

2025000963

CLAY COUNTY NC FEE \$222.00
PRESENTED & RECORDED
05/15/2025 02:39:58 PM
ANGELA SHOOK
REGISTER OF DEEDS
BY: ASHLEY KILLIAN
ASSISTANT
BK: CRP 487
PG: 5 - 5

Return after recording to: Allen, Stahl & Kilbourne, PLLC,
20 Town Mountain Road, Ste. 100, Asheville, NC 28801

References: Book 150, Page 80
Book 173, Page 238
Book 290, Page 263

STATE OF NORTH CAROLINA
COUNTY OF CLAY

**AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS FOR
MOUNTAIN HARBOUR**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN HARBOUR, is made this 15th day of May 2025, by the Mountain Harbour Property Owner's Association, Inc. a North Carolina nonprofit corporation hereinafter referred to as "Association."

WITNESSETH:

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 Book 150, Page 80, Clay County, North Carolina Registry; as amended by the Amended Declaration on December 31, 1993 recorded in Book 173, Page 238, Clay County, North Carolina Registry; and as amended by the Third Amended Declaration of Covenants, Conditions, and Restrictions for The Ridges at Mountain Harbour on July 21, 2005, recorded in Book 290, page 263, Clay County, North Carolina Registry (collectively referred to herein as the "Declaration"); and

WHEREAS, pursuant to Article X, Section 10-4 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

submitted electronically by "Allen, Stahl, & Kilbourne, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Clay County Register of Deeds.

WHEREAS, except as specifically assigned in individual deeds for Development Unit Parcels, the Declarant control period has ended and all Declarant Rights, including Class "B" votes, have been released, waived, or are otherwise terminated; and

WHEREAS, a Mail Referendum was initiated by the Association for the purpose of considering this Amended and Restated Declaration; and

WHEREAS, in such Mail Referendum fifty two percent (52%) of the quorum of total votes were voted FOR amending the Declaration by adopting this Amended and Restated Declaration (the "Covenants" or "Declaration") as provided herein 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 (as 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:

INDEX:

A R T I C L E I:

PROPERTY

DESCRIPTION.....	9
Section 1: Property Description.....	9
Section 1-1: The Property.....	9
Section 1-2: Additions to the Property	9

A R T I C L E II:

DEFINITIONS.....	9
Section 2: Definitions	9
Section 2-1: The Definitions.....	9
Section 2-2: Approved or Approval by the Association.....	9
Section 2-3: Association.....	9
Section 2-4: Club.....	9
Section 2-5: Club Plan Documents.....	9
Section 2-6: Club Property.....	10
Section 2-7: Common Properties.....	10
Section 2-8: Community.....	10
Section 2-9: Covenants.....	10
Section 2-10: Development or Survey Plats.....	10
Section 2-11: Dwelling Lot	10
Section 2-12: Development Unit Parcels	10
Section 2-13: Dwelling Unit.....	10
Section 2-14: Function	10
Section 2-15: Guest	10
Section 2-16: Improved Property	10
Section 2-17: Land Use Class.....	11
Section 2-18: Lessee.....	11
Section 2-19: Mail Referendum	11
Section 2-20: Member	11
Section 2-21: Non-Assessable Land and Water	11
Section 2-22: Open Space	11
Section 2-23: Pertinent Laws.....	11
Section 2-24: Professional Service Unit.....	11
Section 2-25: Property Owner	12
Section 2-26: Recreation Unit	12
Section 2-27: Residential.....	12
Section 2-28: Restaurant Unit.....	12
Section 2-29: Retail Unit.....	12
Section 2-30: Single Private Household.....	13
Section 2-31: Structure.....	13
Section 2-32: Trade Oriented Services.....	13

Section 2-33: Unit	13
Section 2-34: Utility, Transportation, and Maintenance Units	13
Section 2-35: Undesignated Lands	13

ARTICLE III:

CLASSIFICATIONS OF PERMITTED LAND USES	14
Section 3: Classifications of Permitted Land Uses.....	14
Section 3-1: Land Use Classification	14
Section 3-2: Recording and Enforcement of Land Use Class Uses.....	16

ARTICLE IV:

GENERAL COVENANTS.....	17
Section 4: General Covenants	17
Section 4-1: Application of General Covenants	17
Section 4-2: Architectural and Site Development Requirements	17
Section 4-2.1: Architectural Review Required.....	17
Section 4-2.2: Siting	17
Section 4-2.3: Tree and Bush Removal	17
Section 4-2.4: Completion of Construction.....	18
Section 4-2.5: Minimizing Construction Disturbances.....	18
Section 4-2.6: Service Yards	18
Section 4-2.7: Lights and Signs.....	18
Section 4-2.8: Water and Sewage.....	19
Section 4-2.9: Antennas.....	20
Section 4-2.10: Parking	20
Section 4-2.11: Building Height.....	21
Section 4-2.12: Stream Setback Requirements.....	21
Section 4-2.13: Laundry, Drying, and Air Conditioning Units	21
Section 4-3: Other Buildings and Vehicles	22
Section 4-4: Animals	22
Section 4-5: Duty to Keep Property Attractive and in Good Repair	23
Section 4-6: Sound Devices.....	23
Section 4-7: Offensive Activity.....	23
Section 4-8: Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction.....	25
Section 4-9: Prohibition of Oil and Gas Wells and Subsurface Mining	25
Section 4-10: Prohibition of Industry	25
Section 4-11: Subdivision of Property.....	26
Section 4-12: Prohibition of Motorcycles, Snowmobiles, and Off-Road Recreation Vehicles, License Required.....	26
Section 4-13: Willful Destruction of Wildlife	26
Section 4-14: Drainage.....	26
Section 4-15: Smells and Odors	27
Section 4-16: Installation of Bulkheads and Dams; Filling and Excavation of Streambeds.....	27
Section 4-17: Duty to Insure.....	27

ARTICLE V:

SPECIAL COVENANTS PERTAINING TO OPEN SPACE LAND CLASSES (OS-1, OS-2, OS-3, AND OS-4).....	28
Section 5: Special Covenants Pertaining to Open Space Land Classes.....	28
Section 5-1: Overview.....	28
Section 5-2: Transfer of Project Open Space	28
Section 5-3: Members' Easement or Enjoyment of Open Space	28
Section 5-3.1: Project Open Space	28
Section 5-3.2: Private Open Space	29
Section 5-4: Festivals in Project Open Space.....	29
Section 5-5: Prohibited Uses of Open Space.....	29
Section 5-6: Dam Safety; Ponds.....	29
Section 5-7: Use of Ponds	29
Section 5-8: Skateboarding on Roads.....	30

A R T I C L E VI:

SPECIAL COVENANTS PERTAINING TO SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL LAND USE CLASSES (R-1, R-1A, R-2, AND R-3).....	31
Section 6: Special Covenants Pertaining to Single Private Household and Residential Land Use Classes.....	31
Section 6-1: Intended Use for Single Private Household and Residential Purposes	31
Section 6-2: Outbuildings and Camping Units.....	32
Section 6-3: Prohibition of Time Sharing, Interval Ownership, and Subdivision of Residential Property.....	32
Section 6-4: Tennis Courts, Racquetball and Squash Courts, and Swimming Pools.....	33
Section 6-5: Encroachments.....	33
Section 6-6: Basketball Goals.....	33
Section 6-7: Minimum Square Footage.....	33

A R T I C L E VII:

SPECIAL COVENANTS PERTAINING TO COMMERCIAL AND RECREATIONAL LAND CLASSES (C-1, D-1, D-2, AND D-3).....	34
Section 7: Special Covenants Pertaining to Commercial and Recreational Land Classes.....	34
Section 7-1: Lighting.....	34

A R T I C L E VIII:

SPECIAL COVENANTS PERTAINING TO UTILITY, TRANSPORTATION, AND SERVICE AREA LAND CLASSES (U-1, U-2, U-3, AND U-4).....	35
Section 8: Special Covenants Pertaining to Utility, Transportation, and Service Area Land Classes.....	35
Section 8-1: Conditional Uses for Land Uses U-1, U-2, U-3, and U-4.....	35

A R T I C L E IX:

CREATION AND FUNCTIONS OF THE ASSOCIATION	36
Section 9: Creation and Functions of the Association.....	36
Section 9-1: Creation of the Association.....	36

Section 9-2: Limitations on Liabilities, Duties, and Obligations.....	37
Section 9-3: New Functions	37
Section 9-4: Ownership of Common Properties.....	38
Section 9-5: Ownership or Lease of Land or Facilities Not on the Property.....	38
Section 9-6: Power to Mortgage and Pledge	38
Section 9-7: Property Maintenance Function	38
Section 9-8: Maintenance of Purchased Common Properties.....	38
Section 9-9: Operation Function.....	38
Section 9-10: Security Function	39
Section 9-11: Recreation and Festival Functions	39
Section 9-12: Marketing Function.....	39
Section 9-13: Access Function	39
Section 9-14: Domestic Animal Control Function	39
Section 9-15: Resource Protection Functions.....	40
Section 9-16: Enforcement of Covenant Violation(s) Functions	41
Section 9-17: Central Identification Function, Numbering System, and Directional Signage.....	42
Section 9-18: Insurance Function.....	42
Section 9-19: Reconstruction Function	43
Section 9-20: Architectural Review Function and Architectural Review Board.....	43
Section 9-21: Other Utilities Functions	46
Section 9-22: Assessment Function.....	46
Section 9-23: Tax Payment Function	46
Section 9-24: Right to Dispose of Common Properties and Personality	46
Section 9-25: Governmental Successor.....	46
Section 9-26: Implied Rights and Functions.....	47
Section 9-27: Indemnification Function	47
Section 9-28: Limited Regulation Function.....	47
Section 9-29: Charges for Use of Common Properties.....	47
Section 9-30: Charges for Service Functions.....	48
Section 9-30.1: Charges for Services.....	48
Section 9-30.2: Management Contract	48
Section 9-31: Reporting Function.....	48
Section 9-32: Notice Function.....	48

ARTICLE X:

MEMBERSHIP, NOTICE, RIGHTS AND OBLIGATIONS OF MEMBERS OF THE

ASSOCIATION	49
Section 10: Membership, Notice, Rights and Obligations of Members of the Association.....	49
Section 10-1: Automatic Memberships	49
Section 10-2: Voting Rights	49
Section 10-3: Board of Directors.....	49
Section 10-4: Actions at Meetings and Members' Rights to Approve Certain Actions by Mail Referendum; Special Assessments; Amendments of Covenants; Merger of Another Property Owners' Association; and Matters Specified in By-Laws of the Association	49
Section 10-5: Quorum Required for any Action Authorized at Regular or Special Meetings	

of the Association.....	50
Section 10-6: Proxies.....	51
Section 10-7: Duty of Property Owners to Inform the Association of Current Address.....	51
Section 10-8: Notice of Mail Referendum Ballot by Mail	51
Section 10-9: Notice and Mail Referendum Ballots to Predecessor in Title	51
Section 10-10: Notice of Mail Ballot to Co-Owners	51
Section 10-11: Rights Upon Dissolution	51

A R T I C L E XI:

COMMON PROPERTIES.....	53
Section 11: Common Properties.....	53
Section 11-1: General.....	53
Section 11-2: Extent of Members' Easement in Common Properties.....	53

A R T I C L E XII:

ASSESSMENTS AND OTHER CHARGES.....	54
Section 12: Assessments and Other Charges.....	54
Section 12-1: Collection and Use of Assessments, Fees, and Charges	54
Section 12-2: Computation of Annual Assessments.....	54
Section 12-3: Special Assessments for Major Repairs and Debt Retirement	55
Section 12-4: Special Assessment for Maintenance of Units and Delinquent Club Charges.....	55
Section 12-5: Special Assessment for Maintenance of Wastewater Collection, Treatment, and Disposal Facilities.....	55
Section 12-6: Assessment Reserves, Working Capital.....	55
Section 12-7: Time and Method of Payment of Annual Assessments; Supporting Data	56
Section 12-8: Effect of Nonpayment of Assessments and Other Charges.....	56
Section 12-9: Exempt Property.....	56

A R T I C L E XIII:

MOUNTAIN HARBOUR GOLF CLUB	57
Section 13: Mountain Harbour Golf Club	57
Section 13-1: Mandatory Membership.....	57
Section 13-2: The Club Property.....	57
Section 13-3: Acknowledgements Regarding Club Property.....	58
Section 13-4: Rights of Access and Parking	60
Section 13-5: Assumption of Risk and Indemnification	60
Section 13-6: Landscape Easement.....	60
Section 13-7: Golf Play Easement	61
Section 13-8: Vote on Sale of Club and Required Restrictions.....	61

A R T I C L E XIV:

DURATION, OBLIGATION, AND APPURTENANCE OF RIGHTS AND OBLIGATIONS CREATED HEREIN	62
Section 14: Duration, Obligation, and Appurtenance of Rights and Obligations Created Herein.....	62
Section 14-1: Duration	62

Section 14-2: Protection of Mortgages and Other Encumbrances.....	62
Section 14-3: Owner's Rights and Obligations Appurtenant	63

A R T I C L E XV:

EFFECTS OF COVENANTS AND ENFORCEMENT.....	64
Section 15: Effects of Covenants and Enforcement.....	64
Section 15-1: Effect of Provision of These Covenants.....	64
Section 15-2: Who May Enforce.....	64
Section 15-3: Against Whom May the Covenants Be Enforced	64
Section 15-4: Enforcement Remedies	64

A R T I C L E XVI:

INTERPRETATION AND CONSTRUCTION.....	66
Section 16: Interpretation and Construction	66
Section 16-1: Severability	66
Section 16-2: Interpretation.....	66
Section 16-3: Gender, Tense, and Number.....	66
Section 16-4: No Waiver.....	66
Section 16-5: Options.....	66

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 any tracts of land previously subjected to the Declaration of Covenants.

Section 1-2: ADDITIONS TO THE PROPERTY

The Association may annex additional property into the Community and subject it to this Declaration. Annexation shall be accomplished by a Mail Referendum pursuant to Article X, Section 10-4, with a two-thirds (2/3) vote of the Members required, and then by recording a supplemental declaration signed by the Owner of the property being annexed and the president of the Association.

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 Article IX, Section 9-20, 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: 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, and which serves the Functions pertaining to the Property as provided in Article IX of these Covenants.

Section 2-4: CLUB "Club" shall mean and refer to Mountain Harbour Golf Club, LLC or one of its successors, assigns, or affiliates, which shall own and operate the Club Property.

Section 2-5: CLUB PLAN DOCUMENTS "Club Plan Documents" shall mean and refer to any Membership Plan; Rules and Regulations; or Membership Agreements for the Club.

Section 2-6: 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 Mountain Harbour Golf including without limitation, the golf course, golf practice facilities, recreation center, swim complex, tennis facilities, and the clubhouse.

Section 2-7: 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 or leased to and accepted by the Association by any other grantor, and which are designated in said recorded deed or lease as "Common Properties." 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 2-8: COMMUNITY "Community" shall mean the master planned residential community known as Mountain Harbour.

Section 2-9: COVENANTS "Covenants" shall mean and refer to this document, as the same may be amended or supplemented from time to time.

Section 2-10: DEVELOPMENT OR SURVEY PLATS "Development or Survey Plats" 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 2-11: DEVELOPMENT UNIT PARCELS "Development Unit Parcels" shall mean and refer to a parcel of land conveyed by a former Declarant to a developer other than the Declarant and which is subject to limitations established by a former Declarant and set forth in a deed of conveyance (Formerly Article II, Section 2-14).

Section 2-12: 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 2-13: 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 2-14: 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 IX of these Covenants.

Section 2-15: GUEST "Guest" shall mean and refer to any customer, agent, guest, or invitee of the Association or any Property Owner or Lessee.

Section 2-16: 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 2-17: 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 Article III, Section 3-1 of these Covenants.

Section 2-18: 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, or any other property owned by a Property Owner within the Property.

Section 2-19: 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 Article X, Section 10-4.

Section 2-20: MEMBER "Member" shall mean and refer to all those Property Owners who are members of the Association as provided in Article IX hereof.

Section 2-21: 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 nonprofit schools, educational, and instructional centers.

Section 2-22: 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 Article V, Section 5-1 of these Covenants by Recorded declaration.

Section 2-23: 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 2-24: 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 2-25: PROPERTY OWNER "Property Owner" shall mean and refer to the owner 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; Restaurant 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 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 2-26: 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 2-27: RESIDENTIAL "Residential" shall mean and refer to those purposes which are defined in Article VI, Section 6-1(3) of these Covenants.

Section 2-28: RESTAURANT UNIT "Restaurant Unit" shall mean and refer to any unit or real estate, other than one located within the clubhouse 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 2-29: 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 2-30: SINGLE PRIVATE HOUSEHOLD "Single Private Household" purposes shall mean and refer to those purposes which are further defined in Article VI, Section 6-1(2) of these Covenants.

Section 2-31: 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 2-32: 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, pest control, and related services, except where such Trade Oriented Services are used in the manufacture of goods or are prohibited by Article IV, Section 4-10 of these Covenants.

Section 2-33: UNIT "Unit" shall be a separate taxable unit of real property.

Section 2-34: 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 was previously designated in deed of conveyance from a prior Declarant.

Section 2-35: UNDESIGNATED LANDS shall mean and refer to any land within the Property for which a former Declarant designated a tract of land as "UD" in a deed of conveyance (Formerly Article II, Section 2-45).

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 previously specified a shorter period of time in its instrument of conveyance or recordation.

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."

A prior Declarant may have designed land as "UD" or "Undesignated Lands" and/or a "Develop Unit Parcel" in a deed of conveyance. Those designations, rights, and assignments of rights conveyed therein shall remain enforceable and not be impacted by this Declaration.

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 (2) 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, golf 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: Grounds 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 utilities, waste control and resource recovery 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.

*NOTE: The land and facilities identified in Land Classes U-1, U-2, U-3, and U-4 shall be retained by the Association. Special Covenants within Articles V, VI, VII, and VIII shall apply to subclasses (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 subclass 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

Until such time as the Land Use Class or Classes for a particular parcel is/are designated in a recorded deed of conveyance or recorded Development or Survey Plat conforming with Section 3, any and all property subject to these Covenants which has yet to be provided a designation shall be considered R-1

Unless otherwise previously assigned the right by a prior Declarant in a deed of conveyance to designate a tract of "Undesignated Land", upon a majority vote of the Members of the Association, and upon request by the record Owner, the Association may 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.

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 the Club Property; and any lands previously excepted from this Article by a prior Declarant in a recorded deed of conveyance.

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. The Architectural Review Board shall be appointed by the Association's Board of Directors.

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 Article IX, Section 9-20.

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

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 maintain the site of the building in a reasonably clean and uncluttered condition. 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 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 one hundred twenty (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:

(1) During, preceding, or after construction, the identification of all sponsors, designers, and builders of the project may be provided on one sign structure for the entire site which has been Approved by the Architectural Review Board.

(2) Signs used to offer a particular property for sale pursuant to an order of the court.

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

(4) 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 (5) 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.

(5) 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.

(6) Commercial, or any other, vehicles with advertising signs visible from roads within the Property are not permissible unless Approved by the Association.

(7) No mailboxes may be erected or maintained on the Property except mailboxes Approved and provided by the Architectural Review Board. 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 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 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 of 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 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, 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 Property 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 the Property reception of radio, television, or related signs with the Property by any Property Owner, their Lessees, and Guests.

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:

(1) 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.

(2) 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, entertainment Structures, 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 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 (12) inches) shall be kept in any one (1) 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 of the Property, each person who keeps a pet within a Dwelling Lot or Dwelling Unit shall abide by the following restrictions and affirmative obligations:

- (1) no pets may be kept and/or maintained on the Property for any commercial purpose;
- (2) best efforts shall be exercised to prevent pets from excreting upon the shrubbery or in any area outside of the Property Owner's property;
- (3) 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;

(4) the pet shall not be allowed to roam from its attendant uncontrolled by voice or leash; and

(5) any pet which consistently barks, howls, or make disturbing noises which might be reasonably expected to disturb other Property Owners, their Lessees, 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 (8) 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 on the 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 the Association's Board of Directors, 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, 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 Association 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 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 affected 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 thereon 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 utilities 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, 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; (i) the use, in conformity with Article VI, Section 6-1 of kilns, furnaces, welding, or similar equipment in any artist or craft studio constructed to accommodate a home occupation permitted by these Covenants; (ii) 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 (iii) 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 except by means of a written and recorded instrument indicating that such subdivision has been Approved by the Association's Board of Directors. With the Approval by the Association, which Approval may be denied in the sole discretion of the Board, 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, the Board may make specific provisions for payment of assessments. In the event that the owner decides to re-subdivide after a lot combination, the Owner shall be required to reimburse the Association for each year of Assessments for which the properties were combined, with a maximum of six years, before the re-subdivision can occur.

This section does not apply to "UD" or "Undesignated Lands" previously designated by a prior Declarant and recorded in a deed of conveyance. In such case the rights contained in the deed of conveyance from the prior Declarant shall control, including but not limited to an assignment of rights Declarant rights to subdivision under Article IX, Section 9-10 of the prior Declaration.

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

No motorcycles other than mopeds, motor-powered or electric bicycles, with less than or equal to one horsepower shall be permitted on roads within the Property. Mopeds, motor-powered or electric bicycles, 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, motor-powered or electric bicycles, 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, 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 Association's Board of Directors, or licensed for travel on public highways. Only persons holding a current and valid driver's 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 situations originating on construction sites and parking lots, porosity of pavement 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's Board of Directors and applicable government regulatory agencies. The Board 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 Owners.

Section 4-17: DUTY TO INSURE

In order to ensure 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. The Association may require at any time that all or any Property Owners 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 Article III, 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 or whether it is not necessarily owned in common but subject to common usage rights by Property Owners within a given area, or whether it is owned by an individual Property Owner.

All lands which are Common Properties, are not necessarily Open Space and, conversely, all lands which are designed as Open Space are not necessarily Common Properties. All which are 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 or townhouse. 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) are observed.

Section 5-2: TRANSFER OF PROJECT OPEN SPACE

The Association shall maintain and protect any Project Open Space or Private Open Space which it owns in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and these Covenants.

Section 5-3: MEMBERS' EASEMENT OR ENJOYMENT OF OPEN SPACE

Section 5-3.1: 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 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 whether title to such Project Open Space is held by 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 5-3.2: 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 separate covenants for townhomes or cluster homes, 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 5-4: 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 5-5: PROHIBITED USES OF OPEN SPACE

Except as provided in Section 5-4, 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 Article III, Section 3-1.

Section 5-6: DAM SAFETY; PONDS

Notwithstanding any language within Article III, Section 3-1, or this Article, if 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 the Association by recorded covenant.

Section 5-7: 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 5-8: 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

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

(2) "Single Private Household" shall mean and refer to a family or household unit 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.

(3) 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 seasonable vacations.

The restriction to use for Residential purposes is subject to the following qualifications:

- (a) 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.

- (b) 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 Article IV, Section 4-2.7; (vii) Any Guests attending the open house or gathering at the Dwelling Unit must 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.
- (c) 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.
- (d) 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.
- (e) No Dwelling Unit may be used for the purpose of short-term rentals. A short-term rental shall be defined as renting or leasing the Unit for any period less than thirty (30) days. This restriction shall not apply to properties currently renting their Dwelling Units as short-term rentals but shall apply to the new owners of those Dwelling Units upon the sale or transfer of the Dwelling Unit.

Section 6-2: OUTBUILDINGS AND CAMPING UNITS

No trailer, tent, shack, garage, barn, or other outbuilding erected within Land Classes R-1, 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: 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 any Property Owner or of any contractor or subcontractor, which misconduct causes the encroachment, no easement for an encroachment shall exist.

Section 6-6: 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 6-7: 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 one thousand three hundred (1,300) 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 Article IV, Section 4-2.7, all owners of buildings, facilities, and parking lots within Land Use Classes (C-1, D-1, D-2, D-3, and 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, AND U-4)

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, AND U-4

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 Article III, Section 3-1 as proper for being within Land Class U is a "Conditional Use," subject to Approval by the Architectural Review Board, pursuant to the procedures prescribed in Article IX, Section 9-20, 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 zones, fences, shrubbery, trees, vegetation, berms, parking spaces, 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, North Carolina 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: CREATION AND FUNCTIONS OF THE ASSOCIATION

Section 9: CREATION AND FUNCTIONS OF THE ASSOCIATION

Section 9-1: CREATION OF THE ASSOCIATION

The Association has been incorporated, under the laws of North Carolina, Association. The Association, its successors, and assigns, shall be considered:

(1) assignees of the Declarant as to any easement rights previously conveyed or reserved to the Declarant, including:

- (a) 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 Association, 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. The Association 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 Association, or its successors and assigns.

The Association, or its assigns, shall have 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 fifteen (15) feet of that portion of the Dwelling Lot or Common Properties that borders and joins the Club Property.

(b) a twelve (12) foot easement from the edge of the road pavement, edge of any stream channel, parking lot edge, or high pool elevation of any pond or Dwelling Lots for the purpose of construction and maintaining bikeways, golf cart trails, nature trails, jogging paths, bridges, and other passageways to interconnect with major recreational, commercial, and residential areas on the Property.

(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 9-2: 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 PERSONALLY 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. THE ASSOCIATION SHALL FURTHER INDEMNIFY AND HELD HARMLESS THE DIRECTORS AND OFFICERS FOR ANY ACTIONS TAKEN IN GOOD FAITH ON BEHALF OF THE ASSOCIATION.

Section 9-3: 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 9-4: 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 9-5: 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 9-6: 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 9-7: PROPERTY MAINTENANCE FUNCTION

Subject to the limitations provided in Article I, Section 1-2, consistent with the standards set forth in Article IV, Section 4-16, and in addition to the requirements of Section 9-23, 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.

Section 9-8: MAINTENANCE OF PURCHASED COMMON PROPERTIES

The Association shall have the obligation to maintain, repair, and otherwise care for Purchased Common Properties consistent with Section 9-7.

Section 9-9: 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, and desirable community.

Section 9-10: 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, their Residents, Guests, employees, or invitees.

Section 9-11: 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 9-12: 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 such Functions may be carried on separately or jointly with other local, regional, or national organizations, corporations, 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.

Section 9-13: ACCESS FUNCTION

In the event that a national or regional energy shortage 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 9-14: DOMESTIC ANIMAL CONTROL FUNCTION

The Association may provide regulations, manpower and funds to enforce pet control in a manner consistent with Article IV, 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 Article IV, Section 4-4 and may charge the owner or keeper thereof a fee reasonably related to the cost incurred by the Association in enforcing Article IV, Section 4-4.

Section 9-15: 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:

- (1) 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.
- (2) 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 chemicals.
- (3) 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.
- (4) Wildlife Function. The Association may undertake reasonable measures to protect or replenish species of wildlife that can be expected to adapt to man's presence on the Property, particularly in Project Open Space areas; and, the Association shall undertake to enforce the prohibitions of Article IV, 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.

(5) 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 and 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 the future be located on the Property.

(6) 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 9-16: ENFORCEMENT OF COVENANT VIOLATION(S) FUNCTIONS

(1) If a Property Owner is in violation of any covenant contained herein, the Association, through the Board of Directors, may fine the Property Owner up to one hundred dollars (\$100.00) per day for any violation that continues after the Property Owner receives notice of the Association's decision to fine. Prior to making a decision the Association shall notify the Property Owner of the violation. The Property Owner shall have ten (10) days to request a hearing before the Board or an adjudicatory panel selected by the Board. If the Property Owner fails to request a hearing within the ten (10) days, or if the Board or adjudicatory panel determines the Owner is in violation, notice shall be sent to the Property Owner informing the Property Owner of the violation and that a fine not to exceed one hundred dollars (\$100.00) per day shall begin within five (5) days of the date of the notice unless the violation is remedied. Any fine shall become a lien on the property and enforced pursuant to N.C. Gen. Stat. 47F-3-116.

(2) In addition to the rights contained in subsection (1), above, 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 Article XIV, Sections 14-1 and 14-3.

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.

(3) 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.

(4) Whenever the Association 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.

(5) The Association shall respond to complaints received as to violations of these Covenants and shall inform the violators of such complaints. 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.

(6) 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.

Section 9-17: 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 9-18: INSURANCE FUNCTION

(1) 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

(2) Broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than five hundred thousand dollars (\$500,000.00) for each person injured and less than two million dollars (\$2,000,000.00) for each occurrence, and with property damage limits of not less than two million dollars (\$2,000,000.00) 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 distributed, utilized, or set aside as reserves as the Board of Directors, in its discretion, shall determine, provided that:

- (a) 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;
- (b) any proceeds from casualty insurance arising out of coverage for Common Properties, if distributed, shall be distributed to Property Owners in proportion to the amount of Annual Assessments paid by Property Owners; and

Section 9-19: 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 9-20: 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 serve at the pleasure of the Board, and 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:

(1) 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.

(2) 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.

(3) 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:

- (a) 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.
- (b) 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.

- (c) 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 previously Approved development plans, if any, for the areas in which the Structures are proposed to be cited.
- (d) 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.
- (e) Ensuring that any development, Structure, building, or landscaping complies with the provisions of these Covenants.
- (f) 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.

(4) 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.

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.

(5) 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 ASSOCIATION OR THE ARCHITECTURAL REVIEW BOARD.

(6) Liabilities for Approvals Granted or Denials Issued by the Architectural Review Board or the Association. NEITHER THE ARCHITECTURAL REVIEW BOARD, NOR THE ASSOCIATION, 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 9-21: OTHER UTILITIES FUNCTIONS

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 9-22: ASSESSMENT FUNCTION

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

Section 9-23: 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 9-24: RIGHT TO DISPOSE OF COMMON PROPERTIES AND PERSONALTY

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 9-25: GOVERNMENTAL SUCCESSOR

Subject to Pertinent Law, 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 Article X, Section 10-4. 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 9-26: 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 9-27: INDEMNIFICATION FUNCTION

To the maximum extent allowed by Pertinent Law, the Association shall be obligated to and shall indemnify the members of the Board of Directors of the Association and Architectural Review Board members harmless from all liability, loss, cost, damage, and expense, including attorney fees, arising with respect to any operations of the Association or any Common Properties or Functions.

Section 9-28: LIMITED REGULATION FUNCTION

The Association shall be authorized to and shall have the power to adopt, amend, and 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 9-29: 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.

Section 9-30: CHARGES FOR SERVICE FUNCTIONS

Section 9-30.1: 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, or Guest to assist the Association in offsetting the costs and expenses of the Association.

Section 9-30.2: MANAGEMENT CONTRACT

The Association shall have the authority to contract or subcontract with a private management company, to carry out any and all of the Functions of the Association.

Section 9-31: 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 9-32: NOTICE FUNCTION

Copies of these Covenants, the Articles of Incorporation of the Association, the By-Laws 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 Article X, Sections 10-7, 10-8, 10-9, and 10-10.

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 Article X, Sections 10-7, 10-8, 10-9, or 10-10.

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

Section 10: MEMBERSHIP, NOTICE, RIGHTS AND OBLIGATIONS, OF MEMBERS OF THE ASSOCIATION

Section 10-1: AUTOMATIC MEMBERSHIPS

Every Property Owner shall be a Member of the Association.

Section 10-2: VOTING RIGHTS

Members 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.

When any property entitling any Property Owner to membership 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 (1) votes in person proxy, his vote binds all; otherwise, the vote shall be forfeited as to that voting event.

Section 10-3: 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 shall be 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 (1) 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 10-4: ACTIONS AT MEETINGS AND MEMBERS' RIGHTS TO APPROVE CERTAIN ACTIONS BY MAIL REFERENDUM; SPECIAL ASSESSMENTS; AMENDMENTS OF COVENANTS; MERGER OF ANOTHER PROPERTY OWNERS' ASSOCIATION; AND MATTERS SPECIFIED IN BY-LAWS OF THE ASSOCIATION

Any action may be taken at a meeting of the Association where a quorum is present. The following actions shall required more than a majority vote of those members in attendance of a meeting, either in person or by proxy:

- (1) any Special Assessment recommended by the Directors as provided in Section Article XII, 12-5 shall require a fifty-one percent (51%) approval of all the Members;
- (2) amendments of any provision of these Covenants shall require a fifty-one percent (51%) approval of all the Members;
- (3) the sale of any Common Property owned by the Association consisting of realty or Open Space shall require a fifty-one percent (51%) approval of all the Members;
- (5) any annexation of property into the Community shall require a two-thirds (2/3) approval of all the Members.

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 (1/3) of the total votes.

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 10-5) is present and the action Approved by the following respective requisite votes of a quorum in a Mail Referendum:

- (1) any Special Assessment recommended by the Directors as provided in Section Article XII, 12-5 (fifty-one percent (51%) approval required);
- (2) amendments of any provision of these Covenants (two-thirds (2/3) approval required);
- (3) other fundamental and material actions designated in the Association's By-Laws, as actions for which Mail Referendum must be held (fifty-one percent (51%) approval required);
- (4) the sale of any Common Property owned by the Association consisting of realty or Open Space (fifty-one percent (51%) approval required);
- (5) any annexation of property into the Community (two-thirds (2/3) approval required).

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.

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 10-7, 10-8, 10-9, and 10-10. 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 action, and the total votes cast for and against the action.

Section 10-5: 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. The quorum at the second meeting shall be reduced to twenty-five percent (25%). In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to giving property notice wherein the quorum requirement shall be reduced to twelve and one-half percent (12.5%).

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 10-6: 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 10-7: DUTY OF PROPERTY OWNERS TO INFORM THE ASSOCIATION OF CURRENT ADDRESS

Each Property Owner 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 10-8: 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 10-7. 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 10-9: 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 10-10: 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 10-11: 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.

ARTICLE XI: COMMON PROPERTIES

Section 11: COMMON PROPERTIES

Section 11-1: GENERAL

Common Properties are defined in Article II, Section 2-7. 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.

The designation of land or improvements as 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 11-2 below and except at as such and under such rules and regulations, as may be established from time to time by the Association.

Section 11-2: EXTENT OF MEMBERS' EASEMENT IN COMMON PROPERTIES

Every 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.

ARTICLE XII: ASSESSMENTS AND OTHER CHARGES

Section 12: ASSESSMENTS AND OTHER CHARGES

Section 12-1: 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 IX 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 XII of these Covenants 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 hereby are affirmative obligations which are secured by a lien upon the subject property. See Article XIV.

Section 12-2: 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 Club or any 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; all other Land Use Classes shall be deemed to constitute one (1) Unit for each two thousand five hundred (2,500) square feet or portion thereof of finished space.

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 of 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 12-3: SPECIAL ASSESSMENTS FOR MAJOR REPAIRS AND DEBT RETIREMENT

In addition to the Annual Assessments authorized by Section 12-2 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 in a Mail Referendum conducted pursuant to Article X, Section 10-4.

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 12-4: 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 Property 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 Article XIII, Section 13-1 below, shall be obligated to pay a Special Assessment for such amounts, without a Mail Referendum or other approval of the Members.

Section 12-5: 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 12-6: 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. Reserves may also be used to offset operating losses sustained by the Club.

Section 12-7: 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 XII 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 12-8: 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 attorney 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 Section 12-1 above, reasonable attorney fees and expenses to be fixed by the court, and the costs of the action.
- (c) Lien. The Association may file a lien upon the subject property and foreclose on that lien according to procedures set forth in N.C. Gen. Stat. 47F-3-116.
- (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 12-9: EXEMPT PROPERTY

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

ARTICLE XIII: MOUNTAIN HARBOUR GOLF CLUB

Section 13: MOUNTAIN HARBOUR GOLF CLUB

Section 13-1: MANDATORY MEMBERSHIP

The Association is the sole Member and Manager of Mountain Harbour Golf Club, LLC, a North Carolina Limited Liability Company. Mountain Harbour Golf Club, LLC owns the golf course formerly known as the Ridges but now known as Mountain Harbour Golf Club, being the same property described in Book 433, Page 156, Clay County, North Carolina Registry (the "Club Property") (collectively the "Club"). In accordance with the Club Plan Documents, all Property Owners (excluding those Property Owners who owned Dwelling Lots subject to this Declaration prior to July 21, 2005 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" with the Club. Membership in the Club shall be subject to the terms and conditions of the Club Plan Documents, as they may be amended from time to time.

Membership in the 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 Article XII, Section 12-4 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 XII. 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 XII. Transfer of a membership in the Club shall be in accordance with the Club Plan Documents.

Section 13-2: THE CLUB PROPERTY

The Club Property is owned and operated by the Club and shall not be considered to be 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 DWELLING 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 13-3: ACKNOWLEDGEMENTS REGARDING CLUB PROPERTY

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

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

(2) 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 Association, the Club, their affiliates, successors, and assigns and their respective members, partners, shareholders, officers, directors, employees, and agents from:

- (a) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Property Owners; and/or
- (b) 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 Association, 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 Association, 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 Association, 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;

(3) 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;

(4) Reserves collected pursuant to Article XII, Section 12-7 may also be used to offset operating losses sustained by the Club;

(5) That the Club has assigned to the Association the right to collect any or all Club Charges on behalf of the Club. The Association will therefore collect all Club Charges and remit same to the Club. The Association is authorized, on behalf of the Club, to take such actions to collect unpaid Club Charges as the Association customarily takes with respect to other delinquent Assessments or other amounts owed to the Association by Property Owners pursuant to the terms hereof and shall be reimbursed by the Club for all costs incurred by the Association for such action;

(6) 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 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;

(7) 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, nor the Association, shall have any liability to the Property Owner as a result of such modifications to the Club Property;

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

(9) That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by the Club, the Association, or by any person acting on behalf of any of the foregoing; and that the Club may own one (1) 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.

Section 13-4: 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 13-5: 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 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 the 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 the Club, the Association, 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 the Club, and 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 13-6: LANDSCAPE EASEMENT

A perpetual alienable and transferable easement over, across, and upon each and every Dwelling Lot which abuts or is contiguous to the Club Property has been reserved for the benefit of the Club and the members of the Club, 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 13-7: GOLF PLAY EASEMENT

A perpetual alienable and transferable easement over, across, and upon each and every Dwelling Lot which abuts or is contiguous to the Club Property has been reserved for the benefit of the Club, 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 13-8: VOTE ON SALE OF CLUB AND REQUIRED RESTRICTIONS

The Club may only be sold upon a two-thirds (2/3) vote of the total eligible voting Members. Otherwise, the Operating Agreement for the Club controls all the Club's operations. Upon the sale of the Club, a restrictive covenant shall be included in the conveyance which restricts the Club Property such that it can only be used as a golf course and that in the event the Club Property cannot be used as a golf course, no further development may take place on the Club Property.

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

Section 14: DURATION, OBLIGATION, AND APPURTENANCE OF RIGHTS AND OBLIGATIONS CREATED HEREIN

Section 14-1: DURATION

These 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 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 the Members cast pursuant to a duly called Meeting or Mail Referendum conducted pursuant to Article X, Section 10-4 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.

Section 14-2: 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 affect, 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 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 title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust, or other lien, nor shall the former Property Owner's violation, breach, or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new Property Owner resulting from foreclosure. Any such new Property Owner on foreclosure shall, however, take subject to these Covenants with the exception of the former Property 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 Property Owner, and such prior acts shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such new Property Owner, his heirs, personal representatives, successors, or assigns; provided, however, that any action of the new Property Owner, after taking title to, or possession of, such property which constitutes a violation, shall cause such new Property Owner to be subject to all assessments, charges, restraints, restrictions, burdens, and obligations under these Covenants.

Section 14-3: 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 XV: EFFECTS OF COVENANTS AND ENFORCEMENT

Section 15: EFFECTS OF COVENANTS AND ENFORCEMENT

Section 15-1: 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:

(1) 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;

(2) 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 Association, and any other Property Owner.

Section 15-2: WHO MAY ENFORCE

The benefits and burdens of these Covenants run with the land at law and in equity and 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 15-4 against a party specified in Section 15-3 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 Article IX, Section 9-16.

Section 15-3: 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 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 entitles 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 15-4: ENFORCEMENT REMEDIES

In addition to the enforcement rights of the Association pursuant to Article IX, 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, or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity:

- (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) to restrain, correct or abate such violation, or breach of these Covenants;
- (3) to prevent the occupancy of said building, Structure, or land;
- (4) to prevent any act, conduct, business, or use which is in breach of these Covenants; or
- (5) 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.

ARTICLE XVI: INTERPRETATION AND CONSTRUCTION

Section 16: INTERPRETATION AND CONSTRUCTION

Section 16-1: 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 16-2: 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 original scheme and design of the Community as expressed in these Covenants, and which will preserve the Property as a site for a high-quality amenity, attractive, well maintained, privately governed country club community. 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.

Section 16-3: GENDER, TENSE AND NUMBER

When necessary for proper construction, the masculine form of any word 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 16-4: 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 16-5: OPTIONS

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

IN WITNESS WHEREOF, the Mountain Harbour Property Owner's Association, 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.

MOUNTAIN HARBOUR PROPERTY OWNER'S ASSOCIATION, INC.

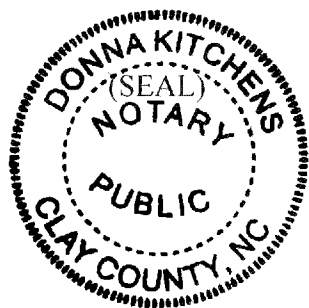
By: 

Title: President

NORTH CAROLINA
CLAY COUNTY

I, Donna Kitchens a Notary Public of said state and county
certify that, Jorge Emilio Azor personally appeared before
me this day and acknowledged that he is the President of Mountain
Harbour Property Owner's Association, Inc. and that by authority duly given and as the act of the
corporation, the foregoing Amended and Restated Declaration was signed in its name by its
President.

Witness my hand and notarial seal this the 7 day of May, 2025.



Donna Kitchens
Notary Public
My Commission Expires: April 3, 2027
4891-2858-1439, v. 1

NOTARY SEAL PRESENT
BUT NOT REPRODUCIBLE

Exhibit "A"

This Exhibit "A" is attached and made a part of the Amended and Restated Declaration of Restrictive Covenants for Mountain Harbour, and being the Exhibit "A" described in Section 1-1 "The Property" and Exhibit "A" is all the following:

- I. All that property located North of U.S. Highway 64 as shown on that plat recorded in Plat Cabinet 2, Slide 567, Clay County, North Carolina Registry, and said plat of survey being by Jeffery B. Weatherly, R.L.S., dated April 26, 1990, and said plat of survey is incorporated herein by reference as if fully set out.
2. All that property shown on that plat recorded in Plat Cabinet 4, Slide 567, Clay County, North Carolina Registry, and said plat of survey being by Jeffery B. Weatherly, R.L.S., dated August 1, 2003, and said plat of survey is incorporated herein by reference as is fully set out.
3. All that property shown on that plat recorded in Plat Cabinet 4, Slide 774, Clay County, North Carolina Registry, and said plat of survey being by Jeffery B. Weatherly, R.L.S., dated April 13, 2004, and said plat of survey is incorporated herein by reference as is fully set out.
4. All that property shown as Tract 2 Revised, containing 4.643 acres, as shown on that plat recorded in Plat Cabinet 4, Slide 817, Clay County, North Carolina Registry, and said plat of survey being by Sprinkles Surveying, P.A., Samuel L. Sprinkles, P.L.S., L-3829, dated August 12, 2003, and said plat of survey is incorporated herein by reference as if fully set out.
5. All that property shown on that plat recorded in Plat Cabinet 4, Slide 429, Clay County, North Carolina Registry, and said plat of survey being by Jeffery B. Weatherly, R.L.S., dated April 9, 2003, and said plat of survey is incorporated herein by reference as if fully set out.
6. Any property previously subjected in Book 150, Page 80, Book 173, Page 238, and Book 290, Page 263 of the Clay County, North Carolina Registry.