



The Ridges
at
Mountain Harbour

THIRD AMENDED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FEBRUARY 2005

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**THIRD AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE RIDGES AT MOUNTAIN HARBOUR**

STATE OF NORTH CAROLINA
COUNTY OF CLAY

THIS THIRD AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RIDGES AT MOUNTAIN HARBOUR, is made this ____ day of _____ 2005, by National Investments, LLC, a North Carolina limited liability company hereinafter referred to as "Declarant" and joined by the Mountain Harbour Property Owner's Association, Inc., a North Carolina nonprofit corporation hereinafter referred to as "Association".

RECITALS:

WHEREAS, on June 18, 1990, Leisy Development, Inc., a Virginia corporation authorized to do business in North Carolina ("Leisy") filed that certain Land Use Covenants, Conditions and Restrictions Creation and Functions of the Mountain Harbour Property Owner's Association, Inc. recorded in Official Records Book 150, Page 80, et. seq. of the Public Records of Clay County, North Carolina, as amended by the Amended Declaration on December 31, 1993 recorded in Official Records Book 173, Page 238 (collectively referred to herein as the "Declaration"); and WHEREAS, an Amendment to Land Use Covenants and Recombination of Lots Applicable to Lot 65A and Lot 66A, Mountain Harbour Golf and Yacht Club was made on March 12, 1997 and recorded in the Official Records Book 199, Page 125 and another amendment was made on December 31, 1993 and recorded in the Official Records Book 173, Page 239 (the "Land Use Amendments").

WHEREAS, Leisy conveyed all of its Declarant's rights under the Declaration to National Investments, LLC, a North Carolina limited liability company as developer of The Ridges at Mountain Harbour residential community, formerly known as Mountain Harbour Golf and Yacht Club (the "Community"); and

WHEREAS, pursuant to Section 11-4 of the Declaration, the Declaration may be amended by the affirmative vote of fifty-one percent (51%) of a quorum of the total Class "A" and Class "B" votes of the Association; provided any amendment that may impair any right reserved by the Declarant or may create or increase the liability of the Declarant must expressly be approved in writing by the Declarant; and

WHEREAS, the Declarant is developing The Ridges Country Club (the "Club") within the Community as a membership club pursuant to The Ridges Country Club Summary of

Membership Program, Membership Plan, Frequently Asked Questions, Rules and Regulations and Membership Agreements (collectively the "Club Plan Documents"); and

WHEREAS, the value of the residential property within the Community and the lifestyle of the residents within the Community is influenced by the positive operation and maintenance of the amenities and recreational facilities of the Club; and

WHEREAS, the Declarant proposed to amend the Declaration to provide for the Club as an integral part of the Community, to establish a reasonable procedure to govern Owners with respect to the Club, and to promote the efficient operation of the Association and the Community, however, amendment of the Land Use Amendments is not required for this purpose; and

WHEREAS, a Mail Referendum was initiated by Declarant for the purpose of considering amendment of the Declaration; and

WHEREAS, in such Mail Referendum ninety-three percent (93%) of the quorum of total Class "A" and Class "B" votes were voted FOR amending the Declaration by adopting these Third Amended Declaration of Covenants, Conditions and Restrictions for The Ridges at Mountain Harbour (the "Covenants") as provided herein below; and

WHEREAS, Declarant has consented to the Covenants as evidenced by its execution of the Covenants below; and

NOW, THEREFORE, the Declaration is hereby replaced by these Covenants by striking it in its entirety and substituting in its place these Covenants, however, the Land Use Amendments remain unchanged.

STATEMENT OF DECLARATION

The Property (defined herein) shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, reservations, assessments and other provisions set forth in these Covenants, which shall run with the Property, shall bind all parties having any right, title, or interest in any part of the Property, their successors and assigns, and shall inure to the benefit of each Owner (as defined herein) thereof and which shall read as follows:

ARTICLE I: PROPERTY DESCRIPTION

Section 1: PROPERTY DESCRIPTION

Section 1-1: THE PROPERTY

The "Property" shall mean and refer to the real property legally described on Exhibit A attached hereto. The Property shall also include the lands described in Section 1-2 to the extent that such lands are subjected to these Covenants. Any supplemental or amended covenants may contain such additions and or modification in the Covenants as may be necessary in the

sole judgment of Declarant, to reflect the different character, if any, of the additional properties as are inconsistent with these Covenants.

Section 1-2: ADDITIONS TO THE PROPERTY

The Declarant may subject to these Covenants: any other parcels of land, by effecting Recorded supplemental or amended covenants executed by Declarant and the owners of such additional parcels.

ARTICLE II: DEFINITIONS

Section 2: DEFINITIONS

Section 2-1: THE DEFINITIONS

The following words and terms when used in these Covenants or any supplemental covenants (unless the context shall clearly indicate otherwise), shall have the following meanings and where applicable shall be considered as restrictions on the use of land where required to give meaning to the land use restrictions of the various Sections and Articles of these Covenants.

Section 2-2: APPROVED OR APPROVAL BY THE ASSOCIATION

"Approved" or "Approval by the Association" shall mean and refer to any approval required under these Covenants to be made by the Association. Any Approval by the Association shall be provided in writing signed by the President (or in the case of architectural review pursuant to Section 10-24, by the Chairman of the Architectural Review Board) and Secretary of the Association, and shall be maintained in the Association's records.

Section 2-3: APPROVED OR APPROVAL BY THE DECLARANT

"Approved" or "Approval by the Declarant" shall mean and refer to a written approval issued by the Declarant, designated members of entities entitled to issue Approvals for the Declarant as may be designated by the Declarant in any supplemental covenants.

Section 2-4: ASSOCIATION

"Association" shall mean and refer to the Mountain Harbour Property Owner's Association, Inc., a nonprofit corporation organized under the laws of North Carolina, which may be renamed "The Ridges at Mountain Harbour Community Association", has a membership as provided in Article XI of these Covenants, and which serves the Functions pertaining to the Property as provided in Article X of these Covenants.

Section 2-5: CLUB

"Club" shall mean and refer to Mountain Harbour Golf LLC or one of its successors, assigns, or affiliates, doing business as The Ridges Country Club, which shall own and operate the Club Property.

Section 2-6: CLUB PLAN DOCUMENTS

"Club Plan Documents" shall mean and refer to The Ridges Country Club Summary of Membership Program, Membership Plan, Rules and Regulations, Frequently Asked Questions and Membership Agreements for the Club.

Section 2-7: CLUB PROPERTY

"Club Property" shall mean all of the real and personal property owned by the Club or its successors or assigns plus all of the recreational and social facilities constructed thereon, which will be operated by the Club and commonly known as The Ridges Country Club including without limitation, the golf course, golf practice facilities, recreation center, swim complex, tennis facilities and the clubhouse. **THE CLUB PROPERTY IS NOT COMMON PROPERTIES.**

Section 2-8: COMMON PROPERTIES

"Common Properties" shall mean and refer to those areas of land or estates in land and any improvements and fixtures thereon which are owned by the Association, deeded or leased to the Association by the Declarant, or deeded or leased to the Association by any other grantor, and which are designated in said Recorded deed or lease as "Common Properties," or are so designated by a Recorded instrument after acquisition by the Association. "Common Properties" shall also include Purchased Common Properties defined in Section 2-33. Common Properties shall also include Neighborhood Common Properties established pursuant to Section 10-34.4. Common Properties shall not include the Club Property. Common Properties shall also include any personal property acquired by the Association if said property is designated as "Common Property."

Section 2-9: COMMUNITY

"Community" shall mean the master planned residential community known as The Ridges at Mountain Harbour, formerly known as The Mountain Harbour Golf & Yacht Club.

Section 2-10: CONCEPT RESEARCH PLANS AND MASTER PLANS

"Concept Research Plans" and "Master Plans" shall mean and refer to master plans, general land use maps, advertising brochures, scale models, designs and drawings, commissioned by the Declarant prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists, and similar professionals displaying possible future uses of the Property that were prepared as an aid to orderly development of the Property as part of its communications with the public and property purchasers or as part of its research

programs undertaken by the Declarant to determine economically optimal environmentally sensitive programs for future developments of the Property.

Section 2-11: COVENANTS

"Covenants" shall mean and refer to this document, as the same may be amended or supplemented from time to time.

Section 2-12: DECLARANT

"Declarant" shall mean and refer to National Investments, LLC, a North Carolina limited liability company, and the successors and assigns of the Declarant as a legal entity.

Section 2-13: DEVELOPMENT OR SURVEY PLATS

"Development or Survey Plats" (as distinguished from "Concept Research Plans" and "Master Plans") shall mean and refer to the Recorded Plats of property prepared and signed by a registered land surveyor describing by metes and bounds sections or portions of the Property for purposes as specified of either describing conveyances or leases to third parties.

Section 2-14: DEVELOPMENT UNIT PARCELS

"Development Unit Parcels" shall mean and refer to a parcel of land which has been conveyed to a developer other than Declarant and which is subject to limitations established by Declarant (as to what Land Uses the property may be used for, and the number of Dwelling Lots, Dwelling Units, Professional Service Units, Retail Units or Restaurant Units which may be established upon the subject parcel).

Section 2-15: DWELLING LOT

"Dwelling Lot" shall mean and refer to any parcel of land located within the Property which is designated for use as a site for one (1) detached residential dwelling unit, one (1) townhouse or one (1) attached Dwelling Unit.

Section 2-16: DWELLING UNIT

"Dwelling Unit" shall mean and refer to any improved property which is used as a Single Private Household and Residential dwelling, whether attached or unattached, including any single family detached dwelling, patio home, condominium unit or townhouse unit located within Land Use Classes R-1, R-1A, R-2 and R-3.

Section 2-17: FUNCTION

"Function" shall mean and refer to these rights, duties and obligations set forth in these Covenants which shall or may be performed by the Association, and in particular those obligations and duties set out in Article X of these Covenants.

Section 2-18: GUEST

"Guest" shall mean and refer to any customer, agent, guest or invitee of the Declarant, the Association or any Property Owner or Lessee.

Section 2-19: IMPROVED PROPERTY

"Improved Property" shall mean land which has been improved by construction of buildings and other Structures to make the property suitable for human lodging, commerce, education and recreation as permitted pursuant to these Covenants.

Section 2-20: LAND USE CLASS

"Land Use Class" shall mean and refer to the designated use for any lands or improvements within the Property which is in conformity with a use classification established in Section 3-1 of these Covenants.

Section 2-21: LESSEE

"Lessee" shall mean and refer to the person or persons, entity or entities, who are the Lessees, assigns of a Lessee, or Sublessee of a Lessee under any ground lease or any lease of any part or all of a Restaurant Unit, Retail Unit, Dwelling Unit, Dwelling Lot, Development Parcel or any other property owned by a Property Owner within the Property.

Section 2-22: MAIL REFERENDUM

"Mail Referendum" shall mean and refer to the power of all Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth in Section 11-4.

Section 2-23: MEMBER

"Member" shall mean and refer to the Declarant and all those Property Owners who are members of the Association as provided in Article XI hereof.

Section 2-24: NEIGHBORHOOD

"Neighborhood" shall mean and refer to any grouping of Dwelling Lots which are designated as a Neighborhood by Declarant on the Master Plans or in supplemental covenants in which the Property Owners thereof may have common interests other than those common to all Property Owners, such as a common theme, entrance feature or facilities which are not available for use by all Property Owners.

Section 2-25: NEIGHBORHOOD ASSOCIATION

"Neighborhood Association" shall be any association, committee or other entity, its successors and assigns, which shall be responsible for administering any Neighborhood. A

Neighborhood may, but shall not be required to have a Neighborhood Association unless it contains Dwelling Units subject to the condominium form of ownership.

Section 2-26: NEIGHBORHOOD COMMON PROPERTY

"Neighborhood Common Property" shall mean and refer to the Structures, facilities, or lands which are owned by a sub-grouping of Property Owners, such as those in a given Neighborhood, and which are not owned by the Association (as in the case of Common Properties) . Neighborhood Common Properties may be owned by a Neighborhood Association.

Section 2-27: NON-ASSESSABLE LAND AND WATER

"Non-Assessable Land and Water" shall mean and refer to all Common Properties, Project Open Space and lands within the Property which are primarily used for the following governmental, charitable or nonprofit uses the presence of which benefits the Property as a whole public libraries, any buildings and lands which are owned by local, state and federal governments and which are used for governmental as opposed to proprietary functions, police stations, fire stations and emergency medical care facilities, and other non profit schools, educational and instructional centers.

Section 2-28: OPEN SPACE

"Open Space" shall be designated as either Project Open Space or Private Open Space and shall mean and refer to those parcels of land which are dedicated pursuant to section 5-1 of these Covenants by Recorded declaration of the Declarant as land for such purposes, which pursuant to these Covenants, cannot be developed or improved or altered except as provided in Article V and any other relevant Sections of these Covenants.

Section 2-29: PERTINENT LAWS

"Pertinent Laws" shall mean and refer to the statutes, ordinances, regulations and other laws pertinent to the ownership, lease, sale, use, improvement and development of the Property, as are codified or promulgated by the State of North Carolina, the County of Clay, North Carolina, the Government of the United States of America and other governmental authorities having jurisdiction over the Property.

Section 2-30: PROFESSIONAL SERVICE UNIT

"Professional Service Unit" shall mean and refer to any unit of real property within the Property, under a single ownership, whether such ownership is proprietorship, corporation, joint tenancy, tenancy in common, tenancy by the entirety, or partnership in form, which Unit is improved and utilized primarily for the purpose of rendering "professional," as opposed to either Trade-Oriented Services within Land Class U-1. Professional Service Units, which units shall include but are not limited to those utilized for business; offices; architectural and design offices; accounting services; general consulting, managerial or real estate brokerage and sales and other professional services; medical offices; legal service offices; insurance sales offices; and governmental offices; provided, however, that no real property and improvements thereon

operated by a single business entity used for providing electronic, plumbing, mechanical, building construction, ceramic firing or repair service can be a "Professional Service Unit."

Section 2-31: PROPERTY

"Property" shall mean and refer to the approximately 123.57 acres of land legally described in Exhibit A attached hereto together with any additions to the property which are made subject to these Covenants pursuant to Sections 1-2.

Section 2-32: PROPERTY OWNER

"Property Owner" shall mean and refer to the owner, except the Declarant (other than as provided), of any real estate within the Property as shown by the real estate records of the Register of Deeds. "Property Owners" shall in all cases also include the successors, heirs, assigns, personal representatives, receivers and trustees of the Property Owner with respect to real estate within the Property. "Property Owners" may be used to describe any persons, firms, proprietresses, associations, corporations or other legal entities owning a fee simple title to any: Dwelling Lot, Dwelling Unit; Professional Service Unit; Retail Unit; Utility, Transportation or Maintenance Unit; Recreational Unit; or other Undesignated Lands situated upon the Property but, notwithstanding any applicable theory of a mortgage or trust, shall not mean or refer to the mortgagee (even if viewed by State law as holding legal title), trustee under a deed of trust, or holder of a security interest, unless and until such mortgage holder or holder of a security deed has acquired both legal and equitable title pursuant to a foreclosure proceeding or deed in lieu of foreclosure; nor shall the term "Property Owner" mean or refer to any Lessee or tenant of a Property Owner. In the event that there is a Recorded long term contract of sale, nominal option to purchase, bond for title, long-term lease with option to purchase, or any similar recorded devise for ultimate conveyance of beneficial interest, covering any Dwelling Lot, Dwelling Unit, building, or parcel of land within the Property, the Property Owner of such property shall be the purchaser under said contract and not the legal title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond twelve (12) months from the date of the contract, and where the purchaser does not receive legal title to the property until such payments are made, although the purchaser is given the use of said property.

Section 2-33: PURCHASED COMMON PROPERTIES

"Purchased Common Properties" shall mean and refer to those Common Properties which the Members of the Association choose to purchase by Mail Referendum.

Section 2-34: RECORDED

"Recorded" shall mean and refer to filing, in conformity with all legal formalities under North Carolina law, for the filing of a real property interest with the Register of Deeds of Clay County, North Carolina.

Section 2-35: RECREATION UNIT

"Recreation Unit" shall mean and refer to any Unit of real property within the Property which is not within a Condominium comprised of Dwelling Units, and which is improved, used and operated as a separate for-profit or not-for-profit sports, athletic or health club facility, whether indoor or outdoor, including but not limited to those used for racquet sports, swimming pools, pro shops, golf, tennis, saunas, spas, gymnasium facilities, skating areas, day care facilities or large recreation centers.

Section 2-36: REGISTER OF DEEDS OR REGISTRY

"Register of Deeds" or "Registry" shall mean and refer to the Register of Deeds of Clay County, North Carolina and to any successors of said office, which is responsible for maintaining formal filing and recording of all conveyances including deeds, covenants, mortgages, plats and other evidences of real property interests.

Section 2-37: RESIDENTIAL

"Residential" shall mean and refer to those purposes which are defined in Section 6-1(c) of these Covenants.

Section 2-38: RESTAURANT UNIT

"Restaurant Unit" shall mean and refer to any unit or real estate, other than one located within the club house in Land Class D-1, which is used as a public bar, dining room, soda shop, restaurant, eatery, café, night club, delicatessen or other public place or club for eating or drinking, which is operated or intended to be operated as a for-profit business enterprise.

Section 2-39: RETAIL UNIT

"Retail Unit" shall mean and refer to any unit of real property within the Property which is improved and utilized primarily for the purpose of sale of goods other than prepared food and beverages to ultimate consumers, usually in small quantities (as opposed to in wholesale quantities).

Section 2-40: SHALL

"Shall" whether or not capitalized, indicates a mandatory requirement, condition or obligation in contrast, the term "May," whether or not capitalized, indicates a right to take permitted action without obligation or duty to take such action.

Section 2-41: SINGLE PRIVATE HOUSEHOLD

"Single Private Household" purposes shall mean and refer to those purposes which are further defined in Section 6-1(b) of these Covenants.

Section 2-42: STRUCTURE

"Structure" shall mean and refer to any construction, object, projection or piece of work artificially built up or composed of parts joined together in some definite manner, which is erected or shaped on the Property, including but not limited to buildings, docks, fences, bulkheads, tennis courts, pavilions, signs, tents, gazebos, decks, bird baths, bird houses, tree houses, garage facilities, garbage receptacles, abutments, ornamental projections, exterior fixtures, beams, shaped earth, masonry structures, outdoor hot tubs and Jacuzzis, large balloons, dirigibles and blimps attached to the Property or suspended so as to remain over the Property for greater than a forty-eight (48) hour period, together with any other lights or any device which might obstruct or interfere with the quality of a view from the windows of any improvements which have been made to the Property.

Section 2-43: TRADE ORIENTED SERVICES

"Trade Oriented Services" shall mean and refer to installation, repair and maintenance services in the nature of air-conditioning, heating, plumbing, solar equipment, mechanical systems, electrical systems, appliances and equipment, motor vehicles, marine vessels, building construction and pest control and related services, except where such Trade-Oriented Services are used in the manufacture of goods or are prohibited by Section 4-10 of these Covenants.

Section 2-44: UNIT

"Unit" shall be a separate taxable unit of real property.

Section 2-45: UNDESIGNATED LANDS

"Undesignated Lands" shall mean and refer to any land within the Property for which the Declarant has not specified a given Land Use Class in a Recorded instrument, and shall also mean any land which was given a specified Land Use Class for a limited period of time which as since lapsed.

Section 2-46: UTILITY, TRANSPORTATION AND MAINTENANCE UNITS

"Utility, Transportation and Maintenance Units" shall mean and refer to any real property within the Property, which is owned by a single entity, whether corporation, trust, partnership or proprietorship, and which is designated in deed of conveyance from the Declarant.

ARTICLE III: CLASSIFICATIONS OF PERMITTED LAND USES

Section 3: CLASSIFICATIONS OF PERMITTED LAND USES

Section 3-1: LAND USE CLASSIFICATION

One or more of the following Land Use Classes to which the parcel is exclusively restricted shall be designated by Recorded covenant, or by inclusion of references in the initial instrument of conveyance for each unit of land or improvements within the Property. Such covenants or initial instrument of conveyance may make such dedication by reference to a Recorded plat. Such designation of land use class shall extend for the duration of these Covenants including any renewals unless the Declarant has specified a shorter period of time in its instrument of conveyance or recordation. Upon the expiration of such shorter period, these Covenants shall still apply to the land subjected to the expired designation except for those sections which relate only to the Land Use Class designation which lapsed. Upon the termination of such shorter period, the Declarant shall have the right to designate a new Land Use Class for the subject property.

These classifications shall also be used in all Development or Survey Plats, and may be used in Concept Research Plans and Master Plans pertaining to the Property.

The designation of land, in a deed of conveyance, as Open Space does not make such land a Common Property. Property Owners have no rights in lands designated as Open Space except to the extent that an express easement has been reserved or dedicated for the benefit of Property Owners or the Association, the Open Space is designated as Project Open Space, or the property itself transferred to the Association. It is possible for an individual Property Owner to designate land it owns as Project Open Space.

Land which is within the Property but which has not been designated as subject to a given Land Use Class, and land which has been previously designated for a given land use for a limited period which has expired, is "Undesignated Land."

Declarant may also assign a Development Unit Parcel to another developer, and in the instrument of conveyance Declarant shall specify the Land Use Class or Classes to which the property is subjected as well as the number and size of Dwelling Lots, Dwelling Units, Retail Units, Restaurant Units, Professional Service Units, and Trade Oriented Service Units which may be established upon the Development Unit Parcel.

The Land Use Classes within the Property shall be as follows:

A. OPEN SPACE: (Hereinafter termed "Land Class OS")

OS-1: General Open Space. Used for general open space including stream beds, gardens, picnic areas, nature trails, footbridges, observation stands, fields and woods.

OS-2: Ponds. Used for ponds.

OS-3: Roads. Used for roads.

OS-4: Roadside Scenic Corridors. Used for roadside scenic corridors or easements, including grassy greenswards, stands of trees, shrubbery, berms, and other natural or man made landscaping features which make traversing the adjacent roads a pleasant aesthetic experience.

B. SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL DWELLING UNITS:
(Hereinafter termed "Land Class R')

R-1: Detached Dwelling Units. Used for Single Private Household and Residential purposes with a maximum of one (1) Dwelling Unit located upon each Dwelling Lot.

R-1A: Detached Dwelling Units. Used for Single Private Household and Residential purposes with a maximum of one (1) Dwelling Unit located on each Dwelling Lot, which Dwelling Unit may have one or more zero lot lines (i.e. a common property line with no set back requirement) with any Dwelling Unit located upon any adjoining Dwelling Lot within a Class R-1A Area.

R-2: Townhouse or Cluster Home Dwelling Units. Used for Single Private Household and Residential purposes with two or more Dwelling Units located upon a Dwelling Lot, which Dwelling Units may share the use of common walls, common walkways and common parking areas, or zero lot line (i.e., a common property line with no set back requirement) with any other Dwelling Unit within a Class R-2 Area.

R-3: Structures with Two (2) or More Dwelling Units. Used for structures which include two (2) or more attached Dwelling Units located upon a Dwelling Lot, which are condominium units which are used for Single Private Household and Residential purposes.

C. COMMERCIAL: (Hereinafter termed "Land Class C")

C-1: General Store, Reception Center, or Small Village Center. Used for general store, reception center, or small village center which contains Retail Units, Restaurant Units and Professional Service Units.

D. RECREATIONAL: (Hereinafter termed "Land Class D")

D-1: Clubhouse. Used for clubhouses, including associated food and beverage facilities, game rooms, meeting rooms, swimming pools, ice rinks, exercise rooms, laundry facilities, real estate sales and marketing offices, golf pro-shop, locker rooms, golf cart storage, golf bag storage, administrative offices, associated parking, and maintenance facilities.

D-2: Outdoor Recreation Facilities. Used for outdoor recreation facilities and grounds including, but not limited to, those of following general nature: tennis, racquetball, squash, handball, shuffleboard, and other similar courts; swimming pools; picnic and game tables; water parks; ice skating rinks; music gardens; and basketball courts.

D-3: Used for golf course, pro shop, golf course maintenance facilities, golf cart pathways and golf cart maintenance facilities, outdoor snack shop and restroom facilities along fairways, irrigation, pumping stations and reservoirs.

*NOTE: The land and facilities identified in Land Classes D-1, D-2, and D-3 shall become Club Property.

E. UTILITY, TRANSPORTATION AND SERVICE AREAS: (Hereinafter termed "Land Class U")

U-1: Ground and Maintenance Centers. Used for Trade Oriented Services, grounds and maintenance centers, utility service and support installation including but not limited to telephone facilities and communications equipment, cable television facilities, satellite earth stations, cellular radio facilities, microwave and light communications stations, off-course golf maintenance facilities, and similar maintenance, repair, communications, security and utility areas.

U-2: Water Tanks, Wells and Solid Waste Collection. Used for Solid and liquid waste collection, pumping, treatment, disposal and storage areas, water tanks, and other similar utility, waste control and resource recover facilities, pumping stations and wells.

U-3: Transportation. Used for taxi, bus, tramway or other transportation stands.

U-4: Utility Corridors. Used for utility corridors including overhead or underground power lines, telephone lines, water and sewage lines, natural gas pipelines, cable television conduits, and similar utility, communications and public works conduits and infrastructure.

U-5: Helicopter Pads. Used for helicopter pads.

*NOTE: The land and facilities identified in Land Classes U-1, U-2, U-3, U-4 and U-5 shall be retained by Declarant.

Special Covenants within Articles V, VI, VII, and VIII shall apply to sub-classes (e.g. Land Class R-1, R-1A, R-2, etc. within a general Land Use Class (e.g. Land Class "OS") unless the language specifically indicates application is only to a specific sub-class or group of subclasses (e.g. "Land in Land Class R-3 shall ...", or "Except for Land Class R-3, all ...").

Section 3-2: RECORDING AND ENFORCEMENT OF LAND USE CLASS USES

Note that Declarant designates no Land Use Class may be restrictive, valid, binding, operative or enforceable under these Covenants until such time as the Land Use Class or Classes for a particular parcel is/are designated by the Declarant in a Recorded Deed or Recorded Development or Survey Plat conforming with Section 3-3. In no event shall a use designated in a Concept Research Plan or Master Plan as defined in Section 2-9 be enforceable, be considered an a implied land use restraint, servitude, covenant or restriction, or be construed

to be a sales commitment of the Declarant to any buyer or Property Owner by the Declarant or the Association.

The Declarant reserves the right to designate or redesignate the Land Class of any land within the Property at any time by a recorded written instrument specifically identifying such land and the Land Class, and the recorded plat on which the initial designation was made, if any.

Section 3-3: LIMITATION OF THE USE OF DEVELOPMENT OR SURVEY PLATS

No Development or Survey Plat may establish use classifications or restrictions on any land or improvements within the Property unless such Development or Survey Plat: (a) is prepared and signed by a registered surveyor; (b) is supplemented by a Recorded written instrument setting forth such restrictions, either on the face thereof or by separate document; (c) said Development or Survey Plat and said written instrument have been Approved by the Declarant; and (d) said Approval by the Declarant or its agent supplements the Recorded Development or Survey Plat, whether on the face thereof or by separate document.

Section 3-4: DEVELOPMENT PLATS

The Association shall be provided, at least ten (10) days prior to recordation, (unless this period is waived by the Association), for purposes of its comment and review for conformity with these Covenants, copies of all Development and Survey Plats of the Property which are prepared by grantees of the Declarant, their heirs, successors and assigns, and for purposes of recording with the Register of Deeds. Any such Development and Survey Plats must be Approved by the Association and the Declarant.

ARTICLE IV: GENERAL COVENANTS

Section 4: GENERAL COVENANTS

Section 4-1: APPLICATION OF GENERAL COVENANTS

Each of the covenants set forth in this Article shall apply to all lands within the Property except those owned by the Declarant and the Club Property. Once conveyed by the Declarant, the provisions of this Article shall apply to each Unit of real property conveyed by Declarant, provided that no approvals by the Association or the Architectural Review Board shall be required for any Structure, parking, landscaping, tree removal, or any other undertaking made by Declarant with respect to the subject property. The Architectural Review Board will be established in accordance with Article IV hereof to promulgate design and development guidelines to implement these Covenants.

Section 4-2: ARCHITECTURAL AND SITE DEVELOPMENT REQUIREMENTS

Section 4-2.1: ARCHITECTURAL REVIEW REQUIRED

No Structure may be installed, commenced or erected upon the Property, nor may any application for building permit for such Structure be made, or any significant landscaping be done, or any addition to an existing building or alteration or change to the exterior thereof, including but not limited to window treatments and colors visible from the outside, be made until the proposed building plans, specifications, materials and exterior finish, plot plan, landscape plan and construction schedule have been submitted to and Approved by the Architectural Review Board provided that no approvals by the Association or the Architectural Review Board shall be required for any Structure, parking, landscaping, tree removal, or any other undertaking made by Declarant with respect to the subject property.

Section 4-2.2: SITING

To assure that buildings and other Structures will be located so that desirable views, privacy and breezes will be available to the largest practical number of buildings or Structures built within the Property, and that Structures will be located with regard to the topography of each property (taking into consideration the location of large trees, structures previously built or approved pursuant to this Article for adjacent parcels of land and other aesthetic and environmental considerations), the Architectural Review Board will determine, following the provisions of the pertinent land use regulations of public authorities having jurisdiction; the precise site and location of any building or Structures within the Property consistent with setback lines, if any, which may be established on an individual Development or Survey Plat. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site.

Section 4-2.3: TREE AND BUSH REMOVAL

No trees of any kind above eight (8) inches in diameter at a point four (4) feet above the ground level may be removed by any Property Owners, their successors and assigns anywhere within the Property, including trees within Common Properties, without the written Approval of the Architectural Review Board as provided by Section 10-24. The Architectural Review Board shall adopt flexible policies concerning diseased trees or trees creating safety hazards. A tree location plan showing all significant trees to be removed and a location map of adjacent and nearby structures may be required as part of the submission under Sections 4-2.1, 4-2.2 and this Section.

Section 4-2.4: COMPLETION OF CONSTRUCTION

Unless otherwise Approved by Declarant, the exterior (including all site work and approved landscaping) of all approved Residential buildings and other Structures must be completed within twelve (12) months after the construction of a particular building or Structure shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities or other factors which, in the discretion of the Association, is determined to be

beyond the control of the Property Owner. Houses and other dwelling structures may not be temporarily or permanently occupied until a Certificate of Occupancy has been issued. All of the landscaping shown in plans submitted to the Architectural Review Board must be completed before initial occupancy or in lieu of completion a bond may be required by the Association which guarantees payment of the landscape contractor's estimated cost of installation to implement the plan as submitted and Approved by the Architectural Review Board.

Section 4-2.5: MINIMIZING CONSTRUCTION DISTURBANCES

During the continuance of construction, the Property Owner, who is the owner of the site upon which the construction has been commenced, shall require the contractor to: (a) maintain the site of the building in a reasonably clean and uncluttered condition, (b) if located within three hundred (300) feet of an occupied Dwelling Unit, ensure that construction activities may not take place on any Sunday and may not commence before 7:00 a.m. or be continued after 7:00 p.m. more than twenty (20) days a year, and (c) maintain active erosion control devices so that storm water leaving the site is free to suspended soil particles. The Property Owner shall be responsible for the cleanup of debris and soil transported from his site by wind or water. All on-site trash shall be placed in a dumpster on a daily basis or removed from the Property. No loud music shall emanate from a construction site.

Section 4-2.6: SERVICE YARDS

All garbage receptacles, electric and gas meters, heat pumps and air conditioning equipment, clothes lines, water pumps, fuel tanks, and other unsightly objects, equipment and service yard contents on the Property must be placed or stored in safe, landscaped, fenced or screened-in areas to conceal them from the view from the road and nearby properties, unless alternate locations are Approved by the Architectural Review Board. However, all fuel tanks with a capacity of more than 120 gallons must be Approved by the Architectural Review Board and located underground.

Section 4-2.7: LIGHTS AND SIGNS

No promotional, advertising or commercial lights, search lights, signs, banners, flags or ornaments, whether mobile or fixed, may be erected on the Property by anyone except where Approved by the Architectural Review Board, subject to reasonable rules and regulations established by the Association or the Architectural Review Board governing the lighting, size, color, materials, nature, graphic standards and content of any signs or ornaments; and except where lights and signs fall within one or more of the following categories or permitted uses:

- (a) During, preceding or after construction, the identification of all sponsors, designers and builders of the project may be provided on one (1) sign structure for the entire site which has been Approved by the Architectural Review Board.
- (b) Signs used to offer a particular property for sale pursuant to an order of the court.

(c) Lights, decorations and ornaments during the holiday seasons beginning on the day after Thanksgiving and ending January 3 each year.

(d) In Land Use Class C and U-1, advertising signs designed by professional graphic designers, neatly constructed, carefully maintained, limited to one (1) on-premise and one (1) off-premise (including item (e) below) sign per entity, having not more than one hundred (100) square feet of face area, including all window signs, and with no single dimension of more than ten (10) feet, exclusive of support column and framing, if Approved by the Architectural Review Board.

(e) Directory signs, designed by professional graphic designers, neatly constructed, carefully maintained, not exceeding twelve (12) feet in height with the maximum amount of advertising space for each advertiser not to exceed eighteen (18) square feet in area, if Approved by the Architectural Review Board.

(f) Commercial, or any other, vehicles with advertising signs visible from roads within the Property are not permissible unless approved by the Association, except those owned by the Declarant or his agent in areas designated by the Declarant.

(g) Project signs erected by the Declarant are permitted.

No mailboxes may be erected or maintained on the Property except mailboxes approved and provided by the Declarant to a Property Owner. The cost of providing, erecting and maintaining a mailbox including numbering and lettering Approved by the Architectural Review Board, shall be paid by the Property Owner. The Architectural Review Board may require the use of areas or Structures such as kiosks in which individual mailboxes are clustered.

The Association or the Declarant reserves the right, after seven (7) days written notice is given to the Property Owner, to enter upon the lands or premises of any Property Owner to remove any nonconforming signs at the expense of the Property Owner, and such entry shall not be a trespass.

Section 4-2.8: WATER AND SEWAGE

Prior to the occupancy of a building or Structure on the Property, suitable provision shall be made for water and the disposal of sewage by each Property Owner consistent with the recommendations of the Architectural Review Board, the Association and the Declarant, and consistent with Pertinent Laws. The location of any well must be approved by the Architectural Review Board. No private water wells may be drilled or maintained on the Property if the Declarant, the Association, or a public service district or other governmental unit, or its successors and assigns, has installed a water distribution line reasonably accessible within two hundred fifty (250) feet of such property with average daily water pressure in such line adequate for uses permitted by these Covenants, provided that such water distribution line is completed by the time the building or Structure is ready for occupancy. If Declarant, the Association, or a utility or public service district provides a water or sewer distribution line within two hundred fifty (250) feet of the property owned by a Property Owner, said Property Owner shall, if feasible, be required to connect to such line at such Property Owner's expense,

including but not limited to construction costs and tap fees. However, notwithstanding the above requirement, any Property Owner existing as of the date of these Covenants shall not be obligated to connect to any such water or sewer distribution line.

Section 4-2.9: ANTENNAS

Except as otherwise provided by law, television antenna, satellite antenna, satellite dishes, radio receiver or transmitter or other similar device for receipt or transmission of infrared, microwave, television or electromagnetic signals may be erected on the exterior portion of any structure if land is coaxial cable, fiber optical cable, or other transmission conduit running from an operating master antenna system or control satellite earth station(s) provided by the Association, Declarant, or public service district or utility has been made available to the structure. Should cable television services or a master antenna system be unavailable, and good television reception is not otherwise available, a Proper Owner may make written application to the Architectural Review Board for permission to install a television antenna subject to any reasonable aesthetic requirements that may be imposed. Except as otherwise provided by law, all exterior antennas must be removed at the Property Owner's expense if cable television service becomes available to the lot upon which a Dwelling Unit is constructed.

No radio, television, microwave, infrared or other form of electromagnetic or light radiation shall be permitted to originate from any portion of the Property if said radiation interferes with any right reserved by Declarant or interferes with the property reception of radio, television or related signs with the Property by any Property Owner, their Lessees and Guest.

Section 4-2.10: PARKING

Any construction, alteration, relocation or additional landscaping of the parking areas, or extension of paved areas to areas previously grassed, landscaped or left in a natural condition shall be submitted for approval to the Architectural review Board. Surfaces of parking areas which absorb water but which protect the land from erosion and wear shall be encouraged in lieu of fully paved surfaces; however, gravel driveways shall not be permitted unless approved by the Architectural Review Board. If local governmental bodies do not specify the number of parking spaces associated with a given land use, the Architectural Review Board, in its discretion, may establish the number of parking spaces which shall be required to be constructed for each given land use.

Subject to any additional requirements of Pertinent Laws, the requirements for construction of parking spaces may be waived to the extent that the same number of parking spaces in a Neighborhood Parking Area are allocated to the Property Owner by the owner of said Neighborhood Parking Area, and such allocation is Approved by the Architectural Review Board after considering the following factors:

(a) The Property Owner must apply to the Architectural Review Board for the credit for parking from neighboring properties at the time of submission of the plans for development or expansion.

(b) Credit may be obtained by shared use with neighboring properties which are already developed and which in normal operation, have counter-cyclical peak period parking demands, such as an evening only restaurant, or a weekday business-hour retail establishment.

Such waiver, however, shall not constitute a waiver of any parking as may be required pursuant to any ordinance of any governmental entity, and such a waiver as to one (1) parcel within the Property shall not thereby create a waiver as to any other parcel.

Section 4-2.11: BUILDING HEIGHT

In addition to any requirements which may be imposed by Pertinent Law, no Structure shall be constructed on the Property which has a height of more than three (3) stories. The first level or deck underneath a building built approximately at, or above grade, and used for parking, shall not be considered a story. In addition, for purposes of calculating permissible building height, a "story" shall not exceed fifteen (15) feet from floor to ceiling. This height limitation shall not apply to roof-top air-conditioning, heating, solar arrays, and energy conservation equipment, and shall not apply to antennas, observation towers, water towers and other similar structures.

Section 4-2.12: STREAM SETBACK REQUIREMENTS

No Structure may be erected within fifteen (15) feet of a pond or stream edge on any property as shown on a Recorded Development or Survey Plat unless such stream is a property line in which case setbacks shown on the recorded Development or Survey Plat shall apply, provided however, that Structures in the nature of pools, decks, nature trails, hot tubs, bridges, guard rails, bike trails, cookout an entertainment structure, open-air bar and picnic facilities, recreational support structures, picnic storage areas, and restrooms may be built within such setback line if such Structure is Approved by the Architectural Review Board. Reasonable variances to these setback requirements may be Approved by the Architectural Review Board where, in the sole discretion of the Architectural Review Board, the integrity of the stream, adjacent property and the overall development scheme would not be harmed by such variances.

Section 4-2.13: LAUNDRY, DRYING AND AIR CONDITIONING UNITS

In order to preserve the aesthetic features of the architecture and landscaping, each Property Owner, his or her family, his or her Guests, or his or her tenants shall not hang laundry from any Dwelling Unit if such laundry is within the public view. This provision, however, shall be temporarily waived by the Association, upon publication by the Board of Directors, during periods of severe energy shortages or other conditions making the enforcement of this Section contrary to the national or local interest.

No permanently-mounted through the wall or window mounted air-conditioning unit shall be permitted to be installed in or maintained in any structure unless Approved by the Architectural Review Board.

Section 4-3: OTHER BUILDINGS AND VEHICLES

No mobile home, trailer, tent, barn or other similar out-building or Structure shall be placed on the Property at any time without prior approval from the Architectural Review Board, and such approvals shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only. No home trailers or residence trailers may be permitted on the Property. Boats, boat trailers, campers, trucks, or utility trailers must be stored either wholly within a garage on the same Dwelling Lot as a Dwelling Unit, or in a central or neighborhood screened-in storage facility for such boats, vehicles and trailers if, as, and when such a screened-in area is constructed upon the Property and thereafter used for such purposes. This Section does not create in the Declarant or the Association an affirmative obligation to provide such a screened-in storage facility.

Section 4-4: ANIMALS

Except as allowed by the Association under conditional, one-year permits, no animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than a maximum of three (3) household pets, mammals, and reptiles (not in excess of twelve inches) shall be kept in any one Dwelling Lot or Dwelling Unit. In order to preserve the aesthetic qualities of the Property, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Property, to maintain a proper respect for other Property Owners and users of the Property, and to maximize the overall use and enjoyment to the Property, each person who keeps a pet within a Dwelling Lot or Dwelling Unit shall abide by the following restrictions and affirmative obligations: (a) no pets may be kept and/or maintained on the Property for any commercial purpose; (b) best efforts shall be exercised to prevent pets from excreting upon the shrubbery or in any area outside of the Property Owners property; (c) any defecation or solid excrement left by the pet upon the Common Properties, Limited Common Properties or Condominium Common Properties shall be removed by the Property Owner or the attendant of the pet; (d) the pet shall not be allowed to roam from its attendant uncontrolled by voice or leash; and (e) any pet which consistently barks, howls, or make disturbing noises which might be reasonably expected to disturb other Property Owners, their Lessee and Guests, shall be muzzled. The breach of any of these restrictions and obligations and duties shall be a Noxious and Offensive activity constituting a private nuisance.

Section 4-5: DUTY TO KEEP PROPERTY ATTRACTIVE AND IN GOOD REPAIR

Each Property Owner and his Lessees shall prevent and remove the accumulation of litter, trash, packing crates or rubbish; keep all grass areas maintained (i.e. grass must be mowed as necessary during growing season and must not exceed eight inches in height at any time); remove any trees which have become damaged and which pose an imminent safety hazard to adjoining properties; prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on the Property either before, during or after construction; prevent and remove accumulations of his Property which tend to substantially decrease the beauty of the specific Property or the Community as a whole; and, keep their buildings, roofs,

structures and improvements in good repair with a reasonably high standard of care. No Property Owner, Lessee or Guest may litter or create unsightly conditions on public or private roadsides within the Project Open Space, Common Properties or Condominium Common Properties.

Section 4-6: SOUND DEVICES

No exterior speaker, horn, whistle, bell or other sound device, except devices intended for use and used exclusively (and with reasonable regard for neighbors) for safety or security purposes, or as a part of a utility warning device shall be located, used or placed upon any part of the Property without a permit from the Association.

Section 4-7: OFFENSIVE ACTIVITY

No Offensive or Noxious activity shall be carried on upon the Property. "Offensive or Noxious" activity or behavior shall include but not be limited to: (1) a public nuisance or nuisance per se; (2) any behavior which is inconsistent with both the reasonable pleasurable use of the Property area by Property Owners, their Lessees and Guests and their reasonable expectations of vacationing, year-round living, studying, working or recreating, free of excessively noisy behavior that is grossly disrespectful of the rights of others; (3) flashing or excessively bright lights, racing vehicles (regardless of the number of wheels); (4) offensive displays of public sexuality; (5) public drunkenness; (6) significantly loud electronic musical or natural distractions; or (7) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of Dwelling Lots or Dwelling Units and their grounds, Common Properties, Condominium Common Properties and other areas within the Property. Athletic events, concerts, festivals, competitions or shows primarily for the use and enjoyment of the Property by Property Owners and their Guests, conducted under permit from the Association, shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Association, or its terms and conditions violated.

Without limiting the foregoing, the following shall also constitute Offensive or Noxious Activity:

- (a) The discharge of firearms, guns, pistols, or arrows of any kind, caliber, type or any method of propulsion except (i) pursuant to Section 4-13; (ii) by security personnel in the course of their duties; (iii) protection of household or self-defense consistent with Pertinent Law; or (iv) as part of an event or festival authorized and approved by the Association;
- (b) Fireworks stores, the sale of fireworks, and the discharge of fireworks except in controlled events Approved by the Association;
- (c) Mechanical amusement rides;
- (d) Commercial wild animal parks, animal farms requiring admission for entry other than commercial stables Approved by Declarant, and other than kennels for boarding of pets of Property Owners, Lessees or their Guests;

- (e) Signs and advertising devices not in conformity with Section 4-2.7 and artificial wild animals or birds, flashing lights, painted tree trunks, stacks of tires, outdoor displays of manufactured projects, balloons, banners, wind socks except in Land Use Class U-5, whirling plastic devices on poles, ropes or cables, painted vehicles, caged or penned animals used as roadside commercial attraction, and similar commercial devices visible from private or public highways and roads within the Property;
- (f) Gasoline stations, tire sales centers or vehicle repair facilities which are designed or constructed in a fashion to display to roadside, travelers' service bays or repair areas;
- (g) Any facility or equipment which creates dust, noise, odors, glare, vibrations or electrical disturbances beyond the property lines of the owner of such facility or equipment; provided, however, that this sub-paragraph shall not apply to normal construction disturbances or to any utility or communications facility owned by the Declarant or its assignee;
- (h) Discharge of explosives except by experienced detonation experts as a part of a necessary and controlled construction undertaking; and
- (i) Outdoor parties after 1:00 a.m. and before 7:00 a.m. which are likely to disturb other Property Owners and their Guests unless approved in advance by the Association.

Section 4-8: DUTY TO REBUILD OR CLEAR AND LANDSCAPE UPON CASUALTY OR DESTRUCTION

In order to preserve the aesthetic value and economic value of all individual properties within the Property, each Property Owner, with respect to any property it owns within the Property, the Declarant, with respect to improved property owned by the Declarant, and the Association, with respect to Common Properties, shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time (not to exceed six (6) months for landscaping and minor Structures, and twelve (12) months for replacement of buildings) any building, Structure, improvement or significant vegetation which is damaged or destroyed by Act of God, fire or other casualty other than war. Variances and conditional waivers of this provision may be made only upon a vote of the Board of Directors of the Association establishing that the overall purpose of these Covenants will be best effected by allowing such a variance. The allowance of a variance or waiver by the Board of Directors shall not be deemed to be a waiver of the binding effect of this Section on all other Property Owners.

Section 4-9: PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon said premises, nor shall any machinery, appliance, or structure ever be placed, operated or maintained there on in connection therewith, nor shall there be any subsurface mining or drilling activity; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the search for or development of water wells, the installation of utilizes and communication facilities, and any

activity associated with soil testing, construction of building foundations or master drainage control.

Section 4-10: PROHIBITION OF INDUSTRY

Neither the Association nor any Property Owner, nor the Declarant, their heirs, successors and assigns, shall erect or suffer or permit to be erected, on any part of the Property, any Structure or operation for the manufacture or production of any manufactured goods (other than hand-crafted items made in a home workshop) intended for off-premise sale; or any forge, foundry, blacksmith shop, furnace or factory of any kind or nature whatsoever for the manufacture and operation of industry, warehousing and/or distribution of products. Nothing herein shall prohibit; (1) the use, in conformity with Section 6-1 of kilns, furnaces and welding or similar equipment in any artist or craft studio constructed to accommodate a home occupation permitted by these Covenants; (2) as a resource recovery measure the production, in limited facilities, of alcohol, methane, ethanol, methanol or other biomass energy source derived from organic wastes originating on the Property; or (3) the use of irrigation of golf courses. This Section shall not serve as a prohibition of Trade Oriented Services when such Trade Oriented Services are not used in the manufacture of goods or operation of industry.

Section 4-11: SUBDIVISION OF PROPERTY

No property within any Land Class within the Property shall be subdivided other than by the Declarant (See Section 9-10) except by means of a written and Recorded instrument indicating that such subdivision has been Approved by the Declarant. With the Approval by the Declarant, which approval may be denied in the sole discretion of Declarant, the provision of two (2) or more contiguous lots may be combined into one (1) larger lot. Following the combining of two (2) or more lots into one (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered in the interpretation of these Covenants. Prior to granting the approval, Declarant may make specific provisions for payment of assessments.

Section 4-12: PROHIBITION OF MOTORCYCLES, SNOWMOBILES, AND OFF-ROAD RECREATION VEHICLES, LICENSE REQUIRED

No motorcycles other than mopeds (or other motor-powered bicycles) with less than or equal to one horsepower shall be permitted on roads within the Property. Mopeds with less than or equal to one horsepower shall be limited to operation only on roads designed for automobile traffic within the Property and on trails specifically designated for moped use by the Association. The use of such mopeds on bicycle trails, cart paths, nature trails and recreation areas is prohibited.

No snowmobiles shall be permitted upon the Property unless approved in writing by the Association or unless used by the Association for the purpose of carrying out the Functions of the Association or maintenance of Property.

No motorized two, three or four-wheeled vehicles, trucks, tractors, or other off-road recreation vehicles, (except golf carts, properly licensed in accordance with Club rules and regulations) shall be permitted to be used on any Open Space, Common Properties, golf course, bicycle trails, nature trails or recreation areas within the Property unless used by the

Association, Declarant, or the Club owner or operator within Land Classes D-1, D-2 and D-3 for the purpose of maintaining or operating the Property or unless Approved by the Declarant, or licensed for travel on public highways.

Only persons holding a current and valid drivers license may operate a motorized vehicle within the Property.

Section 4-13: WILLFUL DESTRUCTION OF WILDLIFE

No hunting shall be allowed on the Property except under controlled conditions Approved by the Association and appropriate governmental wildlife authorities for the purpose of protecting Property Owners, the public and other animals against health hazards, disease and other anomalies resulting from species overpopulation and significant wildlife predation. Any violation of this provision with respect to Common Properties shall constitute both a breach of these Covenants and a trespass against property owned by the Association. Since this Property is not intended to be, nor is to be maintained as, a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this Section.

Section 4-14: DRAINAGE

The Association may establish reasonable regulations and restrictions pertaining to drainage and situation originating on construction sites and parking lots, porosity of payment materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property.

Section 4-15: SMELLS AND ODORS

All Property Owners shall have the affirmative duty to prevent the release of obnoxious smells and odors from his Property which might tend to adversely affect the reasonable use and enjoyment of the lands and other interests in realty owned by adjacent and nearby Property Owners.

**Section 4-16: INSTALLATION OF BULKHEADS AND DAMS;
FILLING AND EXCAVATION OF STREAMBEDS**

No construction of piers, bulkheads or dams, or filling or excavation of stream edges, may be undertaken by any Property Owner or his agent unless such activity is Approved by the Association and applicable government regulatory agencies. The Declarant or the Association may specify that such work must be undertaken by the Association on behalf of the Property Owners) involved and such Property Owners shall be assessed for such portion of the cost of the work as the Association shall determine is reasonably allocable to the property owned by such Property Owner(s).

Section 4-17: DUTY TO INSURE

In order to insure that damaged or destroyed buildings can be reconstructed or cleared and landscaped in conformity with Section 4-8, each Property Owner shall have the affirmative duty to procure and maintain full replacement value casualty insurance for any Residential or detached building owned by the Property Owner. In addition, the members of any Neighborhood Association established to maintain Neighborhood Common Properties, shall have the affirmative duty to procure and maintain full replacement value casualty insurance on the entire building or buildings which make up any condominium in the Community. The Association may require at any time that all or any Property Owner(s) submit a photocopy of the insurance policy or other proof that the buildings are insured in conformity with this Section.

ARTICLE V: SPECIAL COVENANTS PERTAINING TO OPEN SPACE LAND CLASSES (OS-1, OS-2, OS-3, AND OS-4)

Section 5: SPECIAL COVENANTS PERTAINING TO OPEN SPACE LAND CLASSES

Section 5-1: OVERVIEW

It is important to understand the relationship among the concepts of "Common Properties", "Open Space", "Private Open Space", and "Project Open Space", and in this respect it is important to distinguish the difference between what the land may be used for, who owns it, and who may use it.

Land within Land Classes OS-1, OS-2, OS-3 and OS-4 are categorized several ways. First, the land is grouped by the generic use to which it is restricted pursuant to Section 3-1, i.e. the uses described in Land Classes OS-1 (General Open Space), OS-2 (Ponds), OS-3 (Roads) and OS-4 (Roadside Scenic Corridors). All of these categories are referred to as Open Space.

Second, the land is categorized as to whether it is owned by the Association (i.e., Common Properties and Purchased Common Properties), whether it is owned in common by a small group of owners such as those in a Neighborhood Association whether it is not necessarily owned in common but subject to common usage rights by Property Owners within a given area (e.g. Neighborhood Common Properties), or whether it is owned by an individual Property Owner. All lands which are Common Properties, or Neighborhood Common Properties are not necessarily Open Space and, conversely, all land which are designed as Open Space are not necessarily Common Properties, or Neighborhood Common Properties. All which are Common Properties (including Purchased Common Properties and Neighborhood Common Properties) are governed by the Association.

Third, the land is categorized as "Project Open Space" or "Private Open Space". Project Open Space is usable by all Property Owners, their Lessees and Guests, whereas Private Open Space is limited to use by the members of a given condominium, townhouse or other Neighborhood Association. Project Open Space may or may not be a Common Property.

No property shall be dedicated as Project Open Space or Private Open Space unless it is described as "Project Open Space" or "Private Open Space" in a Recorded declaration signed and formally executed by the title owner and the declaration is accompanied by a plat prepared by a registered surveyor which plat designates Project Open Space or Private Open Space within such described area that is designated as Project Open Space or Private Open Space. Similarly, the dedication of land as Project Open Space or Private Open Space does not change the ownership thereof, and no land or improvement thereon becomes a Common Property unless the formalities of a Recorded transfer to the Association (the case of Common Properties) or to a Neighborhood Association (in the case of Neighborhood Common Properties) are observed.

Section 5-2: DEDICATION OF PROJECT OPEN SPACE AND PRIVATE OPEN SPACE

In order to help preserve, protect and enhance the natural, scenic, aesthetic, historic and recreational resources, soils, streams, vegetation, and wildlife on the Property, the Declarant, and other Property Owners including any Neighborhood Association, may dedicate by Recorded instrument portions of their property as being restricted to Land Class OS-1, OS-2, or OS-4 for a minimum of twenty years or for periods of greater durations as is specifically adopted and Recorded as to specific parcels by the owner thereof; provided, however, that no such dedication shall extend beyond the duration of these Covenants (including any extensions thereof). To further this purpose, the Declarant covenants that no Project Open Space or Private Open Space shall be subject to any charges or assessments.

Section 5-3: TRANSFER OF PROJECT OPEN SPACE BY THE DECLARANT OR ANY OTHER PROPERTY OWNER

The Declarant may assign, transfer and otherwise convey to the Association Project Open Space, Private Open Space, and upon such assignment, transfer or designation, the Association shall automatically assume the obligation to maintain and protect such Project Open Space or Private Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and these Covenants. Nothing within this Section or these Covenants place on the Declarant an affirmative obligation to designate any areas as Open Spaces and nothing within this Section or these Covenants places on the Declarant an affirmative obligation to transfer the title to any areas of Project Open Space to the Association.

Any other Property Owner may assign, transfer and otherwise convey to the Association Project Open Space or Private Open Space and, if the Association chooses to accept the conveyance, the Association or such owner of abutting land shall automatically assume the obligation to maintain and protect such Project Open Space or Private Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and these Covenants.

Section 5-4: MEMBERS' EASEMENT OR ENJOYMENT OF OPEN SPACE

Section 5-4.1: PROJECT OPEN SPACE

Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association for so long as the subject parcel has been dedicated as Project Open Space, every Class "A" and "B" Member shall have an easement of access, use, and enjoyment in and to the lands designated in a supplemental Declaration as a Project Open Space wither title to such Project Open Space is held by the Declarant, the Association, or any other Property Owner, and such easement shall be appurtenant to and shall pass with the title of every Dwelling Lot, Development Parcel, or Dwelling Unit within the Property.

Section 5-4.2: PRIVATE OPEN SPACE

Access, use and enjoyment of Private Open Space shall be available only to those Property Owners whose rights are set out in Neighborhood covenants of townhouse or cluster home covenants, or similar instrument which creates a common ownership interest or common usage rights in the Private Open Space and which sets out the rights and conditions of use of said Private Open Space. The Association shall have no right to govern the use of Private Open Space unless the owners thereof grant such right to the Association.

Section 5-5: FESTIVALS IN PROJECT OPEN SPACE

Subject to appropriate safety and noise control regulations established by the Association, the Association may designate one or more areas of Project Open Space for use as sites for festivals where the primary emphasis is on art, music, performing arts, dance, sports and like events.

Section 5-6: PROHIBITED USES OF OPEN SPACE

Except as provided in Section 5-5, Open Space, whether Project or Private, may only be used for facilities and uses permitted in Land Use Class OS-1, OS-2, OS-3 and OS-4 as described in Section 3-1. All Open Space shall however, be subject to the Rights of Declarant as provided in Article IX.

Section 5-7: DAM SAFETY; PONDS

Notwithstanding any language within Section 3-1 or this Article, if in the judgment of the Declarant, with respect to lands owned by Declarant, or in the judgment of the Association, with respect to lands owned by the Association, it is determined that the dam which impounds any pond within the Property is unsafe or cannot be maintained with a reasonable cost, the pond or any lands within Land Class OS-2 pertaining to ponds may be drained. Thereafter, the land use may be designated by Declarant by Recorded covenant.

Section 5-8: USE OF PONDS

There shall be no swimming, fishing, or ice skating allowed within Ponds (Land Class OS-2) unless and until such use is Approved by and in conformance with regulations established by the Association, adequate provisions have been made by the Association to provide for the safety of those so using the Ponds, and those using the Ponds have in writing expressly assumed the risk of so using the Ponds. The acquiescence of the Association with respect to any unauthorized use of the Ponds shall not be deemed to be a waiver of this Section.

Section 5-9: SKATEBOARDING ON ROADS

No skateboarding shall be allowed on any of the roads within the Property unless such use is a part of a controlled event or program which has been Approved by the Association or unless such roads have been transferred to and accepted by a government body which provides for their repair and maintenance.

ARTICLE VI: SPECIAL COVENANTS PERTAINING TO SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL LAND USE CLASSES (R-1, R-1A, R-2, AND R-3)

Section 6: SPECIAL COVENANTS PERTAINING TO SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL LAND USE CLASSES

Section 6-1: INTENDED USE FOR SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL PURPOSES

(a) All Dwelling Units within one of the Single Private Household and Residential Land Classes (R-1, R-1A, R-2 and R-3) as described in Section 3-1 shall be used for Single Private Household and Residential Purposes as defined in (b) and (c) below.

(b) "Single Private Household" shall mean and refer to a family or household until blended into a single group for usual domestic purposes, including a traditional family of parents and those to whom the parents have legal duty to support, and extended families related by blood or marriage, but also including three (3) or fewer companions and friends, nurses and domestic servants and their spouses, and household members not related within two degrees of consanguinity. In no event shall a "household" include more than four (4) persons who are unrelated by blood, marriage, consanguinity or adoption. The Association may grant conditional variances to this provision for purposes of eliminating hardship. A Dwelling Unit restricted to Single Private Household use may not be used as "rooming" house to provide accommodations amounting to less than the entire (physical as opposed to temporal dimensions) Dwelling Unit to boarders, roomers or tenants who are not members of the resident "household" as defined above. The foregoing limitations on Single Private Households shall not apply to Guests staying on a temporary basis.

(c) Residential (as distinguished from "business", "commerce" or "mercantile") shall mean and refer to a use and occupancy of a building as a long-term abode,

dwelling or residence, or use for reasonable vacations or in some instances. The restriction to use for Residential purposes is subject to the following qualifications by rental.

(1) The use of a portion of a Dwelling Unit as an office or art or craft studio of members of the Single Private Households shall be considered as a Residential use only if such use does not create a significant increase in traffic to and from the dwelling Unit, provided that no sign, symbol, logo to or nameplate identifying a business or professional office is affixed to or about the grounds or the entrance to the Dwelling Unit; the Dwelling Unit is only incidentally used for business or professional purposes; and the Association, after responding to one or more reasonable complaints by a neighboring Property Owner, has not expressly requested that the subject Dwelling Unit not be used in whole or in part as an office or studio because of auto congestion or other nuisances.

(2) Dwelling Units may be used by Declarant or its agents as a model home, real estate sales office or site for an "Open House", and may be deemed a use for Residential purposes for a maximum period of sixty (60) months after the building is newly constructed and is substantially completed, and use of said Dwelling Unit as a model home or real estate office after said sixty (60) month period shall be prohibited. In addition, Declarant may use a unit to support rental management (including all service-related support such as laundry, maintenance and coordination of rentals).

(3) Except as provided in Subparagraph (2) above, no Dwelling Unit located in Land Use Classes R-1, R-1A, R-2 and R-3 may be used for "Open House" or other commercial gatherings designed to promote the resale of dwellings at any location or any product sales unless a temporary permit for such use has been Approved by the Association based upon the following criteria:

(i) The "Open House" or other gathering as described herein may only be between the hours of 10:00 a.m. and 6:00 p.m. Monday through Saturday and 1:00 p.m. through 6:00 p.m. on Sunday.

(ii) The application for a written temporary license must be made no later than seven (7) days prior to the date of the anticipated use;

(iii) There shall be no other temporary license issued for the requested date in the immediate neighborhood;

(iv) There shall not have been any temporary license issued for the requested Dwelling Unit within the previous proceeding fourteen (14) day period;

(v) No "open house" may be used as a device or station to promote the sale of any Dwelling Unit other than the one in which the "open house" is being held;

- (vi) All signs comply with Section 4-2.7;
 - (vii) Any Guests attending the open house or gathering at the Dwelling Unit must obtain temporary gate passes from the security office and adhere to any of the vehicular access limitations set forth and in existence at this time; and,
 - (viii) The Property Owners requesting a temporary permit shall use all best efforts to restrict the number of individuals present at the open house or other commercial gathering to be no greater than twenty-five (25) at any one time.
 - (ix) That the "Open House" is being held by the Declarant or grantees of the Declarant who are owners of property identified as Land Classes R-1A, R-2 or R-3 and are actively under development, which are being marketed in conjunction with a marketing plan established by the Declarant or its agents.
- (4) Except as provided in subparagraph (2) above, the use of a Dwelling Unit as a site of work and home occupations is permitted only as an incidental use subject to the following limitations: (i) no display of products shall be visible from the street; (ii) no mechanical equipment shall be installed or used except equipment that is normally used for domestic, craft and professional purposes; (iii) no outside storage shall be used in connection with the home occupation; (iv) not over twenty-five percent (25%) of the total actual floor area, or five hundred (500) square feet, whichever is less, shall be used for a home occupation; and (v) traffic generation shall not be significantly increased as, for example, where the traffic volume exceeds more than thirty percent (30%) of the traffic volume generated by similar nearby Dwelling Units, a significant increase is deemed to have occurred.
- (5) No Dwelling Unit may be used as a means of service to business establishments on adjacent lots, including but not limited to supplementary parking facilities or an intentional passageway or entrance into a business.

Section 6-2: OUTBUILDINGS AND CAMPING UNITS

No trailer, tent, shack, garage, barn or other outbuilding erected within Land Classes R1, R-1A, R-2 and R-3 shall at any time be used as a residence temporarily or permanently, nor shall any Structure of a temporary character be used as a residence.

Section 6-3: PROHIBITION OF TIME SHARING, INTERVAL OWNERSHIP AND SUBDIVISION OF RESIDENTIAL PROPERTY

No Dwelling Unit located within any area classified as R-1, R-1A, R-2 and R-3 may be subdivided by the Property Owner of, and no unit of ownership may be subdivided to permit "Time Sharing", fractional ownership or other "devices" to effect interval ownership. This Section shall not be construed to prohibit the ownership of real property within the Property by corporations, trusts or partnerships.

**Section 6-4: TENNIS COURTS, RACQUETBALL AND SQUASH
COURTS, AND SWIMMING POOLS**

No indoor or outdoor tennis courts or outdoor racquet sport courts may be constructed within Land Classes R-1 or R-1A. No indoor or outdoor tennis courts may be constructed within Land Classes R-2 or R-3. Interior racquetball and squash courts are permitted within Land Class R-2 and R-3.

Private swimming pools are allowed in Land Classes R-1 through R-3. Swimming pools for which user fees may be charged are permissible in Land Classes R-2 and R-3 subject to rules and regulations of the Association.

**Section 6-5: EXTERIOR MAINTENANCE AND REPAIR IN LAND
CLASSES R-1A, R-2 AND R-3**

All structures within Land Class R-1A, R-2 or R-3 shall be subject to a special exterior maintenance assessment and shall be maintained under the direction of a Neighborhood Association or the Association, including but not limited to the following activities:

- (a) Maintaining compliance with Section 4-5;
- (b) Garbage and trash collection from home;
- (c) Painting or staining the exterior siding or trim of Structures and maintaining the roofs of Structures;
- (d) Maintaining the entrance sign to the R-1A, R-2 and R-3 units and Common Property landscaping including entrance areas, and such additional responsibilities relating to the exterior maintenance, landscaping, lighting, and related items as the Association shall direct.

Section 6-6: ENCROACHMENTS

To the extent that any common or party wall comprising a part of any Dwelling Unit shall encroach upon any other Dwelling Unit or Dwelling Lot, whether by reason of any deviation from the recorded plat or Approved plans in the construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, that in the case of willful and intentional misconduct on the part of the Declarant or of any Property Owner or of any contractor or subcontractor, which misconduct causes the encroachment, no easement for an encroachment shall exist.

**Section 6-7: INTERIOR MAINTENANCE AND CARE FOR UNITS
WITHIN LAND CLASSES R-2 AND R-3**

Except to the extent that such responsibility is assumed or undertaken by the Association or a Neighborhood Association, each Property Owner within Land Classes R-2 and R-3 shall perform promptly all maintenance and repair work within his own Dwelling Unit,

excluding any Limited Common Properties or Limited Common Property, and shall be responsible for the damages and liabilities to adjacent Property Owners that his failure to do so may engender. Every Property Owner shall either be responsible for maintaining the interior temperature of his unit to a sufficiently high degree that water pipes located within such Dwelling Unit shall not be in danger of freezing, or else the Dwelling Unit shall be winterized by draining such water pipes.

Section 6-8: BASKETBALL GOALS

No basketball goals within Land Class R-1, R-1A, R-2 and R-3 may be mounted so as to be visible from roads within the Property without Approval from the Architectural Review Board.

Section 6-9: MINIMUM SQUARE FOOTAGE

All Dwelling Units within Land Class R-1, R-1A, R-2 and R-3 shall have a minimum of twenty two hundred (2,200) square feet of heated and finished areas, exclusive of garages, decks, and screened porches. Each main floor shall have a minimum of thirteen hundred (1300) square feet of such heated and finished area.

**ARTICLE VII: SPECIAL COVENANTS PERTAINING TO
COMMERCIAL AND RECREATIONAL LAND CLASSES
(C-1, D-1, D-2, AND D-3)**

**Section 7: SPECIAL COVENANTS PERTAINING TO COMMERCIAL AND
RECREATIONAL LAND CLASSES**

Section 7-1: LIGHTING

In addition to the restrictions of Section 4-2.7, all owners of buildings, facilities and parking lots within Land Use Classes (C-1, D-1, D-2, D-3 & U-1) shall design the placement and structure of all exterior lights so as to illuminate only the premises of the property owned by such owner and avoid direct illumination of property of other adjacent Property Owners or roadways.

**ARTICLE VIII: SPECIAL COVENANTS PERTAINING TO
UTILITY, TRANSPORTATION AND SERVICE AREA LAND
CLASSES (U-1, U-2, U-3, U-4 AND U-5)**

**Section 8: SPECIAL COVENANTS PERTAINING TO UTILITY,
TRANSPORTATION AND SERVICE AREA LAND CLASSES**

**Section 8-1: CONDITIONAL USES FOR LAND USES U-1, U-2,
U-3, U-4 AND U-5**

The Association, each Property Owner, and all who take lands within the Property subject to these Covenants, do covenant and agree that certain land uses, particularly those involving vital support and utility services, cannot be adequately controlled by general land use regulations, but can be more effectively controlled by approaching the problems associated with the special character of each desired use thereof. Each use specified in Section 3-1 as proper for being within Land Classes U is a "Conditional Use," subject to Approval by the Architectural Review Board, pursuant to the procedures prescribed in Section 10-24, and prior to the approval of any conditional service use, the Architectural Review Board shall specify the conditions upon which the service or utility facility may be built, including but not limited to the creation, installation or placement of buffer zone, fences, shrubbery, trees, vegetation, berms, parking space, building materials and other reasonable undertakings which are deemed by the Architectural Review Board or the Association to be necessary to maintain a compatibility within and between Land Classes within the Property. Some of the standards to be considered by the Architectural Review Board in allowing conditional service and utility facilities include: the location, size, design and operating characteristics of the proposed facility, the level of noise generated by such facility; the harmony in scale, bulk, coverage, function and density-of-use characteristics of the proposed facility and utility, the generation of traffic and the capacity of surrounding streets; and the necessity and desirability of providing for such facility or utility in light of benefiting the Property Owners and Property. Any grant of a specific conditional use shall be in writing, shall be Recorded with the Clay County Register of Deeds, and shall briefly state the grounds for such grant, and shall state the conditions for such use. The Architectural Review Board may waive any provision of Article IV with respect to any property within Land Use Class U.

ARTICLE IX: RIGHTS RESERVED BY THE DECLARANT, ITS SUCCESSORS AND ASSIGNS

Section 9: RIGHTS RESERVED BY THE DECLARANT, ITS SUCCESSORS AND ASSIGNS

Section 9-1: OTHER RIGHTS AND RESERVATIONS

The omission of any right or reservation in this article shall not limit any other right of or reservation by the Declarant which is expressly stated in or implied from any other provision in these covenants.

Section 9-2: NO AFFIRMATIVE OBLIGATION UNLESS STATED

Any reservation or right of the Declarant which is stated in or implied from these covenants shall not give rise to any affirmative obligation or duty on the part of the Declarant unless expressly stated in these covenants.

Section 9-3: MODIFICATION AND REVISION OF THE CONCEPT RESEARCH OR MASTER PLAN

The Declarant reserves the right to modify the Concept Research Plan or Master Plan with respect to any parcel, lot or area within the Property which has not, by Recorded

declaration, been dedicated to the Association as Common Properties or already been conveyed to a Property Owner. No implied equitable or reciprocal covenants, servitudes or easements shall arise with respect to lands retained by the Declarant by virtue of any Concept Research Plan or Master Plan.

**Section 9-4: CERTAIN UTILITY, COMMUNICATIONS,
TRANSPORTATION AND PUBLIC CONVENIENCE EASEMENTS**

Notwithstanding the restrictions established by any Land Use Class, and unless expressly waived by Declarant, the Declarant reserves exclusively unto itself, its successors and/or assigns a perpetual, alienable and releasable utility easement and right of way, said easements and rights of way to be located ten (10) feet on each side and parallel with any property boundary line, and in addition as may be located, shown, depicted, and/or designed on the Recorded Development or Survey Plats, for the purposes of erecting, maintain, operating and using wires, cables, switches, computers, receptacles, conduits, directional and information signs, drainage ways, sewers, irrigation lines, pipe lines, receivers, underground pumping stations and tanks, water mains, and other suitable equipment for the conveyance, transmission or use of video, voice, facsimile and data communications, electricity, gas, sewer, water, drainage or other public conveniences, utilities and communication facilities owned, in or over those portions of such property as above designated for location.

Such easements or installation of utilities therein shall be maintained in as attractive a state as is reasonably feasible.

The Declarant, without obligation, reserves the right to transfer such utilities and easements, in whole or in part to the Association, at which time the Association must accept the transfer of such utilities and easements and shall thereafter be responsible for, and shall have the obligations to operate and maintain, such easements at corridors.

The Declarant, without obligation, reserves the right to transfer such utilities and utility easements and easements of access to such utilities and utility easement, in whole or in part, to another entity, whether public or private, which shall undertake to provide the utility service.

No utility, communications, public convenience or transportation facility described in this Section may be installed or operated unless such facility is approved by the Declarant. The Declarant or its assigns may charge reasonable fees for the provision of such utility, communications, public convenience or transportation facilities or services.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Property Owner or Common Properties caused by such utility installation shall be repaired and said grounds returned to a reasonable construction of their prior condition by the Declarant, or its successors and assigns. The Declarant further reserves to itself, its successors and assigns the right to locate well, pumping stations, siltation basins and tanks within the Property in any common Property or on any property designated for such use on the applicable plat of the property, or to locate same upon any property with the permission of the respective Property Owner.

Declarant reserves the right to irrigate that portion of any Dwelling Lot or Common Properties in all Land Use Classes within thirty five (35) feet of that portion of the Dwelling Lot or Common Properties that borders and joins a subdivision road or street, and that portion of any Dwelling Lot or Common Properties in all Land Classes within 15 feet of that portion of the Dwelling Lot or Common Properties that borders and joins the Club Property.

Section 9-5: BRIDGES AND WALKWAYS

The Declarant retains a twelve (12) foot easement from the edge of the road payment, edge of any stream channel, parking lot edge, or high pool elevation of any pond in all Common Properties, Neighborhood Common Properties and Dwelling Lots for the purpose of construction bikeways, golf cart trails, nature trails, jogging paths, bridges and other passageways to interconnect with major recreational, commercial and residential areas on the Property which may be established by Declarant pursuant to this Section shall be thereafter maintained by the Association as long as such trails, bikeways, paths, bridges and other passageways are used by any member of the Association.

Section 9-6: EASEMENTS IN PROJECT OPEN SPACE AND COMMON PROPERTIES

The Declarant may make access trails or paths through Common Properties and Project Open Space for the purpose of permitted recreation, picnicking, health and fitness exercise, observation and study of wildlife, hiking and riding, identifying sites for and constructing helicopter landing pads, erecting small signs through the Project Open Space that designate points of particular interest and attractions, irrigating the Open Space and Common Properties (including the use of treated sewerage effluent); planting flowers, shrubbery and trees, and taking such other steps as are reasonable, necessary and proper to further the community use and enjoyment of the Project Open Spaces; provided, however, that there is no affirmative obligation on the Declarant to perform such functions, and provided, further that any trails, facilities, landscaping, signage or other improvements which may be established by Declarant pursuant to this Section shall be thereafter maintained by the Association.

Section 9-7: ENFORCEMENT

The Declarant and the Association shall have the right, but shall not be obligated, to proceed at law or in equity to enforce compliance to the terms of these Covenants or to prevent the violation or breach in any event. Violators shall be personally obligated to reimburse the Declarant in full for all its direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred by the Declarant and/or the Association in maintain compliance with these Covenants, and such obligation shall also constitute a lien upon the property of any Property Owner in accordance with Section 16-1.

The Declarant and the Association also retain an easement and license to enter upon any part of the Property after reasonable notice, to engage in such repair, maintenance, upkeep or reconstruction as may be necessary to enforce compliance with these Covenants, and the full cost of such maintenance, repair, upkeep or reconstruction shall constitute a lien upon the Property Owner's property and shall be a personal obligation of the Property owner in accordance with Sections 16-1.

Section 9-8: THE DECLARANT'S RIGHTS TO CONVEY AND DONATE; LIMITED REVERSION

THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, MAY AT ITS OPTION AND WITHOUT OBLIGATION TO DO SO, CONVEY TO THE ASSOCIATION, AT NO COST OF ACQUISITION TO THE ASSOCIATION, ANY LANDS OR IMPROVEMENTS THEREON, AND ANY EASEMENTS RETAINED BY THE DECLARANT, WHICH ARE OWNED BY THE DECLARANT, AND THE ASSOCIATION MUST ACCEPT SUCH TRANSFER IF MADE.

Unless otherwise agreed upon by the Association, all transfers made pursuant to this Section shall be subject to any mortgages, deeds of trust, contract obligations, usage rights previously conveyed to third parties, and covenants and restrictive covenants of record to which the property is subject at the time of conveyance, but, although such land and improvements may serve as security for such underlying indebtedness, the Association as grantee shall not be liable for any indebtedness on the transferred property outstanding as of the time of transfer and, after the time of transfer, Declarant shall have no authority to increase the amount of indebtedness to which the transferred property is subject.

Upon the transfer of such properties, the properties shall become Common Properties, and the Association shall have the obligation to maintain the transferred properties in a manner and degree consistent with a clean, safe, high quality, aesthetically attractive and functionally convenient community, and in a manner and degree consistent with the restrictions and obligations set forth in the instrument of conveyance and these Covenants.

The Declarant may assign to the Association any right retained or reserved by the Declarant pursuant to these Covenants. The Association shall accept such assignment of rights and shall exercise the rights in furtherance of its responsibilities pursuant to Article X of these Covenants for the benefit of all Property Owners or to give effect to the intent of Declarant as established in the Recitals of these Covenants. Except as provided in Section 10-29, the Association may not thereafter convey these rights to a third party.

Section 9-9: USE OF TRADEMARK

Each Property Owner or Lessee, by acceptance of a deed to any lands, tenements or hereditaments within the Property, hereby acknowledges that "Mountain Harbour", "Mountain Harbour Development, Inc.", "Mountain Harbour Utility Services, Inc.", "Mountain Harbour Property Owners Association, Inc.", "The Ridges at Mountain Harbour Community Association, Inc.", "Mountain Harbour Golf and Yacht Club", "The Ridges at Mountain Harbour" and "The Ridges Country Club" are service marks and trademarks of the Declarant. Each Property Owner or Lessee agrees to refrain from is appropriating or infringing these services marks or trademarks.

Section 9-10: SUBDIVISION AND RE-PLATTING OF PROPERTY

Notwithstanding the provisions of Sections 4-11, the Declarant expressly reserves unto itself, its successors or assigns, the right to re-plat any lot or adjacent lots into (1), two (2), or more lots which are owned by the Declarant. The Declarant may take such other steps as are reasonably necessary to make such re-platted lots suitable and fit for use for a structure or

structures permitted under its Land Use Class as if originally platted as one parcel, such steps including but not limited to the relocation of easements, walkways, bike trails, nature trails and rights-of-way to conform to the new boundaries of said re-platted lots, provided that no lot originally shown on a Recorded Development or Survey Plat is reduced to a size smaller than the smallest lot in such recorded subdivision plat.

Section 9-11: RECORDING OF ADDITIONAL RESTRICTIONS ON LAND USE BY THE OWNER THEREOF

For so long as Declarant retains ownership of land within the Property, no Property owner may impose additional restrictive covenants on any lands within the Property beyond those contained in these Covenants without consent of the Declarant. The Declarant may impose additional restrictive covenants on land then owned by the Declarant without the consent of any other owner or the Association, but no such additional Declarations of Land Use Restrictions may remove or lighten the burdens and benefits established by the Covenants.

Section 9-12: RIGHT TO APPROVE CONDOMINIUM AND NEIGHBORHOOD ASSOCIATION DOCUMENTS

No condominium declaration, declaration of covenants, conditions and restrictions, and no Recorded instrument giving rise to creation of a Neighborhood Association, the obligations to which run with lands within the Property, shall be effective until all legal documents associated therewith have been Approved by the Declarant as being compatible and integrated with these Covenants. A reasonable charge for cost of legal review of such documents may be charged by Declarant to the entity which seeks to file such documents.

Section 9-13: LIMITED RIGHT TO AMEND COVENANTS

The Declarant specifically reserves to itself, its successors and assigns, the limited right to amend these Covenants on its own motion from the date hereof until December 31, 2010, solely for the purpose of making technical changes to eliminate or clarify conflicting provisions, or adding new Land Use Class categories and special covenants and assessment provisions and restrictions thereof, so long as the amount of the assessments or obligations of such existing Members is not raised or changed in a manner that would substantially or materially adversely affect such Members.

In addition, until December 31, 2010, the Declarant reserves the right, and the irrevocable power coupled with an interest, to make changes in these Covenants, in order that: (a) clearer title can be conveyed to Property Owners; (b) any restraints on alienation adversely affecting the issuance of, or cost of, title insurance be removed at the discretion of the Declarant; (c) these Covenants may qualify real property within the Property for any state or federal loan or loan guarantee program, such as, but not limited to, those which might be established by the Federal National Mortgage Association (FNMA), the Farm Home Administration, the Federal Housing Administration, and their successors; (d) these Covenants may conform to the requirements of the Federal Interstate Land Sales Disclosure Act; and (e) these Covenants may make appropriate changes which may be reasonably necessitated by amendments to the North Carolina Condominium Act.

Section 9-14: LIMITED RIGHT TO COMPLETE CONSTRUCTION OR LANDSCAPING

Declarant specifically reserves to itself, its successors and assigns, the limited right to complete the construction of the exterior of any Dwelling Unit within the Property on which construction has ceased and such Dwelling Unit is in violation of Article IV, Section 4-2.4 in order to preserve the aesthetic value and economic value of all individual properties within the Property. Such right may be exercised solely at the discretion of the Declarant and upon consent of any mortgage holder of the property without the consent of the Owners(s) of the property, or with the consent of the Owners(s) of the property when no mortgage holder is involved, and the cost of such work as required to complete the exterior of the Dwelling Unit as defined in Section 4-2.4 shall become a lien on the property. Failure of either the mortgage holder or Owner to approve such completion of construction shall cause the property and the Owner thereof to be in immediate violation of these Covenants and shall allow the Declarant or the Association to carry out its enforcement rights as provided in Article X.

Section 9-15: LIMITED RIGHT TO AMEND LAND USE CLASS DESIGNATION

Declarant reserves the right to establish overlay Land Use Classes in response to unique site conditions and apply such redesignation to previously designated Dwelling Lots as provided for in Article III, Section 3-2, provided such redesignation does not alter the intended use of the Property.

ARTICLE X: CREATION AND FUNCTIONS OF THE ASSOCIATION

Section 10: CREATION AND FUNCTIONS OF THE ASSOCIATION

Section 10-1: CREATION OF THE ASSOCIATION

Prior to any conveyance or lease of any Dwelling Lot, Dwelling Unit, Development Unit Parcel, Professional Service Unit, Retail Unit or any other lands or improvements with the Property, the Declarant shall have caused to be incorporated, under the laws of North Carolina, Association and, also prior to the conveyance or lease of any lands or improvements within the Property, the Declarant shall cause the Articles of Incorporation of the Association to be Recorded.

The Association, its successors and assigns, shall be considered: (1) assignees of the Declarant; (2) as the trustee of the Property Owners, their successors and assigns, with respect to the Functions specified herein and Common Properties; (3) by virtue of the rights and obligations assigned and assumed by the Association herein, as a real-party-in-interest under these Covenants; and (4) as a third-party beneficiary under these Covenants. The Association and its successors and assigns shall have standing and authority, at law or in equity, to carry out and enforce these Covenants or any supplemental Declaration made pursuant to these Covenants.

Section 10-2: LIMITATIONS ON LIABILITIES, DUTIES AND OBLIGATIONS

The Association shall strive to carry out and put into effect the Functions and Services specified or reasonably implied in these Covenants; however, the Functions and Services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association with due consideration given to the quantum of reserves and revenues available to the Association, and the relative demands upon the resources which the Association can utilize to execute the Functions. Functions for which the Association "shall" be obligated shall have priority over Functions which the Association "may" perform.

THE ASSOCIATION, ITS DIRECTORS AND OFFICERS SHALL NOT BE LIABLE TO ANY PROPERTY OWNER, THEIR LESSEES AND GUESTS FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY RULE OR REGULATION PROMULGATED PURSUANT TO THESE COVENANTS IN GOOD FAITH AND WITH REASONABLE CARE.

Section 10-3: NEW FUNCTIONS

The Association may perform other Functions not in these Covenants so long as: (1) the Board of Directors specifically finds that such function will likely benefit the Property by improving or maintaining its economic, environmental, commercial, aesthetic, cultural or historical value, or enhance the use and enjoyment of the Property; (2) the commitment to provide for such new Function is approved by an affirmative vote of the Board of Directors of the Association; and (3) the commitment to provide for such new Function is approved by the Members pursuant to a Mail Referendum.

Section 10-4: OWNERSHIP OF COMMON PROPERTIES

The Association shall be authorized to own Common Properties and equipment, furnishings and improvements necessary to carry out its Functions pursuant to these Covenants.

Section 10-5: ACCEPTANCE OF PROPERTIES DONATED BY DECLARANT

The Association shall be obligated to accept and assume responsibility for maintaining those lands and facilities described in Section 9-8 when such Properties are conveyed by the Declarant to the Association.

Section 10-6: OWNERSHIP OF PURCHASED COMMON PROPERTIES

The Association shall be authorized to purchase and own Purchased Common Properties and Neighborhood Common Properties.

Section 10-7: OWNERSHIP OR LEASE OF LAND OR FACILITIES NOT ON THE PROPERTY

The Association may acquire and own any land or facilities not located on the Property so long as such land or facilities are necessary to carry out the authorized Functions of the

Association which, in the discretion of the Directors of the Association, will benefit the Property by enhancing its use and enjoyment of its commercial, cultural, economic, historical, environmental or aesthetic value.

Section 10-8: POWER TO MORTGAGE AND PLEDGE

The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge designated percentages of the revenues of the Association as security for loans made to the Association in performing its authorized Functions.

Section 10-9: PROPERTY MAINTENANCE FUNCTION

Subject to the limitations provided in Section 1-2, consistent with the standards set forth in Section 4-16, and in addition to the requirements of Section 10-25, the Association shall provide for the care, operation, management, maintenance, repair, and replacement of all Common Properties, including, if any, parking areas, roads, walks, drives, security gates, signage lighting, malls and other similar Common Properties, as necessary for their customary use and enjoyment; maintenance and care of all Project Open Space or unimproved areas included in the Common Properties, and of plants, trees, shrubs and wildlife in such Open Space or unimproved areas; maintenance of lighting provided for transportation corridors, parking areas, walks, drives, fountains, nature trails, bikeways, waterways and other similar Common Properties; maintenance of other areas as may be necessary for access to the boundary or for full utilization of any land or any improvements within the Property.

If any Common Properties consist of only a portion of, or defined space within, a building or other improvement owned by the Declarant, and such space is not subject to a written lease between the Declarant and the Association, the Association shall, as a part of this Function, be obligated to and shall provide for the care, operation, management, maintenance and repair of said defined space, within the building or other improvement, and shall be obligated to and shall bear and pay to the Declarant a proportionate share of the Declarant's costs and expenses relating to the building or improvement as a whole which shall be determined by the Declarant based on the actual amounts of such costs and expenses relating to the building as a whole multiplied by the ratio of the number of square feet of floor area of said defined space within the building or improvement to the number of square feet of floor area of the entire building, or improvement.

Section 10-10: MAINTENANCE OF PURCHASED COMMON PROPERTIES

The Association shall have the obligation to maintain, repair and otherwise care for Purchased Common Properties consistent with section 10-9.

Section 10-11: OPERATION FUNCTION

Consistent with Pertinent Law and the provisions of these covenants, the Association may perform all functions which are not being performed by a governmental body which may

be reasonably necessary or desirable to keep or maintain the Property as a safe, attractive, desirable community.

Section 10-12: SECURITY FUNCTION

To the extent not provided by public, private or volunteer police, sheriff or fire departments, the Association may provide security and fire protection within the Property and provide and maintain a fire and watch system which may include periodic fire prevention inspections and equipment certifications, cable, microwave, telephone or radio-based fire monitoring, and television security electronics which do not unreasonably offend the privacy of the Property Owners, the Declarant or their Residents, Guests, employees or invitees.

Section 10-13: TRANSPORTATION FUNCTION

The Association may own, lease, care for, operate, maintain, repair and replace or otherwise provide for a transportation system between the major commercial residential, recreational, educational and group meeting facilities located on the Property and within Hayesville, North Carolina. Such transportation system may be linked with other transportation systems which provide access to other parts of neighboring towns. The Association may charge such user fees as may provide optimum revenues to assist in defraying costs for the purchase, operation, and maintenance of a transportation system.

In addition, the Association shall have the power to protect the use and enjoyment of the roadways owned by the Association, including but not limited to restrictions on the types, sizes and weights of vehicles permitted to use roads, use of the roads during ice and snow storms, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. Restrictions on the use of the private roads may more restrictive than the laws of any state or local government having jurisdiction over the Property. The Association may prohibit or regulate the entry into and use within the Property of excessively noisy vehicles and vehicles which, in the judgment of the Association, are likely to damage the terrain or landscape, including but not limited to two and three-wheeled motorcycles, snowmobiles, and off-road recreation vehicles.

The Association shall have the authority to provide for snow removal on public roads and Common Properties within the Property. The Association shall also maintain all directional signs within the Property and shall have the authority to establish directional signs where appropriate.

Section 10-14: RECREATION AND FESTIVAL FUNCTIONS

In order to promote the use and enjoyment of the Property, the Association may provide limited year-round sports recreation, festival and adult education programs of suitable variety and such miscellaneous equipment as may be necessary thereof.

Section 10-15: MARKETING FUNCTION

In order to establish, preserve, enhance or maintain the economic value or maximum use and enjoyment of the Property as a whole, the Association may provide a suitable and

continuing program to promote the Property locally, nationally and internationally, as a desirable year-round community. Such program may include, but not be limited to; stimulating and coordinating major events, including festivals and sports competitions; advertising and placing articles in news media; involvement in travel industry and the management training and development industry; encouraging responsible groups to hold conferences, training sessions and meetings with the Property; and, publishing a newsletter. All of such functions may be carried on separately or jointly with other local, regional or national organizations, corporation or associations, including cooperating in joint programs with other western North Carolina accommodation services. The Association may, to the extent possible, undertake its obligations hereunder in whole or in part, in conjunction with or through, any organization which may be engaged in the promotion of the state or local area resort industry, and shall pay what the Association determines as an appropriate fair share of the costs and expenses of promotional activities of any such organizations. Notwithstanding any of the foregoing, any marketing activity undertaken by the Association pursuant to the paragraph must be Approved by the Declarant.

Section 10-16: ACCESS FUNCTION

In the event that a national or regional energy shortages or other condition makes it difficult for Property Owners, their Lessees or Guests to obtain access to the Property by conventional modes or automobile or airline traffic, the Association may engage in such activities, cooperative or otherwise, which will reasonably enhance the possibility or feasibility of providing other modes of transportation to the Property.

Section 10-17: SOLID AND ORGANIC WASTE COLLECTION FUNCTION

In the absence of, or in lieu of, provision of such services by a governmental body, the Association may provide for collection and removal of all solid and organic waste within the Property. The Association may solicit funds for and may otherwise engage in research and feasibility studies of the possibility of using the solid or organic waste as a fuel for burning or as a feedstock for the production of ethanol, methanol or methane. If, in the discretion of the Board of Directors, such energy production is cost efficient and can be done in a manner which does not create environmental, visual or olfactory pollution, and if such energy production is necessary or beneficial to the survival or maximum use of the Property, the Association may engage in such energy production.

Section 10-18: DOMESTIC ANIMAL CONTROL FUNCTION

The Association may provide regulations, manpower and funds to enforce pet control in a manner consistent with Section 4-4. The Association may exclude pets from Common Properties and other public areas. The Association may, but shall not be obligated to, provide reasonable kennel facilities or the keeping and care of Property Owners', Lessees', and Guests' dogs or for the orderly confinement or demise of stray animals in corporation with an animal humane society. The Association may capture any animal in violation of Section 4-4 and may charge the owner or keeper thereof a fee reasonably related to the cost incurred by the Association in enforcing Section 4.4.

Section 10-19: RESOURCE PROTECTION FUNCTIONS

The resource protection Functions of the Association may be as follows; provided, however, that none of the following resource protection Functions shall apply to any lands or improvements within Land Classes D-1, D-2 or D-3.

- (a) Drainage Control Function. The Association or the Architectural Review Board may promulgate, prescribe, and amend, from time to time, reasonable standards and regulations for drainage control to minimize the ecological damage which would tend to result from any grading, paving, landscaping, clearing vegetation, excavation, burning, application or discharge of chemicals and nutrients, construction or demolition activity on the Property.
- (b) Environmental Hazard Function. The Association or the Architectural Review Board may promulgate, prescribe and amend, from time to time, reasonable rules and regulations which shall govern activities which may be environmentally hazardous, such as the application or discharge of fertilizers, pesticides and other chemical.
- (c) Insect, Reptile and Woods Fire Control Function. To implement effective insect, reptile and woods fire control, the Association or its agents have the right to enter upon any unimproved property (e.g. property on which no building or structure has been constructed, and upon which no landscaping plan has been implemented) for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other growth, removing trash or dispensing pesticides.
- (d) Wildlife Function. The Declarant intends that the Property is to be developed and maintained for the principal purpose of accommodating human uses and that the Property is not intended to be nor is to be maintained as a wildlife sanctuary; nonetheless, the Association may undertake reasonable measures to protect or replenish species of wildlife that can be expected to adapt to human's presence on the Property, particularly in Project Open Space areas; and, the Association shall undertake to enforce the prohibitions of Section 4-13 against willful destruction of important species of wildlife that can be expected to adapt to man's presence in the area. The Association may also undertake to restock fish populations in the ponds and streams within the Property, if any.
- (e) Hazardous Waste Function. In addition to the requirements for solid waste management and for disposition and control of hazardous wastes as provide by Pertinent Law, the Association may from time to time establish appropriate, reasonable regulations and controls designed to reduce the likelihood that noxious and hazardous wastes may seep into the water table or into any ponds which are or may in he future be located on the Property.
- (f) Environmental Monitoring Function. The Association may promulgate, prescribe and amend, from time to time, reasonable rules and regulations designed to protect air and water quality within the Property, including but not limited to regulation of (or preventing the) use of fireplaces and/or requiring the installation of such devices as spark control devices and catalytic converters to reduce emissions and enhance safety. The Association may monitor air and water quality within the Property to determine environmental trends and to detect violation of the Association's rules and regulations as well as violations of local, state and federal pollution laws.

Section 10-20: ENFORCEMENT OF COVENANTS FUNCTIONS

(a) If any Property Owner fails to maintain any Structure, facility or lands within the Property, or fails to perform any acts or maintenance or repair required under these Covenants to be performed by said Property Owner, the Association may provide such maintenance and repair upon such Property and improvements thereon. In addition, the Association may, without notice, make such emergency repairs and maintenance, as may in its judgment, be necessary for the safety of any person or to prevent damage to any other property. The cost of such emergency maintenance and repair shall be assessed against the Property Owner, shall be a lien on the subject property and an obligation of the Property Owner, and shall become due and payable as set forth in sections 15-1 and 15-4. For the purpose of performing the emergency maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Property Owner, to enter upon the respective property during reasonable hours. The Association is given an irrevocable license or easement over all the Property to inspect in order to determine whether any repair is necessary under this Section.

(b) **THE DECLARANT, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR, OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.**

(c) Whenever the Association or the Declarant undertakes, pursuant to these Covenants, to correct, repair, clean, preserve, clear out or perform any action on the property or on easement areas adjacent thereto entering the property and taking such action shall not be a trespass and a license or easement to enter is hereby granted by any Property Owner who takes subject to these Covenants.

(d) The Association shall respond to complaints received as to violations of the Covenants and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Association may engage legal counsel to bring an appropriate action at law or in equity, including any appeals, to enforce these Covenants. Adjudicated violators shall be obligated to reimburse the Association in full for all its direct and indirect costs including, but not limited, to legal fees and expenses incurred by the Association in maintaining compliance with these Covenants.

(e) The Association may suspend the rights of enjoyment in Common Properties of any Member, or Lessee or Guest of any Member, for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days next following the cessation of any violation for any infraction of its published rules and regulations, provided that any suspension for either nonpayment of any assessment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Members' obligation to pay the assessment or to abide by such rules, and provided further that the Association shall not suspend the right to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.

(f) See Section 10-18 pertaining to control of animals.

Section 10-21: CENTRAL IDENTIFICATION FUNCTION, NUMBERING SYSTEM, AND DIRECTIONAL SIGNAGE

The Association may make available to Property Owners and Lessees and Guests of businesses within the Property a central identification card or vehicle sticker function, which may provide for the issuance of an identification card to overnight Guests, employees, Property Owners and Lessees.

In addition, the Association may establish a system for numbering and directional signage for all addresses within the Property so as to minimize the likelihood of confusion to Guests, public safety officers and postal carriers who are attempting to locate buildings or units within the Property.

Section 10-22: INSURANCE FUNCTION

(a) Casualty insurance with respect to all Common Properties and Purchased Common Properties, including all improvements thereon, insuring facilities for the full replacement value thereof, including coverage for fire and extended coverage for vandalism, malicious mischief and Acts of God; and

(b) Broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each person injured and less than Two Million Dollars (\$2,000,000) for each occurrence, and with property damage limits of not less than Two Million Dollars (\$2,000,000) for each accident shall be obtained by the Association. The Board in its discretion may provide higher or lower coverage limits in all categories and may also provide, for directors and officers, liability insurance with respect to the directors and officers of the Association. All liability insurance shall, if reasonably obtainable, include the Architectural Review Board and its members as additional insureds; and

All insurance may contain such deductible provisions as good business practice may dictate. The proceeds of all casualty insurance shall be applied to the repair or replacement of the damaged or destroyed land, improvements or vegetation. The proceeds from all liability insurance shall be applied to satisfy the liability. All proceeds from casualty insurance shall be disturbed, utilized, or set aside as reserves as the Board of Directors, in its discretion, shall determine, provided that: (1) the Directors shall operate under the strong presumption in favor of rebuilding or repairing the property which has been subjected to the casualty or damage; (2) any proceeds from casualty insurance arising out of coverage for Common Properties other than Neighborhood Common Properties, if distributed, shall be distributed to Property Owners in proportion to the amount of Annual Assessments paid by Property Owners; and (3) any proceeds from casualty insurance arising from Neighborhood Common Properties, if distributed, shall be distributed in proportion to the amount of Annual Assessments paid by the Property Owners in the subject neighborhood. Except as provided in the following paragraph, all insurance shall name the Declarant as an additional insured. The Association shall provide the Declarant, upon request, with certificates evidencing such insurance and copies of the insurance policies.

With the consent of the Declarant and the Declarant's insurer, and provided the above standards are met, the Association may elect to be treated as an additional insured under the Declarant's insurance policies. In such case, the Association shall be responsible for payment of the cost to the Declarant for listing the Association as an additional insured.

Section 10-23: RECONSTRUCTION FUNCTION

In the event that any facilities or structures maintained on Common Properties are damaged or destroyed by fire, Act of God or other casualty other than war, the Association shall have the affirmative duty to repair or rebuild such structure or improvement or to clear such structure or facility from the land and to landscape the property so as to render it attractive.

Section 10-24: ARCHITECTURAL REVIEW FUNCTION AND ARCHITECTURAL REVIEW BOARD

In order to carry out the architectural review Functions, the Board of Directors of the Association shall appoint on annual terms a three (3) or five (5) member Architectural Review Board, the members of which need not be Property Owners, which shall function as an agent of the Association for the purpose of establishing and enforcing architectural, siting, landscaping, vegetation and building controls in conformity with these Covenants. The Board of Directors shall provide for staggered terms to be served by Members of the Architectural Review Board by alternating between one year and two year terms for each member appointed. The Architectural Review Board shall have the authority for decisions and actions made pursuant to Article IV of these Covenants pertaining to architectural, siting, landscaping, tree and vegetation removal and building controls. The business of the Architectural Review Board shall be conducted as follows:

- (a) Compensation and Consultation. The Association may compensate the members of the Architectural Review Board in a manner and to the extent that is deemed prudent, desirable and reasonable in the judgment and discretion of the Board of Directors of the Association, and the Architectural Review Board may engage or contract with such consultants or professional services as may be necessary to carry out this Function; provided, however, that for so long as the Declarant shall have voting control of the Association, the Declarant shall reimburse the Association for any remuneration or compensation made to either members of the Architectural Review Board or to consultants or professional, for the purpose of developing appropriate architectural, siting, tree and vegetation removal, landscaping, and building standards, as distinguished from the cost of processing individual applications.
- (b) Submission, Approval and Refusal of Architecture, Siting, Landscaping and Other Building Plans. Two (2) copies of all plans and related data shall be furnished to the Architectural Review Board. One (1) copy shall be retained in the records of the Architectural Review Board. The other copy shall be returned to the Property Owner, and both copies shall be marked "approved" or "disapproved" with the signature of the Chairman or Executive Director of the Architectural Review Board. The Architectural Review Board or the Association may require payment of a reasonable cash fee to recover the expense of reviewing plans and related data at the time they are submitted for review, for site inspections or for related matters.

A similar fee may be required for appeals and considerations. The fee provision shall not be applied to any property utilized by a governmental entity or institution.

(c) Approved Plans shall not be effective for construction to be commenced more than twelve (12) months after such Approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event that approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Architectural Review Board of written request for approval, the applicant may send a demand for action by certified mail, and, if the application is neither granted nor denied with ten (10) days of receipt of such demand, the provisions of this Section shall be thereby waived by the Architectural Review Board and the Associations, but only with respect to that application.

Refusal of approval of plans, location, or specifications, may be based by the Architectural Review Board upon any reasonable ground which is consistent with the objectives of these Covenants including but not limited to aesthetic considerations. The Architectural review process shall not be conducted in an arbitrary and capricious manner.

Architectural and design review shall be directed toward attaining the following objectives for the Community:

- (1) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar landforms.
- (2) Ensuring that the location and configuration of structures is visually harmonious with the terrain and vegetation of the Dwelling Lots and with surrounding Dwelling Lots and Structures and does not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.
- (3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Community's overall appearance, with surrounding development, with natural landforms and native vegetation, and with development plans, officially approved by the Declarant or any governmental or public authority, if any, for the areas in which the structures are proposed to be cited.
- (4) Ensuring that the plans for landscaping provide visually pleasing setting for structures on the same lot and on adjoining or nearby lots, and blend harmoniously with the natural landscape.
- (5) Ensuring that any development, structure, building or landscaping complies with the provisions of these Covenants.
- (6) Promoting building design and construction techniques that respond to environmental quality consideration such as energy conservation, air emissions, and run-off water quality and quantity.

If the Architectural Review Board denies the application of a Property Owner, the Property Owner may appeal such action to the Board of Directors of the Association within thirty (30) days after such action. The Board of Directors shall provide an opportunity to hear the case of the Property Owner and a representative or agent of the Architectural Review Board within thirty (30) days of the receipt of the appeal. The decision of the Board of Directors shall be issued within fifteen (15) days after the hearing of the appeal. The decision of the Board of Directors shall be final.

(d) Building Standards. The Architectural Review Board may promulgate standards through bulletins making reference to various national, regional, statewide or local building standards, fire safety standards and other building codes which must be followed in architectural designs submitted to the Declarant. If adopted, said standards shall be published by the Architectural Review Board or the Association and shall be made available to any Property Owner at the cost of publication.

(e) Approval not a Guarantee or Representation of Proper Design or Good Workmanship. No approval of plans, location or specifications, and no publication of architectural standards bulletins by the Architectural Review Board shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence or that such standards comply with Pertinent Law. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good workmanlike manner. **NO IMPLIED WARRANTIES OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY SHALL ARISE AS A RESULT OF ANY PLANS SPECIFICATIONS, STANDARDS OR APPROVALS MADE BY THE DECLARANT, THE ASSOCIATION OR THE ARCHITECTURAL REVIEW BOARD.**

(f) Liabilities for Approvals Granted or Denials Issued by the Architectural Review Board or the Association. **NEITHER THE ARCHITECTURAL REVIEW BOARD, NOR THE ASSOCIATION, NOR THE DECLARANT, SHALL BE LIABLE TO A PROPERTY OWNER OR TO ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST A PROPERTY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATING TO THIS SUBJECT MATTER OF ANY REVIEW, ACCEPTANCES, INSPECTIONS, PERMISSIONS, CONSENTS OR REQUIRED APPROVALS WHICH MUST BE OBTAINED FROM THE ARCHITECTURAL REVIEW BOARD OR THE ASSOCIATION WHETHER GIVEN, GRANTED OR DENIED.**

Section 10-25: OTHER UTILITIES FUNCTIONS

Subject to Pertinent Law and the rights reserved by the Declarant in Article IX, the Association may regulate the installation of any utilities, including but not limited to water, sewage, power lines, telephone lines, cable television, satellite communications and microwave transmission facilities on the Property. In addition, the Association shall have the authority to install water wells for maintenance of Common Properties.

Section 10-26: ASSESSMENT FUNCTION

The Association shall be authorized to collect assessments, fees and charges as prescribed in Article XIII of these Covenants.

Section 10-27: TAX PAYMENT FUNCTION

The Association shall pay ad valorem real estate taxes, special improvement and other assessments, ad valorem personal property taxes and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with, any Common Properties or personalty owned by the Association.

Section 10-28: RIGHT TO DISPOSE OF COMMON PROPERTIES AND PERSONALTY

Subject to the provisions of these Covenants requiring the consent of the Declarant with respect to Properties Donated by Declarant (Section 9-8), the Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Common Properties and Personalty owned by the Association.

Section 10-29: GOVERNMENTAL SUCCESSOR

Subject to Pertinent Law, and subject to the provisions of these Covenants requiring consent of the Declarant with respect to Properties Donated by Declarant, the Association may convey all or any part of any Common Properties owned by the Association, including leasehold interest, to any public agency, authority, public service district, ties owned by the Association, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Association. No such gift or sale or determination as to the purposes or as to the conditions of the transfer shall be effective unless such dedication, transfers and determinations as to purposes and conditions is authorized by Mail Referendum as set forth in Section 11-4. Unless specifically reserved in the deed of conveyance, the transfer of any Common Properties by the Association to third parties will extinguish all licenses and easements of Property Owners in the Common Properties transferred.

Section 10-30: IMPLIED RIGHTS AND FUNCTIONS

The Association shall have and may exercise any right or privileges given to it expressly in these Covenants or except to the extent limited by the terms and provisions of these Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Covenants, including the right to; engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; obtain and pay for legal, accounting and other professional services as may be necessary or desirable; and to perform any function by ,through, or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

Section 10-31: INDEMNIFICATION FUNCTION

To the maximum extent allowed by Pertinent Law, The Association shall be obligated to and shall indemnify the Declarant and hold it and its officers, partners; employees and managers, and members of the Board of Directors of the Association and Architectural Review Board Members harmless from all liability, loss, cost, damage and expense, including attorneys fees, arising with respect to any operations of the Association or any Common Properties or Functions.

Section 10-32: LIMITED REGULATION FUNCTION

The Association shall be authorized to and shall have the power to adopt, amend an enforce reasonable rules and regulations applicable within the Property with respect to any Common Property or Function, and to implement the provisions of these Covenants, the Association's Articles of Incorporation or its By-Laws. A copy of all such rules and regulations shall be provided to each Property Owner. All Property Owners, Lessees, Guests and their employees shall be obligated to and shall comply with and abide by such rules and regulations, and shall reimburse the Association for its cost of enforcement and for damages upon failure to comply with or abide by such rules and regulations.

Section 10-33: CHARGES FOR USE OF COMMON PROPERTIES

The Association may establish reasonable charges for use of Common Properties to assist the Association in offsetting the costs and expenses of the Association attributable to the Common Property. Such fees and charges may apply to one or more classes of Members, Guests or Lessees without applying uniformly to all classes of users of the Association's Common Properties, provided, however, that such charges may not discriminate against use by the Declarant or members of the Club which may be established by the Declarant see Article XIV, if such use is pursuant to the same manner, degree and type as other Property Owners.

Section 10-34: CHARGES FOR SERVICE FUNCTIONS; CONTRACTS WITH NEIGHBORHOOD ASSOCIATIONS; MANAGEMENT CONTRACTS; NEIGHBORHOOD ASSOCIATIONS AND THEIR FUNCTIONS

Section 10-34.1: CHARGES FOR SERVICES

The Association may establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to a Property Owner, Lessee, Guest or Neighborhood Association to assist the Association in offsetting the costs and expenses of the Association.

Section 10-34.2: CONTRACTS WITH NEIGHBORHOOD ASSOCIATIONS

The Association shall have the authority to enter into a contract with any Neighborhood Association within the Property pursuant to which the Association agrees to manage on behalf of such Association any of the Functions provided for by these Covenants or the covenants which create such other

Neighborhood Associations; provided, however, that this Association shall, at a minimum, recover all of its costs for providing such service and provided, further, that this Association shall be indemnified and held harmless for all liability it incurs in the performance of said contract for reasons other than fraud or gross neglect on the part of the Association. The Association shall also have the authority to contact with a Neighborhood Association to carry out any of the Functions provided for herein.

Section 10-34.3: MANAGEMENT CONTRACT

The Association shall have the authority to contract or subcontract with a private management company, including the Declarant, to carry out any and all of the Functions of the Association. Any contract between the Declarant and the Association shall provide, among other things, that the Declarant shall be entitled to recover all of its direct costs, and a proportionate amount of its indirect costs, of managing the Association, plus a profit not to exceed fifteen (15) percent of such costs.

Section 10-34.4: NEIGHBORHOOD ASSOCIATION FUNCTIONS

Section 10-34.4.1: ESTABLISHMENT BY SUPPLEMENTAL COVENANTS

The Declarant may establish a Neighborhood Association by supplemental covenants filed prior to the time any Dwelling Lot in a given Neighborhood (defined in the supplemental covenant) is transferred. Each such Neighborhood Association, which shall be a part of the Association, shall have the authority set forth in the supplemental covenants, which may include but not be limited to, of maintaining Private Open Space, establishing and maintaining Neighborhood Common Properties including Private Open Space, carrying out the management of a Neighborhood Association, and establishing rules and regulations governing the use and maintenance of these properties. Such supplemental covenants may also set forth the means by which the members of the Neighborhood Association shall be selected and how the rights of the Property Owners in the Neighborhood are established, and, similarly, what Special Neighborhood Assessments shall be paid by members of the Association who constitute the subject Neighborhood.

Section 10-34.4.2: ESTABLISHMENT BY DEED

As an alternate to establishment of a Neighborhood Association by supplemental covenants, the Declarant may establish a Neighborhood Association by including the following information in the initial deed given by the Declarant to a Property Owner.

- (a) The number of Dwelling Lots in the Neighborhood.
- (b) The amount of the initial assessments.
- (c) Reference to a Recorded plat or other Recorded instrument which describes the Neighborhood Common Properties (including Private Open Space), upon which the Neighborhood Functions are to be performed.

(d) Reference to the subsection or subsections which indicate the Functions to be performed by the Neighborhood Association; such as:

- (i) Exterior maintenance as required pursuant to Section 4-5 and Section 6-5, including but not limited to routine and periodic major repairs, such as painting, replacement of rotted wood, and replacement of roofs.
- (ii) Subject to requirements of the North Carolina Condominium Act or its successor, carrying out the functions and duties of the subject, including maintenance and care of Neighborhood Common Properties.
- (iii) Maintenance of Neighborhood Common Properties, including but not limited to common roads and Private Open Space, as designated pursuant to Section 10-34.4.2 (c) above.

Any Neighborhood Association of the Association created by this subsection shall be governed and administered pursuant to the provisions of Section 11-13. See also Section 13-6.

**Section 10-34.4.3: USE OF ASSESSMENTS FOR
NEIGHBORHOOD ASSOCIATION FUNCTIONS; ALLOCATION OF COSTS**

All funds collected and distributed on behalf of any Neighborhood Association pursuant to Section 13-6 shall be maintained in separate bank accounts, shall be recorded and accounted for separately, and, except for sharing common administrative costs (see below), shall only be used for carrying out the specified Neighborhood Association Functions. Even though the Neighborhood Associations shall be managed as a part of the Association, there shall be no commingling of funds between the Neighborhood Associations or between the Neighborhood Associations and the Association.

Each Neighborhood represented by a Neighborhood Association shall repay the Association for all direct costs (e.g. maintenance of Neighborhood Common Properties) incurred by the Association in managing the Functions of the given Neighborhood, as well as its pro rata share of common costs incurred. The allocation of such shall be determined by the Board of Directors of the Association.

In the event of dissolution of the Association, any Common Properties or Neighborhood Common Properties (or the proceeds therefrom) which are not Properties Donated by Declarant, shall be distributed only to Property Owners within the given Neighborhood.

Section 10-35: REPORTING FUNCTION

The Association shall annually, within ninety (90) days after the end of the fiscal year of the Association, prepare a general itemized statement of the Association's revenues, costs and expenses. The Association shall furnish to each Member of the Association who makes request thereof in writing a copy of such statement within thirty (30) days after receipt of such request.

Such copy may be furnished to the Member either in person or by mail. The Association may charge the requesting Member for the cost of copies and postage.

In addition, any Member may request to see listings of the income and expenditures of the Association with fifteen (15) days of written notice to the Association.

Section 10-36: NOTICE FUNCTION

Copies of these Covenants, the Articles of Incorporation of the Association, the Bylaws of the Association, and all rules and regulations established by the Association shall be made available to Property Owners upon written request. The Association may establish a charge for reproducing and distributing these documents. Copies of these documents shall be available for review at the Association offices or the Association clubhouse if said facilities exist. In addition, the Association may publish such rules and regulations in a local newspaper or mail the rules and regulations to Property Owners as provided in sections 11-7, 11-8, 11-9 and 11-10.

The Association or its agents may not enter upon improved lands of any Property Owner to install any utility, communications or public convenience facility without providing at least two (2) weeks mail notice to the Property Owner in conformity with Sections 11-7, 11-8, 11-9 or 11-10.

ARTICLE XI: MEMBERSHIP, NOTICE, RIGHTS AND OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

Section 11: MEMBERSHIP, NOTICE, RIGHTS AND OBLIGATIONS OF MEMBERS OF THE ASSOCIATION

Section 11-1: AUTOMATIC MEMBERSHIPS

Every Property Owner and the Declarant shall be a Member of the Association. The Class "A" and "B" Members, as defined in Section 11-2 below, are sometimes hereinafter collectively referred to as the "Members."

Section 11-2: VOTING RIGHTS

The Association shall have two (2) types of regular voting memberships. Members are divided into classes for the sole purpose of computing voting rights and they shall in no event vote as a class.

Class "A" - Class "A" Members shall be all Property Owners, including the Declarant. Each Property Owner shall be entitled to one (1) vote for each Dwelling Unit, Dwelling Lot, Retail Unit, Restaurant Unit, or Professional Service Unit owned by such Property Owner. The owner of a Development Unit Parcel shall be entitled to one vote for each Dwelling Unit, Dwelling Lot, Restaurant Unit, Professional Service Unit or Retail Unit which the Declarant has designated in the deed of conveyance may be built upon within the Development Unit Parcel. The Club shall be entitled to one vote for each ten (10) memberships then currently issued, up to a maximum of 50 votes.

Class "B" - The Class "B" Member shall be the Declarant, until the earlier of: (i) the Declarant sells 100% of the Dwelling Lots intended to be developed in the Community to initial retail purchasers; (ii) the Declarant relinquishes its Class "B" voting rights in a recorded Declaration; or (iii) December 31, 2010. In addition to whatever vote the Declarant has as a Class "A" member, the Declarant as a Class "B" member shall be entitled to two (2) votes, plus one (1) vote for each vote held by a Class "A" Member for each Dwelling Unit, Dwelling Lot, Retail Unit, Restaurant Unit, or Professional Service Unit owned by Declarant.

When any property entitling any Property Owner to membership as a Class "A" or Class "B" Member of the Association is owned of record in the name of two (2) or more persons or entitles, whether fiduciaries, joint tenants, tenants by the entirety, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entitles have a fiduciary relationship respecting the same property, then, if only one votes in person proxy, his vote binds all; otherwise, the vote shall be forfeited as to that voting event.

Section 11-3: BOARD OF DIRECTORS

The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7) or nine (9) members. Initially, the Board shall consist of three (3) members with the number in subsequent years to be determined by the Board of Directors. Members of the Board need not be Property Owners, but no more than one-third (1/3) of the Board may be comprised of individuals who are not Property Owners. When voting to elect Directors, each Member shall be entitled to as many votes as equal the number of votes to which he is ordinarily entitled, based on his ownership of one or more of the various classifications of property, multiplied by the number of Directors to be elected. All votes must be based on whole numbers and not fractions thereof.

Section 11-4: MEMBERS' RIGHTS TO APPROVE CERTAIN ACTIONS BY MAIL REFERENDUM; SPECIAL ASSESSMENTS; AMENDMENTS OF COVENANTS; MERGER OF ANOTHER PROPERTY OWNERS' ASSOCIATION; AND MATTERS SPECIFIED IN BYLAWS OF THE ASSOCIATION

A Mail Referendum may be held on any of the following issues and may be initiated (i) by a two-thirds (2/3) favorable vote of the Board, (ii) by a petition signed by Property Owners who hold one-third of the total Class "A" votes, or (iii) by Declarant. The subject of a Mail Referendum may include any of the following matters, and none of the following actions may be taken unless a quorum, as defined in Section 11-5, is present and the action approved by the following respective requisite votes of a quorum in a Mail Referendum: (a) any Special Assessment recommended by the Directors as provided in Section 13-5 (fifty-one percent (51%) approval required); (b) any merger of the Association with another property owners' association serving an adjoining or nearby tract (fifty-one percent (51%) approval required); (c) amendments of any provision of these Covenants, except that no amendment may impair any right reserved by the Declarant, may create or increase any liability of the Declarant, or may alter the Land Use Class of any property retained by the Declarant or any Property conveyed by the Declarant prior to the Mail Referendum unless expressly approved in writing by Declarant (fifty-one percent (51%) approval required); (d) other fundamental and material actions designated in the Association's By-Laws, including amendments of these Covenants, as actions

for which Mail Referendum must be held (fifty-one percent (51%) approval required); (e) the sale of any Common Property owned by the Association consisting of realty or Open Space (fifty-one percent (51%) approval required); and (see Section 11-2 for allocation of voting rights when any property entitling any owner no membership as a Class "A" or "B" member of the Association is owner of record in the name of two (2) or more persons who are entities). The percentage of vote requisite refers to the percentage of a quorum of total Class "A" and Class "B" votes; provided, however, that if the Declarant no longer exercises its Class "B" membership rights, the percentage shall relate only to that Class "A" membership vote.

Any Mail Referendum notice shall include a statement prepared by the Directors of the Association stating the reasons that Directors are for passage of the Mail Referendum, together with a statement prepared by the Directors dissenting from such proposed action; provided, however, that neither of such statements may exceed a maximum length of five (5) pages for each proposed action. In any Referendum initiated by a Petition of Property Owners, one representative designated by the Property Owners who are requesting the Referendum may include in the Referendum notice a statement, and the Directors may include a statement setting forth the reasons why a majority of the board is in favor of is opposed to the subject of the Referendum. The Declarant shall have the right to include a statement with respect to any matter which is the subject of any Referendum.

No Mail Referendum shall be effective unless a statement of the results thereof is signed by the President and Secretary of the Association in their representative capacities, and the statement is mailed to Property Owners in the manner provided in Sections 11-7, 11-8, 11-9 & 11-10. Said statement shall include the effective date of the action, the date at which a mailing of the Mail Referendum was made, the total number of votes needed to adopt the actions, and the total votes cast for and against the action.

Section 11-5: QUORUM REQUIRED FOR ANY ACTION AUTHORIZED AT REGULAR OR SPECIAL MEETINGS OF THE ASSOCIATION

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association (other than a matter subject to a Mail Referendum), the presence at the meeting of Members or proxies or Mail Referendum Ballots entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not forthcoming at the first meeting, a second meeting may be called subject to the giving of proper notice, and there shall be no quorum requirement for such meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Section and any other requirements for such "duly called meeting" which may be established by the By-Laws of the Association.

Section 11-6: PROXIES

All Members may vote and transact business at any meeting of the Association by proxy authorized in writing provided, however, that proxies shall not be required for any action which is subject to a Mail Referendum, in which case the votes of all Members polled shall be made by specially provided ballots mailed to the Association.

Section 11-7: DUTY OF PROPERTY OWNERS TO INFORM THE ASSOCIATION OF CURRENT ADDRESS

Each Property Owner other than Declarant shall have the affirmative duty and obligation to inform the Association in writing of his current address or any change of address. No Property Owner may be excused from his obligations established in these Covenants, nor challenge a Mail Referendum if the Association mailed an assessment bill, statement, Mail Referendum ballot or notice of Mail Referendum to the last address of said Property Owner which is recorded on the books of the Association, for which the Association has not received the Property Owner's current address or notice of change of ownership from the Property Owner.

Section 11-8: NOTICE OF MAIL REFERENDUM BALLOT BY MAIL

Any notice of Mail Referendum ballot required to be sent to any Member or Property Owner under the provisions of these Covenants shall be sufficient if mailed with the proper postage affixed, to the last known address of the person or entity who appears as owner in the Association's records as established pursuant to Section 11-7. Unless otherwise specified, a period of thirty (30) days between the date of mailing and the date of action shall be a sufficient and reasonable period of notice or period in which to return a Mail Referendum ballot.

Section 11-9: NOTICE AND MAIL REFERENDUM BALLOTS TO PREDECESSOR IN TITLE

Any person who becomes a Property Owner and Member following the first day in the calendar month in which notice or Mail Referendum ballots are mailed is not entitled to additional notice or a Mail Referendum ballot if notice or Mail Referendum ballot was given or mailed to his predecessor in title.

Section 11-10: NOTICE OF MAIL BALLOT TO CO-OWNERS

Notice of Mail Referendum ballot to one (1) of two (2) or more co-owners of any Units of property within the Property shall constitute sending a proper notice or Mail Referendum ballot to all co-owners of said Unit. Similarly, the sending of notice or a ballot to a life tenant shall constitute proper notice or Mail Referendum ballot to all remaindermen and holders of other future interests.

Section 11-11: CONTRACTS

Prior to the lapse of the Class "B" voting rights of Declarant, the Association shall not be bound either directly or indirectly to contracts or leases (including a management contract) with the Declarant or its affiliates unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, upon to more than ninety (90) days notice to the other party.

Section 11-12: RIGHTS UPON DISSOLUTION

In the event the Association should dissolve, the total net assets of the Association shall be transferred and distributed according to the provisions of the Association Articles of Incorporation and By-Laws.

Section 11-13: GOVERNANCE AND ADMINISTRATION OF NEIGHBORHOOD ASSOCIATIONS

The following provisions shall apply with respect to the governance and administration of Neighborhood Associations.

Section 11-13.1: ULTIMATE AUTHORITY OF BOARD OF DIRECTORS

Notwithstanding the Neighborhood Functions which may be delegated to a Neighborhood Association, all Neighborhood Associations established pursuant to Section 10 34.4 shall operate as a part of the Association and be subject to the ultimate fiduciary administration, direction, and control of the Board of Directors of the Association. All staff or management of the Association shall, within the guidance and direction of the Board of Directors of the Association, be available to support the activities of the individual Neighborhood.

Section 11-13.2: COMPOSITION OF NEIGHBORHOOD ASSOCIATIONS

Each Neighborhood Association, if any are created, shall be comprised of three

(3) members who are nominated by the Board of Directors elected by a majority vote of the Class "A" Property Owners who are located within the given Neighborhood.

Section 11-13.3: VOTING ON NEIGHBORHOOD MATTERS; NEIGHBORHOOD MAIL REFERENDUMS

All provisions of Sections 11-2, 11-5, 11-6, 11-8, 11-9 and 11-10 shall apply with respect to votes on Neighborhood Associations taken by Property Owners within a given Neighborhood, except that only Property Owners within the Neighborhood may vote on the matter and the matter may only affect the given Neighborhood.

An Annual Neighborhood Assessment may be increased or a Neighborhood Special Assessment may be increased or a Neighborhood Special Assessment (see Section 13-6) may be approved by a fifty-one percent (51%) affirmative vote of a quorum of Property Owners within the Neighborhood pursuant to a Neighborhood Mail Referendum. A Neighborhood Mail Referendum may be initiated by either the Declarant, the Board of Directors of the Association, the Neighborhood Association or upon petition of twenty percent (20%) of the Property Owners within the Neighborhood. In any Neighborhood Mail Referendum which is conducted, the last two paragraphs of Section 11-4 shall apply with the exception that the Neighborhood Association shall be substituted for the Directors of the Association.

ARTICLE XII: COMMON PROPERTIES

Section 12: COMMON PROPERTIES

Section 12-1: GENERAL

Common Properties are defined in Section 2-1.4. The title to all Common Property shall be held by the Association. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Property Owners, their family members, Lessees and Guests at uniform fees, charges and assessments, and rules and regulations which may be established from time to time by the Association; provided, however, that Neighborhood Common Properties established pursuant to Section 10-34.4 may be limited to use only by Property Owners and their Guests within a given Neighborhood. The designation of land or improvements as Common Properties or Neighborhood Common Properties shall not mean or imply that Property Owners, their Lessees and Guests acquire an easement of use and enjoyment therein except as provided in Section 12-2 below and except at as such and under such rules and regulations, as may be established from time to time by the Association. (See Section 9-8 pertaining to the Declarant's right to convey certain categories of Common Properties to the Association).

Section 12-2: EXTENT OF MEMBERS' EASEMENT IN COMMON PROPERTIES

Every Class "A" and "B" Member shall have a nonexclusive right and easement of access, use and enjoyment in all Common Property, and such easement shall be appurtenant to and shall pass with the title of every tract of land or other unit ownership of realty within the Property; provided, however, that the rights and benefits created pursuant to this Section shall be subject to the Rights of the Declaration and the Association set forth in these Covenants, and subject to any Rules and Regulations promulgated by the Association.

Section 12-3: PURCHASED COMMON PROPERTIES

"Purchased Common Properties" shall be considered Common Properties, and except where provided otherwise, all provisions in these Covenants pertaining to Common Properties shall be applicable to Purchased Common Properties. Subject to the limitations provided elsewhere in these Covenants, every Class "A" and "B" Members shall have a right and easement of enjoyment in the use of any property now or hereafter defined as "Purchased Common Property" pursuant to these Covenants.

Section 12-4: DISCLAIMER OF WARRANTIES

The Association and each Property Owner agree that the Common Properties shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the condition, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common

Properties. No claim shall be made by the Association or any Property Owner relating to the condition, operation, use, accuracy or completeness of the Common Properties or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Properties which exist and are assignable.

Section 12-5: INSPECTION OF COMMON PROPERTIES

Upon completion of the Common Properties, Declarant will engage independent licensed inspectors to inspect any Common Properties to determine if they were built in substantial compliance with the applicable plans and specifications as modified by any change orders. Any repairs indicated by the inspection report shall be completed by the Declarant, at its sold cost and expense.

ARTICLE XIII: ASSESSMENTS AND OTHER CHARGES

Section 13: ASSESSMENTS AND OTHER CHARGES

Section 13-1: COLLECTION AND USE OF ASSESSMENTS, FEES AND CHARGES

The Assessments, fees, charges and liquidated damages described in these Covenants shall be collected by the Association and used exclusively for carrying out the Functions described in Article X of these Covenants.

The Assessments described in this Article shall not be in lieu of, nor shall they displace, any other charges or fees for services and use of Common Properties which may be required by the Board of Directors of the Association pursuant to other Sections of these Covenants. Nor shall the Assessment described in this Article XIII of these Covenants to be in lieu of, or displace, any charges, fees or assessments owed by any Property Owner to any other Property Owners Association in which the Property is also a member. All obligations to pay assessments established here by are affirmative obligations which are secured by a lien upon the subject property. See Article XV.

Section 13-2: COMPUTATION OF ANNUAL ASSESSMENTS

It shall be the duty of the Board of Directors to prepare a budget annually that shall reflect the estimated revenues and expenses of the Association for the ensuing fiscal year including fees and charges for use of Common Properties charged by the Association, if any; the estimated surplus or deficit; and the estimated funds necessary to maintain the accounts established by the Board of Directors (including any capital replacement reserve provided for in the Association's budget). The Annual Assessment levied against each Unit which is subject to assessment shall be computed by dividing the budgeted common expenses by the total number of Units which are subject to assessment plus the total number of Units reasonably anticipated to become subject to the assessment during the fiscal year. For assessment purposes, each Dwelling Lot and Dwelling Unit within Land Class R-1, R-1A, R-2 and R-3 shall constitute one

(1) Unit; the Club Property shall be deemed to constitute ten (10) Units and all other Land Use Classes shall be deemed to constitute one (1) Unit for each 2500 square feet or portion thereof of

finished space. Notwithstanding the above, the Annual Assessment for the fiscal calendar year of 2005 to 2006 for a Dwelling Lot that does not contain a completed Dwelling Unit as of April 1, 2005, shall be equal to two-thirds (2/3) of the Annual Assessment for a Dwelling Unit for such fiscal year. Thereafter, the Annual Assessments for all Dwelling Lots and Dwelling Units shall be equal. The annual budget and the amount of the assessments shall be determined by the Board of Directors, in their sole and absolute discretion.

The Board of Directors shall cause a copy of the Association's budget and notice of the amount of the Annual Assessment to be levied for the following year to be delivered to each Property Owner at least thirty (30) days prior to the beginning of the fiscal year. The budget adopted by the Board of Directors shall become effective automatically. Notwithstanding the foregoing, in the event the Board or Directors fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue; provided, however, that upon the adoption of a new budget, the same shall be deemed retroactive to the beginning of the then current budget year and each Property Owner shall pay the increase, if any, in the assessment for the beginning of such year at the time the next installment is due.

Section 13-3: SPECIAL ASSESSMENTS FOR MAJOR REPAIRS AND DEBT RETIREMENT

In addition to the Annual Assessments authorized by Section 13-2 hereof, the Association may levy "Special Assessments" for the purpose of reconstruction, repair or replacement of capital improvements upon the Common Properties including the necessary fixtures and personal property related thereto, for additions and improvements to Project Open Space or to Common Properties for the necessary facilities and equipment to offer the services authorized herein, or to repay any loan made to the Association, provided that such Special Assessment shall have received the approval of fifty-one percent (51%) of the votes of the Members other than the Declarant in a Mail Referendum conducted pursuant to Section 11-4.

The portion of each Special Assessment to be paid by the Property Owners (excluding properties with full or limited exemptions) shall be proportionate to the applicable Annual Assessment for each Property Owner for the assessment year during which such Special Assessments are approved.

Section 13-4: SPECIAL ASSESSMENT FOR MAINTENANCE OF UNITS AND DELINQUENT CLUB CHARGES

All maintenance required by Property Owners shall be performed in a manner consistent with this Declaration. If any Property Owner fails to perform this maintenance responsibility accordingly, the Association may perform it and assess all costs incurred by the Association plus an administrative surcharge against the Unit and the Property Owner thereof as a Special Assessment which may be imposed by the Board of Directors without a Mail Referendum or other approval of the Members. Prior to entry upon the Unit, the Association shall afford the Owner ten (10) days' written notice to remedy a condition inconsistent with this Declaration, except when entry is required due to an emergency. Further, any Member who is delinquent in the payment of any Club Charges, as defined in Section 14-1 below, shall be

obligated to pay a Special Assessment for such amounts, without a Mail Referendum or other approval of the Members.

Section 13-5: NEIGHBORHOOD ASSESSMENT

In the event that the Declarant establishes a Neighborhood Association to carry out a Neighborhood Association Function as provided in Section 10-34.4, the Property Owners within the applicable Neighborhood shall be subject to the Neighborhood Assessment which is established as provided in Section 10-34.4. Once established, said Assessments may be increased annually by an amount not to exceed the greater of ten percent (10%) or the increase in the Consumer Price Index published by the United States Department of Labor or comparable index selected by the Board of Directors of the Association, unless otherwise approved by a Neighborhood Mail Referendum as provided in Section 11-13. Similarly, a given Neighborhood may adopt a Special Assessment in the nature of that provided in Section 13-5, but applicable only to a given Neighborhood if approved pursuant to the Neighborhood Mail Referendum as provided in Section 11-13.

Section 13-6: SPECIAL ASSESSMENT FOR MAINTENANCE OF WASTEWATER COLLECTION, TREATMENT AND DISPOSAL FACILITIES

In the event the fund for operations and maintenance of wastewater collection, treatment and disposal facilities are not adequate for the construction, repair, and maintenance of the disposal system, there shall be a Special Assessment to cover such necessary costs. By requirement of the North Carolina Division of Environmental Management, this assessment can be made, as necessary, at any time and there can be and shall be no limit on the amount of such assessment.

Section 13-7: ASSESSMENT RESERVES, WORKING CAPITAL

The Association may establish Reserve Funds for the receipts from its Annual or Special Assessments to be held in an interest drawing account or in prudent investments as a reserve for major rehabilitation or major repairs, and for emergency and other repairs required as a result of depreciation, erosion, storm, fire, natural disaster or other casualty loss.

Section 13-8: TIME AND METHOD OF PAYMENT OF ANNUAL ASSESSMENTS; SUPPORTING DATA

Any assessment year shall run from January 1 to December 31. The Annual Assessments provided for in Article XIII of these Covenants shall be assessed according to the land use characteristics of the property as of January 1, 1990 and each January 1 thereafter, and the Annual Assessments provided for herein shall commence no earlier than January 1, 1990. For any assessment year, each Property Owner shall pay in advance, on a annual basis within the first ten (10) days of each year, all assessments due on said property.

Section 13-9: EFFECT OF NONPAYMENT OF ASSESSMENTS AND OTHER CHARGES

The following actions may be taken by the Association in the event a Property Owner fails to make payment of Annual or Special Assessments set forth above or other charges and obligations when due:

(a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE OF FIFTEEN PERCENT (15%), or five percent (5%) over the prime rate charged by major banks in Atlanta, Georgia, whichever rate is greater, will be charged on all late payments of assessments. In no event shall the interest rate be more than the maximum permitted by law.

(b) Personal Liability. If the assessment or charge is not paid within thirty (30) days after the past due date, the Association may bring an action at law or in equity against the Property Owner personally, and there shall be added to the amount of such assessment the cost, including reasonable attorneys fees, of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (1) above, reasonable attorney's fees and expenses to be fixed by the court, and the costs of the action.

(c) Execution on Lien. Subject to Section 14-3 relating to subordination of the lien to mortgages and other encumbrances, the Association may execute its lien upon the subject property according to procedures prescribed by the law of North Carolina as appropriate.

(d) Other Rights. In addition to the above, the Association shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of a Property Owner in order to receive assessments due.

Section 13-10: ROUNDING OF ASSESSMENT FIGURES

Section 13-11: ALL ASSESSMENTS CHARGED BY THE ASSOCIATION AND INTEREST THEREON SHALL BE ROUNDED OFF TO THE NEAREST DOLLAR. DECLARANT'S OBLIGATIONS FOR ASSESSMENTS

Beginning on the date of the recordation hereof, and continuing so long as Declarant owns one or more Units, Declarant shall pay the difference, if any, between the amount of assessments payable by Owners other than Declarant and the actual common expenses incurred by the Association for each assessment period unless Declarant otherwise elects to pay assessments on its unsold Lots as described more fully below. If Declarant determines not to pay the difference between the amount of assessments payable by Owners other than Declarant and the actual common expenses, then Declarant shall pay assessments for the Units which Declarant owns. Unless Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days prior to the end of the fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as the preceding fiscal year. Declarant's obligations

hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of the same.

Section 13-12: EXEMPT PROPERTY

Notwithstanding anything to the contrary herein, all Open Space within Land Class OS, Common Properties, Purchased Common Properties, Neighborhood Common Properties, Open Space, Properties within Land Class U and Undesignated Land shall be exempt from payment of assessments.

ARTICLE XIV: THE RIDGES COUNTRY CLUB

Section 14: THE RIDGES COUNTRY CLUB

Section 14-1: MANDATORY MEMBERSHIP

The Declarant is developing The Ridges Country Club as a membership club pursuant to the Club Plan. In accordance with the Club Plan Documents, all Owners (excluding the Declarant, the Association and the Club and those Property Owners existing on the date of these Covenants who do not apply for membership) who are approved for membership will be required to acquire and maintain in good standing at least a "Sports Membership" in The Ridges Country Club. Membership in The Ridges Country Club shall be subject to the terms and conditions of the Club Plan Documents, which will be created, as they may be amended from time to time.

Membership in The Ridges Country Club will require the payment of a membership purchase price called a membership deposit and membership dues, fees and other amounts (the "Club Charges"). Club Charges shall be determined by the Club and are subject to change as contemplated by the Club Plan Documents. Delinquent Club Charges are deemed to constitute Special Assessments as provided for in Section 13-5 above. The Association shall have a lien against each Dwelling Lot for all unpaid Special Assessments in accordance with the lien and foreclosure provisions set forth in Article XIII. In the event that the Association does not enforce its rights hereunder with respect to a Special Assessment resulting from delinquent Club Charges, the Association hereby consents and authorizes the Club to enforce the lien and foreclosure provisions of Article XIII. Transfer of a membership in The Ridges Country Club shall be in accordance with the Club Plan Documents.

Section 14-2: THE CLUB PROPERTY

The Club Property is privately owned and operated by the Club and is not a part of the Common Properties hereunder. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Dwelling Lots or Dwelling Units within the Community, to modify the Club Plan Documents, to reserve memberships, to sell, lease or otherwise dispose of the Club Property in any manner whatsoever and to any person whomsoever, to add, issue or modify any type, category or class

of membership, to recall any membership at any time for any or no reason whatsoever, to convert the Club into a member-owned club, to make any other changes in the terms and conditions of membership or in the facilities available for use by members and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges. ACQUISITION OF A MEMBERSHIP IN THE CLUB IS MANDATORY. OWNERSHIP OF A LOT OR UNIT OR ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.

Section 14-3: ACKNOWLEDGEMENTS REGARDING CLUB PROPERTY

Each Property Owner, by acceptance of a deed or recorded contract of sale to a Dwelling Lot acknowledges:

(a) That privileges to use the Club Property shall be subject to the terms and conditions of the Club Plan Documents.

(b) Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Property Owner by acquisition of title to a Dwelling Lot releases and discharges forever the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Property Owners, and/or (2) any claim that the Property Owners are entitled to use the Club Property by virtue of their ownership of a Dwelling Lot without acquiring a membership in the Club, paying the applicable membership contribution or membership deposit and dues, fees and charges established by the Club from time to time, and complying with the terms and conditions of the Club Plan Documents.

Each Property Owner and the Association shall jointly and severally indemnify, defend, and hold harmless the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, against and in respect of, and to reimburse the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant, the Club, their affiliates, successors and assigns and their respective members, partners, shareholders, officers, directors, employees and agents, shall incur or suffer, which arise out of, result from or relate to any claim that because the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by the Association or the Property Owners and/or that Property Owners may use the Club Property without acquiring a membership in the Club pursuant to the Club Plan Documents and paying the membership

contribution or membership deposit, and dues, fees and charges established by the Club from time to time;

(c) That any entry upon the Club Property without permission of the Club may be deemed a trespass and each Property Owner shall refrain from, and shall cause all occupants of such Property Owner's Dwelling Lot, their Guests and invitees to refrain from any unauthorized entry upon the Club Property;

(d) That the Club may, but is not obligated to, assign to the Association the right to collect any or all Club Charges on behalf of the Club. In such case, the Association will collect all Club Charges for a particular calendar month and remit same to the Club, together with a statement of accounts receivable itemized in reasonable detail and in such format as may be reasonably acceptable to the Club and the Association, setting forth the status of payment of each Club member, within ten (10) days following the end of the applicable calendar month. The Club shall have the right, at the Club's expense, upon reasonable notice to the Association to audit the Association's books and records relating to the collection of and remittance of the Club Charges. The Association shall, on behalf of the Club, take such actions to collect unpaid Club Charges as the Association customarily takes with respect to other delinquent Assessments or other amounts owned to the Association by Owners pursuant to the terms hereof and shall be reimbursed by the Club for all costs incurred by the Association for such action, within thirty (30) days of the Association's written request to the Club for such reimbursement;

(e) That the proximity of Dwelling Lots and Common Properties to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, or recovery thereof and that each Owner's use and enjoyment of his or her Dwelling Lot or Dwelling Unit and the Common Property may be limited as a result and that neither the Association, Declarant nor the Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Property Owner or occupant of any Dwelling Lot, their Guests or invitees, for damage or injury resulting from errant golf balls being hit upon any Dwelling Lot or Common Properties or recovery thereof;

(f) That the Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Club Property, including changing the location, configuration, size and elevation of bunkers, fairways and greens and constructing fences, and that neither the Club, Declarant, nor the Association, shall have any liability to Property Owner as a result of such modifications to the Club Property;

(g) That there are no express or implied easements over the Club Property for view purposes and no guaranty or representation is made by Declarant or any other Person that any view over and across the Club Property will be preserved without impairment, and that neither the Club, Declarant nor the Association shall have any obligation to prune or thin trees or other landscaping to preserve views over the Club Property;

(h) That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by Declarant or the Association or by any person acting on behalf of any of the foregoing; and

(i) That the Club may own one or more lakes, water retention ponds or other water features on the Property. Notwithstanding the ownership of such lakes or water retention ponds, the Club may use any and all lakes, water retention ponds or other water features on the Property for the purpose of irrigating and maintaining the Club Property with the result that the water level in such lakes, water retention ponds or other water features may from time to time vary. Each Property Owner in the Community acknowledges such right on the part of the Club and agrees not to commence any cause of action or other proceeding involving the Club based on the exercise of such right or otherwise interfere therewith.

In the event there are insufficient water levels to provide the necessary irrigation needs of the Club Property and all other areas of the Property, subject to applicable governmental permits and requirements, the Club Property shall have first priority of irrigation, followed by the Common Properties, and any Common Properties within a Neighborhood.

Section 14-4: RIGHTS OF ACCESS AND PARKING

The Club and members of the Club (regardless of whether such Persons are Members hereunder), their Guests and invitees and the employees, agents, contractors and designees of the Club shall at all times have a right and a non-exclusive easement of access and use over all roadways located within the Property reasonably necessary to travel to and from the entrance of the Property from and to the Club Property, respectively and further over those portions of the Property (whether Common Properties or otherwise) reasonably necessary for the use operation, maintenance, repair and replacement of the Club Property. Without limiting the generality of the foregoing, members of the Club and permitted members of the public shall have the right to use the pedestrian and golf cart paths located throughout the Property and to park their vehicles on the roadways located within the Property at reasonable times before, during and after tournaments and various other functions held at the Club Property.

Section 14-5: ASSUMPTION OF RISK AND INDEMNIFICATION

Each Property Owner by its purchase of a Dwelling Lot expressly assumes the risks associated with the Club Property (regardless of whether the Property Owner is using the Club Property) and agrees that neither Declarant, the Club, the Association nor any of their affiliates, successors and assigns or their respective members (in the case of limited liability company only), partners, shareholders, officers, directors, employees and agents nor any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Property Owner's Dwelling Lot or Unit shall be liable to Property Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution or other visual or audible offenses or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Property Owner's Dwelling Lot or Common Properties to the Club Property, including without limitation, any claim arising, in whole or in part, from the negligence of Declarant or any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Property Owner's Dwelling Lot or Dwelling Unit. Each Property Owner hereby agrees to indemnify and hold harmless Declarant, the Club, the Association, their

affiliates, successors and assigns or their respective members (in the case of limited liability company only), partners, shareholders, officers, directors, employees and agents and any other entity owning or managing the Club Property against any and all claims by Guests and invitees.

Section 14-6: LANDSCAPE EASEMENT

By recordation of these Covenants, Declarant does hereby reserve for itself and the Club and the members of the Club, a perpetual alienable and transferable easement over, across and upon each and every Dwelling Lot which abuts or is contiguous to the Club Property for the purpose of operation and maintenance of the Club Property, including but not limited to, the use of usual and common equipment for irrigation, maintenance and landscaping thereof, which easement shall specifically constitute a part of the Club Property. By way of example and not limitation, such easement shall permit, but shall not require, entry into any Dwelling Lot for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash, debris and trees.

Section 14-7: GOLF PLAY EASEMENT

By recordation of these Covenants, Declarant does hereby reserve for itself and the Club and the members of the Club, a perpetual alienable and transferable easement over, across and upon each and every Dwelling Lot which abuts or is contiguous to the Club Property for the purpose of doing every act necessary and appropriate to the playing of golf on the Club Property, which shall include, but not be limited to, the recovery of golf balls from any Dwelling Lot, the flight of golf balls over and upon any Dwelling Lot, the usual and common noise level created by the playing of golf and the usual and common activities associated with the operation and maintenance of the Club Property. Nothing herein however, shall be deemed to permit the playing of golf on any Dwelling Lot, it being the intention of this easement that golf play should be limited to the Club Property.

Section 14-8: THE CLUB'S APPROVAL RIGHTS

The Club shall have the right to disapprove actions of the Board and any committees which in its reasonable judgment materially and adversely affects the use of The Ridges Country Club, the Club Property or the Club's rights or obligations under these Covenants. This right may be exercised by the Club at any time within ten (10) days after the Club's receipt of the notice of such proposed action. This Article XIV may not be amended without the written consent of the Club.

ARTICLE XV: DURATION, OBLIGATION AND APPURTENANCE OF RIGHTS AND OBLIGATIONS CREATED HEREIN

Section 15: DURATION, OBLIGATION AND APPURTENANCE OF RIGHTS AND OBLIGATIONS CREATED HEREIN

Section 15-1: DURATION

The Covenants shall be in effect, shall run with and bind the land, and shall inure to the benefit of and be enforceable by and against the Declarant, the Association, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years from the date these Covenants are recorded. Upon the expiration of said twenty (20) year period, these Covenants shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with these Covenants being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; however, that there shall be no renewal or extension of the Declaration, if, during the last year of the initial twenty (20) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes of Class "A and Class "B" Members cast pursuant to a Mail Referendum conducted pursuant to Section 11-4 vote in favor of terminating these Covenants at the end of its then current term.

In the event that the Association votes, at the end of such specific periods, to terminate these Covenants, the president and secretary of the Association shall execute and record a certificate which shall set forth the resolution of the Board of Directors calling for a Mail Referendum concerning termination of the Association, the date of the meeting of the Board of Directors of the Association at which such resolution was adopted, the date that the Mail Referendum was mailed, the total number of votes of Members of the Association returned pursuant to the Referendum and the number of votes in favor of and against termination of the Association. Any termination shall, however, be subject to Section 10-17.

Section 15-2: DURATION OF EASEMENTS

All easements established or reserved by these Covenants shall have a duration coextensive with the duration of these Covenants as provided in Section 15-1 except for those easements which are set forth below and which have the respective durations as set forth below:

- (1) Section 9-4: Certain Utility, Communications, Transportation and Public Conveyance Easements, (reserved in perpetuity);
- (2) Section 9-5: Easements for Bridges and Walkways, (reserved in perpetuity);
- (3) Section 9-6: Easements in Open Space and Common Properties (reserved in perpetuity);
- (4) Section 9-10: Subdivision and Replatting of Property (right to relocate easements), reserved in perpetuity.

Section 15-3: PROTECTION OF MORTGAGES AND OTHER ENCUMBRANCES

No violation or breach of, or failure to comply with, any provision of these Covenants, and no action to enforce any such provision or to prevent a violation, shall effect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any property if such lien or deed of trust is taken in good faith and for value and is Recorded prior to the time an

instrument describing such property and listing the name or names of the owners of fee simple title to the property and giving notice of a claimed violation, breach or failure to comply with the provisions of these Covenants are Recorded. Any such notice of violation, breach or failure to comply used by Declarant, the Association or other Property Owner shall not affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or tile or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien, nor shall the former owner's violation, breach or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new owner resulting from foreclosure. Any such new owner on foreclosure shall, however, take subject to these Covenants with the exception of the former owner's violations or breaches of, or failures to comply with, any provisions of these Covenants which occurred prior to the vesting of fee simple title in such new owner, and such prior acts shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such new owner, his heirs, personal representatives, successors or assigns; provided, however, that any action of the new owner, after taking title to, or possession of, such property which constitutes a violation, shall cause such new owner to be subject to all assessments, charges, restraints, restrictions, burdens and obligations under the Covenants.

**Section 15-4: OWNER'S RIGHTS AND OBLIGATIONS
APPURTENANT**

All rights, easements and obligations of a Property Owner under these Covenants, and all rights of a Property Owner with respect to memberships in the Association under these Covenants, are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer of disposition of such rights and obligations.

ARTICLE XVI: EFFECTS OF COVENANTS AND ENFORCEMENT

Section 16: EFFECTS OF COVENANTS AND ENFORCEMENT

Section 16-1: EFFECT OF PROVISION OF THESE COVENANTS

Each Property Owner, Lessees, their successors, heirs and assigns, and all others who take an interest in land or realty within the Property do promise, covenant and undertake to comply with each provision of these Covenants which provisions:

(a) shall be considered incorporation in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by a Property Owner, or the association (i) be deemed accepted,

ratified, adopted and declared as a personal covenant of the Property Owner or the Association, and (ii) be deemed a personal covenant to, with and for the benefit of the Declarant, the Association, and any other Property Owner;

(c) shall be deemed a real covenant by the Declarant for itself, its successors and assigns, and also an equitable servitude, running in each case, as both burdens and benefits with and upon the title to each parcel of real property within the Property and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by the Declarant within the Property and for the benefit of any and all other real property within the Property; and

(d) shall be deemed a covenant, obligation and restriction secured by alien binding, burdening, and encumbering the title to each parcel of real property within the Property which lien, with respect to any respective unit of real Property, shall be deemed in lien in favor of the Declarant and the Association, jointly and severally.

Section 16-2: WHO MAY ENFORCE

The benefits and burdens of these Covenants run with the land at law and in equity and the Declarant, its successors and assigns, the Association, its successors and assigns, or any Property Owner and his heirs, successors, representatives, administrators and assigns, with respect to the Property, shall have the right to proceed pursuant to Section 16-4 against a party specified in Section 16-3 to compel a compliance to the terms hereof or to prevent the violation or breach in any event. The Association may carry out its Enforcement Function as provided in Section 10-20. The Declarant may carry out its enforcement rights as provided in Article X.

Section 16-3: AGAINST WHOM MAY THE COVENANTS BE ENFORCED

The obligation and benefits prescribed by these Covenants shall run with the Property and shall be enforceable against the Declarant, its successors and assigns, and against any Property Owner, his heirs, successors, representatives, administrators, assigns, or other person whose activities bear a relation to the Property, including Guests and Lessees, when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the covenants, burdens, obligations, easements, servitudes and restrictions set forth in these Covenants.

Section 16-4: ENFORCEMENT REMEDIES

In addition to the enforcement rights of the Declarant pursuant to Article X, and in addition to the enforcement rights of the Association pursuant to Article XI, in the event that any Structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any Structure or land use is in violation of these Covenants, the Association, the Declarant or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity:

(a) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation, or breach of these Covenants; (c) to prevent the occupancy of said building, structure or land; (d) to prevent

any act, conduct, business or uses which is in breach of these Covenants; or (e) to compel any affirmative act which, pursuant to these Covenants, "shall" be performed.

In addition, the Association may suspend the voting rights and easements of enjoyment of any Member, Lessee or Guest for any period during which the payment of any assessments against the Property Owner by such member is delinquent, and for any infraction of its published rules and regulations, it being understood that any suspension for either nonpayment of assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay such assessment, and provided that the Association shall not suspend the rights to use any of the access roads belonging to the association although such use shall be subject to the rules and regulations established by the Association for such use.

Section 16-5: PERPETUITY

The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

ARTICLE XVII: INTERPRETATION AND CONSTRUCTION

Section 17: INTERPRETATION AND CONSTRUCTION

Section 17-1: SEVERABILITY

Should any Covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase or term in these Covenants be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable. Similarly, should any portion of these Covenants be determined to be illegal or unenforceable for any reason as to any parcel within the Property by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties, these Covenants shall nonetheless continue to apply to all other parcels within the Property.

Section 17-2: INTERPRETATION

In all cases, the provisions of these Covenants shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property Owners, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a sites for a high amenity, attractive, well maintained, privately governed country club community.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Property Owners who take ownership subject to these Covenants, do covenant and agree, and are thereby estopped to deny that each Function of the Association and each other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be subject to Pertinent Law to the extent that these Covenants may allow an act which is prohibited by Pertinent Law; however, where these Covenants are inconsistent with Pertinent Law, these Covenants shall apply to the extent that the standards of Covenants shall be higher and more restrictive than Pertinent Law.

Section 17-3: GENDER, TENSE AND NUMBER

When necessary for proper construction, the masculine form of any work used in these Covenants shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 17-4: NO WAIVER

Failure to enforce any provisions of these Covenants shall not operate as a waiver of any such provision or of any other provisions of these Covenants.

Section 17-5: OPTIONS

The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of these Covenants.

Section 17-6: NO IMPLIED LIABILITIES OR DUTIES

ANY RULES OR REGULATIONS ESTABLISHED BY THE ASSOCIATION OR THE DECLARANT PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.

END OF LAND USE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY

IN WITNESS WHEREOF, the Declarant, National Investments, LLC, a North Carolina limited liability company, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

DECLARANT

(SEAL) NATIONAL INVESTMENTS, LLC, a
North Carolina limited liability company

By:

ATTEST: Its:

_____ – Secretary

(SEAL)

ASSOCIATION

MOUNTAIN HARBOUR PROPERTY
OWNER'S ASSOCIATION, INC.

By:

ATTEST: Its:

_____ – Secretary

NORTH CAROLINA
CLAY COUNTY

I, _____ a Notary Public of said state and county certify that,
_____ personally appeared before me this day and
acknowledged that (s)he is _____ Secretary of NATIONAL
INVESTMENTS, LLC and that by authority duly given and as the act of the corporation, the
foregoing THIRD AMENDED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS was signed in its name by its President, sealed with its corporate seal, and
attested by (him)herself as its _____ Secretary.

Witness my hand and notarial seal this the _____ day of _____, 200__.

(SEAL)
Notary Public

My Commission Expires:

NORTH CAROLINA
CLAY COUNTY

Each of the foregoing certificates, namely of

A Notary or Notaries Public of the State and County designed, each duly attested by Notarial seal, is
certified to be correct.

This _____ day of _____, 200__.

Register of Deeds, Clay County, NC

EXHIBIT "A"

[INSERT LEGAL DESCRIPTION OF PROPERTY]

EXHIBIT "B"

[INSERT LEGAL DESCRIPTION OF ADDITIONAL PROPERTY]