



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

Prepared by: Merinda S. Woody  
Attorney at Law

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,  
RESERVATIONS, TERMS AND CONDITIONS

THIS DECLARATION, made and entered into this the 19<sup>th</sup> day of October 1990, by and between Jack Dickey and wife, Blanche Dickey, Harry Dickey and wife, Betty Lou Dickey, and Jean Dickey White, widow, parties of the first part; and, PROSPECTIVE PURCHASERS of Lots 1 through 121 of the "VALLEY RIVER MOUNTAIN" located in Cherokee County, North Carolina, parties of the second part (hereinafter referred to as "Owners");

W I T N E S S E T H:

WHEREAS, parties of the first part are the owners of all that tract of real property located in Murphy Township, Cherokee County, North Carolina, and being more particularly shown and described on those certain maps or plats entitled "Valley River Mountain" prepared by L. B. Adams, RLS, #2708 and recorded in Cabinet A Slide 162 in the office of the Register of Deeds of Cherokee County, reference to said plats being hereby specifically made; and,

WHEREAS, parties of the first part desire and intend to sell the property described above and to impose on it mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lands in the tract and the future owners of those lands;

NOW, THEREFORE, the parties of the first part hereby declare that all of the property described above on the aforesaid plat entitled "Valley River Mountain" recorded in Plat Cabinet A at Slide 162, in the office of the Register of Deeds of Cherokee County, North Carolina, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following Restrictions. This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

1. "Subdivision" means all lots located in Valley River Mountain as denoted on the above named plat and any portion of the Development Area which has been dedicated pursuant to this Declaration.

ARTICLE 2  
APPLICABILITY

These Restrictions shall apply to all subdivided numbered Lots shown on the aforesaid plat or map, and additional plats or maps of subdivisions of the Development Area, (hereafter referred to as "Lot" or "Lots"), which Lots are for residential purposes only.

ARTICLE 3  
VALLEY RIVER PROPERTY OWNERS ASSOCIATION

A. Creation of Valley River Property Owners Association, Inc. Prior to conveyance of any lot, the Declarant shall cause to be incorporated, under the laws of North Carolina, a non-profit corporation called the Valley River Property Owners Association, Inc. (the "Association") and, also prior to the conveyance of any lands, the Declarant shall cause the Articles of Incorporation of the Association to be recorded.

B. Purposes. Its purposes are to own, manage, maintain and operate the Community Use Areas and facilities located upon the Community Use Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the owner's use and occupation of Lots; and to manage and maintain the road right of way system servicing the subdivision.

C. Membership. Each owner of each Lot within Valley River Mountain shall be a member of the Association. The Declarant, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Association:

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association;

2. That each shall be subject to the rules and regulations of the Association with regard to ownership of a Lot and;

3. That any unpaid assessment, whether general or special, levied by the Association in accordance with these Restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the Lot at the time the assessment fell due.

D. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

E. The Association shall have one class of members who shall be all Owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

#### ARTICLE 4

#### MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision as well as the road maintenance of the road right of ways throughout the Subdivision shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Association, but may be delegated or contracted to managers or management services.

#### ARTICLE 5

#### COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

A. All amounts expended by the Association in operating, administering, managing, repairing, replacing and improving the Community Use Areas of the Subdivision including road maintenance of the road right of way throughout the Subdivision; all amounts expended by the Association in insuring the Community Use Areas in the Subdivision; all amounts expended by the Association in legal or engineering fees; all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association by these Restrictions; and all amounts expended in any form by the Association in enforcing these Restrictions, the Articles or the Bylaws.

B. All amounts expended by the Association in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.

C. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.

D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the Subdivision.

#### ARTICLE 6

#### ANNUAL GENERAL ASSESSMENT

A. The Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so-expressed in such deed) is deemed to covenant and agrees to pay to the Association annual general assessments or charges as hereinafter provided. The first annual assessment shall be in the amount of fifty dollars (\$50.00) per lot and will be due and payable on the date each owner accepts a deed to his particular lot. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. Until October 1, 1991, the maximum annual general assessment shall be Fifty and No/100 Dollars (\$50.00) per Lot.

1. From and after October 1, 1991, the maximum annual general assessment may be increased provided the proposed increase is approved by a vote of two-thirds (2/3) of the members who are voting in person or by a proxy at a meeting duly called for this purpose.

2. The Board of Directors may fix the annual general assessment at an amount not in excess of the maximum of fifty dollars (\$50.00) per lot.

3. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Board of Directors.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 2(B) shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

D. The annual general assessments levied by the Association shall be used exclusively to improve, maintain and repair the Community Use Areas, to pay the expenses of the Association, to pay the cost of any insurance the Association determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Community Use Areas; and to maintain and repair the private road right of way system servicing the subdivision.

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

F. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu therefor, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 7  
SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, special assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of Article 12 hereof, the Association may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 8  
LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of Cherokee County or file a suit to collect such delinquent assessments and charges. The Corporation may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein.

ARTICLE 9  
COMPLIANCE WITH THIS DECLARATION, THE ARTICLES  
AND THE BYLAWS OF THE ASSOCIATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or the Bylaws of the Association, the following relief shall be available:

- A. The Association, an aggrieved Lot Owner or Owners within the subdivision on behalf of the Association, or any Lot Owner on behalf of all the Lot Owners within the subdivision shall have

the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.

B. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Community Use Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failure of the Association or any Person to enforce any restrictions contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

Prior to availing itself of the relief specified herein, the Association shall follow the hearing procedures as set forth in the Bylaws.

#### ARTICLE 10

##### PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Association shall have the right to make reasonable rules and regulations respecting the use of same.

2. The Association shall have the right to suspend the voting rights of a Lot Owner and his right to use the Community Use Areas within the Subdivision for any period during which any



due assessment against such Owner's Lot remains unpaid as is provided in Article 9 hereof, and for a period not to exceed sixty (60) days for an infraction of its published Rules and Regulations.

#### ARTICLE 11

##### PRIVATE ROAD RIGHT OF WAY EASEMENTS

A. All subdivision lots shall extend to the centerline of any subdivision access road as shown on the above mentioned plat of survey.

B. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over the road right of ways and easements measuring sixty (60) feet in width as described on the plat of survey referred to above with the following exceptions:

(1) The sixty (60) foot road right of way which provides access to Lots 31 through 47 and to Lots 71 through 73 is for the sole and exclusive use of the owners of Lots 31 through 47 and Lots 71 through 73.

(2) An easement of thirty (30) feet in width is reserved upon and over lots 110, 109, 108, 107, 106, 105, and 104 for purpose of providing access to and from the subdivision main access road from said lots. This easement is exclusively reserved for the use of said lots and runs appurtenant with those particular lots. Further, the upkeep and maintenance of said easement shall be sole responsibility of Lots 104 through 110.

C. The undersigned declarants reserves unto themselves, their heirs, successors and assigns in interest, a perpetual, alienable, releasable, and non-exclusive road right of way for the purposes of ingress, egress, and regress over, on and across all subdivision access roads, either existing or platted on the plat of survey of said subdivision herein referred to and in particular over the common area denoted on said plat of survey for purposes of having access to an island owned by grantors in Valley River and in particular to other tracts of property owned by grantors not included in subdivision. Said road right of ways and easements shall be and are sixty (60) feet in width, thirty (30) feet on either side of centerline.

D. The road right of ways herein described are for the benefit, use and enjoyment of the declarants, their heirs, successors, and assigns in interest, and every conveyance of land

herein restricted shall be deemed to be subject to said road right of way easements while conveying to the grantee(s) named in said conveyance a similar right appurtenant to his land, to his benefit, use and enjoyment of said easement in common with the undersigned declarants, their heirs, successors and assigns in interest.

K. The declarants have constructed a sixty (60) foot private roadway servicing Valley River Mountain and have gravelled and graded the same. The upkeep and maintenance of the roads in Valley River Mountain shall be the joint responsibility of all lot owners in Valley River Mountain on a prorata basis, with each lot in Valley River Mountain bearing its proportionate share of the road repair and maintenance expenses of the road on an annual basis, as determined by the Board of Directors of the Association.

F. There exist a sixty (60) feet in width right of way easement throughout Valley River Mountain for the purposes of providing those property owners in Valley River Mountain access to and from their property to the State maintained road. This easement is expressly reserved for purpose of providing adequate right of way to the state of North Carolina should the property owners association ever petition the North Carolina Highway Department to take over the road system and should the North Carolina Highway Department ever desire to take over the road system.

The cost of maintaining the sixty (60) foot in width road shall be determined by the Property Owners Association and they shall assess an annual assessment to be levied on and collected from each property owner for the purpose of maintaining said road system.

#### ARTICLE 12 LOGGING OPERATIONS

Logging operations are permitted however, no clearcutting which is primarily performed in connection with a commercial harvesting of timber or hardwood may occur closer than 50 feet to any property line. Further, any damage which may occur to roadways as a result of logging operations shall be repaired by the responsible party. The Association shall have standing to bring legal action against the responsible party if he/she fails to repair said road.

ARTICLE 13.Land Use and Building Type.

A. Mobile homes or modular homes are permitted except on Tracts 1 Through 7 and Tracts 110 and 111; however, any mobile home or modular homes placed on any lot must be tied down, underpinned with a material of non-metalllic appearance and the lot shall be landscaped.

B. On tracts 8 and 9 and tracts 107 through 109, no mobile home or modular home shall be permitted closer than 200 feet to the existing entrance road.

C. No junk yard or salvage yard shall be permitted on any lot.

D. Sewer System. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to an individual septic tank or sewer system located upon such and approved by the appropriate governmental authorities. Each such approved individual septic tank or sewer system shall be maintained in good and proper working order and condition by the owner in accordance with the requirements of governmental authorities having jurisdiction. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

E. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved over the front and rear ten feet of each of the aforesaid Lots, and along the road right of ways throughout the subdivision. A drainage and utility easement ten feet in width is reserved along each sideline of each Lot. Additional utility easements are reserved as more particularly shown and delineated on the recorded map of the subdivision. Within said easements so reserved, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The owner of each lot shall maintain that portion of said Lot lying within the easement areas as defined herein and shall maintain such improvements as may be located thereon except those improvements installed and maintained by a public authority or utility company.

F. Garbage and Refuse Disposal. No Lot shall be used or maintained in an unsightly manner or as a dumping ground for

rubbish, trash or debris. Rubbish, trash, debris, garbage and other waste shall be kept only in sanitary containers. All incinerators, containers or other equipment for the storage or disposal of such waste materials shall be kept in a clean and sanitary condition.

G. Nuisances. No noxious or offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become a unreasonable nuisance or annoyance to the other lot owners in the neighborhood. No wrecked or junked motor vehicle or vehicle without current license plates and registration shall be permitted to remain upon any lot.

H. Livestock and Poultry. Farm animals are permitted, however, no poultry, swine, goats or sheep may be maintained closer than fifty (50) feet to any property line.

I. Time. These covenants are to run with the land and shall be binding on all persons acquiring title to any of the aforementioned Lots up to and including the 1st day of October, 2000, at which time said covenants shall be automatically extended for successive periods of ten years, unless by a written instrument executed by a 75% majority of the then-owners of the said Lots, and duly recorded in the office of the Register of Deeds of Cherokee County within three months of any anniversary date of any such automatic renewal, it is agreed to change said covenants in whole or in part.

J. Amendments. These Covenants, Restrictions, Easements, Reservations, Terms and Conditions may be altered, amended, or repealed at any time by the mutual consent in writing by the owners of 75% of the then-owners of the said Lots included herein.

K. Enforcement. Enforcement of these restrictions and conditions shall be by proceeding at law or in equity against any persons or persons violating or attempting to violate any covenant or condition, either to restrain violation thereof or to recover damages therefor.

L. Severability. Invalidation of any one of these covenants or conditions by judgment or order of any court shall in no way affect any of the other provisions which shall remain in full force and effect.

IN TESTIMONY WHEREOF, parties of the first part have caused this instrument to be executed, this the day and year first above written.

Harry Dickey (SEAL)  
Harry Dickey

Jack Dickey (SEAL)  
Jack Dickey

Jean Dickey White (SEAL)  
Jean Dickey White, widow

Betty Lou Dickey (SEAL)  
Betty Lou Dickey

Blanche Dickey (SEAL)  
Blanche Dickey

STATE OF NORTH CAROLINA  
COUNTY OF Clay

I, a Notary Public of the County and State aforesaid, certify that  
JEAN DICKEY WHITE, widow; HARRY DICKEY and wife, BETTY LOU DICKEY; and  
JACK DICKEY and wife, BLANCHE DICKEY, personally appeared before me this  
day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19<sup>th</sup> day of October,  
1990.

Merrinda S. Woody  
Notary Public

My commission expires:

10-23-1991

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

Each of the foregoing certificate, or certificates, namely of

Merrinda S. Woody, Clay Co.  
a Notary or Notaries Public of the County and State de-  
signated is certified to be correct and filed for registra-  
tion on the 22 day of Oct. 1990 in book 618  
at page 175 at 4:35 O'Clock P.M.

WAYNE CORNWELL, REGISTER OF DEEDS

BY: Geneva Stines  
DEPUTY

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

COVENANTS, RESTRICTIONS, EASEMENTS,  
RESERVATIONS, WATER RIGHTS, TERMS AND CONDITIONS  
GOVERNING VALLEY FALLS SUBDIVISION

WHEREAS, the undersigned, being the owners of a certain tract or tracts of land hereinafter described, intend to develop said lands, and

WHEREAS, the undersigned has subdivided said lands into lots for purposes of selling the same for residential purposes, and

WHEREAS, the undersigned desire that said lots and said tracts of land be subject to certain covenants, restrictions, easements, reservations, terms and conditions for the protection of both the present owners and assignees of the present owners; and

WHEREAS, the lands to which these covenants, restrictions, easements, reservations, terms and conditions apply shall include any land which are by deed or in writing refer to this instrument as well as the following described lands:

BEING the lots which are numbered 74, 75, 76 and 77 as shown on survey by and plat prepared by L.B. Adams, R.L.S. 2708 dated November, 1990 and recorded in Cabinet A, Slide 162, Cherokee County Registry and which was acquired by the undersigned by Deed dated June 12, 1996 reference to which is made hereby for incorporation herein.

NOW, THEREFORE, know all men by these presents, that the undersigned as owners of the lands hereinabove described, for full value received in consideration of the obligations of said owners to purchasers of portions of said lands, do hereby establish these covenants, restrictions, easements, reservations, terms and conditions and water rights with regard to said lands as follows:

1. Each lot in said subdivision shall be used for residential purposes only. No commercial activity shall be permitted.
2. No lots may be subdivided.
3. No mobile homes, trailers, double-wides, concrete block dwellings or relocated older homes or any other similar structure shall be placed upon the property.
4. All homes located within the said subdivision shall have a minimum of 1,200 square feet of heated living space.
5. The exterior and interior of all dwellings shall be completed within one(1) year from the beginning of construction.
6. No unlicensed, unused, discarded, or salvaged vehicle or any part thereof and no unusable or salvaged household appliance or parts thereof, shall be placed or left anywhere on any lot outside of any enclosed building or on the right-of-way of any subdivision road.
7. There shall be no clear cutting allowed on any lots in this said subdivision to the he extent of more than 1/3 of the trees located on any subdivision lot.
8. It is expressly agreed and understood that any lot owner shall be responsible for any damages to the common roads caused directly by ongoing construction upon his lot, including but no limited to, concrete trucks, material delivery persons and earth-moving machinery. All such damage shall be immediately repaired by such lot owner at his expense.
9. No hunting or discharging of firearms shall be permitted in the subdivision.

10. The natural flow of the water in any stream on the property shall not be altered or disturbed in any manner.
11. No noisy, offensive or unsightly activity shall be carried on upon any lot.
12. Developer shall be held harmless from any acts arising from the use of any of the lands herein restricted by lot owners or their guests, successors or assigns in interest.
13. Any fencing on said lands shall be wooden. "Chain link" type fence will not be permitted.
14. No animals, birds, or fowls shall be kept or maintained on any part of the property except ordinary household pets (dogs, cats, pet birds) which may be kept thereon in reasonable numbers as pets for pleasure and use of the occupants but not for any commercial purpose. All animals must be kept under the owner's control at all times. If dogs or cats become a nuisance to other residents, they shall be kept on a leash. No livestock, hooved animals, or poultry shall be kept on any lot.

PROPERTY OWNERS' ASSOCIATION  
MEMBERSHIP COVENANT

All owners of lots subject to the Valley Falls Restrictive Covenants shall become members of the Valley Falls Homeowners' Association upon the execution, delivery and recordation of a deed of conveyance of title to any lot or lots with the office of the Register of Deeds of Cherokee County from the undersigned.

Each owner of a lot subject to these covenants and restrictions shall obtain one membership per lot. All lot owners shall abide by the by-laws of the association as may be amended from time to time and further agree to pay the association an annual maintenance charge as hereinafter set forth.

ASSESSMENTS

SECTION 1.

Purpose for Assessments. The undersigned and their successors in interest, including the association as herein provided, shall pursuant to these declarations, have the power to levy assessments as herein provided for the purpose of financing operations of the association and maintaining roads and other improvements for services within and for the benefit of subdivision lots, including roads, wells, water lines, and or utility easements of the subdivision in accordance with the formula herein set forth.

SECTION 2.

Creation of Lien and Personal Obligation for Assessments. Each lot is and shall be subject to a lien and permanent charge in favor of the undersigned, or the association in the event of transfer by the undersigned to the association of any and all rights and responsibilities it has under and pursuant to the terms of this indenture with annual assessments set forth herein. Each assessment, together with interest thereon and the cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the lot or lots against which it relates and shall also be the joint and several personal obligation of each lot owner at the time the assessments become due and payable and upon such owner's successor in title if unpaid on the date of the conveyance of the lot. Each and every owner covenants to pay such amounts to the undersigned, or the association when the same shall become due and payable. A purchaser of a lot at a judicial or foreclosure sale shall be liable only for the assessments due and payable after the date of such sale.

SECTION 3.

Annual Assessments. No later than December 1 of each calendar year the undersigned or the association as assignee of any and all rights and responsibilities of the developer shall establish the annual assessments based upon the following considerations:

1. The cash reserve, if any, on accounts with a lending institution created for the benefit of the



lots of the subdivision;

2. The expenditures devoted to the benefit of the subdivision lots during the immediately preceding twelve month period; and
3. The projected annual rate of inflation for the forthcoming year foreseeable for the county in which the land hereto is situate as determined by review of information available to any person, firm, or corporation by any governmental agency, lending institution or private enterprise which provides such statistical data upon request; provided that the annual assessments shall not exceed \$100.00 per lot per year until such time as the undersigned conveys all right, title and interest into said roads and water systems over to the Homeowner's Association as herein provided.

#### SECTION 4.

Date of Commencement of Annual Assessments - Due Date. Assessments are due in annual installments on or before January 1 of each calendar year or in such other reasonable manner as the undersigned, or the Board of Directors of the Association as designee of the undersigned by and through its treasurers shall designate.

The annual assessment shall commence upon the execution and delivery of or recordation of a deed of conveyance from the undersigned to an owner.

The first annual installment for each such lot shall be an amount (rounded to the sum of the nearest whole dollar) equal to the annual payment by the number of days in the current annual payment period divided by the number of days in the current annual payment period and multiplied by the number of days then remaining in such annual payment period.

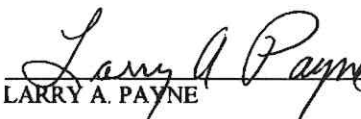
#### SECTION 5.

Exempt Property. Each lot shall be exempt from the assessments created hereunder until the execution and delivery of a deed from the undersigned, to an owner making the lot conveyed subject to these declarations.


#### AMENDMENT.

This instrument may be amended at any time, in writing, by an instrument signed by a majority of the owners of property in said subdivision. As long as the undersigned owns a majority of said property, they may amend the same without joinder of other owners. To be effective, such amendment shall be signed and acknowledged in the manner required for execution of deeds and recorded in the office of the Register of Deeds for Cherokee County, North Carolina. The signatures of spouses who are not owners shall not be required.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this the \_\_\_\_\_ day of \_\_\_\_\_, 1997.

 (SEAL)  
LARRY A. PAYNE

 (SEAL)  
BETTY J. PAYNE

 (SEAL)  
LOUISE E. McTAGGART

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STATE OF N.C.

COUNTY OF CHEROKEE

I WILLIAM H. McKEEVER, a Notary Public of said state and county, do hereby certify that LARRY A. PAYNE and wife, BETTY J. PAYNE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

<sup>NP</sup><sub>5<sup>th</sup>al</sub> WITNESS my hand and Notarial Seal this 5 day of JUNE, 1997.

My Commission expires:  
11/16/2001

William H. McKeever  
Notary Public

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STATE OF N.C.

COUNTY OF CHEROKEE

I WILLIAM H. McKEEVER, a Notary Public of said state and county, do hereby certify that LOUISE E. McTAGGART personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

<sup>NP</sup><sub>3<sup>rd</sup>al</sub> WITNESS my hand and Notarial Seal this 5 day of JUNE, 1997.

My Commission expires:  
11/16/2001

William H. McKeever  
Notary Public

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STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

Each of the foregoing certificates, namely of William H. McKeever, a Notary or Notaries Public of the States and Counties designated, duly attested by Notarial Seal, is certified to be correct.

This 5 day of June, 1997.

Daphne Dockery, Not

Ralph A. Kershart  
Register of Deeds  
Cherokee County, North Carolina

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Daphne Dockery, Not

Ralph A. Kershart  
Register of Deeds  
Cherokee County, North Carolina