

DECLARATION OF RESTRICTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SUNSET POINT

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by: PATRICIA A. REEL
Register of Deeds
BOOK 680 PAGE 447

This Declaration made on the date hereinafter set forth by Sunset Point, LLC, hereinafter referred to as "Declarant."

RECITALS:

Declarant is the owner of real property located in McDowell County, North Carolina, which is known as Sunset Point. At the time of commencement of development, a Plat, or Plats, will be recorded which will include the residential Lots, Common Areas, including roads and other improvements. Except for exceptions and conditions noted on a Plat, amendments to this Declaration, or other exceptions and conditions set forth in Article II, hereof, the portion of the real property included in the Plats which are recorded will subject the Property in such Plats to the covenants, conditions and restrictions in this Declaration and will herein be referred to as the "Property".

The Property was conveyed to the Declarant subject to restrictions in Exhibit B of the deed from Crescent Resources, LLC to Sunset Point, LLC, recorded December 6, 2001 in Book 666, Page 586 in the McDowell County Registry. The Restrictions are recorded in pages 588 to 594. If these is a conflict between the Restrictions attached to the deed and the restrictions in this Declaration the restrictions attached to the deed control.

Sunset Point is subject to the Lake James Protection Ordinance of McDowell County, North Carolina.

Declarant desires to create a community named "Sunset Point" with open spaces and other common facilities for the benefit of the homeowners; and in connection therewith, is establishing the covenants, conditions and restrictions in the Declaration, as the same may be amended from time to time, for the benefit of purchasers of Lots in Sunset Point.

Declarant recognizes the need for collective action by the purchasers of the Lots within Sunset Point to protect the interests of the purchasers in certain common facilities and functions, to enforce these covenants and restrictions, to provide for the preservation of the values and amenities of the Property and to assure the best use and most appropriate development and improvement of the Property.

To this end, Declarant desires to subject the Property to the covenants, conditions and restrictions hereinafter set forth, which are for the benefit of the Property and each Owner thereof.

Declarant has caused to be incorporated, under the laws of the State of North Carolina, Sunset Point Homeowners' Association, Inc., a non-profit corporation, for the purpose of maintaining

and administering the Common Areas and facilities, as shown on the Plats, administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created, or which are created in the By-Laws of Sunset Point Homeowners' Association, Inc.

A Copy of the Articles of Incorporation of the Sunset Point Homeowners' Association is attached to this Declaration as Exhibit A and a copy of the By-Laws of Sunset Point Homeowners' Association is attached to this Declaration as Exhibit B.

NOW, THEREFORE, Declarant hereby declares that the Property included in the recorded Plat(s) for Sunset Point, shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions in this Declaration, which may be amended from time to time, and are for the purpose of providing Common Area maintenance, for protecting the value or desirability of, and which shall run with such Property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. In consideration of said benefits to be derived by Declarant and subsequent Owners of the Lots, Declarant does hereby establish, publish and declare that the covenants, conditions and restrictions hereinafter set forth shall be binding upon the Owners of the Lots included on the Plat(s) and that such Lots will be held, transferred, sold, conveyed, and occupied, subject to the covenants, conditions, restrictions, and easements hereinafter set forth. Such covenants, conditions and restrictions shall become effective at the time of recording of the Plat(s) and shall run with the land, and be binding upon all Persons claiming under the Declarant, its grantees, successors and assigns.

Article I
Definitions

Section 1. "Association" shall mean and refer to Sunset Point Homeowners' Association, Inc.

Section 2. "Common Area" shall mean and refer to those areas of land designated as such on any recorded subdivision Plat of Sunset Point (herein the "Property") intended to be devoted to the use and enjoyment of the purchasers of Lots or to prevent use of areas adjoining portions of the lake which have been designated as environmental areas. "Common Area" shall mean all real property owned by the Association and/or easements for the common use and enjoyment of the Owners, including, but not limited to, ingress and egress easements, pedestrian access easements, and other easements shown on the Plats; provided, however, Declarant reserves unto itself and its mortgagees, Common Area for (1) construction vehicles and crews, (2) maintenance and service vehicles, including, but not limited to, fire, police, public works, refuse collections, electric company, cable television company, telephone company, (3) any and all delivery vehicles and necessary service companies needing access to the Lots within Sunset Point, and (4) any successor or assign as designated by Declarant in writing. During the Development Period, the Declarant retains the full authority and power to assign to any third party the use of the Common Area as defined herein. The streets within Sunset Point are private roads owned by Declarant over which Lot Owners and the Association have a non-exclusive easement for ingress, egress and regress. The streets are, therefore, a part of the "Common Area". At the end of the Development Period, the ownership of the streets will be in the Association. Initially the Declarant, and after the Development Period, the Association, shall have the right to determine whether the streets will

become part of the North Carolina Highway system. Declarant is responsible to construct the streets and the Association will be responsible to repair and maintain the streets, however, maintenance of the right of way not actually used for streets shall be "Common Area" also maintained by the Association.

Section 3. "Community" shall mean the Property as presently described and any additions thereto by the Declarant.

Section 4. "Declarant" shall mean and refer to Sunset Point, LLC, its successors and assigns or any successors-in-title to Sunset Point, or to all or some portion of the Property then subject to this Declaration; provided that, if in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" by the grantor of such conveyance, such grantor shall be the "Declarant" hereunder at the time of such conveyance.

Section 5. "Declaration" shall mean and refer to this Declaration of Restrictive Covenants, Conditions and Restrictions of Sunset Point, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

Section 6. "Development Period" shall mean the time period during which the Declarant is developing Sunset Point which begins upon filing of this Declaration in the McDowell County Registry and ends when ninety-five percent (95%) of the Lots to be developed in the Sunset Point have been sold, or in any event, three (3) years after the Declaration is filed, whichever is the later to occur.

Section 7. "Lot" shall mean and refer to any numbered plot of land or numbered tract shown on a Plat for a portion of Sunset Point recorded in the Office of the Register of Deeds of McDowell County, North Carolina, now or hereafter made subject to this Declaration, to include the present configurations or any subdivision of these Lots or any additions of surrounding properties added to these Lots in areas contiguous with and included in a recorded subdivision map of plots of land constituting a part of Sunset Point.

Section 8. "Member" shall mean and refer to all who are members of the Association. Each Lot Owner shall be eligible to be a Member of the Association. If more than one person owns an interest in a Lot, either as a joint owner, or through a corporation, partnership or limited liability company, no more than two of such persons may be considered as Members and such joint owners, corporation, partnership or limited liability company shall designate one individual to act as the Member on behalf of such Owner.

Section 9. "Mortgage" shall mean and refer to bills of sale to secure debt, deeds to secure debt, deeds of trust and any and all other similar instruments given to secure the payment of an indebtedness.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of a fee simple title to any Lot as per a recorded Plat which is a part of the Property, or any additional lots added hereto by Declarant, but shall not include a party having such interest merely as security for the performance of any obligation.

Section 11. "Person" shall mean and refer to an individual, firm, corporation, partnership, trust, or any other legal entity.

Section 12. "Plat" shall mean and refer to the Plat(s) for Property subjected to this Declaration, including amendments to this Declaration, located in McDowell County, North Carolina. References are to records in the Office of the Register of Deeds of McDowell County.

Section 13. "Property" shall mean and refer to that certain real property included within the Plats, and any additional Property which Declarant may subject to this Declaration, including amendments to this Declaration.

Section 14. "Reserved" shall mean and refer to those areas designated as "Reserved" on Plats of Sunset Point, which during the Development Period, the Declarant and after the Development Period, the Association, retains the right, in its discretion, to determine the uses to which such areas may be subjected.

Section 15. "Residence" shall mean and refer to the building located upon a Lot designated and intended for use and occupancy as a residence by a single family.

Section 16. "Restrictive Covenants" and "Restrictions" as used in the By-Laws shall refer to the restrictive covenants, conditions and restrictions governing and controlling Lots and Common Areas in Sunset Point.

Section 17. "Review Board" shall mean and refer to that Board containing three (3) members for the review of certain matters as recited herein and as recited in the Association By-Laws. Declarant shall reserve the right to initially serve as the Review Board and shall have the right to approve all plans and specifications as provided in this Declaration or in the Sunset Point Homeowners' Association By-Laws dated and recorded simultaneously herewith. At the end of the Development Period, the Declarant shall assign its rights to appoint the member of the Review Board to the Association. The Declarant further reserves the right, but shall not be obligated, to assign its right for architectural control to the Association prior to end of the Development Period.

Section 18. "Sunset Point" as used herein shall mean and refer to only that portion of the residential Community known as Sunset Point which is located on a portion of the Property, shown on a recorded Plat(s), being developed as a part of Sunset Point on the Property now owned by Sunset Point, LLC, together with such additions thereto as may from time to time be designated by Declarant. Sunset Point may be referred to herein as "subdivision," "community," or "development" and such words shall be taken interchangeably to mean the Property described in detail hereinabove.

Article II

Legal Property Description

Section 1. Applicability of Restrictions. The legal description, below, includes the real property owned by Sunset Point, LLC, including that portion of such property as the Declarant may subject to this Declaration, or amendments to this Declaration, to be developed as the subdivision known as Sunset Point. The portion of the real property subject to the covenants, conditions and restrictions in this Declaration will be included in the recorded Plat(s) of Sunset Point which are

recorded in the Office of the Register of Deeds of McDowell County, North Carolina, provided, however, that any areas marked on said Plat(s), as "Reserved" are not subject to this Declaration of Restrictive Covenants, Conditions and Restrictions.

Section 2. Reserved Areas. Any portion of the property marked on a Plat recorded in the Office of the Register of Deeds of McDowell County, North Carolina as "Reserved" may be developed by the Declarant or the Association for other purposes and will not be subject to the covenants, conditions and restrictions in this Declaration, unless subsequently filed Plats or an amendment to this Declaration expressly subjects the "Reserved" area to this Declaration.

Section 3. The Legal Description. The legal description of the property being developed as a part of Sunset Point, which is subject to this Declaration, is described as follows:

Being that property shown on Plat recorded in Plat Book 7, Page 56/57 of the McDowell County Registry, which is incorporated herein by reference.

REFERENCE: Book 666, Page 586; in the Office of the Register of Deeds of McDowell County.

Article III Restrictions and Covenants

The following covenants, conditions, restrictions and easements are herewith imposed on the Property.

Section 1. Duration. The covenants, restrictions and easements as set forth in this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Owners of any land subject to this Declaration, their respective heirs, legal representatives, successors and assigns, the Declarant or the Association for a term of thirty (30) years from the date this Declaration is filed or recorded in the Office of the Register of Deeds for McDowell County, after which time said covenants, restrictions and easements shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then record Owners of seventy percent (70%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 2. Single Family Residential Use of Property. The Property shall be used only for detached, single-family residential purposes, together with the accessory buildings and structures permitted pursuant to Section 6 below. No more than one detached single-family residential dwelling may be constructed on a Lot on the Property. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the Property. No commercial uses or marinas are permitted on the Property or adjacent to the Property within the boundary of the Lake. Further, no camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle, or similar habitable or transportable unit or structure shall be allowed to remain on the Property or adjacent to the Property within the boundary of the Lake as a place of residence. Also, no houseboat shall be allowed on the Property or adjacent to the Property within the boundary of the Lake whether or not the houseboat serves as a residence. The single-family residence restrictions set forth above shall not prohibit the construction of pools, tennis

courts, or other recreational facilities or amenities such as are commonly constructed and maintained for the benefit of lot owners with planned unit developments; provided that such recreational facilities or amenities shall be solely for the common use of the owners of lots subdivided from the Property and, provided further, that no such recreational facilities may be located within any Buffer Area (defined below).

Section 3. Building Construction. Prior to construction of any improvements on any Lot, the Owner must provide the Review Board a site plan, building plans which include exterior finishes and elevations of all proposed structures, and landscape plans. The Review Board shall have the right to approve the site plan, the exterior design and finishes, building plans, and other particulars of any dwelling or improvements on any lot prior to the start of construction. The Review Board shall review and approve or disapprove Owners' submissions as provided hereinafter in Article V.

All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance, and shall be constructed in a good, workmanlike manner, conforming to all applicable building codes. Further, all dwellings must meet the following construction requirements:

- a. Dwellings built within two hundred fifty feet (250') of the shoreline of Lake James shall meet the following minimum size requirements:
 - (i) One story dwellings shall not contain less than 1,600 square feet of Heated Living Area (defined below);
 - (ii) One and one-half story dwellings shall not contain less than 1,800 square feet of Heated Living Area;
 - (iii) Two (or more) story dwellings shall not be less than 1,800 square feet of Heated Living Area;
- b. Dwellings built more than two hundred fifty feet (250') from the shoreline of Lake James shall contain not less than 1,200 square feet on the first floor;
- c. All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or stucco covered foundation;
- d. Roofs shall have not less than a 6 foot pitch, and not less than a 12 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing;
- e. The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished; and
- f. Exteriors of all dwellings and accessory structures must be completed within one year

after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "Heated Living Area" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceiling areas, attics, unheated porches, attached or detached garages, portecocheres and unheated storage areas, decks and patios. The term "story" shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term "half story" shall mean a story which contains fifty percent (50%) or less Heated Living Area than the story in the house containing the most Heated Living Area.

Section 4. Restricted Activities. The following activities are prohibited on the Property and adjacent to the Property within the boundary of the Lake:

- a. Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats or other usual and common household pets (which are registered, licensed and inoculated as required by law) may be permitted on the Property;
- b. Any activity which violates local, state, or federal laws or regulations;
- c. Institutional uses, including but no limited to group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, bed and breakfasts; and
- d. Any business or trade, except that an owner or occupant residing on the Property may conduct business activities within a dwelling on the Property as long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling unit; (ii) the business activities conforms to all zoning requirements for the Property; (iii) the business activity does not involve regular visitation of the Property by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Property, or for which any parts, equipment supplies, raw materials, components or tools are stored on the Property and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance, or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held on the Property more than once in any six-month period. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of the Property

for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

Section 5. Prohibited Conditions. None of the following structures or improvements may be located upon the Property:

- a. Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated, or otherwise fallen into disrepair;
- b. Towers, antennas, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind which are located outside of the dwelling on the Property other than (i) a customary antenna, which shall not extend more than ten (10) feet above the top roof ridge of the dwelling; and (ii) a satellite disc or dish no longer than eighteen inches (18") in diameter; and
- c. No residence or building of a temporary nature shall be erected or allowed to remain on any lot, and no metal fiberglass, plastic, vinyl, or canvas structure shall be placed or erected on any lot or attached to any residence.
- d. No mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the State of North Carolina, shall be located upon the property.
- e. Any freestanding transmission or receiving towers or any non-standard television antenna.
- f. Chain-link fences.

Section 6. Permitted Accessory Structures. No buildings, structures or improvements of any kind may be located on the Property other than one detached, single-family residential home, and the following permitted accessory structures:

- a. Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings, not exceeding fourteen (14) feet in height. The total square footage contained within all such outbuildings combined shall not exceed two thousand (2,000) square feet. All outbuildings shall be permanently affixed to the Property and shall be covered with the approved exterior materials described in Section Article III, Section 3, paragraph (e) above. Further, no outbuildings shall be located wholly or partially within any Buffer Area (as defined below).
- b. Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed one thousand (1,000) square feet in area. Further, no such structure shall be located wholly or partially within any Buffer Area (as defined below).

c. To the extent permitted at the time of construction and installation by Duke Energy Corporation (or its successor, with respect to ownership and/or management authority over the Lake, if applicable) (hereinafter, "Duke Energy") and all applicable governmental authorities, waterfront structures, including fixed piers, boat slips or floats, covered docks, boat ramps, decking and sitting areas attached to piers, walkways and other similar structures. Grantee acknowledges by acceptance of this deed that policies, laws and regulations regarding its ability to construct or install such structures may change from time to time before or after Grantee's acquisition of the Property and Grantor makes no representation or warranty as to Grantee's ability to construct or install such structures either now or in the future. Such structures may be located wholly or partially within the Buffer Area provided no more than a total of two hundred (200) square feet of such structures shall be located within the Buffer Area.

Section 7. Site Development Requirements. The Property shall be subject to the following specific development requirements:

a. No portion (or portions) of the Property greater than two thousand (2,000) square feet shall be; (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.

b. All denuded, graded, excavated or filled areas shall be stabilized and replanted on or before: (i) the thirtieth (30th) day following the initial denuding, grading, excavation, or filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of thirty (30) continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in Section 7 (a) above shall be allowed to commence without compliance with the following requirements:

(i) The surveying and flagging of the Buffer Area (defined below) and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;

(ii) The flagging of all trees in the Buffer Area that equal or exceed six (6) inches in diameter, as measured four and one-half feet (4.5') from the base of each tree. The trees, Buffer Area (defined below) and disturbed areas referenced in Sections 7 (a) and (b) shall be clearly and distinctly flagged, staked, or otherwise designated in order to prevent the unintentional violation of these restrictions by parties performing work upon the Property.

(iii) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Property to be disturbed, and any other areas which may be impacted by silt runoff from any disturbed areas located on the Property.

Section 8. Buffer Area Restrictions. As used herein, the term "Buffer Area" shall mean any

portion of the Property that is located within sixty five feet (65') of any common boundary (the "Contour Line") of the Property and Lake James (the "Lake"). No portion of the Buffer Area may be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. The Contour Line of the Lake shall not change as a result of erosion or stabilization measures occurring following the conveyance of this Property to Grantee. Notwithstanding the second sentence in this Section 8, the following activities are permitted within the Buffer Area:

- a. Trees which are less than six (6) inches in diameter, as measured four and one-half feet (4.5') from the base of each tree may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner.
- b. An access corridor may be created within the Buffer Area for the purpose of providing lake access to install shoreline stabilization or to install and use water access structures (such as docks or boat ramps) that have been approved in advance by Duke Energy and otherwise comply with Section 6(c) above. The access corridor may not exceed fifteen (15) feet in width. Trees with diameters equaling or exceeding six (6) inches, as measured four and one-half feet (4.5') from base, may be removed within the access corridor and grading or ground disturbance (which otherwise complies with the restrictions set forth herein) may be performed if reasonably necessary to provide access to the Lake for the purposes described above in this Section 8(b).
- c. Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet (6') in height) may be removed.
- d. Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged.
- e. The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy and any shoreline stabilization shall be performed in compliance with Duke Energy's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy allows structural stabilization to extend only to a height five feet above the Contour Line of the Lake. If Duke Energy authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization structures or improvements extend from the Contour Line of the Lake into the Property, provided however, that in no event shall the width of the undisturbed Buffer Area be reduced to less than sixty five (65) feet between any portion of the interior edge of the stabilization structures or improvements and any residence or other structure or improvement located on the Property (other than docks, boat ramps, or other water access structures which have been approved in writing by Duke Energy).

Section 9. Setbacks and Building Lines.

(a) Setbacks. Each dwelling erected on any Lot shall be situated on such Lot no closer than forty feet (40') from the center of a street, fifteen feet (15') of any lot line or closer than allowed by the applicable requirements of the Lake James Protection Ordinance of McDowell County or other applicable governmental ordinances or regulations to which it is subject. In addition, no structure shall be closer than permitted by the setback lines as shown on the recorded Plat(s).

(b) Terraces and Detached Garages. For the purposes of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of a detached garage or accessory out-building.

Section 10. Size and Subdivision of Lots.

(a) Size of Lots. The Property may not be subdivided in a manner that will result in any lot or parcel being created which is less than 21,780 square feet.

(b) Subdivision of Lots. No Lot referred to herein shall be subdivided or reduced in size; provided, however, that adjacent Lot Owners or purchasers may acquire an additional Lot or Lots, or some portion thereof. When a portion of an adjoining Lot is so acquired, it shall be added to the Lot or Lots already owned or purchased. In such case, the portion of said additional Lot shall become merged with and be an integral part of the Lot which is already owned or is purchased by the buyer of a Lot and a portion of an additional Lot. The combined Lot, consisting of a Lot and a portion of an additional Lot shall be subject to these covenants, conditions, restrictions and easements, as one Lot. When an adjacent Lot Owner acquires an additional Lot, or when a purchaser acquires more than one Lot, such Lots may be merged by the acquiring Owner or purchaser developing the Lots as one Lot, and in such event the Lots which are developed as one Lot shall be subject to these covenants, conditions, restrictions and easements, as one Lot, except with respect to the imposition of assessments and special assessments under Article IV.

Section 11. Delivery Receptacles and Property Identification Markers. The Review Board shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly-delivered materials, as well as property identification markers.

Section 12. Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot. No carport, unenclosed garage, trailer, mobile home, modular home, pre-fab home, manufactured home, camper, shack, tent, school bus, garage, barn or other structure of a similar nature shall be used as a Residence, either temporarily or permanently; provided, however, this paragraph shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

Section 13. Completion of Construction. The exterior of all houses and other structures shall be completed within one year after the date construction of the same shall have been commenced, except where such completion is impossible due to strike, fire, national emergency or national

calamity. All such structures constructed on Lots, must be maintained in good repair and the Review Board has the authority to require all Property Owners to make necessary repairs and improvements. No partially completed building shall be allowed on the premises after a reasonable time for the completion of the construction thereon. If the Owner refuses to complete same or remove same, the Association shall have the authority and power to remove same at the Owner's expense and said expense shall be considered an assessment collectable under Article IV hereinafter.

Section 14. Livestock. No animals or livestock of any kind, including, but not limited to, horses, hogs, goats, cattle, or other such animals, shall be raised, bred or kept on any Lot. Dogs, cats, or other household pets may be kept provided that household pets are not kept, bred or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Such household pets shall be maintained upon the Owner's Lot, and it shall be considered a nuisance if such pets are allowed to go upon another Owner's Lot, or on the roads or other Common Areas unless under leash or carried by the Owner.

Section 15. Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot or Common Areas, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the Owners of the Lots in Sunset Point. There shall not be maintained any plants or animals, or device or thing of any sort, the normal activity of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Property in the Community by the Owners thereof. Nothing shall be done or allowed, and no noises, conditions or situations shall be permitted, on any Lot which shall constitute, cause, or become a nuisance or otherwise detract from the desirability of the neighborhood as a residential section.

Section 16. Signs. No signs of any kind shall be displayed to the public view on any lot with the following exceptions which may not exceed five (5) square feet in size: (a) one sign advertising the lot "For Sale" or "For Rent"; and (b) temporary political signs located on the lot. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole; to signs for selling Lots and/or houses during the Development Period; or for directional and other property identification markers or signs erected by the Declarant or the Association.

Section 17. Aesthetics, Nature Growth, Screening, Underground Utility Service. Any trees to be removed by a Property Owner, unless retained on the same Lot, shall be first offered to the Declarant, who shall have the right, at its expense, to remove same with the absolute right to enjoy thereafter. Clotheslines, garbage cans, air-conditioning units, storage piles and similar items shall be screened from view of neighboring Lots and roads. All residential utility service and lines to Residences shall be underground. Solar collector panels in reasonable numbers on a residence may be permitted by specific permission of the Review Board, even though not screened.

Section 18. Fences. No fence shall be built on any Lot unless approved by the Review Board. The Review Board shall have the right to approve the location, size, design, and other particulars of any fences or walls to be erected or placed on any Lot.

Section 19. Maintenance of Property. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's Lot, which tend to decrease substantially the beauty of the Community as a whole or

of the specific area. If a Lot Owner allows a condition of any unclean, unsightly or unkempt condition of buildings or grounds, or both, on such Lot, said condition shall be corrected by the Lot Owner, at the Lot Owner's expense upon written request of the Declarant, the Association or the Review Board. Upon failure of the Lot Owner to correct the condition within twenty (20) days after written notice has been given by the Declarant, the Review Board or the Association, the Association shall have the right to correct such condition, and the expense of such correction shall be paid by the Lot Owner, with the expense being treated as an assessment pursuant to Article IV, hereinafter.

Section 20. Trailers, Trucks, School Buses, Motor Homes, Campers. No house trailers or mobile homes, trucks, school buses, motor homes, campers or other habitable motor vehicles of any kind over one (1) ton capacity shall be kept, stored or parked overnight either on any road or Lot, except within enclosed garages, or screened from the road as determined by the Association. No inoperative vehicle shall be permitted on the Property in excess of thirty (30) days.

Section 21. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If litter or other materials are found on any Lot, the same will be removed by the Owner of such Lot, at the Owner's expense, upon written request of the Association. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road in accordance with reasonable standards established by Declarant or the Association.

Section 22. Changing Elevations. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affects surface grade or surrounding Lots, unless approved in writing by the Review Board.

Section 23. Mining. There shall be no mining or drilling for mineral substances within Sunset Point.

Section 24. Underground Utilities. The following underground utilities will be provided to each Lot in Sunset Point:

<u>Type of Service</u>	<u>Provided By</u>
Electric Services	Duke Energy
Water Services	Homeowners Association
Telephone	BellSouth

The Association and the Review Board shall have the right to approve construction necessary for the installation and maintenance of additional utility facilities, including, but not limited to, sewerage systems and cable television.

Section 25. Vacant Lots. Lot Owners shall keep vacant Lots clean, mowed, and underbrush cut. Upon a Lot Owner's failure to do so, following written request of the Association, the Association shall have the authority to clean, mow or remove underbrush at the Owner's expense and said expense shall be considered an assessment collectable under Article IV hereinafter.

Section 26. Light Restrictions. It shall be the responsibility of each Lot Owner to insure that no direct lighting escapes the Owner's property boundaries and there shall be a prohibition against any lighting pollution interfering with the enjoyment of the subdivision by the Property Owners, their designees, or guests. The Association shall have the authority to administer, control and prohibit any and all security lights, exterior flood lights, yard lighting or street lighting. The Association shall also have the authority to require timers and limitations on use of any such lighting. Any exterior lighting which is installed must be shielded in such a manner as to minimize the impact on adjoining Lots. The Association or Lot Owners may enforce the provisions hereunder.

Section 24. Entrance Gate. There is reserved unto the Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Community. Neither the Declarant nor the Association shall be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Community in accordance with the foregoing.

Article IV

Sunset Point Homeowners' Association

A property owners association has been created, named Sunset Point Homeowners' Association, Inc. The Association will be operated in accordance with the By-Laws of the Association attached hereto as Exhibit B and incorporated herein by reference. The Association shall establish necessary rules and regulations and said rules and regulations and By-Laws shall constitute covenants, conditions and restrictions in the Community.

Section 1. Duties and Responsibilities of Association.

(a) By-Laws and Rules and Regulations. Adopt and amend By-Laws and Rules and Regulations;

(b) Budgets. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot owners;

(c) Agents and Employees. Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Litigation. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the subdivision;

(e) Contracts. Make contacts and incur liabilities;

(f) Regulate Common Areas. Regulate the use, maintenance, repair, replacement, and modification of Common Areas and facilities;

(g) Improve Common Areas. Cause additional improvements to be made as a part of the Common Areas;

(h) Own and Sell Property. Acquire, hold, encumber, and convey in its own name any right,

title, or interest to real or personal property provided that common elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least fifty percent (50%) of the votes in the Association including said fifty percent (50%) of the votes allocated to Lots not owned by Declarant or the Association; provided, however, the streets are subject only to non-exclusive easements of the Lot Owners.

(i) Transfer Interest in Common Property. Grant easements, leases, licenses, and concessions through or over the Common Areas;

(j) Fees and Charges. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas and facilities and for services provided for Lot Owners;

(k) Late Payments. Impose charges for late payment of assessments and after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars (\$150.00) for violations of the Declaration, By-Laws and Rules and Regulations of the Association;

(l) Charges for Transfers and Amendments. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration, resale, certificates or statements of unpaid assessments;

(m) Indemnification and Insurance. Provide for the indemnification of and maintain liability insurance for its Officers, Executive Board, Directors, Employees and Agents;

(n) Assign Income. Assign its right to future income, including the right to receive common expense assessments;

(o) Review Board. To appoint members to the Review Board, after the Development Period, or prior thereto if Declarant relinquishes its right to appoint members to the Review Board and hear appeals from the decisions of the Review Board and render final decisions.

(p) General Authority. Exercise all other powers that may be exercised in the State of North Carolina by legal entities of the same types as the Association; and

(q) Necessary and Property Action. Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 2. Use of Common Property Subject to Rules of Association. The use of Common Areas and facilities, by the Owner or Owners of all Lots, and all other parties authorized to use the same, shall be at all times subject to reasonable Rules and Regulations as may be prescribed and established governing such use or which may be hereafter prescribed and established by the Association.

Section 3. Assessments: Liability, Lien and Enforcement. The Association is given the authority to administer the operation and management of the subdivision, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Lots. To administer property in the operation and management of the subdivision, the Association will incur for the mutual benefit of all of the Owners of Lots, costs and expenses which are sometimes herein referred

to as "common expense". To provide the funds necessary for such proper operation, management, and capital improvement, the Association is granted the right to make, levy and collect assessments against the Lot Owners and the Lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management of capital improvements to the subdivisions shall be operative and binding upon the Owners of all Lots.

(a) Assessments Equal. Unless specifically otherwise provided for in this Declaration, all assessments made by the Association shall be in amounts so that any assessment levied against a Lot Owner and his Lot shall be equal to the assessment against all other Lot Owners and other Lots; provided, however, that assessments for enforcement of restrictive covenants or penalties shall apply to the Lot Owner and Lot against which the assessment or penalty was made. If a Lot is combined with a portion, or all of another Lot, as provided in Section 10, paragraph (b) of Article III, the dues and assessments for portions of a combined Lot shall be added to the prorata amount payable by the Owner of the Lot to which it was added.

(b) Payment of Assessments. Assessments provided for herein shall be payable in monthly installments, or other periodic intervals, as determined by the Board of Directors of the Association. Such assessments shall commence for each Lot on the first day of the first month following recording the deed to the Lot.

(c) Special Assessments. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Lot Owners owning two-thirds (2/3) of the Common Areas and facilities who are voting in person or by proxy at a meeting duly called for such purposes.

(d) Annual Budget. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year, which shall correspond to the calendar year. Such Budget shall project all expenses for the coming year which may be required for the proper operation, management and maintenance of the, subdivision including a reasonable allowance for contingencies and reserves, and the Budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph (e) hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Lot Owner of a Lot and the assessment for said year shall be established based upon such Budget, although the failure to deliver a copy of said Budget to each Lot Owner shall not affect the liability of any Owner for such assessment.

(e) Reserve Fund. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Subdivision, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to construct improvements, to replace structural elements and mechanical equipment constituting a part of the Common Areas and facilities, as well as the replacement of

portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvements Funds may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

(f) Administration of Collections. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the subdivision, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for assessments are paid to the Association by Lot Owners, the same may be commingled with monies paid to the Association by all Owners of Lots. Although all funds and common surplus, including other assets of the Association, and any increment's thereto or profits derived therefrom or from the lease or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein. When the Owner of a Lot ceases to be a Member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Subdivision.

(g) Interest on Default. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear interest at the lesser of, eighteen percent (18%) or the highest rate allowed by law, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owed to the Association shall be due and payable at the main office of the Association in the State of North Carolina.

(h) Owner's Liability. The Owner or Owners of Lots shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Lots while such party or parties are Owner or Owners of a Lot. In the event that any Lot Owner or Lots are in default of any assessment or installment thereof owed to the Association, such Lot Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as provided, and for all costs of collecting such assessment or installment thereof and interest thereof, including a reasonable attorney's fee, whether suit be brought or not.

(i) No Liability Exemptions. No Owner of a Lot may exempt himself from liability for any assessment levied against him or his Lot by waiver of the use or enjoyment of any of the Common Areas or facilities or by abandonment of the Lot or in any other way.

(j) Liens. Recognizing that proper operation and management of the Subdivision requires continuing payment of costs and expenses therefor, and that such proper operation and management

results in benefit to all of the Owners of Lots, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Lot Owner, the Association is hereby granted a lien upon each Lot, which lien shall secure and does secure monies due for all assessments now or hereafter levied against the Owner of each Lot, which lien shall also secure interest, in any, which may be due on the amount of any delinquent assessments owing to the Association, in which it shall also secure all costs and expenses, late charges, fines, and reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Lot. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust or a mortgage on real estate under power of sale under Article 29(A) of Chapter 45 of the General Statutes.

(k) Lien: Filing and Priority. The lien herein granted to the Association shall be enforceable from and after the recording of claim of lien in the public records of McDowell County, North Carolina, which claim shall state the description of the Lot encumbered thereby, the name of the record Lot Owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, late charges, fines, attorney's fees, advances to pay taxes, and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an Officer or Agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The lien under this section is prior to all other liens and encumbrances upon a Lot except (i) liens and encumbrances (specifically included, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. The priorities of the lien does not affect the priority of mechanics' or materialmen's liens.

(l) Transfers Effect on Lien. Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Lot Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Lot. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Lot and such Lot due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase to the Owner of any Lot who is responsible for payment of such delinquent assessment.

Upon the voluntary conveyance of a Lot, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary

conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amount paid by Purchaser therefore.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sums then remaining owing to the Association.

Section 4. "Common Surplus". "Common Surplus," meaning all funds and other assets of the Association (including but not limited to assessments, rents, profits, and revenues from whatever source) over the amount of Common Expense, shall be held by the Association in the manner prescribed in, and subject to, the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution upon termination of the subdivision, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Lots equally.

Section 5. Right of Declarant to Vote as Member of Association. During the Development Period, but no longer than three (3) years from the date this Declaration is recorded, the Declarant shall have one vote for each Lot owned by the Declarant.

In the event of dissolution of Declarant or the transfer or sale by Declarant of its interest in Sunset Point, during the Development Period at a time when Declarant has the voting rights as set forth in the preceding paragraph, then the voting rights of the Declarant shall pass to and may be exercised by its successors or assigns.

Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be provided in the By-Laws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Declarant need not be a resident of the Subdivision. However, Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Lot or Lots owned by said Declarant, and for complying with the remaining terms and provisions hereof in the same manner of any other Owner of a Lot or Lots.

Section 6. Relinquishment of Control. Upon the expiration of three (3) years from the date of recording this Declaration, Declarant continue to have one vote for each Lot owned by Declarant.

Article V

Sunset Point Review Board

Section 1. Appointment of Review Board. There is hereby created the Sunset Point Review Board. The Review Board is to be composed of three (3) members of the Sunset Point Homeowners'

Association, Inc. appointed by the Board of Directors of the Association; provided, however, the initial Sunset Point Review Board shall be appointed by the Declarant, which shall have a continuing right to appoint the members of the Review Board until the end of the Development Period, or until Declarant has relinquished in writing its right to appoint the members of the Review Board to the Association, whichever is the first to occur. At the end of the Development Period or when Declarant has relinquished its right to appoint the members of the Review Board, the Review Board members shall be appointed by the Board of Directors of the Association in accordance with the By-Laws of the Association as set forth therein, which are incorporated herein as if re-stated.

Section 2. Appeals. During the period the Review Board is appointed by the Declarant, the decision of the Review Board shall be final and there shall be no appeal therefrom. Once the Review Board members are appointed by the Board of Directors of the Association, there shall exist appeals from the Review Board to the Board of Directors of the Association where decisions shall be final and binding.

Section 3. Consideration of Plans. Within twenty (20) days of Owner's submission of a site plan, building plans which include exterior finishes and elevations of all proposed structures, and landscape plans, the Review Board shall have the right to approve or disapprove the site plan, the exterior design and finishes, building plans, and other particulars of any dwelling or improvements on any Lot prior to commencement of construction. The Review Board may also recommend modifications of the same. In the event the Review Board does not take action within twenty (20) days of the date the foregoing plans are received by the Review Board, such plans shall be deemed approved.

In making its decision, factors to be considered by the Review Board shall include, but not be limited to, the following:

- (a) Preservation of the natural environment.
- (b) Harmony of design and size with the locale and with existing structures, so as to avoid devaluation of surrounding properties.
- (c) The desirability of minimizing intrusions on the view and privacy of surrounding properties.
- (d) Design and location of driveway entrances and utility service equipment so as to protect the private drive from damage or erosion.
- (e) Compliance with the covenants, restrictions and conditions of this Declaration and any amendments thereto, or such other covenants and restrictions as may be recorded with respect to the Lot or Property in question.
- (f) Hardship or unusual circumstances pertaining to the submittal in question.
- (g) Lighting systems and security systems to be designed to preclude intrusion on adjacent Property Owners or other Lots within the subdivision.

(h) Drainage of silt from the construction area onto Common Areas or the Golf Course, which may result in the Owner being required to construct a silt fence to control such erosion.

Section 4. Modification of Restrictions. The Review Board or the Association shall have the right to waive or modify the provisions of Article III, Sections 9, 12, 16, 18 and 26 of the Declaration of Covenants, Restrictions and Easements of Sunset Point.

Article VI
Property Rights

Section 1. Use of Common Areas. Subject to the other provisions in this Article, the Lot Owners shall have a right to a non-exclusive easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title of every Lot.

Section 2. Owner's Easement of Enjoyment. Every Owner shall take title subject to the following easements, assessments, and provisions, which shall be appurtenant to and shall pass with the title to each Lot.

(a) The right of the Association to charge reasonable assessments for repairs and maintenance of Common Areas, to establish reserves for major repairs or improvements and assessment for any Common Areas that may be granted to or purchased by the Association, and to charge penalty assessments pursuant to Article IV of this Declaration.

(b) The right of the Association to suspend the voting rights and assess fines or penalties against an Owner for any period during which an assessment against an Owner's Lot remains unpaid.

(c) Prior to the end of the Development Period, the right of the Declarant or the Association to dedicate or transfer all or any part of the Common Areas to any Person, public or private group, corporation, agency, authority, or utility for such purposes and subject to such conditions as may be approved by the Association, so long as such dedication or transfer is in compliance with all applicable zoning regulations.

(d) After the end of the Development Period, the right of the Association to dedicate or transfer all or any part of the Common Areas to any Person, public or private group, corporation, agency, authority, or utility for such purposes and subject to such conditions as may be approved by the Association, so long as such dedication or transfer is in compliance with all applicable zoning regulations. After the Development Period, no such dedication or transfer shall be effective unless approved in writing in an instrument signed by two-thirds ($\frac{2}{3}$) of the Members of the Association.

(e) The right of the Declarant and its successors and assigns, to retain legal title to the Common Areas until such time as, in the opinion of the Declarant, the Association is able to maintain the same. Notwithstanding any provisions herein, the Declarant hereby covenants for itself, its successors and assigns, that it will convey the Common Areas to the Association prior to, or immediately following, the end of the Development Period.

(f) The right of the members, employees, invitees, guests, and agents of Sunset Point to use the roads and other Common Areas.

Section 3. Delegation of Use. Any Owner may delegate in accordance with the By-Laws and rules and regulations adopted by the Association, the Owner's right of enjoyment to the Common Areas and facilities to the members of the Owner's immediate family, tenants, or contract purchasers who reside in the residence on the Owner's Lot, but to no other party. The property rights and uses delegated hereunder shall run with the ownership of the Lot.

Section 4. Assignment. Declarant and its successors and assigns, shall have the right to assign to any one or more Persons (as defined hereinabove in Definitions) any and all rights, powers, title, easements and estates reserved to the said Declarant, including, but not limited to, its rights, powers, easements and right to use all roads within the subdivision and all easements of ingress and egress within the subdivision.

Article VII DEDICATION OF ROADS AND EASEMENTS

Section 1. Public Ownership. In the event the Association desires to dedicate the roads, drainage easements, water system or any other asset of the Association to a public body, and the public body requires as a condition for acceptance of such assets, that the Asset to be accepted must meet all of the then requirements of said public body, which may include but not be limited to, bringing the roads and drainage easements up to the standards required by said public body. The Association may then assess each Lot Owner a prorata share of the cost that will be required to bring the assets, including but not limited to, the roads and drainage easements, to the then current existing applicable governmental standards for roads and subdivision regulations. If the Association has dissolved or become defunct and said assets, including the roads and drainage easements, have reverted to a public body responsible for any reason, then each Owner will be assessed a prorata share of the cost that will be required to bring the assets, including but not limited to, the roads and drainage easements, to the then current existing applicable governmental standards for roads and subdivision regulations, and the public body or such entity as is then responsible for said assets, including the road and drainage easements, shall have authority to make such Assessments.

Article VIII EASEMENT AND UTILITY PROVISIONS

Section 1. Utility and Drainage Easements. Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on recorded Plats thereof. Also, easements for installation and maintenance of utilities and drainage facilities are hereby reserved unto the Declarant, its successors and assigns and to the Association, over ten (10) feet of each front Lot line, ten (10) feet of each side Lot line, and ten (10) feet of each rear Lot line, for the purposes of utility installations and rights-of-way and the operation and maintenance thereof. The front of the Lot shall be defined as the part of the Lot abutting the roadway. No fence or other structure shall be erected thereon which shall interfere with such use. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot, except the ingress and egress easement shown on the Plats, and all improvements within it, shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 2. Sewerage Disposal and Maintenance. Sewerage disposal shall be by septic tank, or other sewerage disposal system, approved and constructed consistent with applicable rules and regulations of the governmental department or agency having jurisdiction. The Association shall be responsible for the maintenance and operation of the common disposal system, if any.

Article IX
General Provisions

Section 1. Enforcement. The Declarant, Association, or any Owner shall strictly comply with and have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, easements, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, Association, or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation or breach or threatened violation or breach of any of the same, the Declarant, the Association, or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity for the recovery of damages or for injunctive relief, or both.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended by an instrument signed by the Declarant or by an instrument signed by two-thirds ($\frac{2}{3}$) of the Members of the Association as defined in the By-Laws of the Association attached hereto. Declarant reserves the right, and shall have the authority, to amend this instrument at any time in order to comply with any requirements of the Veterans Administration, Federal Housing Administration, Federal Home Loan Bank Board, Department of Housing and Urban Development, Federal National Mortgage Association, County of McDowell, or any other governmental body having authority over such matters. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Lot. No amendment shall become effective until the instrument evidencing such change has been filed for record in the Office of the Register of Deeds for McDowell County, North Carolina. Every purchaser or grantee of any interest in Property now or hereafter subjected to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

Section 4. Interpretation. This Declaration shall be interpreted in the spirit of reasonableness, and, in the absence of authoritative court decisions, the interpretations thereof by the Declarant shall prevail until the end of the Development Period.

Section 5. Appurtenant to the Land. These restrictive covenants shall be appurtenant to and run with the land and shall be binding on all present Owners or successor Owners of any Lots thereunder.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this day of April, 2002.

Sunset Point, LLC

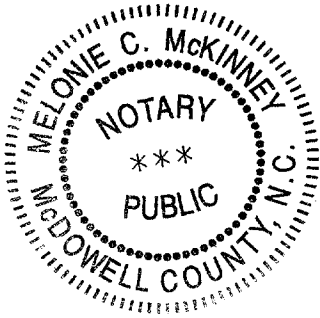
By: [Signature]
David Zimmerman, Member

State of North Carolina
County of McDowell

I, Melonie C. McKinney, Notary Public for said county and state, hereby certify that David Zimmerman, personally appeared before me and acknowledged that he is a member of Sunset Point, LLC and that he was duly authorized and executed the foregoing Declaration on its behalf.

Witness my hand and notarial stamp or seal, this 9th day of April, 2002.

[Signature]
Notary Public
My Commission Expires: 02-24-07





NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

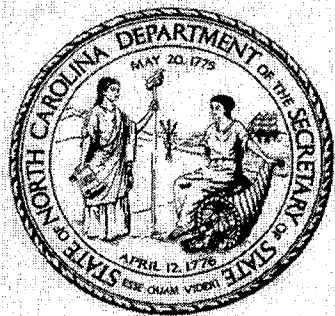
I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF ORGANIZATION

OF

SUNSET POINT, LLC

the original of which was filed in this office on the 13th day of November, 2001.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of November, 2001

Elaine F. Marshall

Secretary of State

EXHIBIT "A"

SOSID: 609968
 Date Filed: 11/13/2001 3:27 PM
 Elaine F. Marshall
 North Carolina Secretary of State

21 317 5087 ARTICLES OF ORGANIZATION

BOOK 680 PAGE 472

OF

SUNSET POINT, LLC

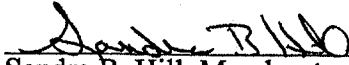
Pursuant to Section 57C-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company.

1. The name of the limited liability company: Sunset Point, LLC.
2. The latest date on which the limited liability company is to dissolve is: December 31, 2099.
3. The name and address of the organizer and Members executing these Articles of Organization are as follows:

Sandra B. Hill
 1618 Ridgewood Ave.
 Hendersonville, NC 28791

4. The street address and county of the initial registered office and principal office of the limited liability company is: 1618 Ridgewood Avenue, Hendersonville, Henderson County, North Carolina 28791.
5. The mailing address is: P.O. Drawer 1269, Morganton, NC 28680-1269. (Burke County)
6. The name of the initial registered agent is: John W. Ervin, Jr., P.O. Drawer 1269, Morganton, N.C. 28680-1269.
7. Check one of the following:
 - (i) Member-managed LLC: all of the members by virtue of their status as members shall be managers of this limited liability company.
 - (ii) Manager-managed LLC: except as herein provided by N.C.G.S. Section 57C-3-20(a), the members of this limited liability company shall not be managers by virtue of their status as members.
8. Any other provisions which the limited liability company elects to include are attached.
9. These articles will be effective upon filing.

This the ____ day of October, 2001.


 Sandra B. Hill, Member/ ORGANIZER

OPERATING AGREEMENT OF
SUNSET POINT, LLC
(a North Carolina limited liability company)

This Operating Agreement, dated as of April 1, 2002, (this "Agreement"), between Sandra B. Hill, Gary Splawn, Robert Prince, Dan Prince, Eric Gibson, Jim Kinley, John Frock, Laura A. Kirschner, and Tommy Williams (referred to collectively as the "Members"), governs the operations and management of the North Carolina limited liability company named above (the "Company").

Now, therefore, intending to be legally bound hereby, the parties hereto agree to operate a limited liability company under the laws of the State of North Carolina, pursuant to the following terms and conditions:

ARTICLE I
GENERAL PROVISIONS

Section 1.1 Purposes. The purposes of the Company shall be to acquire, develop and manage a residential subdivision on Lake James in McDowell County, North Carolina and to engage in any other lawful business.

Section 1.2 Management. The Company shall be managed by its Members.

Section 1.3 Principal Office. The principal office and place of business of the Company shall be maintained at 301 East Meeting Street, Morganton, NC 28655 or at such other place as the Members may designate from time to time.

Section 1.4 Registered Agent and Office. The registered agent and office of the Company in North Carolina shall be as provided in the Articles of Organization or as the Members may designate from time to time.

Section 1.5 Term. The existence of the Company shall terminate upon the earlier of the completion of liquidation and distribution of the assets of the Company after the occurrence of an Event of Dissolution (as defined in Section 11.1 hereof) or December 31, 2099.

Section 1.6 Independent Activities. Except as expressly provided otherwise herein and subject to applicable law, unless a Member agrees otherwise with the Company, such Member may engage in any activity in addition to the business of the Company, whether or not competitive with or in conflict with the business of the Company, and shall not be required to disclose such activity to or offer any interest in any such activity to the Company or to any Member.

ARTICLE II
ACCOUNTING

Upon execution of this Agreement and the commencement of the Company, the Members shall make initial capital contributions to the Company, the nature and value of which are set forth on Exhibit A attached hereto. All capital contributions other than cash shall be valued at their fair market values as of the date of contribution. No Member shall have any obligation to make additional capital contributions

to the Company, and no Member shall make any voluntary additional capital contributions to the Company without authorization by the Members.

ARTICLE III BOOKS AND RECORDS

Section 3.1 Books and Records. At all times during the continuation of the Company, the Members shall keep or cause to be kept true and full books of account and all other records necessary for recording the Company's business and affairs and in compliance with applicable laws.

Section 3.2 Fiscal Year. The fiscal year of the Company shall be the calendar year or such other period designated by the Members.

Section 3.3 Bank Accounts. All funds of the Company shall be deposited in its name in such checking or savings accounts as shall be designated from time to time by the Members. Withdrawals therefrom shall be made upon such signature or signatures as the Members may designate.

Section 3.4 Income Tax Returns and Elections. The Company shall provide the Members information on the Company's taxable income or loss that is relevant to reporting the Company's income as well as all other filings, forms, or other information required by federal or state taxing and regulatory authorities. This information shall also show each Member's distributive share of each class of income, gain, loss or deduction. This information shall be furnished to the Members as soon as possible after the close of the Company's taxable year. All elections required or permitted to be made by the Company under the Internal Revenue Code of 1986, as amended (the "Code") shall be made by the Members.

Section 3.5 Loans to the Company. The amount of a loan, if any, made to the Company by a Member shall not be considered a contribution to capital of the Company nor shall such loan entitle such Member to an increased share of the profits or losses to be made pursuant to the provisions of this Agreement. All such loans shall be documented by a promissory note of the Company and shall bear interest at a rate, and be subject to the other terms, agreed to by the lending Member and the Members.

ARTICLE IV CAPITAL ACCOUNTS

Section 4.1 Capital Accounts. An individual capital account shall be established and maintained for each Member. Unless otherwise specifically provided herein, all references to "capital accounts" shall be references to "book" capital accounts and not "tax" capital accounts. Book and tax capital accounts shall be maintained in accordance with Treasury Regulation §1.704-1(b), as those regulations may be amended from time to time. No Member shall be entitled to withdraw any part of such Member's capital account or to receive any distributions except as specifically provided herein. No interest shall be paid on any capital invested in the Company except as expressly provided herein.

Section 4.2 Adjustments to Capital Accounts. The capital account of each Member shall be (a) increased by the initial and authorized additional capital contributions of such Member and by such Member's share of the Net Profits (as defined in Section 5.1) and items of income that are either nontaxable or otherwise not taken into account for federal income tax purposes and (b) decreased by the share of such Member's Net Losses (as defined in Section 5.1), distributions, and items of expense or cost that are either

nondeductible or otherwise not taken into account for federal income tax purposes, unless otherwise prescribed by Treasury Regulations §1.704-1(b), as amended.

ARTICLE V
ALLOCATIONS OF PROFITS AND LOSSES

Section 5.1 Profits and Losses. Any Net Loss or Net Profit of the Company for any year shall be allocated among the Members in accordance with the following ratios (the "Profit-sharing Percentages"), except as otherwise provided in Section 5.2 hereof:

The lot or lots owned by a Member when divided by the total number of lots in Sunset Point owned by lot owners, excluding the Company, shall determine the Profit-sharing Percentages of each Member.

The allocation of the Net Profit or Net Loss of the Company shall be determined for each calendar year and shall be prorated for any fractional part of a calendar year. For purposes of this Agreement, "Net Profit" or "Net Loss" shall be determined in accordance with the cash method of accounting, consistently applied, and as required by the regulations promulgated under Section 704 of the Code.

Section 5.2 Special Allocations. The following special allocations shall be made in the following order and priority:

(a) Minimum Gain Charge-Back. Notwithstanding any other provision of the Article V, if there is a decrease in Company minimum gain during any fiscal year or other period, prior to any other allocation pursuant hereto, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount and manner required by Treasury Regulation §1.704-2(f) or 1.704-2(i). The items to be so allocated shall be determined in accordance with Treasury Regulation §1.704-2.

(b) Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a negative balance in its capital account (in excess of any amount that Member is obligated to restore) shall be allocated items of income and gain sufficient to eliminate such increase or negative balance caused thereby, as quickly as possible, to the extent required by such Treasury Regulation.

(c) Gross Income Allocation. In the event any Member has a deficit capital account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation §1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specifically allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.2(c) shall be made only if and to the extent that such Member would have a deficit capital account in excess of such sum after all other allocations provided for in this Article V have been made as if this Section 5.2(c) were not in this Agreement.

(d) Section 704(b) Limitation. Notwithstanding any other provision of this Agreement to the contrary, no allocation of any item of income or loss shall be made to a Member if such allocation would not have "economic effect" pursuant to Treasury Regulation §1.704-1(b)(2)(ii) or otherwise be in

accordance with its interest in the Company within the meaning of Treasury Regulation §1.704-1(b)(3) and 1.704-2. To the extent an allocation cannot be made to a Member due to the application of this Section 5.2(d), such allocation shall be made to the other member(s) entitled to receive such allocation hereunder.

(e) Curative Allocations. Any allocations of income, gain or loss pursuant to Section 5.2(a)-(d) hereof shall be taken into account in computing subsequent allocations pursuant to this Article V, so that the net amount of any items so allocated and the income, losses and other items allocated to each Member pursuant to this Article V shall, to the extent possible, be equal to the net amount that would have been allocated to each Member had no allocations ever been made pursuant to Sections 5.2(a)-(d).

(f) Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value at the time of its contribution. Allocations pursuant to this Section 5.2(f) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of income, losses, other items, or distributions pursuant to any provision of this Agreement.

ARTICLE VI DISTRIBUTIONS

Section 6.1 Cash Flow Distribution. Except as otherwise provided in Section 6.2 hereof, the "Net Cash Flow" (as defined in Section 6.3) of the company shall be distributed at such times as the Members deem advisable, but not less frequently than annually, to the Members in accordance with their respective Profit-sharing Percentages.

Section 6.2 Sale or Dissolution. Upon the sale of all or substantially all of the property of the Company or upon dissolution of the Company, distribution of the proceeds of such sale or the distributable proceeds of liquidation shall be made, subject to the provisions of Section 11.2, to the Members in accordance with their then capital account balances (after reflecting the Net Profit or Net Loss on any sale and any Net Profit, Net Loss and other capital account adjustments for such year).

Section 6.3 Net Cash Flow Defined. For purposes of this Agreement, the term "Net Cash Flow" shall mean the Net Profit of the Company as ascertained through the use of sound accounting principles, consistently applied, except that (a) depreciation of buildings, improvements, personalty and all other depreciated items and amortization of leasehold improvements and all other amortized items shall not be considered a deduction, (b) mortgage amortization and loan payments shall be considered a deduction, (c) any amounts expended by the Company for capital items shall be considered a deduction, (d) if the Members deem it necessary or advisable, a reasonable reserve shall be deducted for working capital needs, to provide funds for improvements or for any contingencies of the Company, and (e) all other actual expenditures of the Company (except for distributions to Members pursuant to this Article VI) shall be considered deductions. Net proceeds from refinancing or sale, excess insurance and any condemnation award of all or any portion of real property owned by the Company and additional capital contributions by Members shall be deemed profits for purposes of determining Net Cash Flow except as otherwise provided in Section 6.2 hereof.

ARTICLE VII
MEETINGS OF MEMBERS; ACTION BY MEMBERS

Section 7.1 Meetings. Meetings of the Members may be called at any time by ten percent (10%) of the total number of Members.

Section 7.2 Notice of Meetings. Written notice stating the date, time and place of the meeting shall be given by the Member or Members calling the meeting to each Member not less than ten (10) nor more than sixty (60) days before the date of any meeting of the Members and such notice need not specify the purpose for which the meeting is called. When a meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment.

Section 7.3 Waiver of Notice. Any Member may waive notice of any meeting before, during or after the meeting. The waiver must be in writing, signed by the Member and delivered to the Company for inclusion in the minutes or filing with the Company's records. A Member's attendance, in person or by proxy, at a meeting (a) waives objection to lack of notice or defective notice of the meeting unless the Member or its proxy at the beginning of the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting; and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the Member or its proxy objects to considering the matter before it is voted upon.

Section 7.4 Quorum. Members may take action on a matter at the meeting only if Members representing a majority of the Profit-sharing Percentages (a "quorum") are present in person or by proxy. Once a Member is represented for any purpose at a meeting, such Member is deemed present for Quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. In the absence of a Quorum at the opening of any meeting of members, such meeting may be adjourned from time to time by the vote of Members holding not less than fifty-one percent (51%) of the Profit-sharing Percentages cast on the motion to adjourn; and, subject to the provisions of Section 7.2, at any adjourned meeting any business may be transacted that might have been transacted at the original meeting if a Quorum exists with respect to the matter proposed.

Section 7.5 Proxies. Members may vote either in person or by one or more proxies authorized by a written appointment of proxy signed by the Member or by Member's duly authorized attorney-in-fact and delivered to the Company for inclusion in the minutes or filing with the Company's records. An appointment of proxy is valid for eleven (11) months from the date of its execution unless a different period is expressly provided in the appointment form.

Section 7.6 Action by Members. Except as otherwise provided herein, if a Quorum exists, action on a matter is approved if Members holding a majority of the Profit-sharing Percentages vote in favor of the action. As used in this Agreement, the phrase "the approval of the Members," and similar phrases shall mean the approval as set forth in the foregoing sentence except as expressly provided otherwise in this Agreement.

Section 7.7 Unanimous Written Consent. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting if one or more written consents, describing the

action so taken, shall be signed by all of the Members and delivered to the Company for inclusion in the minutes or filing with the Company's records.

Section 7.8 Delegation of Authority; Officers.

(a) Subject to their duties hereunder and under applicable law, the Members may from time to time delegate to one or more persons other than Members such authority, powers and duties as the Members shall deem appropriate.

(b) The Members may from time to time designate one or more individuals who are Members and, subject to their duties hereunder and under applicable law, individuals who are not Members, as officers of the Company. An officer so designated shall have such authority, powers and duties as the Members shall delegate to him or her. Any two or more offices may be held by the same individual, but no officer may act in more than one capacity where action of two or more officers is specifically required by law or by the members to be taken by two different individuals. The officers shall serve without compensation in such capacity unless otherwise determined by the Members. The designation of an officer does not itself create contract rights.

(c) Officers elected to the following offices shall have duties and responsibilities as follows:

President. The President shall be the chief executive officer of the company, and, subject to the instructions of the Members, shall have general charge of the business, affairs and property of the company and control over its other officers, agents and employees. He shall preside at all meetings of the members at which he may be present. The President shall do and perform such other duties as from time to time may be assigned to him by the Members.

Vice-President. At the request of the President, or in the absence or disability of both, the Vice-President designated by the Members, shall perform all the duties of the President and when so acting shall have all powers of and be subject to all the restrictions upon the President. A Vice-President shall perform such other duties and have such authority as from time to time may be assigned to him by the Members.

Secretary. The Secretary shall keep the minutes of the meetings of members and shall see that all notices are duly given in accordance with the provisions of the operating agreement or as required by law. He shall be custodian of the records, books, reports, statements, certificates and other documents of the company. In general, he shall perform all duties and possess all authority incident to the office of Secretary, and he shall perform such other duties and have such other authority as from time to time may be assigned to him by the Members.

Treasurer. The Treasurer shall have supervision over the funds, securities, receipts and disbursements of the company. He shall keep full and accurate accounts of the finances of the company and shall cause a true statement of its assets and liabilities, as of the close of each fiscal year, and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, to be made and filed at the registered or principal office of the company within four months after the end of such fiscal year. The statement so filed shall be kept available for inspection by any member for a period of ten years and the Treasurer shall mail or otherwise deliver a copy of the latest such statement to any member upon his written request for the same. He shall in general perform all duties and have all authority incident to the office of Treasurer and shall perform such other duties and have such other authority as from time to

time may be assigned or granted to him by the Members. He may be required to give a bond for the faithful performance of his duties in such form and amount as the Members may determine.

(d) Each officer shall hold office until such officer's death, mental incapacity, resignation or removal or until the appointment of a successor. Any officer may be removed as an officer by the Members at any time with or without cause. An officer may resign as an officer at any time by communicating a resignation to the Company, orally or in writing. A resignation is effective when communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date, the Members may fill the pending vacancy before the effective date provided that the successor does not take office until the effective date.

Section 7.9 Major Decisions. Neither the Company nor any Member or officer thereof shall take or agree to take any of the following actions without the consent of all of the Members:

(a) Take any action which would make impossible the ordinary conduct of Company business, including selling, transferring or otherwise disposing of all or substantially all of the Company's assets;

(b) Take any action in contravention of this Agreement;

(c) Confess a judgment against the Company;

(d) File or consent to the filing of a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act;

(e) Make a non-pro rata distribution or return of capital to any Member, except as otherwise provided in this Agreement;

(f) Amend this Agreement;

(g) Change or reorganize the Company into any other legal form; or

(h) Merge the Company into or with another limited liability company.

Section 7.10 Expenses. The Company shall reimburse the Members and the officers for all reasonable expenses, if any, incurred in connection with the organization of this Company and in connection with the ownership, operation, and management of the property owned by the Company. In addition, the Company shall reimburse the Members and the officers for all reasonable expenses incurred in connection with the performance of duties and responsibilities hereunder, including such expenses as shall be incurred by the Members in connection with the keeping of books and records and other administrative expenses.

ARTICLE VIII INDEMNIFICATION

The Company shall indemnify each Member to the extent permitted or required by law.

ARTICLE IX
WITHDRAWAL OF A MEMBER

No Member may voluntarily withdraw from the Company, by voluntary dissolution or otherwise, except as expressly permitted by this Agreement.

ARTICLE X
TRANSFER RESTRICTIONS; PURCHASE RIGHTS

Section 10.1 General. A Member may not sell or transfer all or any part of its membership interest except as provided in this Article. Any sale, assignment or transfer or purported sale or transfer of a membership interest, or any portion thereof, shall be null and void unless made strictly in accordance with the provisions of this Article.

Section 10.2 Transfer to Related Party. Each Member's membership interest may be transferred, during such Member's lifetime or by testamentary or intestate transfer, to any Related Party (as defined below) of such Member, and any transferee thereof shall become a Member only in accordance with Section 10.5. No further transfer of such membership interest shall be made by such transferee except back to the Member who originally owned it or to a Related Party of such Member who originally owned it, or except in accordance with the provisions of Section 10.2 through 10.6. For purposes of this Agreement, "Related Party" shall mean a spouse, any issue, spouse of issue, ancestor, trust for the sole benefit of any such Related Party or Parties or partnership or limited liability company owned entirely by Members and Related Parties of members, or any one of them; provided, however, that any spouse living separate and apart from the other spouse with the intention by either spouse to cease their matrimonial cohabitation shall not be deemed a Related Party.

Section 10.3 Rights of First Refusal upon Voluntary Transfer.

(a) Upon receipt of a bona fide offer from a non-related party to purchase a Member's membership interest or any portion thereof, the selling Member shall first offer to sell such membership interest, upon the same price, terms and conditions of the bona fide offer, to the other Members (the "offeree Members") on a pro rata basis determined by reference to the relative Profit-sharing Percentages of each of the offeree Members accepting such offer or as otherwise agreed by the offeree Members.

(b) Notice of such offer shall be given in accordance with Section 12.1 to each offeree Member, with copies to the Company at its principal address, and must specify the price, terms and conditions of the bona fide offer and the identity and address of the proposed third party transferee. Each offeree Member shall have a period of thirty (30) days from the date of effective notice of such offer to accept such offer by written notice in accordance with Section 12.1 to all Members and the Company at its principal office.

(c) If the entire membership interest offered by the selling Member is not purchased by the offeree Members, then the selling Member may sell such interest to the third person identified to the Members during the ninety (90) days following the expiration of all offer periods referred to in subsection (b) above, but at a price and on terms no more favorable than the price and terms offered to the offeree Members. After the expiration of the ninety (90) day period, no portion of the membership interest of the selling Member shall be sold without first being reoffered in accordance with this Section 10.3.

Section 10.4 Purchase Option upon Involuntary Transfer or Breach.

(a) Upon the occurrence of any of the following events concerning any Member, the other Members shall have the right to purchase at the Purchase Price (as defined below) the entire membership interest held by such Member on the terms and conditions set forth in this Article:

(i) the filing of a petition by a Member for relief as a debtor or bankrupt under the U.S. Bankruptcy Code or any similar federal or state law affording debtor relief proceedings; the adjudication of insolvency of a Member as finally determined by a court proceeding or the filing by or on behalf of a Member to accomplish the same or for the appointment of a receiver, custodian, assignee or trustee for the benefit of creditors of a Member;

(ii) the commencement of any proceedings relating to a Member by a third party under the U.S. Bankruptcy Code or similar federal or state law or other reorganization, arrangement, insolvency, adjustment of debt or liquidation law; the allowance of a Member's membership interest (or portion thereof) to become subject to attachment, garnishment, charging order, or similar charge unless any such preceding enumerated event is susceptible to cure and is cured within ninety (90) days;

(iii) any voluntary withdrawal or attempted withdrawal of a Member other than as a result of a transfer of such Member's membership interest pursuant to Section 10.2 or 10.3; or

(iv) the change in control of a Member.

For purposes of this Section 10.4, "change of control" of any Member which is not a natural person shall mean any person or entity who is not now an equity owner of such Member shall hereafter own, or have the right to acquire a majority of the voting power of such corporation or shall otherwise have the right, by contract or otherwise, to elect a majority of the directors or other management body of such Member.

(b) Any Member whose membership interest is subject to the purchase rights created by this Section 10.4 is referred to as the "Defaulting Member". Any Defaulting Member shall have the obligation to give notice to the other Members and the Company of any event triggering purchase rights under this Section 10.4.

(c) The Members' collective purchase rights under this Section 10.4 shall be allocated to the Members in accordance with the relative Profit-sharing Percentages of such Members electing to exercise such rights or as they otherwise agree. The right to purchase a Defaulting Member's interest pursuant to this Section 10.4 may be exercised by delivery of written notice to the Defaulting member no later than sixty (60) days after the last to occur of (i) the occurrence of the event giving rise to the purchase right and (ii) actual receipt by all Members and the Company of written notice of the occurrence of such event. Upon delivery of such notice to purchase, the purchasing Member(s) shall have the right to and obligation to purchase the Defaulting Member's interests, and the Defaulting Member shall be required to sell such interest for the Purchase Price in accordance with this Article.

(d) If no Member elects to exercise purchase rights pursuant to this Section 10.4, the membership interest of any Defaulting Member shall be and become the interest of an assignee as set forth in the second and third sentences of Section 10.5.

(e) The "Purchase Price" of any membership interest shall mean such price as agreed by the parties, or if such parties cannot agree, the Purchase Price shall equal the fair market value of such membership interest as determined by an appraiser jointly selected by such parties no later than the initially scheduled Closing Date, or if the parties cannot agree on the selection of an appraiser, by three appraisers, the first of whom is selected by the purchasing party (or parties), the second of whom is selected by the selling party (or parties), and the third of whom is selected by the two appraisers so selected. If the three appraisers cannot agree on the Purchase Price, the Purchase Price shall equal the appraised value determined by the appraiser whose appraised value is not the lowest or the highest of the three appraised values. The appraisers shall be directed to submit their determinations in writing within thirty (30) days after their selection.

(f) The closing of the purchase of any membership interest shall occur within ninety (90) days after any obligation to close such purchase shall arise under this Section 10.4, such date being referred to herein as the "Closing Date". On the Closing Date, the selling Member shall convey its membership interest-free and clear of all liens, claims and encumbrances and pursuant to such instruments of conveyance and warranties as the purchasing Member shall reasonably request. The purchasing Member shall pay all fees and expenses in connection with such transaction, except the attorneys' fees of the selling Member. The failure of any party to satisfy the obligation to close the purchase and sale of a membership interest in accordance with this Article shall entitle the other party to specific performance of such obligation, in addition to all other equitable and legal remedies available.

Section 10.5 Rights of Assignors and Assignees. Any transfer to an existing Member pursuant to Section 10.3(a) or 10.4 shall be effective to make the transferee thereof a Member without further action by any person. Any other sale, assignment or transfer, whether voluntary or involuntary of any membership interest shall be effective to give the assignee only the right to receive the share of income, losses and distributions to which the assignor would otherwise be entitled and shall not be effective to constitute the assignee as a Member. Any assignee who assigns all of its membership interest shall be removed automatically as a Member without further action or approval by any person. An assignee who does not become a Member shall have no right to share in any management decisions, no voting rights, no right to examine Company books and records, and no other rights of any kind whatsoever except as described in the second sentence of this paragraph. Any assignee of the interest of a Member shall be admitted as a Member of the Company only after the following conditions are satisfied:

(a) Members holding at least a majority of the Profit-sharing Percentages and capital account balances of the Members (exclusive of the assignor and assignee) consent in writing to the admissions of the assignee as a Member, which consent may be granted or denied in the absolute discretion of such Members;

(b) The duly executed and acknowledged written instrument of assignment has been filed with the Company, setting forth the intention of the assignor that the assignee become a Member;

(c) The assignee has consented in writing in a form satisfactory to the Members (exclusive of the assignor and assignee) to be bound by all of the terms of this Agreement in the place and stead of the assignor; and

(d) The assignor and assignee have executed and acknowledged such other instruments as the Members (exclusive of the assignor and assignee) may deem necessary or desirable to effect such admission.

Any assignee of a membership interest who does not become a Member, whether or not admitted as a Member, shall be subject to all terms of this Agreement. Without limiting the generality of the foregoing, any such assignee who desires to make a further assignment of such membership interest shall be subject to all provisions of this Article X to the same extent and in the same manner as any Member desiring to make an assignment of its interest.

Section 10.6 Further Restriction on Transfer. Notwithstanding any provision of this Agreement to the contrary, (a) no Member may pledge or hypothecate a membership interest to secure a debt or other obligation of such Member; and (b) no interest in the Company may be transferred unless (i) such transfer will not cause a termination of the Company for federal tax purposes within the meaning of Section 708 of the Code, and (ii) the sale or transfer of such interest is registered under the applicable federal and state securities law and regulations or the Company is furnished with an opinion of counsel (at the transferor's expense) satisfactory to the Members that such registration is not required.

ARTICLE XI DISSOLUTION AND TERMINATION OF THE COMPANY

Section 11.1 Events of Dissolution. The Company shall be dissolved (a) upon the mutual consent of all Members; or (b) upon the sale by the Company of all or substantially all its right, title, and interest in and to the Company property and the receipt by the Company of the purchase price in full; or (c) upon the entry of a decree of judicial dissolution, or the filing of a certificate of administrative dissolution, pursuant to the North Carolina Limited Liability Company Act (the "Act"), in either case that is not reversed, revoked or rescinded within sixty (60) days thereafter; or (d) upon the occurrence of any event described in Section 10.4(a), unless within ninety (90) days after such event Members holding at least a majority of the Profit-sharing Percentages and capital account balances of the remaining Members consent to the continuation of the Company; or (e) in any event at midnight on the 31st day of December, 2099.

Section 11.2 Winding-Up the Company. In the event of a dissolution of the Company, a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon liquidation. The Members shall continue to share profits or losses during the liquidation in the same proportion as before dissolution. The proceeds from liquidation of Company assets shall be applied as follows; (a) payment to creditors of the Company in the order of priority provided by law, and the establishment of a reserve for any unforeseen liabilities or obligations; and (b) in accordance with Section 6.2 hereof.

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given three (3) days after the deposit in the United States mail if mailed by first class, certified or registered mail, postage prepaid, or on the date of delivery if delivered by overnight delivery service, hand, telegram, or facsimile transmission, addressed to the Company at its principal office or to a Member at such Member's address then contained in the records of the Company. Any Member may change its notice address by giving written notice of such change to the Company.

Section 12.2 Amendments. This Agreement may not be modified or amended except with the written consent of Members holding a majority of the Profit-sharing Percentages (or such greater percentages as expressly required hereunder or as required by law or in order to maintain the tax status of the Company), and such writing must refer specifically to this Agreement.

Section 12.3 Captions. The captions and headings as used in this Agreement are used for convenience and reference only, and do not constitute substantive matter to be considered in construing the terms of this Agreement.

Section 12.4 Variations in Pronouns. All personal pronouns used in this Agreement, whether used in masculine, feminine, or neuter gender, shall include all other genders; singular shall include plural, and vice versa; and shall refer solely to the parties signatory thereto except where otherwise specifically provided.

Section 12.5 Cumulative Remedies. Each right, power, and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise.

Section 12.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

Section 12.7 Merger and Modification. This Agreement expresses the entire agreement between the parties hereto and supersedes any prior written or oral understanding or agreements. These terms and conditions may not be waived except by a writing signed by all of the Members, and such writing must refer specifically to this Agreement. A waiver of any breach on any one occasion shall not constitute a waiver of any other or subsequent breach whether of like or different nature.

Section 12.8 Severability. Every provision of this Agreement is intended to be severable, and if any term or provision hereof shall be declared illegal, invalid, or in conflict with the Act, or the purposes of this Agreement for any reason whatsoever, such term or provision shall be ineffectual and void, and the validity of the remainder of this Agreement shall not be affected thereby, unless the invalidity of any such provision substantially deprives either party of the practical benefits intended to be conferred by this Agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed under seal as of the day and year first above written.

SUNSET POINT, LLC


By:  (SEAL)
David Zimmerman, Member

Exhibit A

The capital contribution of each Member of the Company shall be equal to one/forty sixth (1/46) of the development costs for streets, wells and water, surveying, engineering and all other indirect costs in developing Sunset Point, specifically including costs to receive an assignment of the rights of McDowell Wildlife Club, Inc. under its Exchange Agreement with Crescent Resources.

State of North Carolina County of McDowell

The foregoing Certificate of Melanie C. McKinney _____ Notary(ies) Public

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof,

PATRICIA A. REEL REGISTER OF DEEDS FOR McDOWELL COUNTY
By Betty B. Fender Deputy/ Assistant - Register of Deeds.