

DECLARATION OF COVENANTS, RESTRICTIONS & EASEMENTS



AVALONTM

LAND OF
WONDER & ENCHANTMENT

HAYWOOD COUNTY, NORTH CAROLINA

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

FOR "Avalon at Junaluska Highlands" SUBDIVISION

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR "Avalon at Junaluska Highlands" SUBDIVISION is made as of the ____th day of _____, 2005, by **Ultima Junaluska Development, LLC**, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the Owner of certain real property in *Haywood County, North Carolina* which is more particularly described in those deeds recorded in Deed Book 619, Page 733 and Book 619, Page 737, Haywood County Public Registry which are incorporated herein by express reference as if fully set out herein, which Declarant has developed into a development known as "**AVALON AT JUNALUSKA HIGHLANDS**" (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the property made subject to this Declaration by the recording of this Declaration. Declarant also desires to establish a method for the administration, maintenance, preservation, use, and enjoyment of the property that is subjected to this Declaration.

Declarant has caused or will cause the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

The Declarant hereby declares that all of the real property described above shall be held, sold, and conveyed subject to this Declaration of Covenants, Restrictions, and Easements, which is for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property (as hereinafter defined). The covenants, restrictions, and easements set forth herein shall run with the Property, and shall be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, devisees, successors, successors-in-title, and assigns and to the benefit of the Association.

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ARTICLE I DEFINITIONS

The following words, when used in this Declaration of Covenants, Restrictions, and Easements, shall have the following meanings:

1.01 **Association**: "Association" means "**Avalon at Junaluska Highlands Property Owners Association, Inc.**" (A non-profit, non-stock, membership corporation organized under the North Carolina Non-Profit Corporation Code), its successors and assigns.

1.02 **Board**: "Board" means the Board of Directors of the Association.

1.03 **By-Laws**: "By-Laws" means the By-Laws of the Association.

1.04 **Commencement Date**: "Commencement Date": November 1, 2005.

1.05 **Common Property**: "Common Property" means all real and personal property owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.06 **Declarant**: "Declarant" means **Ultima Junaluska Development, LLC**, a North Carolina Limited Liability Company and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in those deeds recorded in Deed Book 619, Page 733 and Book 619, Page 737, Haywood County Public Registry which are incorporated herein by express reference as if fully set out herein, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the Grantor of such conveyance, which Grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the real property which is subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.07 **Lot**: "Lot" means any parcel of land shown upon the subdivision plat for "**Avalon at Junaluska Highlands**" *recorded* in the Office of the Register of Deeds of Haywood County, North Carolina covering any portion of the Property, as such boundaries may be modified in accordance with Section 6.03.

1.08 **Member**: "Member" means any member of the Association.

1.09 **Membership**: "Membership" means the collective total of all Members of the Association.

1.10 **Occupant**: "Occupant" means any person occupying all or any portion of a

Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property; or a guest of either.

1.11 Owner: "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.12 Property: "Property" means that certain real property described in those deeds recorded in Deed Book 619, Page 733 and Book 619, Page 737, Haywood County Public Registry which are incorporated herein by express reference as if fully set out herein and any Additional Property as may be added by Declarant pursuant to Article XI herein.

1.13 Residence: "Residence" means a structure and the Lot on which it is situated which is intended for independent use and occupancy as a residence for a single family. A structure and the Lot upon which it is situated shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

1.14 Restrictions: "Restrictions" means all covenants, restrictions, easements, charges, liens, and other obligations created or imposed by this Declaration and any amendments hereafter adopted.

1.15 Structure: "Structure" means:

(a) Any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, deck, swimming pool, dock, fence, driveway, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement to such Lot;

(b) Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash, or drainage channel from, upon, or across any Lot; and

(c) Any grading on a lot whether or not Subsection (b) of this Section 1.15 applies to such Change.

ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property:

(a) The Declarant may, but is not legally required to, convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property"). The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property and upon acceptance thereof by the Association the Declarant's duties and obligations with respect to such Common Property.

Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

(b) The Declarant intends to convey to the Association, as part of the Common Property, any lands, recreation facilities, lakes, walking trails and easements set forth on the Recorded Plat.

(c) Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish.

2.02 Maintenance: The Association shall maintain and keep in good repair the Common Property and Subdivision Roads; as shown on the Recorded Plat. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority, shall maintain all entry features, and shall maintain all storm water and detention facilities serving the Development until such facilities are dedicated to and accepted for maintenance purposes by the applicable governmental authority.

ARTICLE III

AVALON AT JUNALUSKA HIGHLANDS PROPERTY OWNERS ASSOCIATION, INC.

3.01 Purpose, Powers, and Duties of the Association: The Association has or will be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To

the extent, and only to the extent, necessary to carry out such purpose, and subject to any limitations contained in this Declaration, the Association (a) shall have all of the powers of a corporation organized under the North Carolina Non-Profit Corporation Code, and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 Membership in the Association: Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions, and Easements.

3.03 Voting Rights:

(a) Each Owner of a Lot, including Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Lot. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association. In no event shall more than one Class A vote be cast per lot.

(b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned or every three (3) acres should all lots not be designated by a plat of survey. The Class B Membership shall cease at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08.

3.04 Board of Directors: The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in the By-Laws of the Association.

3.05 Suspension of Membership: The Board may suspend the voting right and right of enjoyment of the Common Property of any person who:

(a) Shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11 Section 6.13, or Section 8.02;

(b) Shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV; or

(c) Shall be in violation of any of the rules and regulations of the Association relating to the use, operation, or maintenance of Common Property.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach, or default, as aforesaid, except that in the case of a violation described in Subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's

ingress to or egress from his Lot, excuse payments of assessments or compliance with this Declaration during the suspension or obviate the obligation of such Member or person to cure such violation, breach, or default.

3.06 Termination of Membership: Membership shall cease only when a person ceases to be an Owner.

3.07 Voting Procedures: The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the North Carolina Non-Profit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Controls by Declarant:

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove at any time and from time to time any or all members of the Board of the Association and any or all officers of the Association, with or without cause, until fifteen (15) days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which 90% of the residences, cabins and/or lots have been conveyed to third parties other than the builders thereof; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE IV
ASSESSMENTS**

4.01 Covenants for Assessments and Creation of Lien and Personal Obligation: Each Owner, jointly and severally, for himself, his heirs, devisees, legal representatives, successors and assigns, whether or not the covenants contained herein shall be expressed in any

such deed, hereby covenants and agrees as follows:

(a) To pay to the Association the annual assessments and any specific assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him, excluding Declarant.

(b) To pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him.

(c) That there is hereby created a continuing charge and lien upon all Lots and Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees.

(d) That such continuing charge and lien on such Lots and Residences binds such Lots and Residences in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens, and encumbrances which may hereafter in any manner arise or be imposed upon such Lots, Cabins and Residences whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot, Lots (together with any and all Structures which may from time to time be placed or located thereon) or (2) to finance the construction, repair, or alteration of any or all Structures which may from time to time be placed or located thereon.

(e) That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Owner from liability for any assessment thereafter assessed.

(f) That all annual, special, and specific assessments (together with interest thereon as provided in Section 4.09 and costs of collection including reasonable attorneys' fees) levied against any Lots and/or Residences owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lots and/or Residences as provided in Section 4.01(c)) a personal obligation which will survive any sale or transfer of the Lot and/or Residences owned by him.

(g) In addition to the assessments set out herein, each lot owner, excluding Declarant, may be assessed up to 75% of the maintenance assessment levied on lot owners in the first phase of Junaluska Highlands, which requirements and obligations are more fully set out in the deed recorded at Book 619, Page 733, Haywood County Public Registry and each lot owner in Avalon at Junaluska Highlands subdivision shall be responsible for the payment of such assessment directly to the developer or successor of the first phase of Junaluska Highlands. Such obligation is not the responsibility of Declarant or the Association and Owner, by acceptance of the deed from declarant, agrees to indemnify, save and hold harmless Declarant and/or Association with regards to any liability, demands, judgments, costs and attorney fees incurred by Declarant and/or Association with regards the assessments charged to Owners by the developer or successor of the

first phase of Junaluska Highlands.

4.02 Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Owners of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, and equipping of Common Property, maintaining property values, the enforcement of the Restrictions, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association, the payment of all costs and expenses of the Association in carrying out its obligations under this Declaration, and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted: The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

4.04 Annual Assessments:

(a) Beginning on the Commencement Date each Lot, Residence and Cabin shall be subject to an annual assessment of Five Hundred and no/100 Dollars (\$500.00), as may hereafter be adjusted pursuant to Sections 4.04(b) and (c). In the event that the Commencement Date falls on a day other than January 1 the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, and the "First Assessment Year" shall be the calendar year in which this Declaration is recorded.

(b) Commencing with the Second Assessment Year (Calendar Year 2006), the annual assessment shall be \$600.00

(c) Commencing with the Third Assessment Year (Calendar Year 2007) and continuing thereafter, without a vote of the Membership, the annual assessment shall be increased on January 1st of each Assessment Year by a maximum percentage which is equal to the greater of (i) fifteen (15%) percent, or (ii) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (the "CPI") as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the United States, All Items (base year 1967=100) for the monthly period ending on the 31st day of the month of October immediately preceding each Assessment Year over the CPI for the monthly period ending on the 31st day of the month of October one year earlier. If such Consumer Price Index should cease to be published, the Association shall use the most comparable governmental index published in lieu thereof.

(d) Commencing with the Second Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than the amount required by Section 4.04 (b) and (c) if such increase is

approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

(e) At any time from the commencement date specified hereinabove, Developer, its successors, and assigns, may that its sole discretion modify or amend the amount of annual assessments set out herein and increase the annual assessments to cover the reasonable costs for maintenance, upkeep and other expenses associated with the operations of amenities constructed and/or established, if any, which amenities may include but are not limited to a pool and club house. This provision in no way obligates the Developer, or its successors and assigns to construct or establish any such amenities.

4.05 Special Assessments: In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such annual frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of any existing or new capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.06 Assessment Procedure:

(a) The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by special assessments. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice, by U.S. mail sent to the last known address for the Members, by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(d) or Section 4.05. Such written notice shall specify under which section or sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast thirty (30%) percent of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by

the Board subject to the same notice requirement, and the required quorum at such second meeting shall be twenty (20%) percent of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Rate of Assessment: Both annual and special assessments shall be fixed at a uniform rate for all Lots, unless the Board determines, in its reasonable discretion, that certain expenses benefit less than all of the Lots, or that certain expenses are directly attributable to services provided to a specific Lot (or Lots), in which case the Board may equitably assess the Owner(s) of said Lot(s) according to said benefit or said services.

4.08 Contribution by Declarant: For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special, and specific assessments collected by the Association in any Assessment Year. Declarant shall be entitled to be reimbursed from the annual and special assessments the full amount of such advances.

4.09 Effect of Non-Payment of Assessments: Any assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen (18%) percent per annum, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of North Carolina. In the event of default in the payment of any one or more annual assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence and/or Lot enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment: Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Residence and/or Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot or Residence in question.

4.11 Approval by Declarant: Notwithstanding anything to the contrary contained

herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

4.12 Specific Assessments: The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. The failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;

(b) Expenses incurred by the Association pursuant to Section 6.13 hereof; and

(c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE V ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition:

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than one (1) or more than three (3) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots and Cabins in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC will be borne by the Declarant, so long as Declarant has the authority to appoint and remove directors and officers of the Association. Appointees of Declarant need not be Members of the Association or Owners. After Declarant's right to appoint and remove directors and officers of the Association, has expired or been surrendered (pursuant to Section 3.08) the costs of operating the ACC shall be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 2006. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal, or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 5.01(a), be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at the time

the Board has the right to appoint members of the ACC).

5.02 Purpose, Powers, and Duties of the ACC: The purpose of the ACC is to assure that any installation, construction, or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction, or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation, and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient, or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction, or alteration of any Structure on any Lot or any Cabin.

5.03 Officers, Subcommittees and Compensation: The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine to be necessary. The members of the ACC shall be reimbursed by the Declarant for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC, so long as Declarant has the authority to appoint and remove directors and officers of the Association. After Declarant's right to appoint and remove directors and officers of the Association, has expired or been surrendered (pursuant to Section 3.08) traveling expenses and other reasonable out-of-pocket costs shall be borne by the Association.

5.04 Operations of the ACC:

(a) Meetings: The ACC shall hold regular meetings at least once every six (6) months or more often as may be established by the ACC. Special meetings may be called by the Chairman at any time, and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as

originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b)Activities:

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration. The Design Standards shall be recorded in the Office of the Register of Deeds, Haywood County, North Carolina.

(ii) Any one (1) or more members of the ACC shall be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC. The unanimous action of the one (1) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit, or authorization, subject, however, to review and modification by the ACC on its own motion or to appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such one (1) or more members shall be given to any applicant for an approval, permit, or authorization within ten (10) business days. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the entire membership of the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.05 Design Standards:

(a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the "Design Standards") for the purposes of:

(i)Governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) Governing the procedure for such submission of plans and specifications;

(iii) Establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) Assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications: No Structure shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

(a) A site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways, and parking spaces including the number thereof; and all siltation and erosion control measures;

(b) A foundation plan;

(c) Exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all backfilling and landscaping are completed;

(d) Specifications of materials, color scheme, lighting scheme, and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(e) Plans for grading and landscaping.

5.07 Approval of Plans and Specifications: Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features, or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been strict adherence to, and compliance with, such plans and specifications, as approved, and all conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications: The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

(a) The failure to include information in such plans and specifications as may have been reasonably requested;

(b) The failure of such plans or specifications to comply with this Declaration or the Design Standards; or

(c) Any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction, or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation, or surrounding Structures.

In any case in which the ACC shall disapprove any plans and specification submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act: The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within thirty (30) days after receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.10 Inspection Rights: Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.11 Violations: If any Structure shall be erected, placed, maintained, or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance, or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association, and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the

mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02.

5.12 Certification of Compliance

(a) Upon completion of the installation, construction, or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency, or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function, or operation of the Structures or of any construction, workmanship, engineering, materials, or equipment.

The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation or in accordance with every detail on the approved plans and specifications.

5.13 Fees: The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and specifications and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Non -Discrimination by ACC: The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age, or national origin.

5.15 Disclaimer as to ACC Approval: Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans and specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the

officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quitclaims, and covenants not to sue all such persons and entities for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or non-feasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

6.01 Application: The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 Restriction of Use: Lots may be used for single-family residences only and for no other purpose provided that Declarant or any builder acquiring any Lots from Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated or approved by Declarant for this specific use. Declarant may at any time designate a specific area in the subdivision to construct multi-family buildings or any other attached Product as Declarant sees fit. These uses will not be in specific single family lot sections of the subdivision. See the “**Subdivision Design Guidelines**”, **II. The Design Process, B. Architectural Requirements** for specific requirements for the design, minimum size and detailing for each home along with submittal forms that need to be presented and approved.

The following sections address specific restrictions for each lot.

6.03 Resubdivision of Property: No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that the Owner of the Residence on such Lot shall be responsible for annual, specific, and special assessments based upon the original number of Lots combined into one Lot. Notwithstanding anything contained herein to the contrary, the Declarant reserves the right to replat any Lot still owned by the Declarant and shown upon recorded plats of any portion of the Property in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, roads, and other amenities to conform to the new boundaries of such replatted Lot; provided, however, that no Lot originally shown on a final recorded plat of the Property shall be reduced to a size more than ten percent (10%) smaller than the smallest Lot shown on such plat.

6.04 Erosion Control: No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping as provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design

Standards of the ACC.

6.05 Landscaping: No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Standards of the ACC.

6.06 Temporary Buildings: No temporary building, trailer, garage, or building under construction on any Lot shall be used, temporarily or permanently, as a residence except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the ACC. Unless extended by Declarant, all temporary buildings, trailers, and sheds used by contractors or builders shall be removed at any time such contractor or builder has no house actively under construction.

6.07 Signs:

(a) No signs whatsoever (including, but not limited to commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefore, be installed, altered, or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) Such signs as may be required by legal proceedings and for display of all building permits;

(ii) No "For Sale" signs, other than the ones placed on lots owned by the Declarant shall be allowed on any lot.

(iii) Not more than two lot identification signs in accordance with plans and specifications approved by the ACC;

(iv) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; and

(v) Signs of commercial burglar alarm companies.

(b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

6.08 Setbacks: In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks are included in the Subdivision Design Guidelines of the ACC; being recorded herewith. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks

6.09 Fences and Walls: No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location, and uses of fences and walls shall be included in the Design Standards of the ACC.

6.10 Roads and Driveways: No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways shall be included in the Design Standards of the ACC.

6.11 Clotheslines. Antennae. Etc.: No clotheslines or exterior television or radio antenna or satellite dish or receiver or solar or other equipment of any sort shall be placed, allowed, or maintained upon any portion of a Structure or Lot without the prior written approval by the ACC. No antenna shall be installed or used for the purpose of transmitting electronic signals.

6.12 Garbage Cans and Woodpiles: All clotheslines, equipment, garbage cans, woodpiles, and solar equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Residences and streets, and may be maintained only in the rear yard of a Lot.

6.13 Maintenance: Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures, (ii) the seeding, watering, and mowing of all lawns, and (iii) the pruning and trimming of all trees, hedges, and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curb of the street or streets bordering said Lot. If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Board. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.14 Commercial and Recreational Vehicles and Trailers: No commercial vehicle (other than passenger vehicles having a capacity of less than nine (9) passengers), house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, boat trailer, or like equipment shall be permitted on any Lot or within the right-of-way of any street in the Development on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in a garage and is concealed from view from neighboring Residences and streets.

6.15 Recreational Equipment: Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals *may* be placed adjacent to the driveway, but may not be attached to a Residence without the prior written approval of the ACC. No above-ground pool shall be placed or installed on any Lot.

6.16 Non-Discrimination: No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot, to any person because of race, color, religion, sex, age, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

6.17 Animals: No agricultural animals may be kept on any Lot and no animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No structure for the care, housing, or confinement of any animal shall be constructed, placed, or altered on any Lot unless plans and specifications for said structure have been approved by the ACC. If any Owners' pets become a nuisance; among with all other remedies hereunder, the Board may require the pets to be kept on a leash whenever outside. All pets shall be kept indoors between 11:00 pm and 8:00 am.

6.18 Solid Waste:

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials, or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

6.19 Nuisances: No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to anyone in the Development.

ARTICLE VII
EASEMENTS, ZONING, AND OTHER RESTRICTIONS

7.01 Easements:

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, and all utility companies serving the area, the right to create perpetual easements in, on, over, and under any part of the Property for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

- (i) The erection, installation, construction, and maintenance of wires, lines, conduits, and poles and the necessary or proper attachments and guy wires in connection with the transmission of electricity, telephone, cable television cables, and other utilities and similar facilities;
- (ii) The erection, installation, construction, and maintenance of storm-water drains, land drains, public and private sewers, retention ponds, irrigation systems, pipelines for supplying gas and water, and for any other public or quasi-public facility, service, or function;
- (iii) Slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct, or retard drainage flow;
- (iv) The planting or replanting of hedges, shrubbery, bushes, trees, flowers, and plants of any nature and
- (v) The maintenance of all entry features and retention ponds for the Development.
- (vi) Walking, biking and horse trails will be a part of the development. They may or may not encroach upon individual lots.
- (vii) Roads for ingress, egress and regress across the Subdivision Roads located within the Road Right of Ways shown on the Recorded Plat and the right to use the easements granted to Declarant in the deeds recorded in Deed Book 619, Page 733 and Book 619, Page 737, Haywood County Public Registry.

(b) No Owner shall have any right to use any easement created by the Declarant in, on, or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

7.02 Easement Area: The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement, or any filed or recorded map or plat relating thereto.

7.03 Entry: The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area.

7.04 Zoning and Private Restrictions: None of the covenants, restrictions, or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules, or regulations of any governmental body. In the event of any conflict between such laws, rules, or regulations and the covenants, restrictions, and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII ENFORCEMENT

8.01 Right of Enforcement: This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his heirs, devisees, legal representatives, successors and assigns.

8.02 Right of Abatement:

(a) Except where different notice provisions are provided in Sections 5.11 and 6.13, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. The notice shall be sent to the last known address on record with the Association. If the certified mail is returned as unclaimed, refused or moved left no forwarding address; the notice will be deemed received on the date it was first postmarked. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.13, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach, or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach, or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the costs thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or eighteen (18%) percent, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens, or encumbrances which may in any

manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01, and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) or (2) to finance the construction, repair, or alteration of any or all Structures which may from time to time be placed or located thereon.

8.03 Specific Performance: Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association, or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform, any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of Assessments and Enforcement of Lien:

(a) If any assessment, interest, cost, or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or file a Claim of Lien and/or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost, or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost, or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the **Courthouse in Haywood County, North Carolina**, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriffs advertisements for **Haywood County, North Carolina** are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, legal representatives, devisees, successors, and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the

successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefore the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen (15%) percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

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

8.05 No Waiver: The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective heirs, legal representatives, devisees, successors, and assigns, to enforce any Restriction herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach, or as to any violation or breach occurring prior or subsequent thereto, or as to the same violation or breach by the Owner of any other Lot.

ARTICLE IX DURATION AND AMENDMENT

9.01 Duration: This Declaration and the Restrictions contained herein shall run with and bind the Property perpetually after the date when this Declaration is filed for record with the Register of Deeds of **Haywood County, North Carolina**. This Declaration and the Restrictions contained herein, except those placed on the property by the Seller as set forth above, may be terminated by an instrument executed by two-thirds of all Class A Members who are present in person or by proxy, and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and recorded in the Office of the Register of Deeds, Haywood county, North Carolina after Declarant has terminated the right to appoint and remove any directors and officers of the Association as set out herein.

9.02 Amendments by Declarant: During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may unilaterally amend this Declaration by an instrument in writing, filed and recorded in the Records of the Register of Deeds of **Haywood County, North Carolina**, without the approval of any Member or mortgagee except when such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagee, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot and/or Residence, agrees to be bound

by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots and/or Residences subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loan on any Lot and/or Residence subject to this Declaration or (iv) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration. Declarant further reserves the right to enter into contractual and easement relationships with other subdivisions for the mutually beneficial sharing of the amenities of the Avalon at Junaluska Highlands Subdivision and the other subdivisions.

9.03 Amendments by Association: Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant. All Owners, whether voting for, against or abstaining from the vote on the amendment shall sign the Amendment to the Declaration.

(c) The approval of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the approval of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

ARTICLE X CONSTRUCTION AND SALE PERIOD

10.01 Construction and Sale Period: Notwithstanding any provisions contained in this Declaration, the By-Laws, the Articles of Incorporation, use restrictions, rules and regulations, Design Guidelines, and any amendments thereto, until Declarant's right unilaterally to appoint and remove officers and directors of the

Board as provided herein terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant maybe required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property subject to this Declaration, including, but without limitation: the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Development; the right to tie into any portion of the Development with driveways, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense.

ARTICLE XI EXPANSION OF THE SUBDIVISION

11.01 Expansion: Declarant reserves the option, in Declarant's unfettered discretion, to expand the Subdivision by adding to the Subdivision all or any part of **Additional Property** on one or more occasions. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or portions may be added at different times. There are no limitations fixing the boundaries of any portion of the Additional Property which may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. This option shall expire seven (7) years from the date of the recording of this Declaration; provided, however, that Owners of Lots to which two-thirds (2/3) of the total vote in the Association appertain, excluding any votes appurtenant to any Lot or Lots then owned by the Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired. No assurances are made that any improvements will be made on all or any of the Additional Property that may be submitted to the Declaration. The Additional Property shall be subject to the use restrictions set forth herein when it is added to the Subdivision. The Declarant shall have the right to assign Limited Common Elements on the Additional Property with the provisions hereof. The undivided interests in the Common Elements are allocated among the Lots of the Subdivision equally and any Additional Property will be added on the same basis. Any expansion under this Paragraph shall be affected by Declarant's executing and recording the amendments to this Declaration, the plats and the plans required by the Act, at Declarant's sole expense. The Lots thereby created and added shall be owned by Declarant, but the common Elements shall be owned by all the Lot Owners.

ARTICLE XII MISCELLANEOUS

12.01 No Reverter: No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

12.02 Severability: A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

12.03 Headings: The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

12.04 Gender: Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

12.05 Notices: All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures, or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant: **Ultima Junaluska Development, LLC**
 270 Carpenter Drive
 Suite 200
 Atlanta, Georgia 30328
 Attn: Robert M. Ullmann

Owners: Each Owner's address as registered
 With the Association in accordance
 With the By-Laws, or if no such address
 has been registered, at the Owner's last
 known address.

The Declarant reserves the right to change its address from time to time by filing an amendment to this Declaration specifying its new address in the Office of the Register of Deeds, **Haywood County, North Carolina**.

Except as specifically provided otherwise herein, any written communication mailed in accordance with this Section 12.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

12.06 No Liability: Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration or any provision herein is, for any reason whatsoever, unenforceable by

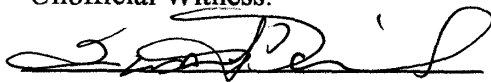
an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. In addition, neither the Declarant nor the Association shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration.

12.07 Variances: Notwithstanding anything to the contrary contained herein, the Declarant, the Board, and the designee of either of them shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that the waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Development.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

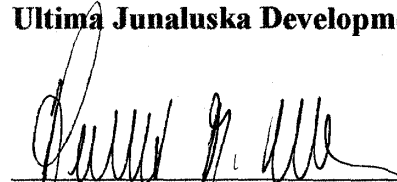
Signed, sealed, and delivered
in the presence of:

Unofficial Witness:


Mary Brock

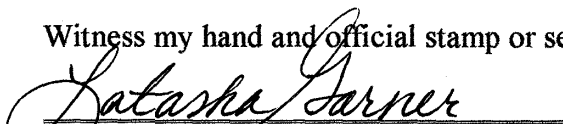
Georgia, DeKalb County

Ultima Junaluska Development, LLC


By: ROBERT M. ULLMANN
(MANAGER / MEMBER)

I, Latasha Garner, a Notary Public of the County and State aforesaid, certify that Robert M. Ullmann, personally came before me this day and acknowledged that is Manager/Member of Ultima Junaluska Development, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of the company, the foregoing instrument was signed by him as its Manager / Member.

Witness my hand and official stamp or seal, this October 17, 2005


Notary Public
My Commission Expires: 3-31-08

