dogs shall at all times whenever they are outside of a Dwelling be on a leash or otherwise confined in a manner acceptable to the board. Animal control authorities shall be permitted to enter the Development and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be

BOOK 1748 PAGE 372  
 constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee. No breeds of animals with a known propensity for harm or protection (i.e. Rottweiler, Doberman, Pit Bull, etc.) shall be kept or maintained on any lot.

#### ARTICLE VIII ARCHITECTURAL AND LANDSCAPE GUIDELINES

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no improvements, including, without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, or any landscaping or cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article VIII hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided has approved the plans and specifications therefore and the location of such improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines; (b) the fees set forth in or contemplated in this Article VIII have been paid; and (c) the contracts identified in this Article VIII have been executed. The provisions of this Article VIII shall not apply to the construction of any improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the board under this Article VIII.

Section 2. Composition of Architectural Control Committee. So long as Declarant owns any Lot or other portion of the Property, the members of the Architectural Control Committee shall be appointed by Declarant. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board as the case may be). The members of the Architectural Control Committee need not be Owners of Property in the Development. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article VIII.

#### Section 3. Architectural and Landscape Guidelines

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural and landscape guidelines (the "Architectural and Landscape Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Section 8 hereof. In any event, the Guidelines shall not be binding upon the Architectural Control

Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event the basis for approval or disapproval of plans, specifications and other materials (for the construction of improvements) submitted to the Architectural Control Committee for approval.

BOOK 1748 PAGE 373

(b) The Guidelines shall also be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Landscape Improvements. In addition, the Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Property shall be based upon the conformity of such plan or improvement with the Guidelines.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing improvements (including landscape improvements) on the Property.

(d) The Architectural Control Committee may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; pet "runs"; lines and similar tethers or enclosures; landscaping (including cutting trees); hedges; mass plantings; irrigation equipment, apparatus and systems; driveways; signs; site preparation; changes in grade or slope; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

#### Section 5. Enforcement

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Development and to help preserve values of properties in the Development. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Development and to Declarant, and to the values of their respective properties in the Development, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of

BOOK **1748** PAGE **374**

any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved improvements, the Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvements) if such improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, to remove any unapproved improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such improvement was commenced or constructed.

Section 6. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to improvements which will conform) with the requirements hereto and of the Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the Architectural Control Committee, and provided the Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after additional written request to act on such items is delivered to the Architectural Control Committee following the passage of such first above-described thirty (30) business day period, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, EXCEPT that the Architectural Control Committee shall not be deemed to have waived any of the requirements set forth in Section 8, Section 9 or Section 10 hereof. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 7. Variances. Upon submission of a written request for same, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner.

Section 8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to construct such Improvements.



Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee and shall be set forth in the Guidelines.

Section 9. No Construction Without Payment of Fees. Notwithstanding anything contained in this Article VIII to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the Architectural Control Committee to be paid in connection with such Improvements, as provided in Section 8 above, shall have been paid to the Architectural Control Committee or Declarant as required.

Section 10. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 11. Separate Committee for Changes to Existing Improvements. The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Architectural Control Committee to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot or other portion of the Property (herein, the "Architectural Changes Committee"). Should the Board appoint such an Architectural Changes Committee, then the Architectural Control Committee shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes committee shall be solely responsible for review and approval of the same. The composition of the Architectural Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Architectural Control Committee shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article VIII and the Guidelines.

Section 12. Limitation of Liability. No member of the Architectural Control Committee or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Architectural Control Committee, nor the Architectural Changes Committee (if applicable), nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the architectural Control Committee or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or the Architectural Changes Committee (as the case may be). Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefore is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, any Association, the Architectural Control Committee, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quits all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

BOOK 1748 PAGE 376

Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration and no other person, firm or entity, including, with limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 13. Miscellaneous. Members of the Architectural Control Committee and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 5 of this Article VIII.

## ARTICLE IX INSURANCE

Section 1. Board of Directors. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

- (a) Fire. All improvements and all fixtures included in the Common Area, including, but not limited to, the Entrance Monument(s), Roadways (prior to acceptance by governmental authorities for maintenance), and all personal property and supplies belonging to the Association, shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provisions and endorsements set forth in this Article, the fire and casualty insurance described herein shall contain the following provisions:

- (i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- (ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property and public liability insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or by laws contain) provisions whereby: (1) contributions or assessments may be made against Declarant, the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

BOOK 1748 PAGE 377

- (b) Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the Development, covering each member of the Board of Directors, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$2,000,000 per occurrence against liability for bodily injury, including death resulting there from, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage.

- (c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- (d) Other. Such other insurance coverage, including flood insurance and worker's compensation, as the Board of Directors shall determine from time to time desirable.

Section 2. Premium/Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Article V hereof.

Section 3. Special Endorsements. The Board of Directors shall use diligent efforts to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- (c) coverage that cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 4. General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-10" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to, the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized

**BOOK 1748 PAGE 378**  
 representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

## ARTICLE X RIGHTS OF MORTGAGEES

**Section 1. Rights of Mortgagees.** Any Mortgagee shall have the following rights, to wit:

- (a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;
- (b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;
- (c) to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;
- (d) to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;
- (e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (f) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property.

Whenever any Mortgagee desires the provisions of the Section to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee. The Mortgagee must pay any reasonable fee charged by the Association to cover the expense of providing this request.

**Section 2. Books and Records.** Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

**Section 3. Payment of Taxes and Insurance Premiums.** The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefore from the Association.

ARTICLE XI  
CONDENAMATION

BOOK 1748 PAGE 379

Section 1. Partial Taking Without Direct Effect on Lots. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board of Directors in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole Discretion. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation damages relating to loss of value of the affected Lots, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board of Directors in its sole discretion.

Section 2. Partial or Total Taking Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 1 of this Article and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots and all compensation and damages for and on account of the taking of any one or more of the Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 3. Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Article X hereof.

ARTICLE XII  
EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Development, including, but not limited to, easements in favor of Declarant, the Association and any designees of the foregoing, the Owners, and all their family members, guests, invitees and lessees and to various

BOOK 1748 PAGE 380

governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Development or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and lessees, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, lessees, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, guests, invitees, successors and assigns, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

Section 4. Right of the Association and Declarant to Enter Upon the Common Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct improvements which an Owner is required to maintain, construct or repair.

Section 5. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, easements for encroachments, to the extent necessary, in the event any portion of the improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching improvements in favor of Declarant, the Association, the Owners and all their designees.

BOOK 1743 PAGE 381

Section 6. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

- (a) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" on the Maps (herein referred to as "Landscape Easements").

The Association shall maintain the above-described areas to a consistent standard of maintenance typical of a first-class development.

Section 7. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Maps, including, but not limited to, those certain easements shown and designated on the Maps as:

- (a) "Utility and Drainage Easement";  
(b) "Public Storm Drainage Easement";  
(c) "Sanitary Sewer Easement."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a 10-foot strip of land adjacent to the front boundary lines of all Lots, a 7.5-foot strip of land adjacent to the side boundary lines of all Lots and a 7.5 foot strip of land adjacent to the rear boundary line of all Lots for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 8. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in this Article for the purpose of enforcing the provisions of this Section 8. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

BOOK **1748** PAGE **382**

Section 9. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article as well as the maintenance and repair rights described below and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 10. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of the Declaration or as may otherwise be desirable for the development of the Development, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners.

Section 11. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recording of an instrument specifically terminating any such easement.

#### ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. Declarant, being the developer of other subdivisions in the area of the Development, wishes to maintain a high standard in the appearance and quality of the Development. Though damages would be difficult to measure, the failure of the Owners and the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Each Owner and the Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association hereby covenants and agrees that it shall exercise its power of enforcement hereunder in order to maintain a first class development in appearance and quality, and that it shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to the Association at law or in equity. The Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed, in Declarant's sole discretion, to bring such Common Areas within the standards required by Declarant. Should Declarant go upon the Common Areas to perform maintenance and repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and repairs, upon receipt of a statement for such cost from Declarant. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



BOOK 1748 PAGE 383  
Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment of court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended or modified at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, any amendment to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Development. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record.

Notwithstanding anything in this Section 3 to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of F.H.A. V.A. the Federal National Mortgage Association or other similar agency. In addition, Declarant, without obtaining the approval of any other person or entity, may make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

Section 4. Term. The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of thirty (30) years from the date this Declaration is recorded; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots, plus Declarant, has been recorded, the residential use restrictions set forth in Article VII of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal by its duly authorized member as of the day and year first above written.

The Denver Group, LLC, a North Carolina  
 limited liability company

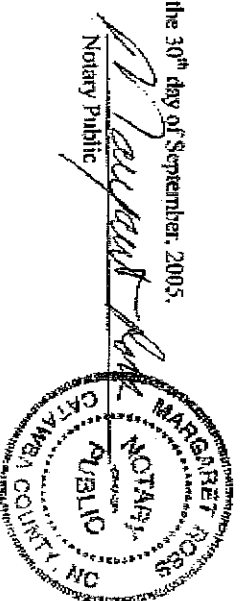
By: *[Signature]*  
~~President/Manager~~

NORTH CAROLINA,  
 LINCOLN County.

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Declarant A. Stage 11 personally appeared before me this day and acknowledged that he is the manager of THE DENVER GROUPT, LLC, a North Carolina Limited Liability Company and the foregoing instrument was signed in its name by its manager on behalf of the company.

WITNESS my hand and notarial seal, this the 30<sup>th</sup> day of September, 2005.

My Commission Expires: 7-22-2010



BOOK 1748 PAGE 384

SOSID: 798384  
Doc Filed: 8/18/2005 8:33:00 AM  
Elaine F. Marshall  
North Carolina Secretary of State  
C210622901239

## ARTICLES OF INCORPORATION

OF

TREETOPS AT COWANS FORD HOMEOWNERS ASSOCIATION, INC.

A Non-Profit Corporation

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act," and the several amendments thereto, and to that end does hereby set forth:

All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Treetops At Cowans Ford, together with all supplements or amendments thereto (the "Declaration"), which Declaration shall be recorded in the Office of the Register of Deeds for Lincoln County, North Carolina.

ARTICLE I  
NAME

The name of the corporation is TREETOPS AT COWANS FORD HOMEOWNERS ASSOCIATION INC. (the "Association").

ARTICLE II  
REGISTERED OFFICE AND REGISTERED AGENT

The physical address of the initial/principal registered office of the Association is 5970 Highway 150 East, Denver, North Carolina 28037, and the mailing address is PO Box 587, Denver, North Carolina 28037 and the name of the initial registered agent at such address is Douglas S. Howard. The county of the registered office is Catawba.

ARTICLE III  
PRINCIPAL OFFICE

The street address of the principal office of the Association is 5970 Highway 150 East, Denver, North Carolina 28037, and the mailing address is P. O. Box 587, Denver, North Carolina 28037.

ARTICLE IV  
PURPOSES AND POWERS

The Association does not contemplate pecuniary gain or profit to the members thereof and it is

EXHIBIT A

organized for nonprofit purposes. It is intended that this corporation qualify as a nonprofit organization under the provisions of Chapter 55A of the North Carolina General Statutes. No part of the net earnings of this corporation shall inure to the benefit of any private member or individual. The purposes and objectives of the Association are: (1) to own and maintain the Common Areas within the community known as Treetops at Covans Ford located in Lincoln County, North Carolina; (2) to provide for the architectural control within the Treetops community, and any additions thereto as may hereafter be brought within the jurisdiction of the Association; (3) to undertake the performance of the acts and duties incident to the administration of the operation and management of the Treetops community in accordance with the terms, provisions and conditions and authorization of the Treetops these Articles of Incorporation, the Bylaws of the Association and the Declaration (as hereinafter defined); and (4) to engage in any other lawful activity which a corporation organized under the North Carolina Nonprofit Corporation Act may now or hereafter be engaged.

The Association shall have the powers necessary to implement and effectuate the purposes of the Association, including, but not limited to, the following:

- (a) To exercise all of the powers and privileges and to perform all duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Treetops, to be recorded in the Lincoln County Public Registry, as the same may from time to time be amended as provided therein, said Declaration and any amendments thereto (hereinafter collectively referred to as the "Declaration") being incorporated herein as if set forth at length.
- (b) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration;
- (c) To pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (b) above, and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against property owned by the Association;
- (d) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association; provided, however, that all conveyances and transfers of Common Areas must be done in accordance with any applicable law and as provided in the Declaration;
- (e) To borrow money and mortgage, pledge, deed in trust, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred, subject to the property rights of the members as provided in the Declaration;
  - (f) To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any merger or consolidation shall have the consent of the members as provided in the Declaration;
  - (g) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted or imposed upon the Association by the Declaration, the Bylaws of the Association, and applicable laws; and

BOOK 1748 PAGE 386

(b) To have and to exercise any and all powers, rights, and privileges which a corporation organized under the North Carolina Nonprofit Corporation Act by law may now or hereinafter have to exercise, and all of the powers, rights and privileges which may be granted unto the Association under any other applicable laws in the State of North Carolina, including the applicable provisions of the North Carolina Planned Community Act, Chapter 47E, North Carolina General Statutes.

#### ARTICLE V MEMBERSHIP, VOTING RIGHTS AND ASSESSMENTS

The Association shall be a membership corporation without certificates or shares of stock. The authorized number and qualifications of members of the Association, the different classes of membership, if any, the property, voting rights and privileges of the members, the liability of members for assessments, and the method of collection thereof shall be as set forth in the Declaration and in the Bylaws of the Association.

#### ARTICLE VI BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors of not less than three (3) persons, who need not be members of the Association. The number, method of election, qualification, term of office, powers and authority, and duties of the directors, the time and place of their meetings, and such other provisions with respect to them as are not inconsistent with the provisions of these articles shall be as specified by the Bylaws and in the Declaration.

The names and addresses of the persons who are to act in the capacity of the initial Board of Directors until the selection of their successors are:

Name	Address
Dwight Sherrill	7916 Sherrill's Ford Road Sherrill's Ford, NC 28073
K. Dean Black	P. O. Box 457 Denver, NC 28037
Mitch Latham	16507-A Northcross Drive Huntersville, NC 28078

#### ARTICLE VII INDEMNIFICATION

To the fullest extent permitted by the North Carolina Nonprofit Corporation Act as it exists or

BOOK 1748 PAGE 387

may hereafter be amended, no person who is serving or who has served as a director of the Association shall be personally liable for monetary damages or breach of any duty as a director. No amendment or repeal of this article, nor the adoption of any other amendment to these Articles of Incorporation inconsistent with this article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal, or adoption.

#### ARTICLE VIII AMENDMENT

These Articles of Incorporation may be amended by a resolution duly adopted by the Board of Directors and the affirmative vote of members to which at least two-thirds (2/3) of the votes of the Association are allocated; provided, no amendment may be in conflict with the Declaration. Prior to the Turnover Date (as defined in the Declaration), any amendment to the Articles of Incorporation must have the written consent of the Declarant.


#### ARTICLE IX DISSOLUTION

The Association may be dissolved only upon a resolution duly adopted by the Board of Directors and the affirmative vote of members to which at least eighty percent (80%) of the votes in the Association are allocated and the written consent of the Declarant so long as the Declarant owns any portion of the Property (as defined in the Declaration). Upon dissolution of the Association, the Board of Directors shall, after paying and making provisions for the payment of all of the liabilities of the Association, distribute the assets of the Association (if any) in accordance with a plan of dissolution adopted pursuant to Article 14 of Chapter 55A of the General Statutes of North Carolina.

#### ARTICLE X INCORPORATOR

The incorporator of this Association is D. Todd Wulfborst, and his address is 3758 Highway 16 North, Denver, Lincoln County, North Carolina 28037.

2005. IN TESTIMONY WHEREOF, the undersigned has set his hand and seal this 16<sup>th</sup> day of August,

 (SEAL)  
D. Todd Wulfborst, Incorporator

BOOK 1748 PAGE 388

**BYLAWS OF  
TREETOPS AT COWANS FORD HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**DEFINITIONS**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for Treetops at Cowans Ford executed by The Denver Group, LLC, as Declarant therein, and recorded in the Office of the Register of Deeds for Lincoln County, North Carolina (as modified, amended or supplemented, from time to time, the "Declaration").

**ARTICLE 2**

**ADMINISTRATION OF PROJECT**

Section 2.1 **Power and Authority:** Except as otherwise specifically provided in the Project Documents, the Association shall have the following power and authority:

- A. To own, purchase, manage, maintain, repair and replace the Common Area or any other part of the Property for which the Association is responsible under the Project Documents, as well as any or all of the equipment or property of any type used in connection with the maintenance and preservation thereof.
- B. To make assessments against the Owners of Lots in the Project for payment of expenses incurred in accordance with the provisions of the Declaration or as otherwise permitted by law.
- C. To promulgate such rules and regulations with respect to the Project, and to perform such deeds and acts as are deemed necessary to achieve the aforesaid objectives, and to promote the recreation, health, safety and welfare of the Members of the Association, all in accordance with the provisions of the Declaration.
- D. To do or undertake any other lawful act or activity for which non-profit corporations may be organized under the North Carolina Nonprofit Corporation Act and to exercise all powers which may be granted unto the Association by applicable law, including, without limitation, those powers set forth in N.C.G.S. § 47F-3-102.

Section 2.2 **Official Action:** Unless specifically required in the Declaration or otherwise by law, all actions taken or to be taken by the Association shall be valid when such are approved by the Board as hereinafter set forth or when taken by the officer, committee, person or entity to whom such authority has been duly delegated by the Board as permitted in the Project Documents or as otherwise allowed by law. The Association, its Board, officers and Members shall at all times act in conformity with the North Carolina Nonprofit Corporation Act, and the Project Documents.

**ARTICLE 3**

**OFFICERS - FISCAL YEAR**

Section 3.1 **Principal Office and Registered Office:** The principal office of the Association shall be located at such place as the Board may fix from time to time. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

Bylaws-1

EXHIBIT B

Section 3.2 Other Offices: The Association may have other offices at such other places within the State of North Carolina as the Board may from time to time determine or as the affairs of the Association may require.

Section 3.3 Fiscal Year: The fiscal year of the Association shall be fixed by the Board.

#### ARTICLE 4

##### MEMBERSHIP

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of a Lot shall automatically be a Member of the Association. "Membership" means all Members as a group. Membership in the Association shall be appurtenant to and may not be separated from Lot ownership. The date of recordation in the Office of the Register of Deeds of Lincoln County of the deed conveying any Lot shall govern the date of ownership that Lot. However, in the case of death, the transfer of ownership shall occur on the date of death (in the case of intestacy), or on the date of probate of the will (in the case of testacy). Until a decedent's will is probated, the Association will rely upon the presumption that a deceased Owner died intestate.

As provided in the Declaration, there shall be two classes of Membership in the Association. The Declarant, so long as it owns any Class B Lots, shall be the Class B Member, and every other Owner of a Lot shall be a Class A Member.

Section 4.2 Place of Meetings: All meetings of the Membership shall be held at a place within Lincoln County, North Carolina, or at such other place, either within or without the State of North Carolina, as designated in the notice of the meeting.

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year as required by N.C.G.S. § 47F-3-108. The first Annual Meeting of the Association shall be held within twelve (12) months after the incorporation of the Association, at a date and time specified by the Board. Thereafter, the Annual Meeting of the Association shall be held on the second Wednesday in November of each year at 7:00 p.m., Eastern Standard Time, if not a legal holiday, but if a legal holiday, then at the same hour on the next day following which is not a legal holiday. At such meetings, the Board shall be elected in accordance with Article V of these Bylaws, and the Members shall transact such other business as may properly come before the meeting.

Section 4.4 Substitute Annual Meetings: If an Annual Meeting is not held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5 Special Meetings: After the first Annual Meeting of the Members, Special Meetings of the Members may be called at any time by the President, by Owners having ten percent (10%) of the votes of the Association, by a majority of the Board, or as permitted by N.C.G.S. § 47F-3-108. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meetings: Written or printed notice stating the time and place of a Membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than sixty (60) days before

Bylaws-2

**BOOK 1748 PAGE 390**

the date of any such Membership meeting, by or at the direction of the President or the Secretary, either by hand delivery or by mail, to the mailing address of each Lot or to any other mailing address designated in writing by an Owner. Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Lot shall be deemed notice to all Owners of the subject Lot. Notice of any Special Meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise expressly required in these Bylaws and subject to the provisions of N.C.G.S. § 47F-3-109(c), the presence in person or by proxy of Members entitled to cast ten percent (10%) of the votes which may be cast for election of the Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented as provided in N.C.G.S. § 47F-3-109(c). The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum in attendance.

Section 4.8 Voting Rights: The voting rights of Members in the Association shall be as set forth in the Declaration. If fee simple title to a Lot is owned by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Lot shall be cast as hereinafter provided.

If the fee simple title to any Lot is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Lot shall be cast as provided in N.C.G.S. § 47F-3-110(a). In no event may the vote which may cast with respect to any Lot be divided among joint Owners of the Lot or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no splitting of votes that may be cast by any Member or Members.

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of eleven (11) months from the date of its execution. In order to be effective, all proxies must be signed, dated and filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A Member may not revoke a proxy given pursuant to this Section 4.9 except by actual notice of revocation delivered to the person presiding over a meeting of the Association. Each and every proxy shall be revocable and automatically ceased upon conveyance of the applicable Member's Lot. The provisions of N.C.G.S. § 47F-3-110(b) shall apply to the vote cast for any one Lot by the holders of proxies given by its Owners.

Section 4.10 Majority Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is required by these Bylaws, the Declaration, the Articles of Incorporation of the Association, or by law.

Section 4.11 Actions By Written Ballot: Any action which may be taken at a meeting of the Membership may be taken without a meeting by written ballot as provided in N.C.G.S. § 55A-7-08.

**ARTICLE V****BOARD**

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Board or by such committees as the Board may establish pursuant to Article VI of these Bylaws. Provided,

Bylaws-3



however, the Board may not act on behalf of the Association to amend the Declaration, to terminate the planned community, to elect members of the Board, or to determine the qualifications, powers and duties, or terms of office of Board members. The Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Board shall consist of the three (3) individuals whose names are set forth in the Articles of Incorporation of the Association and who need not be Members. Until the Turnover Date, the Board shall consist of three (3) Directors, all of whom shall be appointed by the Class B Member. As required by N.C.G.S. § 47F-3-103(e), the Members shall elect five (5) Board members following the Turnover Date, each to serve until the next Annual Meeting (or until a successor is elected and qualified) and each of whom must be a Member. Thereafter the Board shall consist of not less than three (3) individuals nor more than seven (7) individuals as may be fixed or changed from time to time, within the minimum and maximum by the Board. Elections of Board Members shall be conducted so as to create staggered terms with three (3) classes of approximately equal size. Except as required to provide staggered terms as provided herein, each member shall serve a one (1) year term (or until a successor is elected and qualified). Board members may succeed themselves in office.

Section 5.3 Election of Board Members: Subject to the right of the Class B Member to appoint Directors as provided in Section 5.2, the election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4 Removal: Any Board member, other than a member appointed by the Class B Member, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present; provided, the notice of the meeting must state that the purpose, or one of the purposes, of the meeting is removal of the Board member. Board members appointed by the Class B Member may only be removed by the Class B Member. If any Board members are so removed, their successors as Board members may be elected by the Class B Member or the Membership at the same meeting to fill the unexpired terms of the Board members so removed as provided in Section 5.3.

Section 5.5 Vacancies: A vacancy occurring in the Board may be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; provided, however, a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As provided in Section 5.4, the Class B Member or the Membership shall have the first right to fill any vacancy created by the Class B Member or the Membership's removal of a Board member by electing a replacement at the meeting where the removal occurs.

Section 5.6 Chairman: A member of the Board shall be elected as Chairman of the Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Board, the President shall preside.

Section 5.7 Compensation: No Member of the Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from reasonably compensating a Board member for unusual and extraordinary services which are beyond services usually and customarily provided by Board members. Further provided, each

BOOK 1748 PAGE 392

Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon service as a Board member.

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers. The Board members who vote for or assent to the making of a loan to a Board member or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 5.9 Liability of Board Members: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Board member is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Board member. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10 Meetings of the Board:

A. Regular Meetings: Regular Meetings may be held, without notice, at such hour and address as may be fixed from time to time by the Board.

B. Special Meetings: Special Meetings shall be held when called by the Chairman of the Board, the President of the Association, or by a majority of the Board members upon written notice sent to each Board member by any usual means of communication not less than five (5) days before the meeting.

C. Waiver of Notice: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

D. Meeting Place: The Board may hold Regular or Special Meetings in or out of the State of North Carolina.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members as permitted by N.C.G.S. § 55A-8-21. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association

immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

Section 5.13 Powers of the Board: The Board shall have the authority to exercise all powers of the Association necessary for the administration of the affairs of the Project except such powers and duties as by law or by the Project Documents may not be delegated by the Members to the Board. The powers that may be exercised by the Board shall include, but shall not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the Common Area, to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;
- B. Determination of the funds required for operation, administration, maintenance and other affairs of the Project and collection of the assessments from the Owners, as provided in the Project Documents;
- C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Area;
- D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Area;
- E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;
- G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits and/or reviews of financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices;
- H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by written ballot or by consent without meeting;
- I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;
- J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of the Declaration and the procedures set forth in N.C.G.S. §47F-3-116, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines for violations of the Declaration, Bylaws and rules and regulations of the Association;
- K. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

BOOK 1748 PAGE 394

- L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing the Property, including use of the Common Area;
- M. Paying all taxes and assessments which are or may become liens against any part of the Common Area, and to assess the same against the Owners in the manner herein provided;
- N. Hiring attorneys and other professionals;
- O. Maintaining and repairing any Lot or Improvement, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Board to protect the Common Area or any other Lot or Improvement or if the Owner of such Lot has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner. Allocation of costs incurred shall be as provided in N.C.G.S. § 47F-3-107 and §47F-3-115;
- P. Entering any Improvement when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours and with notice to the Owner when practicable. Any damage caused thereby shall be repaired by the Board and such expenses shall be treated as an expense of the Association;
- Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the President, any Vice President, the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;
- R. Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Lot to the Owner or Mortgagee of such Lot, or a proposed purchaser or Mortgagee of such Lot, and imposing and collecting reasonable charges therefor;
- S. Exercising any other powers allowed or provided in the Declaration, the Articles of Incorporation, these Bylaws or otherwise by law, including, without limitation, Chapter 47F of the North Carolina General Statutes
- T. To grant all necessary easements and rights-of-way upon, over, and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- U. To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association; and
- V. To employ or retain the services of architects or other qualified persons to serve on or advise the Architectural Control Committee and/or the Architectural Changes Committee.

Bylaws-7

BOOK 1748 PAGE 395

Section 5.14 Independent Manager: The Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association. The Board may delegate to such person, firm or entity (referred to in these Bylaws as Independent Manager(s)) such duties and responsibilities in the management of the Property as the Board deems appropriate. Provided, the Board may not delegate to the Independent Manager responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina. The Independent Manager's contract shall be for a term not to exceed three (3) years, and shall be terminable as provided in Section 4.6 of the Declaration. The Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Board and subject to its direction. Should the Association enter into a management agreement for the Property as permitted herein, the Independent Manager shall obtain and at all times maintain Fidelity Insurance as provided in Section 7.1(c) of the Declaration.

#### ARTICLE VI

##### COMMITTEES

Section 6.1 Creation: The Board may create such committees as they deem necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Project as permitted under N.C.G.S. § 55A-8-25.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Board.

Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

Section 6.4 Minutes: Each committee shall keep regular minutes of its proceedings, report and file the same to the Board when required.

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility or liability imposed upon it or him by law.

Section 6.6 Architectural Control Committee: Notwithstanding anything in this Article VI to the contrary, the Architectural Control Committee shall be created, appointed and governed as provided in the Declaration.

#### ARTICLE VII

##### OFFICERS

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board may from time to time appoint. Except for the President, no officer need be a member of the Board.

Section 7.2 Appointment and Term: The officers of the Association shall be appointed annually by the Board at the first meeting of the Board next following the Annual or Substitute Annual Meeting of

Bylaws-8

BOOK 1748 PAGE 396

the Members and shall serve for the terms of one year. Each officer shall hold office until his death, resignation, removal or until his successor is appointed.

Section 7.3 Removal: Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 Vacancy: A vacancy in any office may be filled by the appointment by the Board of a successor to such office. Such appointment may take place at any meeting of the Board. The officer appointed to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of the Chairman, he shall also preside at all meetings of the Board. He shall see that the orders and resolutions of the Board are carried out; he shall sign all written agreements or instruments on behalf of the Association and execute all promissory notes of the Association, if any, with the Treasurer authorized by Resolution of the Association; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the North Carolina Nonprofit Corporation Act in connection with the supervision, control and management of the Association in accordance with the Project Documents.

Section 7.7 Vice Presidents: The Vice Presidents in the order of their appointment, unless otherwise determined by the Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 7.9 Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall execute promissory notes of the Association together with the \_\_\_\_\_ authorized by Resolution of the Association; he shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 7.10 Assistant Secretaries and Assistant Treasurers: The Assistant Secretaries and Assistant Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board.

Section 7.11 Compensation: Officers shall not be compensated for the usual and ordinary services rendered to the Association incident to the offices they hold. The Board may, however, reasonably compensate any officer or officers who render unusual and extraordinary services to the Association beyond those usually and customarily expected of persons serving as officers. Each officer, by assuming office,

BOOK 1748 PAGE 397

waives his right to institute suit against or make claim upon the Association for compensation based upon services usually or customarily rendered by persons occupying the office each holds.

Section 7.12 Indemnification: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 7.13 Amendment Authority: Amendments to the Declaration may be prepared, executed, certified and recorded by the President, the Secretary, the Treasurer or any Vice President of the Association.

#### ARTICLE VIII

##### AMENDMENTS

Section 8.1 Amendments by Board: Subject to Section 8.2 and the last sentence of this Section 8.1, these Bylaws may be amended by the Board as provided in N.C.G.S. § 55A-10-20. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly adopted as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Project Documents, without the consent of Declarant.

Section 8.2 Amendments by Declarant: Declarant, for so long as it is a Class B Member of the Association, shall have the right to amend these Bylaws for the purposes set forth in Section 12.2 and Section 12.3 of the Declaration, without the consent or approval of the Board.

Section 8.3 Agency Approval: So long as Declarant is a Class B Member, any amendment of these Bylaws, except as expressly provided in Section 8.2 above, shall require the prior written approval of any Agency then holding or insuring any Mortgage.

#### ARTICLE IX

##### MISCELLANEOUS

Section 9.1 Severability: Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 9.2 Successors Bound: The rights, privileges, duties and responsibilities set forth in the Project Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

Section 9.3 Gender, Singular, Plural: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 9.4 Nonprofit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Board, or any

Bylaws-10

BOOK 1748 PAGE 398

other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Declaration, the Articles of Incorporation of the Association and these Bylaws.

Section 9.5 Books and Records: The books and records of the Association shall be kept as required by N.C.G.S. § 47F-3-118(e) and shall be available for inspection as provided in Article 16 of Chapter 55A of the North Carolina General Statutes.

IN WITNESS WHEREOF, these Bylaws have been duly adopted by the incorporator as provided in N.C.G.S. § 55A-2-06 this the 30<sup>th</sup> day of September, 2005.

  
D. Todd Wulfforst, Incorporator

Bylaws-11



017593

DENISE JOHNSON  
BOOK 1868 PAGE

821

FILED

DATE 11/2/2006

TIME: 3:26 PM

BOOK 1868

PAGE 821

ELAINE N. HARMON  
REGISTER OF DEEDS  
LINCOLN COUNTY, NC

b71

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN  
Prepared by: Kennedy & Wulforst, Denver NC

DECLARATION OF RESTRICTIONS  
TREETOPS AT COWANS FORD

PHASE II

PLAT BOOK 14, PAGES 71, 72, 73 & 74

KNOW ALL MEN BY THESE PRESENTS, that THE DENVER GROUP, LLC, a North Carolina Limited Liability Company with its principal office and place of business in Denver, Lincoln County, North Carolina, does hereby covenant and agree to and with all persons, firms and corporations hereafter acquiring any of the property hereinafter described, as follows:

WITNESSETH THAT:

WHEREAS, the undersigned is the sole owner of a subdivided tract of land known as Treetops at Cowans Ford, Phase II located in Lincoln County North Carolina as shown by a plat thereof recorded in Plat Book 14 at Pages 71, 72, 73 & 74 in the office of the Register of Deeds for Lincoln County, North Carolina; and

WHEREAS, Lots 76 through 139, Phase II are so situated as to compromise a neighborhood unit of the aforesaid subdivision known as Treetops at Cowans Ford; and

WHEREAS, The Denver Group LLC has heretofore placed and imposed upon all the lots in the Treetops at Cowans Ford Subdivision certain restrictions set forth in Declaration of Restrictions, Treetops at Cowans Ford, recorded Book 1748 Page 351 Lincoln County Public Registry; and

WHEREAS, The Denver Group, LLC, desires to insure the continued development of the Treetops at Cowans Ford Subdivision with a general plan of development for the mutual benefit of lot owners in Treetops at Cowans Ford , Phase II.

NOW, THEREFORE, in consideration of the premises and for the purposes aforesaid, The Denver Group LLC for itself, its successors and assigns and its future Grantees and Lessees, does hereby declare that all of the lots in Treetops at Cowans Ford , Phase II Plat Book 14 Pages 71, 72, 73 & 74, Lincoln County Public Registry, shall be held, sold and

BOOK 1868 PAGE 822

conveyed subject to restrictions set out in that certain declaration of Restrictions Tree Tops at Cowans Ford, recorded in Book 1748 Page 351 Lincoln County Registry, which are incorporated herein by reference.

IN WITNESS WHEREOF, The Denver Group, LLC has caused this instrument to be signed by its duly authorized manager this the \_\_\_\_ day of October 2006.

THE DENVER GROUP LLC

BY: *Dwight A. Sherrill*  
Dwight A. Sherrill, Manager

COUNTY OF LINCOLN

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Dwight A. Sherrill, personally appeared before me this day and acknowledged that he is the manager of The Denver Group LLC, a North Carolina Limited Liability Company and the foregoing instrument was signed in its name by its manager on behalf of the company.

Witness my hand and official seal this the 31 day of October, 2006

*Margaret Ross*  
Notary Public

My commission expires: 7-22-2010

