



A Distinctive Mountain Community

**PO Box 6215
Hendersonville, NC 28793**

**AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CCR'S)**

RECORDED IN HENDERSON COUNTY, NORTH CAROLINA

BOOK 1207 PGS. 208-280

NOVEMBER 4, 2004

The word content of this copy has been digitally transferred from a file hard copy of the original recorded legal size document. It has been reformatted to a manageable letter size retaining the original paragraph format.

Visual changes have been made with the aim of affording the document a more "user friendly" appearance. Bold print now sets off section headings, several items addressed in prior years and some phrases of importance. Line end points differ from the original legal size recorded document.

The Declaration of Covenants, Exhibits "B", "C" and "D" are footnoted to indicate the page breaks of the original document prepared by the Van Winkle, Buck, Wall, Starnes & Davis, P.A., Law Firm.

"Table of Contents" for the CCR's and the By-laws (Exhibit "D") have been added. Top of page #'s are based on the total 67 pages in order to correspond with PDF paging while searching the document.

DISCLAIMER:

Even though this copy is identical in word content, except for the addition of two "Table of Contents", your official copy of the Covenants is the one you received at the time of closing on your property and/or the amended copy sent by the Van Winkle Law Firm to all owners via certified mail in June of 2004.

The intent of this copy is to give SPHOA members and other users a PDF computer searchable version for research and a uniformity of reference.

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**Original Recorded in Book 1207
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North Carolina, Henderson County The foregoing certificate(s) of
 Notary Public, ~~Myron W Freeman~~, ~~Leggia M Roberts,~~
~~Myron W Freeman~~, ~~Leggia M Roberts,~~ ~~Myron W Freeman,~~ ~~Leggia M Roberts,~~
 (Notaries Public) are certified to be correct, this
 instrument presented for registration and recorded in this office
 this 30 day of Nov, 2004
 at 2:30 in book _____, page _____
at 2:30 p.m.
Jedra Smiles Register of Deeds
By: Peter B. Higgins (Assistant Deputy)

FILE COPY

**AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

Mail after recording to Van Winkle Buck Wall, Starnes, & Davis P.A. Attorney's Initials CWE
 Post Office Box 7376 , Asheville, NC 28802-7376
 This instrument was prepared by Van Winkle, Buck, Wall, Starnes, & Davis. P A

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made this the 30th-day of November , 2004 by and between all of the undersigned Lot and Property Owners in Somersby Park (the "Subdivision"), hereinafter referred to as the "Owners and Successor Declarant",

WHEREAS, the parties to this Amendment and Restatement are the Owners and Successors to Declarant of the Subdivision, and are the owners of the lots and property within the Subdivision; and

WHEREAS, this Declaration is to impose upon the Properties (as defined herein) **mutually beneficial** restrictions under a general plan of improvement **for the benefit of all owners of real property within the Properties**, to provide a flexible and reasonable procedure for the overall development of the Properties; and to establish a method of such Properties as are now or hereafter subjected to this Declaration; and

WHEREAS, the original Somersby Park Declaration of Covenants, Conditions and Restrictions is recorded in Deed Book 1011, Page 303 of the Office of the Register of Deeds for Henderson County (the "Original Declaration"); and

WHEREAS, this Declaration may be signed in one or more counterparts by the owners of the lots and properties in the Subdivision, for recording in the Henderson County, North Carolina Public Registry.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the undersigned parties do hereby make the following Declarations, Covenants and Restrictions on that certain tract of Land shown on Plat Slide 3295, recorded in the Office of the Register of Deeds for Henderson County, North Carolina, and any additional property which is hereafter subjected to this Declaration by supplemental Declaration (as defined herein), and **the Properties shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Properties and which shall run with the title to the Properties.** This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successor-in title, and assigns, and shall inure to the benefit of each owner thereof.

THIS AMENDED AND RESTATED SOMERSBY PARK DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS SUPERSEDES AND REPLACES ALL PRIOR DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND AMENDMENTS THERETO, RECORDED AGAINST THE PROPERTY, SPECIFICALLY INCLUDING THE ORIGINAL DECLARATION AND SUCH PRIOR DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS ARE HEREBY WITHDRAWN AND OF NO FURTHER FORCE AND EFFECT.

ARTICLE I DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.¹

- 1.1 "Area of Common Responsibility":** The Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement with any Neighborhood, become the responsibility of the Association.
- 1.2. "Articles of Incorporation" or "Articles":** The Articles of Incorporation of Somersby Park Homeowners Association Inc., to be incorporated and filed with the Secretary of State of the State of North Carolina as amended from time to time.
- 1.3. "Association":** Somersby Park Homeowners Association Inc., to be filed with the Secretary State of the State of North Carolina, its successors or assigns.
- 1.4. "Base Assessments":** Assessments levied on all Lots subject to assessment under Article X fund Common Expenses for the general benefit of all Lots, as more particularly described in Article I 0.1 and 10.3.
- 1.5. "Benefitted Assessment":** An assessment levied in accordance with Article 10.7.
- 1.6. "Board of Directors" or "Board":** The body responsible for administration of the Association selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.
- 1.7. "Builder":** Any Person which purchases one (1) or more Lots for the purpose of constructing improvements thereon for later sale to consumers or which purchases one or more parcels of land within the Properties for further subdivision, development, and resale in the ordinary course of such Person's business.
- 1.8. "By-Laws":** The By-Laws of The Somersby Park Homeowners Association, Inc., attached hereto as Exhibit "D" and incorporated by reference, as they may be amended from time to time.
- 1.9. "Declarant Control Period":** The period of time during which the Declarant is entitled to appoint majority of the members of the Board of Directors, as provided in Article 3.11 of the By-Laws.
- 1.10. "Common Area":** All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in and for the use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below,
- 1.11. "Common Expenses":** The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.
- 1.12. "Community-Wide Standard":** The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board Directors and the Architectural Committee.
- 1.13. "Covenant to Share Costs":** Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator or such property.
- 1.14. "Declarant":** Somersby Park, LLC, a North Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" for the purpose of development and sale and who is designated as the declarant in a recorded instrument executed by the immediately preceding Declarant.

¹ Page break of pg. 1 of original Doc. Recorded in B1207 P208

1.15. "Exclusive Common Area": A portion of the Common Area which the Association now hereafter owns, leases, or otherwise holds possessory or use rights in for the exclusive use or primary benefit of one (1) or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.16. "Lot": Each numbered, platted lot, whether improved or unimproved, shown on any subdivision plat of the Properties, which is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

In the case of a parcel of vacant land which has not been platted, the parcel shall be deemed contain the number of Lots designated for residential use on the site plan approved by Declarant until such time as the parcel is shown on a subdivision plat.

1.17. "Member": A Person entitled to membership in the Association.

1.18. "Mortgage": Any and all instruments used for the purpose of encumbering real property security for the payment or satisfaction of an obligation.

1.19. "Mortgagee": A beneficiary or holder of a Mortgage.²

1.20. "Neighborhood": A separately developed residential area within the Properties, whether or not governed by a Neighborhood association, in which the Owners of Lots may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, a patio home development and single-family detached housing development may each constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one (1) housing type with other features in common. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood upon development.

Neighborhood boundaries may be established and modified as provided in Article II of this Declaration.

1.21. "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Articles 10.1 and 10.4.

1.22. "Neighborhood Association": Any owners association having concurrent jurisdiction with the Association over any part of the Properties.

1.23. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein or in any supplemental Declaration applicable to a particular Neighborhood.

1.24. "Owner": One (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.25. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.26. "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational, commercial and related purpose, such as a golf course and any other facility owned by Declarant. Private Amenities may also include without limitation any hotel, inn, restaurant, and amphitheater.

1.27. "Properties": The real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration in accordance with Article IX hereof.

1.28. "Special Assessment": An assessment levied in accordance with Article 10.6.

² Page break of pg. 2 of original Doc. Recorded in B1207 P209

1.29. "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by Declarant pursuant to Article II which designates Neighborhoods.

**ARTICLE II
USE OF PROPERTY AND NEIGHBORHOODS**

2.1. Common Area. Every owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (c) The right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Article 9.2 of the By- Laws;
- (d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article 4.8:
- (e) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Article 14.2; and³
- (f) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Article 2.3.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

2.2. Neighborhoods.

(a) **Creation.** Declarant, in its sole discretion, may establish Neighborhoods within the Properties and may assign portions of the Properties to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. If Neighborhoods are established, all Lots not specifically assigned to a Neighborhood shall be deemed assigned to the same Neighborhood.

The Lots within a particular Neighborhood may be subject to additional covenants and/or the Owners within the Neighborhood may be mandatory members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as required by law. Any Neighborhood which does not have a Neighborhood Association may have a Neighborhood Committee to represent the interests of Owners of Lots in such Neighborhood at Association meetings.

(b) **Modification.** Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to establish or to redesignate Neighborhood boundaries; provided, however, two (2) or more Neighborhoods shall not be combined without the consent of Owners of a majority of the lots in the affected Neighborhoods. If Neighborhoods are established, the Owner(s) of a majority of the total number of Lots within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods. Such petition shall be in writing and shall include a plat of survey of the entire

³ Page break of pg. 3 of original Doc. Recorded in B1207 P210

parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Lots to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(c) Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Lots in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Article 10.7. Such assessments may be collected as a Benefitted Assessment hereunder and shall be subject to all lien rights provided for herein.

Since a Neighborhood Committee is a committee of the Association, the Board shall have all of the power and control over any Neighborhood Committee that it has under applicable law over other committees of the Association. The authority of the Board shall include, without limitation, the power to veto any action taken or contemplated to be taken by any Neighborhood Committee and to require specific action to be taken by any Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties.

2.3. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Area may include entry features, landscaped medians and cul-de-sacs, ponds and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not preclude Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as⁴ Declarant has a right to subject additional property to this Declaration pursuant to Article 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned only upon the vote of Members holding a majority of the total votes in the Association, including a majority of the votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned. As long as Declarant owns any property described on Exhibit "A" for development and/or sale, any such assignment or reassignment shall also require the consent of Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or Board of Directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive

⁴ Page break of pg. 4 of original Doc. Recorded in B1207 P211

Common Areas are assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and **may not be separated** from ownership of any Lot.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event a Lot is owned by more than one (1) Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Article 3.2 and in the By-Laws and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Declarant, if any. Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Article 3.1; there shall be only one (1) vote per Lot.

In any situation where there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary to the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall be entitled to one (1) equal vote for each Lot that it owns which is submitted to the Declaration, and such vote shall be weighted equally to the vote allocated to each Class "A" Member. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Articles 4.3 and 3.11 of the By-Laws. Additional rights of the Class "B" Member are specified elsewhere in this Declaration and the By-Laws.

Declarant's membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i)** Two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws;
- or**
- (ii)** When, in its discretion, Declarant so determines and declares in a recorded instrument.

**ARTICLE IV
ASSOCIATION FUNCTIONS**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant or its designee may convey to the Association improved or unimproved real estate located

within the property described in Exhibit "A", personal property and leasehold and other property interests. Upon conveyance or dedication by Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions or limitations set forth in the deed of conveyance⁵.

4.3. Rules and Regulations. The Association, **through its Board of Directors**, may make, modify and enforce reasonable rules and regulations **governing the use of the Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration**. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees until **and unless overruled, canceled, or modified** at a regular or special meeting of the Association **by the vote of** Members holding at least sixty-seven **percent (67%)** of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

4.4. Enforcement. The Association shall be authorized to impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. **Sanctions may include reasonable monetary fines and suspension of the right to vote** and to use any recreational facilities within the Common Area. In addition, the Association, through the Board, in accordance with Article 9.1 of the By-Laws, shall have the right to exercise self-help to cure violations and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

4.5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

4.6. Governmental interests. For so long as Declarant owns any property described on Exhibit "A", the association shall permit Declarant to designate sites within the Properties for fire, police, water and sewer facilities, parks, and other public facilities. The sites may include portions of the Common Areas and upon written notice from Declarant, the Association shall execute such documents as may be necessary to convey or dedicate property for such purposes.

4.7. Indemnification. The Association, to the fullest extent allowed by applicable law and in accordance therewith, shall indemnify every officer, director, and committee member against any and all damages and expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available.

⁵ Page break of pg. 5 of original Doc. Recorded in B1207 P212

4.8. Dedication of Common Areas. The Board shall have the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity, subject to such approval as may be required by Article 14.2.

4.9. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be.

Neither the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, Declarant, nor any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge that the Association, and its Board of Directors, Declarant, any successor Declarant, and New Construction and Modifications Committees do not represent or warrant that any entry gate, patrolling of the Properties, or other security system designated by or installed according to guidelines established by Declarant or the New Construction or Modifications Committees will not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that entry gate, patrolling of the Properties or other security systems will in all cases provide the detection or protection for which the system is designed and intended.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board of Directors, committees, Declarant, or any successor Declarant are not insurers.

All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board of Directors, committees, Declarant, or any successor Declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representation or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties or other security systems recommended or installed or any security measures undertaken within the Properties.

4.10. Covenant(s) to Share Costs. So long as the Class "B" membership exists, Declarant may, but shall not be obligated to, execute and record various declarations, covenants, and deed restrictions which may constitute covenants running with the title to certain parcels of land outside the Properties, assigning to the owners and occupants of such parcels and their members, guests, employees, agents and invitees, as applicable, certain rights to use all or portions of the Common Areas and obligating the owners of such parcels to share in the certain costs incurred by the association which benefit such parcels. Such Covenants to Share Costs may expand the Area of Common Responsibility and provide remedies to the owners of such parcels for the Association's failure to perform. Upon request of Declarant, the Association shall join in such Covenants to Share Costs. The Association shall comply with the terms of any and all such Covenants to Share Costs.

ARTICLE V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to: (1) all landscaping and other flora, parks, scenic overlooks, structures, and improvements, including bike and pedestrian pathways/trails situated upon the Common Area; (2) any private streets or shared drive access shown on any recorded plat of the Properties

⁶ Page break of pg. 6 of original Doc. Recorded in B1207 P213

situated upon the Common Area or a Lot; and (3) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any covenant, contract, or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment; provided, however, all costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots within the Neighborhood(s) to which the Exclusive Common Area is assigned.

5.2. Owner's Responsibility. Except to the extent otherwise specifically provided above, each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article 10.7. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. **There shall be no signage upon a Lot without written consent of the Property Owners Association to include, but not limited, to Real Estate Signage, for sale, for rent, yard or garage sale etc.**

5.3. Neighborhood's Responsibility. Upon resolution of the Board or pursuant to additional covenants applicable to the Neighborhood, a Neighborhood may be delegated responsibility for operating, maintaining and insuring certain portions of the Area of Common Responsibility which are the responsibility of the Association within or adjacent to such Neighborhood. This may include, without limitation, maintaining any signage, entry features, right-of-way and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. The costs of such operation, maintenance, and insurance shall be paid by the Owners within such Neighborhood though either Neighborhood Assessments established by the Board or assessment of the Owners within such Neighborhood by the Neighborhood Association assigned such responsibility.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood fails, in the opinion of the board, to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Article 10.7. In addition, the Association may assume such maintenance responsibility by agreement with the Neighborhood and assess the costs thereof as a Neighborhood Assessment against those Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this paragraph shall not constitute discrimination within a class.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instrument creating and assigning such maintenance responsibility, responsibility for maintenance shall include⁷ responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Neither the Association, Declarant, any Owner nor any Neighborhood shall be liable for any damage or injury occurring on, or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

⁷ Page break of pg. 7 of original Doc. Recorded in B1207 P214

5.5. Party Walls, Party Fences and Party Driveways.

(a) Applicability. Each wall, fence or driveway built as a part of the original construction on the Lots:

(i) Any part of which is built upon or straddling the boundary line between two adjoining Lots;

or

(ii) Which is built within four (4) feet of the boundary line between adjoining Lots, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(iii) Which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot;

shall constitute a party wall, party fence, or party driveway, respectively (herein referred to as "party structures"). The Owners of each such Lot (the "Adjoining Owner") shall own that portion of the party structure lying within the boundaries of their respective Lots and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining Lot.

(iv) Any common driveway, which is shown on a plat and determined for use of more than one lot.

(b) Maintenance. Upon written request of either Adjoining Owner, which request is delivered to the Board with a copy to the other Adjoining Owner, and agreement of the Board that a party structure is in need of maintenance, repair or replacement, the Board shall perform the necessary maintenance, repair or replacement of the party structure on behalf of the Owners. Except as otherwise provided in Sub article (c) below, all costs of such maintenance, repair or replacement shall be assessed equally to the Adjoining Owners and their Lots as a Benefitted Assessment under Article 10.7.

(c) Damage and Destruction. Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Article 6.3., and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

If a party structure is destroyed or damaged by fire or other casualty, the Board shall proceed promptly to repair or restore the party structure and shall assess all costs incurred against the Adjoining Owner who is responsible for insuring the party structure and against his or her Lot as a Benefitted Assessment under Article 10.7. If both Adjoining Owners are responsible for insuring portions of the party structure, then such costs shall be assessed equally against the Adjoining Owners and their Lots. However, nothing herein shall prejudice the right of either Adjoining Owner to recover from the other under any rule of law or equity regarding liability for negligent or willful acts or omissions.

ARTICLE VI INSURANCE

6.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect property insurance covering "risks of direct physical loss" on a "special form" basis for all insurable improvements in the Neighborhood. If "risks of direct physical loss" on a "special form" basis is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the

Association on behalf of a Neighborhood shall be charged to the Owners of lots within the Benefitted Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability policy on the Area of Common Responsibility, insuring the association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;⁸

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all persons responsible for handling Association funds in an amount determined by its best business judgment but not less than one-sixth (1/6) of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance as the Board, in its best business judgment, determines advisable.

(g) The Association shall have no insurance responsibility for any part of property of any Private Amenity.

6.2. Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Henderson County, North Carolina, area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

Except as otherwise provided in Article 6.1 with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard upon the same terms as set forth in Article 9.2 of the By-Laws, that the loss is the result of the negligence or willful conduct of one of more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Article 10.7.

(a) All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board requires;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

⁸ Page break of pg. 8 of original Doc. Recorded in B1207 P215

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement if the policy contains a co-insurance clause.

(b) In addition, the Board shall be required to use reasonable efforts to secure insurance policies providing the following:

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's right to repair and reconstruct instead of paying cash;

(iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement excluding individual Owners' policies from consideration under any "other insurance" clause;

(v) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;⁹

(vi) A cross liability provision;

(vii) Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(viii) List the Lot Owners as additional insureds under the policy.

6.3. Owners Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost of improvements located upon his or her Lot, less a reasonable deductible, and liability insurance, unless either the Neighborhood in which the Lot is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising a Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed

6.4. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or

⁹ Page break of pg. 9 of original Doc. Recorded in B1207 P216

reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Owners holding at least sixty-seven (67%) of the total vote of the Neighborhood Association decide within sixty (60) days after the damage or destruction not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period may be extended for not more than sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.5. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association or the Neighborhood Association, as appropriate, and placed in a capital improvements account,

6.6. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Benefitted Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Article 6.1.

ARTICLE VII NO PARTITION

Except as is permitted in this Declaration or amendments hereto, the Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition of the whole or any part thereof **without the written consent of all Owners and Mortgagees.**¹⁰

¹⁰ Page break of pg. 10 of original Doc. Recorded in B1207 P217

ARTICLE VIII CONDEMNATION

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting upon approval of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property described in Exhibit "A", and Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the provisions in Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

ARTICLE IX ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Annexation Without Approval of Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time during the Declarant Control Period, to subject to the provisions of this Declaration and the jurisdiction of the Association and additional property acquired by Declarant ("Additional Property"). Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property so annexed and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration. Such Supplemental Declaration shall not require the consent of an Owner, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property other than Additional Property, and following the expiration of the right in Article 9.1, any Additional Property, to the provisions of this Declaration and the jurisdiction of the Association. **Such annexation shall require the affirmative vote of Members holding a majority of the votes of the Association represented at a meeting duly called for such purpose** and the consent of Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Article 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Henderson County, North Carolina. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to annex property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by Declarant.

9.4. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property to be annexed by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant during the Declarant Control Period.¹¹

ARTICLE X ASSESSMENTS

10 .1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Article 10.9. There shall be **four (4) types of assessments: (a) Base Assessments** to fund Common Expenses for the general benefit of all Lots; **(b) Neighborhood Assessments** for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; **(c) Special Assessments** as described in Article 10.6; and **(d) Benefitted Assessments** as described in Article 10.7. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate to be set by the Board (not to exceed the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, **late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Article 10.8.** Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. In the event of a transfer of title to a Lot, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. However, no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall, be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment, a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so elects, assessments may be paid in installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board 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

¹¹ Page break of pg. 11 of original Doc. Recorded in B1207 P218

taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

10.2. Declarant's Obligation for Assessments. Declarant shall pay assessments on all Lots owned by Declarant which are subject to assessments as set forth in Article 10.9, if any. Declarant shall pay on the same basis as any other Owner in accordance with this Article X.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

10.3. Computation of Base Assessment. It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve and in accordance with a budget separately prepared as provided in Article 10.5.

The Base Assessment shall be levied equally against all Lots and **shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves.** The Board shall take into account the number of Lots subject to assessment under Article 10.9 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any amounts due from any party pursuant to a Covenant to Share Costs. The base assessment will be computed from a starting figure of Eight Hundred & No/00 Dollars (\$800.00) annually for members in Somersby Park Homeowners Association.

So long as Declarant has the right unilaterally to annex additional property pursuant to Article IX hereof, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Article 10.2), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a fine item in the¹² Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall cause a **copy of the budget** and notice of the amount of the Base Assessment to be levied against each Lot for the following year **to be delivered to each Owner at least thirty (30) days prior** to the beginning of the fiscal year for which it is to be effective. Such budget and assessment **shall become effective unless disapproved** at a meeting by Members holding at least sixty-seven percent (**67%**) of the **total votes** in the Association and by the Declarant, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Article 3.3 of the By-Laws, which petition must be presented to the Board within ten (10) days after the delivery of the notice of assessments.

Notwithstanding the foregoing, however, **in the event the proposed budget is disapproved** or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, **the budget in effect for the immediately preceding year** shall continue for the current year.

10.4. Computation of Neighborhood Assessments. It shall be the duty of the Board unless such duty is delegated to the Neighborhood Association, at least ninety (90) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Such budget shall include a capital contribution establishing a reserve fund for repair and

¹² Page break of pg. 12 of original Doc. Recorded in B1207 P219

replacement for capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment unless otherwise specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by the Neighborhood in writing to the Board of Directors.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot in the Neighborhood for the coming year to be delivered to each Owner of a Lot in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a vote of sixty-seven percent (67%) of the Owner of Lots in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Lots in such Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.5. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare reserve budgets for both general and Neighborhood purposes, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. **The Board shall set the required capital contribution** in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the period of the budget. **The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Articles 10.3 and 10.4.**

10.6 Special Assessments. In addition to other assessments authorized hereunder, **the Association** may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. **Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Members holding at least a majority of the total votes allocated to Lots which will be subject to such Special Assessment,** and the affirmative vote or written consent of Declarant, if such exists.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

10.7. Benefitted Assessments. The Board shall have the power to specifically assess expenses of the Association against Lots **(a) receiving benefits, items, or services not provided to all Lots** within a Neighborhood or within the Properties that are incurred, upon request of the Owner of a Lot for specific items or services relating to the Lot or **(b) that are incurred as a consequence of the conduct of a particular Owner or Owners, occupants of such Owners' Lot or their licensees, invitees, or guests (c) for cost of repair or maintaining all waste water collection systems to include but not limited to: lines, pump stations, force main, and all water related systems.** The Association may also levy a Benefitted Assessment against any Lot or Neighborhood to reimburse the Association for costs incurred in bringing the Lot or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Benefitted Assessments may be levied upon the vote of the Board after notice to the Owner or Neighborhood, as applicable, and an opportunity for a hearing.¹³

10.8. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys' fees). Such lien shall be prior and superior to all other liens when filed

¹³ Page break of pg. 13 of original Doc. Recorded in B1207 P220

with the Clerk of Court for Henderson County, North Carolina, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, or judicial or non-judicial foreclosure in accordance with North Carolina law. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot. During the period in which a Lot is owned by the Association following foreclosure: (a) no right of vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments, which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Article 10.1, including such acquirer, its successors and assigns.

10.9. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to a Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

10.10. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

10.11 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to the annual Base Assessment per Lot for that year as determined by the Board. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited by the purchaser at the time of closing on the purchase of the Lot and disbursed to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, Special Assessments, and Benefitted Assessments:

- (a) All Common Area;
- (b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public schools, public streets, and public parks, if any; and
- (c) Property owned by a Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

ARTICLE XI ARCHITECTURAL STANDARDS

11.1. General. No structure shall be placed, erected, or installed upon any Lot, and no construction or modification (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs) **shall take place except in strict compliance with this Article**, until the requirements below have been fully met, and approval of the appropriate committee has been obtained pursuant to Article 11.2.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any improvements constructed upon his or her Lot or to paint the interior of such improvements any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Lot visible from outside the Lot shall be subject to approval. No permission or approval shall be required¹⁴ to repaint the exterior of an improvement in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications..

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer.

This Article shall not apply to the activities of Declarant nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without Declarants written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by two (2) committees, as described in Sub articles (a) and (b) of this Article. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

(a) Architectural Committee. The Architectural Committee shall consist of at least three (3), but not more than five (5), Persons and shall have **exclusive jurisdiction over all construction on any portion of the Properties**. During the Declarant Control Period, Declarant retains the right to appoint all members of the Architectural Committee who shall serve at the discretion of Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may, at its option, appoint members of the Architectural Committee, who shall serve and may be removed at the Board's discretion.

11.3. Guidelines and Procedures.

(a) Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use of such portion of the Properties.

The Architectural Committee shall adopt **the Design Guidelines** and shall have sole and full **authority to amend them from time to time**. The Architectural Committee shall make the Design Guidelines available to

¹⁴ Page break of pg. 14 of original Doc. Recorded in B1207 P221

Owners and Builders who seek to engage in development of or construction upon all or any portion of the Properties and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. Any amendments of the Design Guidelines adopted from time to time by the Architectural Committee in accordance with this Article shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved by the Architectural Committee once the approved construction or modification has commenced.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning, without limitation, irrigation systems, drainage, lighting, fences, outdoor pools, and any other special features of such proposed construction or modification, as applicable, shall be submitted.

In the event that the Architectural Committee fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Committee pursuant to Article 11.5.

11.4. No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

11.5. Variance. The Architectural Committee may authorize variances from compliance with any of its guidelines and procedures **when circumstances** such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, **but only in accordance with duly adopted rules and regulations.** Such variances may be granted, however, **only when unique circumstances dictate**, and no variance shall (a) be effective unless in writing; or (b) estop the Architectural Committee from denying a variance in other circumstances. For purposes of this Article, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.¹⁵

11.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the **Architectural Committee shall not bear any responsibility for ensuring** the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, nor members of the Architectural Committee shall be held liable for any injury or quality of approved construction on or modifications to any Lot.

11.7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, bring such construction, alteration or other work into conformity with this Article to the satisfaction of the Board or remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the Association shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Benefitted Lot and collected as a Benefitted Assessment pursuant to Article 10.7.

¹⁵ Page break of pg. 15 of original Doc. Recorded in B1207 P222

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in Article 9.1 of the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Committee.

ARTICLE XII USE RESTRICTIONS AND RULES

12.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Properties **under this Declaration in order to protect all Owners' quality of life and collective interests**, the aesthetics and environment within the Properties, and the vitality of and sense of community within the properties, **all subject to the Board's and the Members ability to respond to changes in circumstances, conditions, needs, and desires within the community.** The Properties are subject to Design Guidelines as set forth in Article XI and other restrictions governing land development, architectural control, individual conduct and uses of or actions upon the Properties. This Declaration, including the initial "Use Restrictions" attached hereto as Exhibit "B" and incorporated by this reference, and the rules and resolutions adopted by the Board or the Members, establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease of any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand (collectively "modifications") the initial Use Restrictions set forth on Exhibit "B". **The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.**

Modifications shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes and by the Class "B" Member, if any. **The Board shall have no obligation** to call a meeting of the Members to consider disapproval **except upon petition of the Members** as required for special meetings in Article 3.3 of the By-Laws.

(b) **Alternatively, the Members, at a special meeting** duly called for such purpose as provided in Article 3.3 of the By-Laws, may adopt **Modifications by a vote of Members holding sixty-seven percent (67%) of the total Class "A" votes** and the approval of the Class "B" Member, if any.

(c) At least thirty (30) days prior to the effective date of any action under subsection (a) or (b) of this Article, the Board shall send a copy of the Modification to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Lots are given notice **that use of their Lots is limited by the Use Restrictions and future Modifications.** Each Owner, by acceptance of a deed,

acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions and rules may change from time to time.¹⁶

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), including Exhibit "B", neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(b) Activities Within Dwelling. No rule shall interfere with the activities carried on within the confines of dwellings on the Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(c) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals, livestock or poultry of any kind for commercial or business purposes.

(d) Alienation. No rule shall prohibit leasing of any Lot, or require consent of the Association or Board for leasing of any Lot for any period greater than two (2) months; provided, the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

(e) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time.

The limitations in this Article 12.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Article 18.2.

**ARTICLE XIII
EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for

¹⁶ Page break of pg. 16 of original Doc. Recorded in B1207 P223

encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities. Etc. During the Declarant Control Period, there are hereby reserved unto Declarant, the Association, and the designees of each (which may include, without limitation, Town of Laurel Park and Town of Hendersonville, North Carolina and any utility company public or private) access and maintenance easements upon, across, over, and under all of the Properties as shown on recorded plats as amended, to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, road, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, cable, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Without limiting the generality of the foregoing, there are hereby reserved for the water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot. Notwithstanding anything to the¹⁷ contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

All utilities must be underground. All residences shall be connected to the central system for water and sewer, when such systems are constructed.

13.3. Easements to Serve Additional Property. Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of Additional Property, whether or not such property is made subject to this Declaration and regardless of the use of the Additional Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of Additional Property.

13.4. Easement for Emergency. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any Lot for emergency, security, and safety reasons. The Association's rights may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.5. Easements for Maintenance and Enforcement. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any portions of the Properties, including any Lot, (a) to perform its maintenance responsibilities pursuant to Article V, and (b) to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules and regulations. The Association's rights may be exercised by the Association's Board of Directors, officers, agents, employees, and managers, in the performance of their respective duties. Except in an emergency situation, entry into a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement shall be exercised with a minimum of interference to the quiet

¹⁷ Page break of pg. 17 of original Doc. Recorded in B1207 P224

enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and the Person causing the damage at its sole expense shall repair damage to such property.

The Association or its duly authorized agent shall also have the power to enter a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

13.6. Access. All Lots within the Properties shall have a non-exclusive, perpetual easement for pedestrian and vehicular ingress and egress over all roads which are now or hereafter designated as Common Areas by the Declaration or any Supplemental Declaration. Said easement shall be effective as to each road or any portion only after the construction thereof is complete.

13.7. Trails. Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas of the Properties, including the Common Areas, to be used as recreational bike, pedestrian and/or equestrian pathways and trails ("trail system").

Declarant reserves for itself, the Association, and the members, guests, invitees and licensees of any of the Private Amenities, a nonexclusive, perpetual easement of ingress and egress over the trail system and such portions of the Common Areas which are necessary to travel to and from the trail system.

13.8. Easement for Cemeteries. Declarant reserves for itself, the Association, the relatives of any deceased person in any cemetery that is located within the boundaries of the Properties, and persons seeking access to any such cemeteries for academic or historical purposes, a nonexclusive, perpetual easement of ingress and egress over such portions of the Common Areas which are necessary to travel to and from such cemeteries.

ARTICLE XIV MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:¹⁸

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by an Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of an Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is entitled upon request to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;
and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. **Unless at least sixty-seven percent (67%) of the first Mortgagees or Members holding at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:**

¹⁸ Page break of pg. 18 of original Doc. Recorded in B1207 P225

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Sub article);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

14.5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.6. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, By-Laws, or North Carolina law for any of the acts set out in this Article.

14.7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**ARTICLE XV
DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the By-Laws, as applicable. Furthermore, no such transfer¹⁹ shall be effective unless it is in a written instrument signed by Declarant and successor and duly recorded in the public records of Henderson County, North Carolina. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any Additional Property in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sales of Lots shall continue, it shall be expressly permissible for Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and rental units. Declarant and Builders

¹⁹ Page break of pg. 19 of original Doc. Recorded in B1207 P226

authorized by Declarant shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by Declarant and any clubhouse, community center, or other facility which may be owned by the Association, as models, sales offices, or rental units.

In addition, notwithstanding any contrary provision of this Declaration, the By-Laws, or any Association rules, Declarant shall have the right to re-plat or revise the recorded plats relating to any portion of the Properties without the consent of any Person other than the owner(s) of the property the boundaries of which are altered.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarants review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar Instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the public records.

This Article may not be amended without the express written consent of Declarant. However, the rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

**ARTICLE XVI
PRIVATE AMENITIES**

16.1. General. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the respective owners and operators of the Private Amenity and to any contracts entered into by such Private Amenity, and no Person gains any ownership interest in any Private Amenity or any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of Lot. Rights to use each Private Amenity will be granted only to such persons and on such terms and conditions, as determined by such Private Amenity. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by Declarant or any other Person with regard to the nature or size of the improvements, or to the continuing ownership or operation, of the Private Amenities. No purported representation or warranty, written or oral, with regard to any Private Amenity shall ever be effective without an amendment hereto executed or joined into by Declarant and such Private Amenity.

16.2. Rights of Access and Parking. The owners and operators of the Private Amenities, and the members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees of each shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel to and from the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of the Private Amenities. Without limiting the generality of the foregoing, members, guests, and invitees of any Private Amenity and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after golf tournaments and other similar functions.

16.3. Assessments. No Private Amenity shall be obligated to pay to the Association any assessments as described in Article X hereof. However, each Private Amenity may be obligated to contribute funds to the Association for maintenance of portions of the Area of Common Responsibility in accordance with a Covenant to Share Costs.

16.4. Limitation on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of this Article of any other provisions of this Declaration, may be made without the prior written approval of the owner or operator of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

16.5. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owners and operators of the Private Amenities cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community- Wide Standard as it pertains to maintenance of the Area of Common Responsibility. The Association shall have no power to promulgate

rules and regulations affecting activities in or use of any Private Amenity without prior written consent of such Private Amenity.²⁰

ARTICLE XVII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation, if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By- Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Article 17.2, shall be resolved using the procedures set forth in Article 17.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Article 17.3:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions and Rules);

(c) Any suit between Owners (other than Declarant) seeking redress of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By- Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00; and

(d) Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party.

(e) Any suit filed by Declarant, in Declarant's sole discretion.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Article 17.3. but they shall not be obligated to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Article 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

2. The basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

²⁰ Page break of pg. 20 of original Doc. Recorded in B1207 P227

3. What Claimant wants Respondent to do or not do to resolve the Claim; and

4. That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which **to submit the Claim to mediation²¹ under the auspices of any Henderson County dispute resolution center or such other independent agency which may provide similar services upon which the Parties may mutually agree.**

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. **If the Parties do not agree in writing** to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "C", attached hereto, and incorporated herein by this reference, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This Sub article (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The

²¹ Page break of pg. 21 of original Doc. Recorded in B1207 P228

arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

17.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Article 17.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Article 17.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Article 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in Sub article 17.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

17.5. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Article 17.3, and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Article 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

**ARTICLE XVIII
GENERAL PROVISIONS**

18.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association, Declarant, or the Owner of any Properties, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive 10-year period agreeing to change this Declaration, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.²²

18.2. Amendment

(a) **By Declarant.** Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure or guarantee mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. During the Declarant Control Period, it may unilaterally amend this Declaration for any other purpose, provided

²² Page break of pg. 22 of original Doc. Recorded in B1207 P229

the amendment has no material adverse effect upon any substantive right of any Owner unless such affected Owner shall consent thereto in writing.

(b) By Owners. Except as otherwise specifically provided herein, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, **of Members holding at least sixty-seven percent (67%) of the total votes in the Association**, and the consent of Declarant during the Declarant Control Period. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in Henderson County, North Carolina.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

18.3. Severability. Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

18.4. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

18.5. Litigation. Except as otherwise specifically provided below, **no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners holding seventy-five percent (75%) of the total votes of the Association. This Article 18.5 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Article 18.5 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.**

18.6. Cumulative Effect: Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood, and the Association may, but shall not be required to enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens of assessments created in favor of the Association.

18.7. Compliance. Every Owner and occupant of any Lot shall comply with all lawful provision of this Declaration, the By-Laws, and the rules and regulations of the Association. Failure to comply shall be grounds for action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association, Declarant, or, in a proper case, by any aggrieved Lot Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

18.8. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot coming due prior to the

date upon which such notice is received by the Board of Directors including assessment obligations, notwithstanding the transfer of title to the Lot.

Each transferee of a Lot shall, within seven (7) days of taking title to a Lot, confirm that the information previously provided by the transferor is complete and accurate.²³

18.9 Annexation into Town of Laurel Park. It is the intention of Declarant to make application to the Town of Laurel Park, a North Carolina Municipality (the "Town"), for annexation of the Properties to be made part of the Town and to conform to the regulations and zoning of the Town. In the event that such annexation application is granted by the Town and annexation is completed, then in such event **the Town will provide the following services to the Properties and only those stated herein as follows and any other services agreed to by Declarant and Town, or Association and Town:**

- 1. Fire Protection
- 2. Police or Law Enforcement
- 3. Household Trash Collection
- 4. Potable Water

It is understood between Declarant and the Town that the Town will not provide or is not responsible for the following services:

- 1. Brush or leaf pick-up
- 2. Street Maintenance
- 3. Snow plowing
- 4. Drainage maintenance or control

IN WITNESS WHEREOF, Declarant, and at least sixty seven percent (67%) of the owners of lots in the Subdivision, hereby execute this Amended and Restated Declaration of Covenants, Conditions, and Restrictions as of the day and year first written above.

Exhibits

- Exhibit A: Description of the Properties**
- Exhibit B: Use Restrictions**
- Exhibit C: Rules of Arbitration**
- Exhibit D: By-Laws of Somersby Park HOA**²⁴

²³ Page break of pg. 23 of original Doc. Recorded in B1207 P230

²⁴ Page break of pg. 24 of original Doc. Recorded in B120 7 P231

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DECLARANT: SOMERSBY PARK, LLC

By: *Kent E. Smith* (Seal)
Kent E. Smith
Managing-Member

SEAL-STAMP STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

I, *Tanya K. White*, a Notary Public for said County and State, do hereby certify that Kent E. Smith, Managing-Member of Somersby Park, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this 3rd day of June, 2004.

My commission expires: 18 FEBRUARY 2009

Tanya K. White
Notary Public



SIGNATURES AND ACKNOWLEDGMENTS FOR OWNERS APPEAR ON THE FOLLOWING PAGES

Signatures and Acknowledgments for Owners appear on Recorded pages 233-256 in Book 1207, Henderson County, NC, Court House. Only the Declarant's is pagged in this Document.

B 1 2 0 7 P 2 5 7

EXHIBIT "A"
TO AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONSITIONS AND RESTRICTIONS

Description of the Properties

See Next Page

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" EXHIBIT A "

A 156.26 acre tract shown on a plat of survey prepared by Patterson and Patterson entitled "Survey for William Austin" dated September 1998 and described by metes and bounds as follows:

BEGINNING on an iron pin standing in the south margin of Laurel Park Highway, said iron pin standing South 58° 51' 58" East 562.57 feet from a North Carolina grid point labeled "JumpOff" (North Carolina grid bearing = South 59° 30' 46" East), said beginning point marking the northeast corner of the E. J. Chalhub property described as tract two in a deed from Francis M. Coiner, Trustee recorded in Book 607 at Page 731 of the Henderson County Registry; and running then from said beginning point with the south margin of Laurel Park Highway on the arc of a circle having a radius of 53.5 feet in a southeasterly direction an arc length of .24 feet to a point; then with the arc of a circle having a radius of 40 feet in a southeast direction an arc length of 35.10 feet to a point; then still with the south margin of Laurel Park Highway South 13° 44' 22" East 80.40 feet to a point; then with an arc of a circle having a radius of 593 feet curving to the left and in a southeasterly direction 567.51 feet to a point; then South 68° 34' 22" East 341.89 feet to a point; then with the arc of a circle having a radius of 252.9 feet curving to the right and in a southeasterly direction an arc length of 134.92 feet to a point; then South 38° 00' 22" East 393.97 feet to a point; then with the arc of a circle having a radius of 269 feet curving to the left and in a southeasterly direction an arc length of 185.06 feet to a point; then South 77° 25' 22" East 44.3 feet to a point; then leaving the margin of Laurel Park Highway and running with a line of property now or formerly owned by A. G. Ricci South 13° 3' 32" West 200.17 feet to an iron pin; then with the north line of property now or formerly owned by R. W. Spaulding, North 89° 5' 22" West 338.11 feet to a planted stone, the southernmost corner of the Mickey Leyva parcel described by deed recorded in Book 614 at Page 403 of the Henderson County Registry; then with the west line of the R. W. Spaulding property South 06° 03' West 651.38 feet to a planted stone; then South 85° 33' 53" East 126 feet to an iron pin; then with the west line of property now or formerly owned by James L. Robinson, South 12° 50' 12" East 1,392.72 feet to a planted stone marking the terminus of the center line of a 60-foot wide right of way referred to below; then South 28° 39' West 473.46 feet to a nail spike set in the center line of Hebron Road (S.R. 1171); then with the center line of Hebron Road and leaving the same North 88° 2' 52" West 164.34 feet to a PK nail; then North 20° 39' 17" East 5.96 feet to a PK nail set on the south side of the pavement of Hebron Road; then with and crossing said road North 39° 32' 30" West 448.54 feet to an iron pin on the north side of said pavement; then North 73° 22' 30" West 100 feet to an iron pin on the north side of said pavement; then crossing the pavement South 77° 37' 30" West 154 feet to an iron pin on the south side of said pavement; then North 62° 52' 30" West 117.04 feet to a nail set in the south margin of the pavement of Hebron Road; then leaving the pavement and running with the east line of property sold by Chalhub to Kim Orr by deed recorded in book 898 at page 780 of the Henderson County Registry and continuing with the east line of the B.F. Orr property North 6° 13' 21" East

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1,739.18 feet to a planted stone; then with the north line of the Orr property, North 84° 36' 6" West 1,468.47 feet to an iron pin; then South 16° 29' 49" East 73.58 feet to a planted stone; then South 84° 36' 6" East 450.19 feet to an iron pin, a corner of the Don S. Orr property; then South 6° 16' 7" West passing an iron pin on line at 954.73 feet (marking the southwest corner of the Terry S. Orr property) a total distance of 1,412 feet to a nail set in the center of Hebron Road; then with the center line of Hebron Road North 68° 28' 30" West 294.61 feet to a point; then North 54° 28' 4" West 63.02 feet to a point; and North 28° 50' 6" West 127.11 feet to a nail set in the center line of Hebron Road; then leaving said road and running with the southeast line of property now or formerly owned by E. E. Jenkins, North 49° 41' 22" East 410.71 feet to an iron pin; then North 16° 18' 38" West 122.9 feet to an iron pin; then South 88° 45' 59" West 164.97 feet to an iron pin; then North 00° 14' 5" East 459.88 feet to a point marking the northeast corner of property now or formerly known as F.M. Summersill; then with the north line of the Summersill property North 69° 45' 55" West 239.68 feet to a dead locust tree on the bank of a branch; then South 44° 13' 47" West 43.66 feet to a point in the branch; then down and with the meandering of said branch the following courses and distances: South 21° 37' 53" West 59.78 feet; South 1° 11' 21" East 69.42 feet; South 5° 2' 25" East 79.74 feet; South 15° 50' 2" West 133.3 feet; South 27° 42' 53" West 47.46 feet; then leaving said branch South 4° 28' 27" West 233.36 feet to an iron pin on the north side of Hebron Road; then North 68° 9' 7" West 206 feet to a nail spike; then leaving Hebron Road, North 34° 16' East 186.09 feet to a point in the center of a branch; then up and with the center of said branch the following courses and distances: North 18° 26' 51" West 72.55 feet; North 20° 35' 59" West 84.29 feet; North 17° 29' 11" West 112.94 feet; North 53° 13' 13" West 84.6 feet; North 10° 40' 15" West 94.75 feet; North 16° 00' 20" West 162.31 feet; North 5° 44' 59" West 46.4 feet; North 64° 47' 50" West 56.9 feet; North 33° 32' 19" West 81.37 feet; North 31° 41' 32" East 49.34 feet; and North 31° 1' 53" East 93.48 feet to a point in said branch; then leaving the branch, North 83° 52' 24" West passing a nail in a Lynn tree at 4.4 feet a total distance of 549.6 feet to a planted stone marking the southeasternmost corner of property now or formerly owned by Clay F. Staton; then North 10° 51' 52" East 1,779.77 feet to a planted stone; then with a line of property now or formerly owned by Stuart Van Meter, South 85° 4' 36" East 1,014.52 feet to an iron pin standing in the South line of property conveyed by Chalhub to the Town of Laurel Park; then with the south line of the said Laurel Park property South 56° 39' 15" East 550.04 feet to an iron pin and South 53° 23' 45" East 242.47 feet to an iron pin; then with the arc of a circle having a radius of 90 feet curving to the right and in a northeasterly direction an arc length of 102.55 feet to an iron pin marking the southeast corner of the E. J. Chalhub property described by deed recorded in Book 607 at Page 731 of the Henderson County Registry; then with the east line of the Chalhub property North 32° 45' 13" East 246.71 feet to an iron pin and the point of the BEGINNING.

ALSO CONVEYED by this instrument is a 60-foot wide right of way conveyed to Chalhub by deed recorded in Book 602 at Page 498 of the Henderson County Registry, the center line of which right of way begins on a planted stone mentioned in the above description and running then from said beginning point South 60° 6' 23" East

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100 feet to a point and South 41° 00'23" East 114.39 feet to a point standing in the North margin of the pavement for Hebron Road (S.R. 1171).

EXCEPTING FROM the above described tract and from the operation of this conveyance is a .75 acre parcel now or formerly owned by Mickey Leyva and recorded in Deed Book 614 at Page 403 of the Henderson County Registry, said parcel lying in the vicinity of the northeast corner of said property.

The above described property is a consolidated description of several tracts conveyed to Elias Chalhub by the following deeds:

A. Deed from Crockett Odom dated August 2, 1957 and recorded in Deed Book 362 at Page 64 of the Henderson County Registry.

B. Deed from James L. Robinson, Jr. and wife dated June 25, 1981 and recorded in Deed Book 602 at Page 498 of the Henderson County Registry.

C. Deed from John D. Kluttz and wife dated June 19, 1944 and recorded in Deed Book 252 at Page 212 of the Henderson County Registry.

D. Deed from the Town of Laurel Park dated the 16th day of OCTOBER 1990.

LESS AND EXCEPTING from said conveyances are certain portions thereof conveyed to other parties by Elias Chalhub by deeds recorded in the office of Register of Deeds of Henderson County.

**EXHIBIT "B"
TO AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONSITIONS AND RESTRICTIONS**

Use Restrictions

See Next Page

EXHIBIT "B"
Use Restrictions

1. Dwellings and Garages:

(a) Only one single family residential dwelling shall be erected on any lot. All one story or one and one half story dwellings shall have a minimum of 1,800 square feet of heated floor space. All two story dwellings shall have a minimum of 2,400 square feet of heated floor space. Dwellings shall not exceed two (2) stories in height above the foundation wall without approval from the Committee.

(b) An attached or basement level two-car garage shall be provided for each dwelling. Garage square footage is not included in minimum square footage requirements stated above.

(c) The construction of all dwellings must be completed within one year of the issue date of the building permit with all exceptions requiring special Committee approval.

(d) No alteration, including painting or staining, affecting the exterior appearance of any building, structure or landscape shall be made without prior approval of the Committee.

2. Setbacks:

- Front or Side Yard (adjoining a street).....25 feet (min. 40' center R/W)
- Rear Yard (interior boundary).....20 feet
- Side Yard.....15 feet (Property Line)
- Rear Yard.....25 feet

The side or rear yard setback which is applied to waterfront lots specifically prohibits construction of any building (including stoops, porches or decks - whether attached or unattached) nearer than 15 feet to the waterside lot line. The waterside lot line means the top of the bank of any stream, pond or lake.

3. Non-Dwelling Items: The following shall be permitted only in rear yards, provided they are not visible from the street: HVAC equipment, utility meters, 18" satellite dishes, permanent grills, permanent play equipment and hot tubs (those at ground level must be covered). The following shall not be permitted: Laminated materials, quoins, window air-conditioning units, above ground pools (except those of the inflatable variety), antennas, concrete patios, solar panels, signs. Electric meters and air-conditioning units must be screened from view. Television and radio antennas are not permitted on the exterior of houses and should be installed in attics. Clothes lines are not permissible.

4. Temporary Structures: No dwelling or building of a temporary nature will be permitted or allowed to remain on any lot. No trailer, motor home, recreational vehicle or camper shall be used as a residence, either temporarily or permanently. No boat (including a houseboat) whether docked at any dock or pier connected to any lot or otherwise moored adjacent to the property may at any time be used as a residence either temporarily or permanently.

5. Decks and Bridges: The proposed building of a deck or bridge into or across any natural or man-made water body or wetland area must receive prior approval from the Committee. Exterior lighting requires Committee approval, and must be installed so as not to disturb either neighbors or nearby traffic. The construction of game and play structures as well as swimming pools and tennis courts are considered improvements and must be submitted to the Committee. The approval of such structures generally depends upon their location, appearance and related landscaping.

6. Lighting: All exterior lighting shall be installed so as not to disturb neighbors or impair vision of traffic on nearby streets. Holiday lumination shall be minimal. The Committee shall have the right to require the removal of any holiday lumination which the Committee determines, in its sole discretion, to be inappropriate for the Subdivision.

7. Trees: No living tree exceeding six (6) inches in diameter nor any dogwood or flowering shrub, shall be cut without prior written consent of the Committee unless it is in the area of the lot approved for construction of a structure.

In the event that trees, shrubs or ground cover are removed in connection with Lot improvements, at least fifty percent (50%) of the area cleared of such vegetation (excluding built-upon area) shall be replaced with grass or other vegetative cover which shall be maintained by the Owner.

8. Driveways: Permanent driveways, turnarounds and parking areas must be surfaced. A hard surface, such as brick, concrete, asphalt, or prime and seal must be used and adequate drainage provisions to accommodate heavy rains must be incorporated. Drives must not drain into the public roadways. A concrete, prime and seal or asphalt apron, which blends with the roadway, must be installed to the edge of any road at least twenty (20) feet wide at the connection and taper to meet your

driveway surfacing. The drive must be at least ten (10) feet wide. Drives located along a property line must be screened with an appropriate shrub mass. Guest or visitor parking areas must be provided. Parking must be accommodated within the property lines. Off-street parking space for at least two automobiles is required, and all parked vehicles must have current license plates affixed. Parking areas should be screened from the road with walls, fences, and plantings. Drainage culverts, if needed, must be installed prior to construction.¹

9. Fencing: All lots may be individually marked by fencing. Wooden fences shall be constructed of pressure treated 40-year material. Fences may be simple, open picket fences with pickets as narrow as one and one-half inches (1-1/2") in width or wider and more ornate Victorian pickets. Any other fencing must be approved by the Committee.

10. Mobile Homes: No mobile or modular home or structure having the characteristics or appearance of a mobile or modular home shall be located upon any lot.

11. Division of a Lot: No Lot shall be re-subdivided except for rights reserved by Declarant. Declarant reserves the right to modify Lots and to record a new plat thereof. Notwithstanding anything to the contrary herein, should the topography so dictate, in Declarant's sole opinion, that an easement for encroachment or driveway or a land transfer in furtherance thereof is needed to reasonably use a Lot, Declarant may make such deeds, reservations or grants as deemed necessary, so long as no Lot is reduced in size below the minimum required by Henderson County for the applicable zoning classification.

12. Trash and Nuisances: No noxious or offensive activities shall be carried out upon any Lot, nor shall anything be done thereon which is or is likely to become an annoyance or nuisance to the Subdivision. Except for routine household garbage, trash and debris, either kept in covered containers that are screened from view or which are promptly hauled off, no Lot shall be used in whole or in part for the placement, dumping or storage of rubbish, garbage, junk or refuse, including but not limited to junked or unlicensed motor vehicles. Trash cans cannot be visible from the street except on day of trash pick-up or collection. No Lot shall be allowed to remain in an unclean or unkempt condition. No liquid wastes or other substance, thing or material shall be dumped, placed or kept upon any Lot which will emit foul or noxious odors discernible on any adjoining Lot or which will cause such odor as to unreasonably disturb the peace, quiet and comfort of any occupant of another Lot. No loud or continuous noise or barking dogs shall be allowed on any Lot. No toys, bicycles, or other items shall be allowed to remain in the front yard of any Lot.

13. Livestock: No cows, pigs, goats, chickens, sheep, horses, llamas or other animals generally considered livestock nor any animal bred, raised or sold for money may be kept on any Lot. No commercial animal raising of any type shall be permitted on any Lot. Only animals which are generally recognized as domestic pets, not to exceed a total of two per Lot (exclusive of fish, gerbils or like pets kept indoors at all times), may be kept and maintained upon a Lot. All pets must be kept under the control of their owner and kept in such a manner so as not to become a nuisance or an annoyance to other residents within the Subdivision. Specific regulation may be promulgated from time to time by the Association, which may control the type of pets to be allowed within the Subdivision, including breeds and sizes of pets to be prohibited so as to avoid nuisances.

14. Hunting and Weapons: No hunting shall be allowed at any place within the Subdivision, nor shall firearms or other weapons of any kind be discharged within the Subdivision.

15. Motorized Vehicles: No unlicensed vehicles may be operated within the Subdivision. Motorcycles, mini-bikes, dune buggies, motorized bikes and other recreation vehicles that are duly licensed may be operated within the bounds of the Subdivision, but only while riding for access purposes to and from a residence to the public road (outside the Subdivision), and may not be ridden within the bounds of the Subdivision for recreational or any other purpose. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven within the Subdivision, except on driveways and on the roadways shown on the recorded plats for the Subdivision.

16. Signs: No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot except one sign for advertising the sale or rent thereof, provided, however, Declarant shall have the right to (1) erect larger signs when advertising the Lot for sale, (ii) place signs on Lots designating the lot number of Lots, and (iii) following the sale of a Lot, place signs on such Lot designating the name of the purchaser of that Lot. This restriction shall not prohibit placement of occupant name signs and Lot numbers. **Signs shall be of a design as approved by the Architectural Review Committee.**²

¹ Original Pg. break of pg. 1 - Exhibit "B" recorded in B1207 P262

² Original Pg. break of pg. 2 - Exhibit "B" recorded in B1207 P263

**EXHIBIT "C"
TO AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Rules of Arbitration

See Next Page

**Recorded in Henderson County, NC: November 4, 2004
Book 1207 Pages 264-270**

EXHIBIT "C"

RULES OF ARBITRATION

1. Agreement of Parties: These rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules.

2. Name of Tribunal: Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Real Estate Industry Arbitration Tribunal.

3. Administrator and Delegation of Duties: When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct.

4. National Panel of Arbitrators: The AAA shall establish and maintain a National Panel of Real Estate Industry Arbitrators and shall appoint arbitrators as provided in these rules.

5. Regional Offices: The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

6. Initiation under an Arbitration Provision in a Contract: Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

The initiating party (hereinafter claimant) shall, within the time period, if any, specified in the contract(s), give written notice to the other party (hereinafter respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and shall file at any regional office of the AAA three copies of the notice and three copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule

The AAA shall give notice of such filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the AAA within ten days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee provided in the schedule shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration. The demand or answer may assert a third-party claim against another party, if the third party is obliged to arbitrate the subject of that party's claim under these rules. The arbitrator is authorized to resolve any dispute over such joinder.

7. Initiation under a Submission: Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule.

8. Changes of Claim: After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of ten days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

9. Applicable Procedures: Unless the AAA in its discretion determines otherwise, the Expedited Procedures shall be applied in any case where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest and arbitration

costs. Parties may also agree to using the Expedited Procedures in cases involving claims in excess of \$50,000. The Expedited Procedures shall be applied as described in Sections 54 through 58 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

All other cases shall be administered in accordance with Sections 1 through 53 of these rules.

10. Administrative Conference, Preliminary Hearing, and Mediation Conference: At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings. There is no case service fee for this service.

At the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts, to schedule hearings to resolve the dispute, and to ¹ consider other matters that will expedite the arbitration proceedings. There is no case service fee for the first preliminary hearing.

Unless the parties agree otherwise, the AAA at any stage of the proceeding may arrange a mediation conference under its mediation rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

11. Exchange of Information: Consistent with the expedited nature of arbitration, the arbitrator may establish (i) the extent of and schedule for production of documents and other information and (ii) identification of witnesses to be called. The arbitrator is authorized to resolve any dispute over this information exchange.

12. Arbitration Submission and Attachments: Any party may attach exhibits. Said exhibits shall be consecutively numbered and labeled with the name of the submitting party for easy identification and reference. Such attachments may include, if deemed relevant, items such as, but not limited to:

appraisal reports; a survey of the parcel; zoning ordinances, maps, and other appropriate public documents; real estate assessed valuation, appropriate local tax rates, and aggregate tax charges; building plans and specifications; evidence concerning construction costs, both "hard" and "soft" (if improvements are of recent vintage); executed copies of leases in force for office, retail, industrial, and special-purpose properties; operating agreement (if any) for large multifamily properties; a rent roll; and annual income and expense statements carrying, if possible, the endorsement of a certified public accountant; for shopping centers, financial statement arranged, if possible, in accordance with the Urban Land Institute's Standard Manual of Accounting for Shopping Centers; the Phase I environmental audit and, if in existence, the Phase II environmental audit and the Phase III environmental remediation plan (these reports are sometimes known as environmental site assessments); information concerning the initial principal amount, interest rate, amortization pattern, commencement date, current outstanding balance, balloon payment (if any), and expiration date of any mortgage in force; any feasibility, market, or other advisory reports; mortgages, notes, commitment letters, and other loan documents; real estate contracts or partnership agreements; real estate agency and other documents relevant to commission disputes; real estate title policies and abstracts; condominium prospectuses, bylaws and declarations with amendments to date; cooperative prospectuses, bylaws and proprietary leases with amendments to date; and house rules and relevant board resolutions or policy statements; evidence relevant to tax certiorari disputes; master plan, environmental impact studies, traffic studies, demographic studies, and other appropriate studies and reports; additional documents appropriate in hospitality disputes such as management agreements, franchise agreements, and financial statements arranged, if possible, in accordance with the Uniform System of Accounts for Hotels prepared by the Hotel Association of New York City and adopted by the American Hotel and Motel Association; and other material having a substantive effect on the matter at issue.

13. Fixing of Locale: The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects

¹ | Pg. 1 break of original recorded Exhibit "C" in B1207 P269

to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

14. Qualifications of an Arbitrator: Any neutral arbitrator appointed pursuant to Section 15, 16, 17, or 55 or selected by mutual choice of the parties or their appointees shall be subject to disqualification for the reasons specified in Section 20. If the parties specifically so agree in writing,, the arbitrator shall not be subject to disqualification for those reasons. Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section 20.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party-appointed.

15. Appointment from Panel: If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the panel.

Each party to the dispute shall have ten days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. In a single-arbitrator case, each party may strike three names on a peremptory basis. In a multi-arbitrator case, each party may strike five names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

16. Direct Appointment by a Party: If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the panel from which the party may, if it so desires, make the appointment.²

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment. If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within ten days thereafter an arbitrator has not been appointed by a party, the AAA shall make the appointment.

17. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties: If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed as provided in Section 16, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators or the parties do not make the appointment within ten days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the neutral arbitrator, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the panel, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section 15, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as provided in that section.

² Pg. 2 break of original recorded Exhibit "C" in B1207 P266

18. Number of Arbitrators: If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

19. Notice to Arbitrator of Appointment: Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

20. Disclosure and Challenge Procedure: Any person appointed as neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of a neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

21. Vacancies: If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules. In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

22. Date, Time, and Place of Hearing: The arbitrator shall set the date, time, and place for each hearing. The AAA shall send a notice of hearing to the parties at least ten days in advance of the hearing date, unless otherwise agreed by the parties.

23. Representation: Any party may be represented by counselor or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

24. Stenographic Record: Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

25. Attendance at Hearings: The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

26. Postponements: The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree.

27. Oaths: Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.³

³ Pg. 3 break of original recorded Exhibit "C" in B1207 P267

28. Majority Decision: All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

29. Order of Proceedings and Communication with Arbitrator: A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section 10.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

30. Arbitration in the Absence of a Party or Representative: Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

31. Evidence: The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

32. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence: The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

33. Inspection or Investigation: An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

34. Interim Measures: The arbitrator may direct whatever interim measures are deemed necessary with respect to the dispute, including measures for the conservation of property, without prejudice to the rights of the parties or to the final determination of the dispute. Such interim measures may be taken in the form of an interim award and the arbitrator may require security for the costs of such measures. A request for interim measures addressed by a party to a judicial authority, or seeking a judicial order mandating action under an agreement, or the foreclosure against

real or personal property, or the exercise of self-help remedies relating to collateral or proceeds of collateral such as offset or repossession, shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

35. Closing of Hearing: The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.⁴

36. Reopening of Hearing: The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

37. Waiver of Oral Hearing: The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

38. Waiver of Rules: Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

39. Extensions of Time: The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

40. Serving of Notice: Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

41. Time of Award: The arbitrator shall endeavor to issue the award promptly and, unless otherwise agreed by the parties, within 30 days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

42. Form of Award: The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law.

43. Scope of Award: The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections 50, 51,

⁴ Pg. 4 break of original recorded Exhibit "C" in B1207 P268

and 52 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

44. Award Upon Settlement: If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon the written agreement of those parties, set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

45. Deliver of Award to Parties: Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

46. Correction of Award: Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational error in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given ten days to respond to the request. The arbitrator shall dispose of the request within twenty days after transmittal by the AAA to the arbitrator of the request and any response thereto.

47. Release of Documents for Judicial Proceeds: The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

48. Applications to Court and Exclusion of Liability: No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the property's right to arbitrate. Neither the AAA nor any arbitrator in a proceeding under these rules shall be a party in judicial proceedings relating to the arbitration.

Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.⁵

49. Administrative Fees: As a not-for-profit organization, the AAA shall prescribe an initial filing fee and a case service fee to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

50. Expenses: The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

51. Neutral Arbitrator's Compensation: The per-diem fee for each neutral arbitrator shall appear on the arbitrator's biographical information card and shall be agreed upon by the parties and the arbitrator prior to commencement of activities by the arbitrator.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

⁵ Pg. 5 break of original recorded Exhibit "C" in B1207 P269

If in the opinion of the AAA, the parties do not reach agreement on the per-diem fee within a reasonable time, the AAA will have the sole power to determine the per-diem fee and will communicate it in writing to the parties and the arbitrator.

52. Deposits: The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpanded balance at the conclusion of the case.

53. Interpretation and Application of Rules: The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If decision. All other rules shall be interpreted and applied by the AAA has arisen, the matter may not be

EXPEDITED PROCEDURES

54. Notice by Telephone: The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

55. Appointment and Qualification of Arbitrator: Where no disclosed claim or counterclaim exceeds \$50,000, exclusive of interest an arbitration costs, the AAA shall appoint a single arbitrator, from the National Panel of Real Estate Industry Arbitrators, without submission of lists of proposed arbitrators. Where all parties request that a list of proposed arbitrators be sent, the AAA upon payment of the service charge as provided in the Administrative Fees shall submit simultaneously to each party an identical list of five proposed arbitrators, drawn from the National Panel of Real Estate Industry Arbitrators, from which one arbitrator shall be appointed. Each party may strike two names from the list on a peremptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by telephone by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section 20. The parties shall notify the AAA, by telephone, within seven days of any objections to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

56. Date, Time and Place of Hearing: The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

57. The Hearing: Generally, the hearing shall be completed within one day, unless the dispute is resolved by submission of documents under Section 12. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

58. Time of Award: Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing⁶.

⁶ End of Pg. 6 in original recorded Exhibit "C - B1207 P270

**EXIHIBT "D"
TO AMENDED AND RESTATED
SOMERSBY PARK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

By Laws of Somersby Park HOA

See Next Page

RECORDED IN HENDERSON COUNTY, NC, NOVEMBER 4, 2004
BOOK 1207 PAGES 271-280

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EXHIBIT D
BY-LAWS OF
SOMERSBY PARK HOMEOWNERS ASSOCIATION
A NORTH CAROLINA NON-PROFIT CORPORATION

ARTICLE I
Identity

These are the Bylaws of the SOMERSBY PARK HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of Covenants, Conditions and Restrictions (the "Declaration") for the residential community to be known as "Somersby Park" and located off of Hebron Road, Town of Laurel Park, in Henderson County (herein "Somersby Park"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes (herein "the Community Act") shall have the same meaning herein.

Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Community Act . In the event of any conflict between the Corporation Act or the Community Act, the Community Act shall control.

ARTICLE II
Qualifications and Responsibilities
of Members

2.1. Members. Every Owner of a Lot in Somersby Park shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Lot.

2.2. More Than One Owner. When there is more than one Owner of a Lot , all such persons shall be members of the Association.

2.3. Registration. It shall be the duty of each Owner of a Lot to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Lot does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In addition, an Owner of a Lot shall register with the Secretary the name and mailing address of any applicable person, firm or company holding a note secured by a first deed of trust lien on that Lot (the "First Mortgage"). In no event shall an Owner of a Lot avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.

2.4. Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Lot.

ARTICLE III

Members' Meetings and Voting

3.1. Place. Meetings of the members shall be held at such place within Somersby Park or within Henderson County, North Carolina, as may be designated from time to time by the Board of Directors of the Association (the "Board").

3.2. Annual Meeting. The members shall meet at least once each year in January, the day being specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members may transact any business properly coming before them.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by members of the Association entitled to cast at least fifty-one percent (51%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Lots and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, **at least sixty (60) days in advance of any annual or special meeting**. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on.¹

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty-one percent (51%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be twenty-six (26%) percent of the total votes in the Association.

3.6. Vote. Except for Lots owned by Declarant, each Lot is entitled to one (1) vote. Prior to the expiration of Declarant Control Period, Declarant is entitled to cast two (2) votes for every Lot that Declarant owns. The reference in the Community Act to the number of votes allocated in the Association shall include the votes Declarant is entitled to vote as provided above. When there is more than one Owner of a Lot, said Owners shall designate in writing the person authorized to vote for said Lot.

3.7. Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all owners of the Lot, the votes of which are subject to the proxy, be given only to another member or to a Security Holder of that Lot, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

¹ Pg. 1 break of original recorded document Exhibit "D" in B1207 P272

3.8. Required Votes. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

3.11. Declarant Control Period. "Declarant Control Period" shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, appointing and/or removing the Board of Directors of the Association and vetoing certain amendments to the Declaration. Declarant Control Period shall be the earlier of twenty-five (25) years after the date of the Declaration or when all of Somersby Park (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than a Declarant or such earlier time as determined in Declarant's sole discretion.

ARTICLE IV

Directors

4.1. First Board. The first Board shall consist of five (5) persons appointed by Declarant.

4.2. Number and Qualifications of Directors. The Board shall consist of five (5) natural persons, as determined in the sole discretion of Declarant during the Declarant Control Period, and thereafter by a majority of the members. During the Declarant Control Period, a Director need not be a member of the Association or be a resident of North Carolina. A Board member may be a representative of Declarant. After the Declarant Control Period expires, a Director must be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual.

4.3. Election of Directors. During the Declarant Control Period, Declarant reserves the right to appoint all the members of the Board. After the end of the Declarant Control Period, **the election of Directors by the members shall occur at an annual meeting of the members and at each subsequent meeting after the term of the Directors have expired.**

4.4. Term. The term of the initial Board of Directors shall be staggered with Directors designated to serve one year, two year or three year terms. Thereafter, each Director shall serve a three year term. There is no limitation on the number of terms a Director may serve as appointed by Declarant or as elected by the membership. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.5. Removal. During the Declarant Control Period, Declarant retains the sole authority to remove any Director, with or without cause. **After the Declarant Control Period has expired, any Director may be removed, with or without cause, by a vote of the members entitled to cast at least a majority of the total votes in the Association, at a special meeting called for such purpose.** During the Declarant Control Period, Declarant shall appoint a successor to serve for the balance of the removed Director's term. **Thereafter, the members by majority vote shall appoint a successor to serve the balance of the removed Director's term .**

4.6. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.²

² Pg. 2 break of original recorded document Exhibit "D" in B1207 P273

4.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least three (3) times a fiscal year (as that term is defined in Sections 4.13(a) and 7.2 below). Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile or telegraph, at least thirty (30) days prior to the meeting.

4.8. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, facsimile or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.9. Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws.

4.11. Meeting Forums; Board Action Without Meeting. Although regular or special meetings may occur at such places as specified in the notice, regular or special meetings by means of a conference telephone or similar communication device are permissible as long as the required notice is given. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in writing, setting forth the action taken, signed by all Directors.

4.12. Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.13. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Corporation Act, the Community Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Corporation Act, the Community Act, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and **provide to** members annually, a **budget summary report** for the fiscal year commencing January 1 and concluding December 31 of that calendar year (the "Fiscal Year"), said budget summary report containing at least the following:

- (i) A statement of the **status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.**
- (ii) A statement **of the financial condition** of the Association for the last Fiscal Year
- (iii) A statement of the **status of any pending suits or judgments** in which the Association is a party.
- (iv) A statement of the **insurance coverage** provided by the Association.

- (v) A statement of any **unpaid assessments** payable to the Association, identifying the Lot and the amount of the unpaid assessment. **All Lot owners do hereby acknowledge that this reporting of unpaid assessments shall not constitute a violation of any federal or state unfair debt collection laws.**

The Board shall provide all members a **summary of the budget** as provided above and in subsection 8.3 below.

(b) To **adopt and amend budgets** (with the ratification of the membership as provided above) and to determine, and collect assessments to pay the Association's common expenses, including operating expenses and Common Element maintenance fees (the term "Common Expenses" being defined with more particularity in Section 8.12), and capital improvement costs. The Board shall engage a certified public accountant to do the Association bookkeeping, to file annual returns and to assist in preparing the report described above.

(c) To **regulate the use of**, and to maintain, repair, replace, modify and improve the **Common Elements**.

(d) To **adopt and amend rules and regulations** and to establish reasonable penalties for infraction thereof.

(e) To **enforce the provisions** of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To **hire and terminate** agents and independent contractors.³

(g) To **institute, defend, intervene in, or settle** any litigation or administrative proceeding in its own name on behalf of itself on matters affecting the Common Elements or enforcement of the Declaration, the Bylaws or the rules and regulations of the Association.

(h) To **establish and dissolve and liquidate**, from time to time, reserve accounts for any purpose.

(i) To **borrow money** for the maintenance, repair, replacement, modification or improvement of the Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(j) To **buy Lots in foreclosure of an assessment lien**, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Lots from time to time owned by the Association.

(k) To **grant** leases, licenses, concessions and easements through and over the Common Elements, **unless contrary to the Declaration**.

(l) To **impose and collect reasonable charges**, including reasonable costs and attorneys' fees, for the enforcement of any use restrictions or rules and regulations set forth in the Declaration or these Bylaws.

(m) To **provide for indemnification** of the Association's officers and Directors and maintain Officers and Directors liability insurance.

(n) To **impose charges for late payment** of assessments and, after notice and an opportunity to be heard, **levy reasonable fines** for violations of the Declaration, these Bylaws, or the rules and regulations.

³ Pg. 3 break of original recorded document Exhibit "D" in B1207 P274

Any assessments, charges or fines levied against members shall specifically relate to the need to preserve and fulfill the purposes set forth in the Association's Articles of Incorporation and are applied to owners of Lots in their capacity as owners-members rather than in some other capacity such as customers for services.

ARTICLE V

Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Declarant Control Period, officers do not have to be members or residents of North Carolina. Officers may include Declarant or a representative of Declarant. After the Declarant Control Period, each officer shall be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. **The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.**

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every year at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

5.3. Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

(a) President. The President shall be the chief Executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.⁴

⁴ Pg. 4 break of original recorded document Exhibit "D" in B1207 P275

5.8. Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI

Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors Liability Insurance.

ARTICLE VII

Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board.

7.2. Fiscal Year. The Fiscal Year of the Association shall run from January 1 until December 31 of that calendar year, provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

ARTICLE VIII

Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. Each Owner of a Lot shall be personally and severally liable for an assessment equaling the total amount of the Association's Common Expenses as determined in the Board's discretion divided by the total number of Lots owned by parties other than Declarant at the time of the annual assessment. The levy of an annual assessment noted above does not include any special assessment which may be levied against Lot in accordance with Section 8.7 below. The purposes behind the assessments levied by the Association are set forth with more particularity in Article IV, Section 5. of the Declaration.

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of the share of assessments, and, if allocated, may be paid to the Owner of a Lot or credited against that Lot's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

8.3. Preparation of Budget and Levying of Assessment. For each Fiscal Year, beginning with the Fiscal Year commencing January 1, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. **Within thirty (30) days after adoption of any proposed budget, the Board shall provide the members of the Association with a summary of the budget and a notice of the meeting to consider ratification by the membership of the budget, including a statement that the budget may be ratified without a quorum.** There shall be no requirement that a quorum be present at the meeting, annual or special, when the budget is considered for ratification. **The budget shall be ratified unless at that meeting a majority of all the members of the Association entitled to vote rejects the budget.** In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board. After the ratification of the budget by the membership as provided above, the Board shall give each

member notice of the assessment made against that member's Lot based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after filing of the Declaration and the conveyance of the first Lot within Somersby Park shall be prepared and adopted by the Board only for the balance of the then Fiscal Year of the Association.

8.4. Assessment A Lien. Every assessment shall constitute a lien upon each Lot and Unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual Assessments are typically due and payable within thirty (30) days of the date of the Assessment.

8.6. Notice to First Mortgagees. Although the lien of assessments may be superior to the lien of a First Mortgagee, any enforcement of said assessment lien by the Association's filing of a collection or foreclosure action with the courts shall require the giving of notice to the applicable First Mortgagee, if any. All Owners of Lots acknowledge that such notice shall not constitute a violation of any state or federal unfair debt collection laws. Failure to give the⁵ notice provided for herein shall not be a defense for the defaulting member in the enforcement action filed by the Association.

8.7. Special Assessments. In addition to the assessments levied pursuant to Section 8.3., the Board may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Common Elements and its facilities.
- (b) Improvements, acquisitions and additions to the Common Elements.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1. and 9.3. hereof.

The Board shall provide to its members a summary of the proposed special assessment and notice of a meeting to ratify the special assessment at least thirty (30) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at a meeting where the special assessment is to be considered by the members. The special assessment shall be deemed ratified unless at the meeting a majority of all the members entitled to vote rejects the special assessment. Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.8. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.9. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Lots and Units which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon

⁵ Pg. 5 break of original recorded document Exhibit "D" in B1207 P276

written request, shall furnish to a Lot Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Lot . The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

8.10. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided in the Community Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements (except access to the Lot) and its facilities until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Declaration or in the Community Act. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number of breaches thereof that may have occurred by the member regarding assessments.

8.11. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all sums delinquent more than thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum or as set forth in the notice levying the assessment (but not exceeding the rate of interest allowed by law) from the date of the delinquency until paid. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.12. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the⁶ Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Lot Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

⁶ Pg. 6 break of original recorded document Exhibit "D" in B1207 P277

ARTICLE IX
Compliance, Enforcement, Fines and Penalties, Other
Than Assessment Liens

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Elements and its facilities until the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Lot when required under Section 8.6 of these Bylaws, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default or failure specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within thirty (30) days after receipt of the determination shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief. In accordance with N.C.G.S. §47F-3-107.1 of the Community Act, the Board may appoint an adjudicatory panel to hear and decide the matters referenced to in this subsection and in doing so, the Board may reserve unto itself the role of an appellate body.

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in Section 9.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as

provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.⁷

9.5. Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

9.6. Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

ARTICLE X
Amendment

During the Declarant Control Period, the power to alter, amend, or repeal these Bylaws or adopt new Bylaws shall be vested in the Board with Declarant approval being necessary for any particular change. **After the Declarant Control Period has expired, the amendment of these Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the members present at said meeting to such changes.** Any amendments to these Bylaws shall be recorded in the Henderson County, North Carolina Register's Office

ARTICLE XI
General Provisions

11.1. Rules and Regulations.

(a) By the Board. The Board, including the first Board, **may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and for the protection and preservation thereof.** In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants. **There shall be no Amendment to these Bylaws or Declaration which prohibits leasing of occupied Lots.**

(b) By the Association. After the Declarant Control Period has expired, **any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority of the members represented in person or by proxy at an annual or special meeting of the members.** Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

⁷ Pg. 7 break of original recorded document Exhibit "D" in B1207 P278

(c) **Uniform Application.** All rules and regulations shall be equally and uniformly applicable to all Lot Owners and their Occupants, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) **Copies Furnished.** Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceeding when not in conflict with the Declaration, these Bylaws, the Articles, the Corporation Act, the Community Act or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

11.3 Conflict; Severability. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

11.4 Notices. Whenever in the Declaration, the Act or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or a First Mortgagee or other party entitled to notice, such notice or demand shall be given in writing by and mailed, postage prepaid, to the respective addresses as hereinafter set forth. All notices or demands provided under the terms of the Declaration, the Corporation Act, the Community Act or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above.⁸

LOT OWNER OR FIRST MORTGAGEE AT: THE ADDRESS GIVEN AND ON FILE WITH THE ASSOCIATION.

c/o Somersby Park,LLC
3150 Hebron Road
Post Office Box 190
Hendersonville, NC 28739

THESE BYLAWS adopted and approved at a duly called meeting of the Board of Directors, as of the 15th day of January, 2004.⁹

⁸ Pg. 8 break of original recorded document Exhibit "D" in B1207 P279

⁹ Pg. 9 break of original recorded document Exhibit "D" in B1207 P280