

FILED in McDowell County, NC
on Nov 12 2003 at 08:58:00 AM
by: PATRICIA A. REEL
Register of Deeds
BOOK 758 PAGE 675

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
BLACK FOREST ON LAKE JAMES

Maid
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STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BLACK FOREST ON LAKE JAMES.

COUNTY OF McDOWELL

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this _____ day of November, 2003, by BLACK FOREST ON LAKE JAMES, LLC, a Delaware limited liability company (the "Declarant"). All capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Declaration.

Declarant is the owner of that certain real property located in McDowell County, North Carolina, which is hereinafter described and defined as the "Property", which Property consists of all of the real property shown on the Plats recorded in Plat Book 9 at Page 21 through 26 of the McDowell County Registry. The Property is being developed by Declarant as a residential community and amenity facility as a portion of the development known as Black Forest on Lake James. Black Forest on Lake James is intended to be developed and occupied as a low density, low impact subdivision featuring large homesites and preserved natural areas, and to accommodate family compounds consisting of multiple structures.

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Project.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I

DEFINITIONS

Section 1. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of McDowell County, North Carolina, with regard to a certain Phase, section or portion of the Property, as more particularly described in Article II, Section 2 hereof.

Section 2. "Additional Property" shall mean and refer to additional real estate near or contiguous to the Property and within ten thousand (10,000) feet of any boundary of the Property which may be made subject to the terms of this Declaration in accordance with the provisions of Article II of this Declaration, including, without limitation, the following real property, whether or not within ten thousand (10,000) feet of such Property: all real property conveyed to Declarant by deed recorded in Book 206, Page 870 of the McDowell County Public Registry.

Section 3. "Amenity Area" or "Amenity Areas" shall mean and refer to the Lake Camp, the River Camp, and any other Common Area upon which recreational amenities or facilities are constructed or placed for the common use and enjoyment of all Owners.

Section 4. "Architectural Changes Committee" shall have the meaning set forth in Article VIII hereof.

Section 5. "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

Section 6. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit A hereto and incorporated herein by reference.

Section 7. "Association" shall mean and refer to BLACK FOREST ON LAKE JAMES PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 8. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 9. "Boatslip" or "Boatslips" shall mean and refer collectively to the Common Use Boatslips and the Community Boatslips, together with any additional Boatslips which Declarant may cause or permit to be constructed in accordance with the terms of Article II of this Declaration.

Section 10. "Boatslip Assessments" shall have the meaning set forth in Article V-B below.

Section 11. "Boatslip Lease" or "Boatslip Leases" shall mean and refer to the lease to be entered into by Declarant and Lot Owner who desires to lease a Community Boatslip.

Section 12. "Boatslip Lots" shall mean and refer to those Lots in the Project which have, as an appurtenance to the Lot, the right to use a Boatslip pursuant to a Boatslip Lease or other instrument transferring the right to use a Boatslip, in accordance with and as more particularly set forth in Article IV of this Declaration.

Section 13. "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit B hereto and incorporated herein by reference.

Section 14. "Caretaker" shall mean and refer to the individual (if any) employed by the Association to reside in the Caretaker's Cottage and to perform certain maintenance services with respect to the Common Area and improvements located thereon, and to administer certain activities of the Association, all as may be set forth in any agreement entered into by such Caretaker and the Association.

Section 15. "Caretaker's Cottage" shall mean and refer to the dwelling constructed on Lot 63 located near the entrance of the Subdivision, in which the Caretaker is to reside.

Section 16. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 17. "Common Area" or "Common Areas" shall mean and refer to the Caretaker's Cottage, Parking Area(s), Street Lights (if any), the Trail System, Lake Camp, River Camp, Helipad C.O.S., and the Roadways, drainage facilities and other improvements located therein, collectively, and

any other property specifically shown and designated on any Plat as "Common Area," "Common Open Area," "Common Open Space," "Open Space," or "COS." The Common Areas shall be initially owned by Declarant, and ultimately owned by the Association (except as otherwise provided herein) for the common use, benefit and enjoyment of the Owners. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Project. The Common Area does not include the Piers or Boatslips which are adjacent to the Lake Camp; all interests in and rights to use the Pier and Boatslips belong to the Owners having the right to use them, and the costs of maintenance thereof are paid from the Boatslip Assessments collected from such Owners, as more particularly set forth herein. (However, the Pier and Boatslips are "Maintenance Areas" maintained by the Association, as provided herein.)

Section 18. "Common Use Boatslips" shall mean and refer to those six (6) boatslips in that certain Pier containing only six (6) Boatslips located in and over the waters of the Lake adjacent to the Lake Camp, the rights to which are appurtenant to the Waterview Lots, as more particularly described in Article IV below, together with any additional Common Use Boatslips which Declarant may cause to be constructed in accordance with the terms of Article II of this Declaration.

Section 19. "Community Boatslip" or "Community Boatslips" shall mean and refer to the Boatslips located or to be located within the Pier containing up to fourteen (14) Boatslips, adjacent to the Lake Camp, together with any additional Community Boatslips which Declarant may cause to be constructed in accordance with the terms of Article II, Section 2 of this Declaration. Owners of Lots that are not Waterfront Lots or Waterview Lots shall have the right to lease a Community Boatslip, subject to availability, as more particularly provided in Article IV below.

Section 20. "Community Mail Facility" shall mean and refer to the mail facility located at the Caretaker's Cottage to be used to provide mail delivery to the Owners.

Section 21. "Conservation Areas" shall mean and refer to those portions of the Common Area designated as Conservation Area on the Plats, upon which only limited activities may be conducted, and which shall remain largely undisturbed, all as more particularly set forth in the Guidelines.

Section 22. "Conservation Buffer" shall mean and refer to those portions of the certain Lots as designated as Conservation Buffer on the Plats, which only limited activities may be conducted, and which shall remain largely undisturbed, all as more particularly set forth in the Guidelines.

Section 23. "CPI" shall have the meaning set forth in Article V hereof.

Section 24. "Declarant" shall mean and refer to Black Forest on Lake James, LLC, a Delaware limited liability company, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

Section 25. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as same may be amended and/or supplemented from time to time as herein provided.

Section 26. "Guidelines" shall mean and refer to the architectural, design, landscaping and lake buffer guidelines more particularly described in Article VIII hereof.

Section 27. "Helipad COS" shall mean and refer to the parcel of Common Area labeled "Lot 57A Common Open Space" on the Plat, together with any facilities located thereon to accommodate the landing of helicopters for emergency or other purposes.

Section 28. "Impervious Surfaces" shall mean and refer to any Improvements which cannot be penetrated by surface water, as determined under applicable governmental regulations.

Section 29. "Improvement" shall have the same meaning as set forth in Article VIII hereof.

Section 30. "Lake" shall mean and refer to that certain body of water commonly known as Lake James, located adjacent to portions of the Project.

Section 31. "Lake Camp" shall mean and refer to that certain tract of Common Area located on Lot 16A on the Plat.

Section 32. "Lot" shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the Office of the Register of Deeds of McDowell County, North Carolina.

Section 33. "Maintenance Areas" shall mean and refer to certain portions of the Property that are maintained by the Association, as more particularly provided in Article X, Section 7 below, including the Landscape Easements, Trail System, and Piers and Boatslips.

Section 34. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 35. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 36. "Occupant" shall mean and refer to any person occupying all or any portion of a Lot or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

Section 37. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 38. "Parking Area" shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), including, without limitation, the Lake Camp, River Camp, Community Mail Facility and Caretaker's Cottage, for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

Section 39. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 40. "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of McDowell County, North Carolina.

Section 41. "Pier" or "Piers" shall mean and refer to the pier or piers containing the Community Boatlips and the Common Use Boatlips, which may be constructed in and over the waters of the Lake, together with any additional piers which Declarant may cause or permit to be constructed in accordance with the terms of Article II of this Declaration.

Section 42. "Pier Zones" shall mean and refer to those areas shown on the Plats designated as "Pier Zone" or "PZ" with corresponding Lot numbers, where Owners of Waterfront Lots may construct a dock or pier in accordance with Article VII, Section 30 of this Declaration.

Section 43. "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Office of the Register of Deeds of McDowell County, North Carolina, and all revisions thereof, including without limitation the Plats recorded in Plat Book 9 at pages 21 through 26 in the McDowell County Registry.

Section 44. "Project" shall mean and refer to the residential development and amenity facility being developed by Declarant on the Property and commonly known as Black Forest on Lake James.

Section 45. "Property" shall mean and refer to all the real property shown on the Plat, including Lots, Roadways and Common Areas, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

Section 46. "Protected Lake Buffer" shall have the meaning as set forth in Section 3(b) of Article IX of this Declaration.

Section 47. "Restricted Zone" shall mean and refer to the area twenty-five (25) feet in depth adjoining the Protected Lake Buffer.

Section 48. "River Camp" shall mean and refer to that portion of the tract of Common Area designated as "Lot 61A Conservation Area/COS" on the Plat upon which a kayak put-in, canoe launch dock, fishing platform, and other Improvements are to be constructed by Declarant.

Section 49. "Roadways" shall mean and refer to the roads, streets, entranceways and cul-de-sacs (if any) in the Project, shown on the Plats, and any other roads, streets, entranceways and cul-de-sacs on the Property, all to be privately maintained as Common Area by the Association.

Section 50. "Septic System" shall mean and refer to all pipes, drainage fields and related equipment and apparatus installed within a Lot for the disposal of sewage.

Section 51. "Street Lights" shall mean and refer to any street lights leased by Declarant and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

Section 52. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of McDowell County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

Section 53. "Trail System" shall have the meaning set forth in Article X hereof.

Section 54. "Turnover Date" shall have the meaning set forth in Article IV hereof.

Section 55. "Waterfront Lots" shall mean and refer to all Lots with frontage on the Lake and which have an adjacent Pier Zone and, as an appurtenance to the Lot, the right to construct and use a private Pier as more particularly set forth in Article IV of this Declaration. Waterview Lots, although they have frontage on the Lake, do not have an adjacent Pier Zone or the right to construct and use a private Pier, and are not Waterfront Lots.

Section 56. "Waterview Lots" shall mean and refer to Lots 9, 10, 21, 22, 23 and 47 which will have, as an appurtenance to the Lot, the right to use a Common Use Boatslip in accordance with and as more particularly set forth in Article IV of this Declaration. Waterview Lots have frontage on the Lake, but do not have an adjacent Pier Zone or the right to construct and use a private Pier, and are not Waterfront Lots.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additions to the Property.

(a) Declarant may cause all or a portion or portions of the Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the McDowell County Register of Deeds, containing a description of the portion of the Additional Property being subjected to their Declaration and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may also cause additional Piers and/or Boatslips to be constructed and made subject to the terms and scheme of this Declaration by the filing of one or more Supplemental Declarations describing the location and number of Piers and/or Boatslips to be added and containing a statement by Declarant of its intent to extend the operation and effect of this Declaration to the additional Piers and/or Boatslips. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of McDowell County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association; provided, with respect to any part of the Common Areas leased by Declarant (e.g., any Street Lights), Declarant shall assign its rights under such lease to the Association. Declarant reserves the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Street Lights (which will be leased from a third party) and other lighting, signage and irrigation facilities, (ii) the Trail System, (iii) the Roadways (including drainage facilities and other improvements), (iv) the Caretaker's Cottage and a neighbors' gathering room, gazer's shelter, toolshed, vehicle storage, workshop and barn building adjacent thereto, (v) Parking Areas, and (vi) certain additional recreational amenities and facilities upon the Lake Camp and the River Camp, including without limitation boardwalks and catwalks, fishing docks, house, grilling area, seating, trails, restrooms, pavilion, picnic stations, terraces, viewing shelters, and other related improvements, all for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public. Portions of the Trail System may be located within certain Lots, and fee simple title to the land underlying such portions of the Trail System shall be and remain in the applicable Owner over whose Lot such portion of the Trail System is located, subject to the easement rights contained in this Declaration.

Section 2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners within the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas; and

(d) the rights of exclusive occupancy of the Caretaker's Cottage granted to the Caretaker pursuant to any agreement between the Association and the Caretaker.

(e) the prohibitions on use of the Conservation Areas as set forth herein and in the Guidelines.

(f) any and all other applicable provisions of this Declaration, including, without limitation, the provisions of Article III, Section 3 below.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

ARTICLE IV

THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws attached as Exhibit B hereto. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting membership:

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant.

Section 3. Relinquishment of Control. Notwithstanding anything contained herein to the contrary, the Class II Association Membership shall cease and be converted to the Class I Association Membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership cease and be converted to the Class I membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2030. The earliest to occur of (a), (b) or

(c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots, provided the Association shall have no responsibility to distribute such documents. All such documents shall be available upon reasonable notice and during normal business hours, provided the Association shall have the right to charge the requesting party reasonable costs incurred by the Association in complying with such request, including, without limitation, copy charges. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee. The Association is also authorized and empowered to enter into an agreement with a Caretaker to perform certain maintenance functions and perform other services relating to the administration of the Common Area, the Property and the Association.

Section 6. Maintenance. The Roadways shall be maintained by the Association. Such maintenance shall include repair and reconstruction of the Roadways, when necessary, including, but not limited to the swales, medians, bridges and associated landscaping and related improvements along and within the Roadway. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity.

The Common Areas and the Maintenance Areas, together with all utilities, easements and amenities located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association as more particularly described below:

(a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, gate, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.

(b) Maintenance of the Parking Area(s) (if any) shall include repair, maintenance and reconstruction, when necessary, of the pavement and payment of the costs of lighting.

(c) The Common Areas and Maintenance Areas, including, without limitation, the Caretaker's Cottage, Lake Camp and River Camp, shall be clean and free from debris and maintained in a safe and orderly condition, together with the landscaping thereon (if any), in accordance with the highest standards for first-class residential developments located in the Asheville, North Carolina, metropolitan area, including any removal and replacement of any landscaping, utilities, or improvements located thereon.

(d) Maintenance of the Caretaker's Cottage and any other improvements located on the parcel of Common Area upon which the Caretaker's Cottage is located, and of all improvements on the Lake Camp and River Camp, shall include, but not be limited to, any and all interior and exterior maintenance (including, where necessary, repair and/or reconstruction), landscaping and payment of all utility charges related to any such improvement.

(e) Maintenance of the Pier and Boatslips shall include the maintenance, repair and reconstruction, when necessary, of the Pier and Boatslips, including all lighting, water lines and other fixtures, wire, railings, and other facilities located thereon, and providing and paying for utility charges therefor.

(f) Except for portions of Common Areas located within a Lot (e.g., the Trail System), the Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any dock, pier or boatslip located within the Pier Zone adjacent to any Waterfront Lot, or the Piers and Boatslips. The Owners of such Lots shall be solely responsible for same.

Section 7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all or a portion of the Common Areas and Maintenance Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments and Boatslip Assessments, as hereinafter defined. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments or Boatslip Assessments.

Section 8. Piers and Boatslips. Subject to and contingent upon the approval of Duke Energy Corporation ("Duke") and of the Federal Energy Regulatory Commission ("FERC") and any other regulatory body having jurisdiction, Declarant shall have the exclusive right to construct some or all of the Piers and Boatslips (including all improvements located thereon), in its sole and absolute discretion, in the approximate locations shown on the Plat(s) or as otherwise shown in any Supplemental Declaration or other document which may be filed pursuant to the provisions of this Declaration.

There will be two types of Boatslips available for the Owners of certain Lots in the Subdivision: Community Boatslips, and Common Use Boatslips.

(A) Community Boatslips. There will be up to fourteen (14) Community Boatslips. Declarant must obtain the permission of Duke and FERC before it can construct the Community Boatslips and the Pier in which they will be located. The area within which the Community Boatslips and Pier are to be located must be leased from Duke; such lease is hereinafter referred to as the "Duke Lease." The lease will be entered into in accordance with Duke's policy with respect to such leases; currently such policy requires the Declarant and Association to enter into the Duke Lease as joint lessees, with the Association becoming the sole lessee under the Duke Lease at such time as the Lake Camp (or portion thereof adjacent to the Pier in which the Community Boatslips are located) is conveyed by Declarant to the Association. Even though the Association will be the lessee under the Duke Lease, the Community Boatslips and Pier are not Common Area (but are Maintenance Areas) and are to be maintained, together with the Common Use Boatslips, through collection of the Boatslip Assessments from all Boatslip Lot Owners, as provided below, and not from the Annual Assessments.

Declarant may (but shall not be obligated to) offer to lease a Community Boatslip to any Owner of any Lot other than a Waterfront Lot or a Waterview Lot, and may limit the time within which such Owner can accept such offer. If any such Owner to whom a Community Boatslip is offered does not

accept such offer within such time limit, such Owner shall have no further right to lease a Community Boatslip, and Declarant shall have no obligation to construct such Community Boatslip.

(B) Common Use Boatslips. The Common Use Boatslips and the Piers in which they are located shall be for the exclusive use and benefit of the Owners of the six (6) Waterview Lots. Declarant shall lease a designated Common Use Boatslip at the time of conveyance of the Waterview Lot to the initial Owner thereof.

(C) Leases of Boatslips. Boatslips will be leased and transferred as follows:

(i) Pursuant to that certain boatslip lease form provided by Declarant (the "Boatslip Lease"), Declarant shall lease one (1) Community Boatslip to each Owner of a Lot who has accepted Declarant's offer to lease a Community Boatslip, and one Common Use Boatslip to each Owner of a Waterview Lot. From and after the time such Boatslip Lease has been entered into, each such Lot shall be a Boatslip Lot hereunder. Each Boatslip Lease shall be appurtenant to and may not be separated from the ownership of the applicable Boatslip Lot, except as provided below. DECLARANT AND ASSOCIATION WILL HAVE NO RIGHTS IN OR TO THE PORTION OF THE LAKE WHERE THE BOATSLIPS WILL BE LOCATED, EXCEPT TO THE LIMITED EXTENT PROVIDED IN THE DUKE LEASE AND THE PERMITS, LICENSES, AND APPROVALS GRANTED BY DUKE ENERGY CORPORATION, AND/OR THE FEDERAL ENERGY REGULATORY COMMISSION ("FERC") AND/OR ANY OTHER GOVERNMENTAL AUTHORITIES HAVING JURISDICTION. THE RIGHTS GRANTED PURSUANT TO THE DUKE LEASE AND SUCH PERMITS, LICENSES, AND APPROVALS MAY BE LIMITED IN DURATION AND MAY, SUBSEQUENT TO THE LEASE TO A LOT OWNER, BE SUBJECT TO ADDITIONAL REQUIREMENTS OR FEES IMPOSED BY DUKE ENERGY CORPORATION, FERC, OR ANY OTHER APPLICABLE GOVERNMENTAL AUTHORITY.

(ii) The Lot as to which a Boatslip Lease is entered into shall thereafter be a Boatslip Lot subject to the provisions of Article IV, Section 8(C)(iii) below. Once entered into between Declarant and the Boatslip Lot Owner, the relevant Boatslip Lease shall not be separated from ownership of the Boatslip Lot to which it is appurtenant, but, rather, shall run with the title to such Boatslip Lot unless and until such Boatslip Lease is assigned by the Boatslip Lot Owner to another Lot Owner in accordance with Article IV, Section 8(C)(iii). In this regard, provided the applicable Boatslip Lease has not been previously assigned in accordance with Article IV, Section 8(C)(iii), any conveyance by a Boatslip Lot Owner of its ownership interest in a Boatslip Lot shall automatically assign to the transferee of such ownership interest all rights and duties of said Boatslip Lot Owner under the Boatslip Lease; provided, however, in such event, the Boatslip Lot Owner and the transferee of the Boatslip Lot Owner's ownership interest in the Boatslip Lot shall immediately execute and record an instrument in the McDowell County Public Registry sufficient to provide record evidence of the assignment of the Boatslip Lease (a filed copy of which instrument shall be provided to Declarant, as lessor, and the Association following recordation). Any deed of trust, mortgage or other encumbrance of a Boatslip Lot shall also encumber the Boatslip appurtenant thereto, even if not expressly included therein. Provided, however, no mortgagee, trustee or other person claiming by, through or under any instrument creating any such encumbrance shall by virtue thereof acquire any greater rights in the relevant Boatslip than the Boatslip Lot Owner may have under the Boatslip Lease at the time of such encumbrance; and provided further, such deed of trust, mortgage or other instrument of encumbrance, and the indebtedness secured thereby, shall at all times be and remain subordinate and subject to all of the terms and conditions of the Boatslip Lease and to all of the rights of Declarant (as lessor) thereunder. Any successor to a Boatslip Lot Owner's interest in a Boatslip Lease, whether such interest is acquired by sale, assignment, foreclosure, deed in lieu of foreclosure, power of sale, execution or otherwise, shall take such interest subject to all of the terms, covenants, conditions, duties and obligations of such Boatslip Lot Owner under the Boatslip Lease, shall be deemed to have

attorned to Declarant or the Association (as lessor) and shall execute an attornment agreement upon the request of Declarant or the Association (as lessor).

(iii) Any Boatslip Lease may be assigned by the relevant Boatslip Lot Owner only to another Lot Owner. Upon such assignment, the Boatslip Lot Owner and the assignee of such Boatslip Lot Owner's interest in the Boatslip Lease shall immediately execute and record an instrument in the McDowell County Public Registry (a filed copy of which shall be provided to the Association) sufficient to provide record evidence of such assignment. Following such assignment, the assignor's Lot shall automatically cease to be a Boatslip Lot and the assignee's Lot shall thereafter be a Boatslip Lot (until further assignment of said assignee's lease rights), in which case the relevant Boatslip Lease shall then run with the title to such Boatslip Lot as set forth in Article IV, Section 8(C)(ii). No Boatslip Lease shall be separated from the ownership of any Lot and assigned to anyone or any entity other than another Owner in accordance with this Article IV, Section 8(C)(iii) and as provided otherwise in the Declaration.

(iv) Declarant shall have the right to use Boatslips not leased to another Owner and shall have the obligation to pay Boatslip, Supplement Boatslip and Special Boatslip Assessments on any Community Boatslips constructed by Declarant and not leased to another Owner. In addition, notwithstanding any term or provision herein to the contrary, Declarant shall have the right to grant the right to any third party (whether or not such third party owns a Lot) to use any Community Boatslip which has not theretofore been transferred to an Owner, pursuant to terms and conditions specified by Declarant. At Declarant's option, Declarant shall be entitled to assign all rights and duties of Declarant under any Boatslip Lease and/or the Duke Lease to any person or entity, including, without limitation, the Association, whereupon Declarant shall have no further rights, duties, obligations or liabilities thereunder.

(D) Limits on Use. The use of the Piers and Boatslips is and shall be subject to each of the following:

- (i) the terms of the Boatslip Lease pursuant to which the Boatslip was leased, and any rules and regulations for use promulgated thereunder;
- (ii) all laws, statutes, ordinances and regulations of FERC and all federal, state and local governmental bodies having jurisdiction thereon;
- (iii) the Duke Lease;
- (iv) the conditions and terms of any permit issued by, and the rules and regulations for use established by, Duke, its successors and assigns; and
- (v) any rules and regulations adopted by the Board of Directors.

(E) Rules and Regulations. The Board of Directors, pursuant to the Bylaws attached hereto as Exhibit B, may adopt rules and regulations governing the use, operation and maintenance of the Boatslips, the Piers in which they are located, and the personal conduct thereon of the Members as to the Boatslips.

(F) Piers may be used only by Owners of Boatslip Lots, their families, guests and invitees, and each Boatslip may only be used by the Owner(s) of the Boatslip Lot to which such Boatslip is appurtenant, their families, guests, tenants and invitees.

Section 9. Parking Area. Declarant may construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, paved Parking Areas located

on the Amenity Areas and other Common Areas. The Parking Areas shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees, in connection with their use of the Amenity Areas.

Section 10. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE V

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessments, Special Assessments and Special Individual Assessments (collectively, the "Assessments"), as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner, at the time when the assessment fell due, of the Lot against which such assessment or charge is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot against which such assessments or charges are made.

Section 2. Purpose of Annual Assessments. The assessments to be levied annually by the Association ("Annual Assessments") shall be used as follows:

(a) to repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas and the Maintenance Areas and any improvements located thereon, and to maintain the landscaping in accordance with the highest standards for first-class residential developments located in the Asheville, North Carolina, metropolitan area, including any necessary removal or replacement of landscaping;

(b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) for residential streets prevailing in the Asheville, North Carolina, metropolitan area;

(c) to maintain, operate, repair and reconstruct, when necessary, the entryway to the Project, including the entrance monuments, gate, signage, irrigation, planters, landscaping and lighting located thereon;

(d) to maintain and repair the swales and medians, bridges and any associated Street Lights, landscaping and related improvements along and within the Roadways;

(e) to pay all costs associated with the lease and operation of any Street Lights, including, but not limited to, monthly lease payments and utility costs;

(f) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;

(g) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(h) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(i) to carry out all other purposes and duties of the Association, the Board of Directors and the Architectural Control Committee as stated in the Articles, the Bylaws and in this Declaration;

(j) to maintain contingency reserves for the purposes set forth in Article IV hereof in amounts as determined by the Board of Directors;

(k) to pay the salary of and all other costs associated with the employment of the Caretaker;

(l) to pay all costs incurred with respect to any resource manager or other consultant engaged to assist with the preservation of flora and fauna within the Property.

The expenses of the Association for the foregoing are sometimes referred to herein as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

Annual Assessments provided for herein shall commence as to all Lots shown on a Plat of any Phase of the Property as of the date of the completion of the Caretaker's Cottage, and the gathering area adjacent thereto, or October 1, 2004, whichever is earlier. The Annual Assessment amount for the calendar year beginning January 1, 2004, shall be Seven Hundred Fifty Dollars (\$750.00) per Lot. The Annual Assessment amount for the calendar year beginning January 1, 2005, shall be (\$3,000.00) per Lot. The Annual Assessment amount for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable in advance in equal installments on a semi-annual basis commencing on January 1 and July 1 of each calendar year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or

other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in Section 4(a) below, the budget is ratified unless at such meeting Members exercising all of the votes in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in Section 4(a), the budget is ratified unless at such meeting Members exercising a majority vote in the Association reject the budget.

The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments. Notwithstanding the foregoing, for calendar years beginning prior to the Turnover Date, in lieu of payment of Annual Assessments, Declarant shall be responsible for paying for each such calendar year that portion of the annual expenses of the Association (excluding any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant.

Section 4. Maximum Annual Assessment.

(a) For calendar year 2006 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statute 47F-3-103(c) or other applicable law, in which case the procedures set forth in Article V, Section 3 above shall apply), may increase the Annual Assessment applicable to each Lot by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members, unless required under N.C. General Statutes 47F 3-103 (c) or other applicable law, in which case the procedures set forth in Article V, Section 3 above shall apply.

(b) For calendar year 2006 and thereafter, the maximum annual assessment applicable to each Lot may be increased above the maximum amount set forth in subparagraph (a) of this Article V, Section 4 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property), subject to the procedures set forth in Article V, Section 3 above if applicable.

(c) The Board of Directors may fix the Annual Assessment applicable to each Lot at an amount not in excess of the maximum set forth in Subparagraph (a) of this Article V, Section 4 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in Section 3 above, if applicable. In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

(d) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(e) Declarant shall have the authority to reduce the Annual Assessment on any Lot on which no structure has been completed (i.e., no Certificate of Occupancy has been issued).

Section 5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area and/or Maintenance Area improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Areas and/or Maintenance Areas, including any improvements located thereon, and including, without limitation, the Amenity Areas. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or Maintenance Areas, including, without limitation, the Roadways, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Article V, Section 6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 7. Collection Agent. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

Section 8. Assessments Against Lots Owned by Declarant.

Anything to the contrary set forth in this Declaration notwithstanding, Assessments on all Lots owned by Declarant shall be in an amount equal to ten percent (10%) of Assessments on all other Lots. Furthermore, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for common expenses, or has paid or contributed to the Association for the Association's payment of common expenses.

COVENANT FOR SEPTIC SYSTEM ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Septic System Assessments.

Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association, in addition to the Annual, Supplemental Annual, Special and Special Individual Assessments provided for herein, Septic System Assessments and Supplemental Septic System Assessments, as hereinafter defined, for the inspection of the ground absorption sewer system or systems serving each Lot, including all pipes, lines, tanks, drain fields, pumps, and related apparatus (collectively, "Septic System"). Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner effective at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot against which such assessments or charges are made.

Section 2. Purpose of the Septic System Assessments. The assessments to be levied annually by the Association against each Lot upon which a Septic System has been constructed shall be used to inspect each Septic System to ensure that the Septic Systems are in compliance with any requirements imposed by the Association or any governmental authority. Such assessments, together with the initial inspection fees provided for in Section 3 below, are referred to herein as the "Septic System Assessment."

Section 3. Payment of Septic System Assessment; Due Date. The initial Septic System Assessments provided for herein shall be payable annually, in advance, and shall commence as to each Lot at the time of submission of plans and specifications to the Architectural Control Committee as provided in Article X hereof. A one time fee for the inspection of the initial installation of the Septic System (which includes three visits by the inspector) in the initial amount of Four Hundred Fifty Dollars (\$450.00) shall be payable to the Association at the time of submission of plans and specifications to the Architectural Control Committee. This fee for inspection of the initial installation is in addition to the Septic System Assessment for annual inspection of completed septic systems. If more than three visits by the inspector are needed to verify the proper initial installation of a Septic System, the cost of such additional visits by the inspector shall be paid by the Lot Owner to the Association at the rate of \$200.00 per inspection. A separate annual Septic System Assessment for the inspection of all completed Septic Systems shall be payable annually by each Owner of a Lot upon which a Septic System or Systems is located. The initial Septic System Assessments applicable to all Lots (payable to the Association) upon which Septic Systems have been completed shall initially be Three Hundred and Twenty-five Dollars (\$325.00) per Lot. The Septic System Assessments for each and every year thereafter shall be in the amount of Three Hundred Twenty-five Dollars (\$325.00) or the amount as set by the Board of Directors, in accordance with Section 4 of this Article V-A and shall be due and payable no later than January 31 of each such year. However, the initial Septic System Assessment for inspection of completed Septic Systems shall be payable at the time plans and specifications are submitted to the Architectural Control Committee and shall constitute payment for the one (1) year period beginning on the date of submission. (Therefore, at the time of submission of plans, based on the initial rates, a total of \$775.00 must be paid to the Association - \$450.00 for inspection of the initial installation, and \$325.00 for the first year's annual inspection.) The second annual Septic System Assessment for inspection of completed Septic Systems shall be due and payable on the first anniversary of the payment of the initial Septic System Assessment;

shall be in the amount established by the Board of Directors of the Association for that calendar year; and shall be prorated from the due date thereof through the end of the calendar year in which it is paid. The third and all subsequent annual Septic System Assessments for inspection of completed Septic Systems shall be due and payable on a calendar year basis, on or before January 31 of each calendar year, as set forth above. The Board of Directors shall adopt a proposed budget and fix the amount of the Septic System Assessment as to each Lot for any year at least thirty (30) days prior to January 1 of such year, and the Association shall send written notice of the amount of the Septic System Assessment and a summary of the proposed budget to each Lot Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c) or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in Section 4(a) below, the budget is ratified unless at such meeting Members exercising all of the votes in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in Section 4(a), the budget is ratified unless at such meeting Members exercising a majority vote in the Association reject the budget. Failure of the Association to send the notice described in this Section shall not relieve the Owners of their liability for Septic System Assessments. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Septic System Assessments, and may increase or decrease the frequency of the collection of the Septic System Assessments (or installments thereof) in any reasonable manner.

Section 4. Maximum Septic System Assessment.

(a) For years following the first year of Septic System Assessments and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statute 47F-3-103(c) or other applicable law, in which case the procedures set forth in Section 3 above shall apply), may increase the Septic System Assessment each year by a maximum amount equal to the previous year's Septic System Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the Septic System Assessments are not increased by the maximum amount permitted under the terms of this provisions, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Septic System Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after the first year of Septic System Assessments, the maximum annual assessment may be increased above the maximum amount set forth in subparagraph (a) of this Section 4 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property) subject to the procedures set forth in Section 3 above, if applicable.

(c) The Board of Directors may fix the Septic System Assessment at an amount not in excess of the maximum set forth in Subparagraph (a) of this Section 4 (the "Maximum Septic System Assessment") subject to the procedures set forth in Section 3 above, if applicable. If the Board of Directors shall levy less than the Maximum Septic System Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Septic System Assessment ("Supplemental Septic System Assessment"). In no event shall the sum of the Septic System Assessment and Supplemental Septic System Assessment for any calendar year exceed the applicable Maximum Septic System Assessment for such year, other than as set forth herein.

Section 5. Assessment Rate.

Septic System Assessments and Supplemental Septic System Assessments must be fixed at a uniform rate for all Lots.

ARTICLE V-B

COVENANT FOR BOATSLIP, SUPPLEMENTAL BOATSLIP
AND SPECIAL BOATSLIP ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Boatslip, Supplemental Boatslip and Special Boatslip Assessments. Declarant, for each Boatslip Lot owned within the Property, hereby covenants, and each Owner of any Boatslip Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, or by entering into a Boatslip Lease (or an assignment thereof) or other instrument transferring the right to use a Boatslip for a Boatslip as an appurtenance to such Owner's Lot as more particularly set forth in Article IV, Section 8 of this Declaration, is deemed to covenant and agree to pay to the Association, in addition to the Annual, Supplemental Annual, Special and Special Individual Assessments provided for herein, Boatslip Assessments, Supplemental Boatslip Assessments and Special Boatslip Assessments, as hereinafter defined, for maintenance and repair costs of the Pier and Boatslips (including all improvements thereon) established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Boatslip Lot against which each such assessment or charge is made and upon the right to use the Pier and Boatslip appurtenant to such Boatslip Lot. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Boatslip Lot effective at the time when the assessment falls due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Boatslip Lot against which such assessments or charges are made.

Section 2. Purpose of Boatslip Assessments. The assessments to be levied annually by the Association against each Boatslip Lot (the "Boatslip Assessments") shall be used as follows:

- (a) to clean, maintain, repair and reconstruct, when necessary, the Pier and Boatslips, including all lighting and other fixtures, wires, railings and other facilities located thereon (if any), all as more particularly set forth in Article IV, Section 6 of this Declaration;
- (b) to provide and pay for lighting of and water service to the Pier and Boatslips (if any) to the extent necessary for the safety and enjoyment of the users thereof;

(c) to pay all ad valorem taxes levied against the Pier and Boatslips and any other property owned by the Association in connection therewith;

(d) to pay all lease payments, if applicable, to Duke Energy Corporation for the lease of the land on which the Pier and Boatslips are located;

(e) to pay the premiums on all insurance carried by the Association in connection with the Pier and Boatslips (including all improvements located thereon) pursuant hereto or pursuant to the Bylaws;

(f) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Pier and Boatslips (including all improvements located thereon); and

(g) to maintain contingency reserves for the purposes set forth in Article IV, Section 7 hereof in amounts as determined by the Board of Directors.

Section 3. Payment of Boatslip Assessments; Due Dates. The Boatslip Assessments provided for herein shall be payable, annually, in advance, and shall commence as to each Boatslip Lot (to which a completed Boatslip is appurtenant), and shall be due and payable thirty (30) days following the execution of the Boatslip Lease for such Boatslip, as set forth in Article IV, Section 8 of this Declaration (such assessment shall be prorated from the date of such lease through the remainder of the calendar year for which such assessment is due). Notwithstanding the foregoing, no Boatslip Assessments shall be due prior to January 1, 2004. The initial Boatslip Assessments applicable to all Boatslip Lots (if assessed on or before January 1, 2005) shall be Three Hundred Seventy-five and No/100 Dollars (\$375.00) per Boatslip Lot. Boatslip Assessments for each and every year thereafter shall be payable no later than January 31 of such year. The Boatslip Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 4 of this Article V-B, and shall be due and payable no later than January 31 of each such year. The Board of Directors shall fix the amount of the Boatslip Assessment as to each Boatslip Lot for any year at least thirty (30) days prior to January 1 of such year, and the Association shall send written notice of the amount of the Boatslip Assessment to each Boatslip Lot Owner on or before January 5 of such year. Failure of the Association to send the notice described in this Section 3 shall not relieve the Owners of their liability for Boatslip Assessments. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Boatslip Assessments, and may increase or decrease the frequency of the collection of the Boatslip Assessments (or installments thereof) in any reasonable manner.

Section 4. Maximum Boatslip Assessment.

(a) For years following the first year of Boatslip Assessments and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Boatslip Assessment each year by a maximum amount equal to the previous year's Boatslip Assessment times the greater of (i) ten percent (10%); or (ii) the annual percentage increase in the CPI issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Boatslip Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed, and the Boatslip Assessment may be increased by that amount in a future year, in addition to the

maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after the first year of Boatslip Assessments, the Boatslip Assessments may be increased without limitation if such increase is approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Boatslip Lots.

(c) The Board of Directors may fix the Boatslip Assessments at an amount not in excess of the maximum set forth in subparagraph (a) of this Section 4 (the "Maximum Boatslip Assessment"). If the Board of Directors shall levy less than the Maximum Boatslip Assessment for any calendar year and thereafter, during such year, determine that the important and essential functions of the Association as to the Pier and Boatslips cannot be funded by such lesser assessment, the Board may, by a vote in accordance with the Bylaws, levy a supplemental Boatslip Assessment (the "Supplemental Boatslip Assessment"). In no event shall the sum of the Boatslip and Supplemental Boatslip Assessments for any year exceed the applicable Maximum Boatslip Assessment for such year other than as set forth herein.

Section 5. Special Assessments for Boatslip Improvements. In addition to the Boatslip Assessments authorized above, the Association may levy, in any assessment year, a special Boatslip Assessment (the "Special Boatslip Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of the Pier and Boatslips and any capital improvement located thereon, including lighting, water lines and other fixtures, poles, wires, railings and other facilities located thereon and personal property related thereto. Provided, however, (i) any such Special Boatslip Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Boatslip Lots, and (ii) any such Special Boatslip Assessment may be levied only against the Owners of Boatslip Lots.

Section 6. Assessment Rate.

(a) Except as set forth in subsection (b) below, Boatslip, Supplemental Boatslip and Special Boatslip Assessments must be fixed at a uniform rate for all Boatslip Lots;

(b) Boatslip, Supplemental Boatslip and Special Boatslip Assessments for each Boatslip Lot owned by Declarant shall be ten percent (10%) of the Boatslip, Supplemental and Special Boatslip Assessments for each other Boatslip Lot in the Subdivision not owned by Declarant.

ARTICLE VI

GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment (or installment thereof) not paid by its due date as set forth herein shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late

charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the applicable portion of the Property), and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment and assessment lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his or her property or the Common Areas or otherwise.

Section 3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Special or Special Individual Assessment, Supplemental Boatslip, Special Boatslip, Supplemental Boatslip, Septic System, Supplemental Septic System, or a Special Septic System Assessment (as the case may be), as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the Maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot as above provided.

ARTICLE VII

RESTRICTIONS

Section 1. Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Project. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board. Provided, however, the Board may permit a business or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion on the Property or in the Project. The Board may issue rules regarding permitted business activities.

Except those to be utilized by Declarant as described hereinabove, no structures shall be erected, placed, altered, used or permitted to remain on any Lot other than one or more detached single-family private dwellings (each, a "Dwelling Unit"), private garages and such other accessory structures as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. Such other accessory structures may include, but are not limited to, and guest houses, storage buildings, housing for domestic employees, studios, tree houses, and similar structures. The Architectural Control Authority must approve the number, placement, size, appearance, and materials of construction of all such Dwelling Units and accessory structures.

All Dwelling Units and accessory structures shall be used solely for the occupancy of the Owner of the Lot upon which located and such Owner's guests and invitees, and no Lot and no Improvements may be leased or rented, or used for hotel or other transient residential purposes.

Subject to the requirements set forth herein and in the Guidelines, fixed piers and floating boat dock facilities incidental to the residential use of Waterfront Lots are expressly permitted only within the Pier Zone (as defined below) of Waterfront Lots upon the condition that they are not rented or otherwise used for remuneration. Furthermore, no boat (including a houseboat), whether existing on a Lot, docked at a Pier or docked at a fixed pier or floating boat dock appurtenant to any Waterfront Lot in the Project, may at any time be used as a residence.

Section 2. Dwelling Unit and Accessory Structure Size; Maximum Impervious Surface and Disturbed Area. Any Dwelling Unit or other structure erected upon any Lot shall contain no more than the maximum potential heated living area established by the Architectural Control Committee, in connection with its review and approval of plans as provided in Article VIII below. The square footage requirements so established will be for the collective horizontal footprints of each room in a structure, measured in square feet, and includes both finished and unfinished basement areas. (defined as any level in which at least one perimeter wall is below or partially below grade). Potential heated living area excludes vaulted ceiling areas, attics, unheated and/or unenclosed porches, attached or detached garages, porte-cocheres, decks, and patios.

No more than seven percent (7.0%) of the surface area of any Lot may be covered with Impervious Surfaces, and no more than fourteen percent (14.0%) of the surface area of any Lot may be disturbed. There shall be no disturbance whatsoever of that portion of any Lot having a slope of greater than thirty-five percent (35.0%).

Section 3. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit or accessory structure on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines.

Section 4. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines and shall be subject to the approval of the Association.

Section 5. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration, only fences or walls (including, without limitation, densely planted hedges, rows or similar landscape barriers) approved in advance by Declarant and/or the Architectural Control Committee, in their sole and absolute discretion, shall be used, installed and/or constructed along or near the front, side and/or rear boundary lines of each Lot within the Project. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall.

Section 6. Mail and Newspaper Boxes; House Numbers. No mail boxes or newspaper boxes will be constructed or installed on any lot. All Lot Owners shall receive mail at the Community Mail Facility located at the Caretaker's Cottage. House numbers may be displayed on the Dwelling Unit and/or at entrance of Lot as approved by the Architectural Control Committee. Declarant shall not be responsible for the installation or maintenance of any mailbox or newspaper box.

Section 7. Animals. No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. The number of household pets kept or maintained outside the Dwelling Unit

on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under nine (9) months in age. Dogs shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee.

Section 8. Signs. No sign of any kind shall be displayed on any Lot except for sign(s) approved in advance by the Architectural Control Committee. Notwithstanding the foregoing, Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas or Maintenance Areas.

Section 9. Temporary Structures; Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence. Provided, however, nothing herein shall prohibit Declarant (subject to the prior written approval of Declarant) from erecting or moving temporary buildings onto Lots owned by Declarant to be used for storage, or for construction or sales offices.

Section 10. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Control Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration.

Section 11. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, gravel construction entrances, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Architectural Control Committee, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion. Each Owner and each Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation, as described and defined in the "Erosion Control Protection" on Exhibit C attached hereto and incorporated herein by this reference.

Section 12. [Intentionally Omitted]

Section 13. Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front street right-of-way or side abutting right-of-way (for a corner Lot) building setback lines as noted on the Plat. Notwithstanding any rear setback restrictions noted on the Plat, no building, including stoops, porches or decks (whether attached or unattached), shall be erected or permitted to remain nearer than one hundred (100) feet to the rear (waterside) lot line of any Lot adjoining the waters of Lake James. For purposes of this restriction, the waterside lot line shall mean the contour line of Lake James as noted on the Plat. Boathouses, piers and dock facilities are exempt from the rear setback restrictions provided they comply with the provisions set forth in Section 30 of this Article VII.

In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements.

The Association shall have the authority but not the obligation, in its sole discretion, to assess penalties against an Owner who fails to abide by the terms of this Section 13. The penalties authorized by this Section 13 as well as the expenses to be reimbursed Declarant or the Association shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article VI of this Declaration.

Section 14. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and established by the Architectural Control Committee.

Section 15. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except as provided herein) be considered as one Lot for the purposes of this Declaration upon the recordation in the Office of the Register of Deeds of McDowell County, North Carolina, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Declaration, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee); and in each such case, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, Declarant reserves the right to designate said combined Lots as one (1) Lot or multiple Lots, in Declarant's sole and absolute discretion, for purposes of payment of assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

Section 16. Restricted Activities in Common Areas and Maintenance Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or the Maintenance Areas. There shall be no obstruction of the Common Areas or the Maintenance Areas, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of the Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 17. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

Section 18. Camping. Overnight tent camping on Lots is permitted only if the camping area is out of view from adjoining Lots, Common Areas, or Roadways. Furthermore, no camping whatsoever shall be allowed in the Protected Lake Buffer. All tents and associated shelters must be on site when camping occurs. Recreational vehicle camping is not permitted.

Section 19. Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorneys' fees.

Section 20. Hunting. There shall be no hunting or discharge of firearms of any type on the Property.

Section 21. Recreational and Other Equipment.

(a) Recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) may be installed only with the prior written approval of the Architectural Control Committee, and must be installed in accordance with the Guidelines.

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners.

(c) No such recreational equipment shall be located within one hundred feet (100') of the Lake; no such recreational equipment located on a Lot shall be located within fifty feet (50') of any Common Area

(d) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a long period of time as to create a continuing, unsightly condition.

Section 22. Recreational Vehicles. No motorized vehicle used primarily for recreational purposes, including, without limitation, any motorcycle, moped, go-cart, snow mobile, three- or four-wheeled all terrain vehicle, or similar vehicle, may be operated on any Lot or any other part of the Property (including, without limitation, the Trail System), provided Declarant and the Association, and their respective employees, contractors and agents, shall have the right to operate such recreational vehicles in connection with the development, maintenance and operation of the Property.

Section 23. Parking; Storage.

(a) No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked overnight on any Roadway within the Property.

(b) Commercial-use vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4th) ton shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient parking area for all vehicles normally parked and/or situated on or in regard to such Lot.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in an enclosed garage, in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee, or in a location on a Lot that is not visible from the Lake, any Roadway, Common Area, Trail System or any other Lot, which location has not been approved in advance by the Architectural Control Committee.

(e) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

Section 24. Sewage Disposal. Every Lot shall be served by a Septic System approved by Declarant. As of the date of recordation of this Declaration, municipal sewer service is not available to the Property, and Declarant makes no representations regarding the future availability of municipal sewer service. All Septic Systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of, the Architectural Control Committee (including all requirements set forth in the Guidelines), the Project's On-Site Waste Water Disposal Booklet (the "Booklet"), and all governmental authorities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that any governmental permit or approval allowing for the construction and operation of a Septic System or other private sewage disposal system may be limited in duration in accordance with the terms thereof, and neither Declarant, nor the Association, nor the Architectural Control Committee, nor the officers, directors, members, employees, agents or affiliates of any of them, shall have any liability arising directly or indirectly out of the inability of an Owner to obtain any such permit or approval (including an extension or continuation) following the initial expiration thereof.

Each Lot Owner shall maintain, in accordance with all rules and regulations and requirements of the Architectural Control Committee (including, without limitation, all requirements set forth in the Guidelines) all portions of any Septic System or other sewage disposal system located on such Lot (i) in an orderly condition, clean and free from debris, together with the landscaping thereon (if any), in accordance with the highest standards for residential developments, including any upkeep, repair, removal and replacement of any landscaping, utilities, or improvements located thereon, and (ii) in a good operating condition in compliance with any requirements imposed by the Declarant, the Association, or any governmental authority. If any Septic System or other sewage disposal system located on a Lot is not maintained by the applicable Lot Owner as set forth herein, the Declarant or the Association, in its sole discretion, may enter such Lot to perform such maintenance and may levy a special Septic System assessment ("Special Septic System Assessment") upon the Lot Owner for the purpose of maintaining, repairing or replacing the Septic System or other sewage disposal system serving such Lot. In addition to the foregoing, the Association (or its designee) shall have the right to enter any Lot from time to time for purposes of inspecting and/or maintaining any Septic System or other sewage disposal system and may levy a Special Septic System Assessment to pay for any costs incurred in connection with such inspection and/or maintenance, as more particularly described in Section 25 of this Article VII. In this regard, each Owner of a Lot (other than Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (in addition to other

assessments provided for herein) Special Septic System Assessments as levied in the discretion of the Association. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot effective at the time when the assessment fell due.

All Dwelling Units and Improvements to be located upon each Lot within the Property shall have sewer disposal service and facilities provided exclusively by an individual septic tank system to be installed and operated by the Owner of said Lot and each Owner, by acceptance of a deed to the Lot, expressly and permanently waives the right to petition or request sewer service from any governmental authority. Each Lot Owner, on behalf of itself, its heirs, successors and assigns, shall have the right to enforce this covenant against any other Owner of a Lot within the Property, its heirs, successors and assigns

All Septic Systems located on the Property will be approved, constructed and maintained in accordance with all applicable governmental regulations requirements, and Declarant must obtain a septic permit for each Lot within the Property prior to the date on which it conveys the Lot. Systems requiring pumping shall be subject to North Carolina Department of Environment and Natural Resources ("NCDENR") regulations requiring bi-annual inspections and equipped with audible and visual alarms. An independent contractor shall be employed for the inspections and for emergency response as more particularly described in Article VII, Section 25 below. The inspections at a minimum shall include: evaluation of solids level in the septic tank, proper operation of pump(s) including controls and alarms, check for leaks in any piping, and inspection of condition of drainfields, especially from effluent surfacing.

Section 25. Septic System Inspection and Septic Inspection and Repair Easement. The Association shall cause all private Septic Systems located within the Project to be inspected by an independent contractor no less than once a year. Such inspections shall be paid for from the Septic System Assessments provided for in Article V-A above. Such inspections shall be conducted in order to confirm that each such system is properly functioning and is generally in compliance with this Declaration (including, without limitation, the terms of Article VII, Section 24 above, the Booklet and the Guidelines) and any applicable laws, ordinances or governmental regulations. If an inspection reveals that a Septic System is not functioning properly, or is otherwise not in compliance with any applicable law, ordinance or regulations, the inspector shall notify the Association and any other party or agency as required by law. The Association shall notify the Owner of the Lot to which the Septic System is appurtenant of the problem or noncompliance and such Owner shall be responsible for immediately repairing the Septic System at such Owner's sole cost and expense and providing the Association, within thirty (30) days, with proof of such repair. The Association shall be authorized to notify any applicable governmental or regulatory agencies or officials of the malfunctioning or noncompliance of any Septic System located within the Project.

The foregoing notwithstanding, neither Declarant, the Association, nor its directors, officers, agents or employees shall be responsible for damages or otherwise to anyone by reason of mistake of judgment, omission, negligence or nonfeasance arising out of the inspection services performed pursuant to this Declaration including, without limitation, any damages to any Lot or property by reason of the failure to inspect or the failure of such inspections to detect any malfunction, damage or noncompliance with law.

Declarant hereby reserves a non-exclusive perpetual easement over all property within the Project, including Lots, benefiting Declarant and the Association for the purposes of conducting the

Septic System inspections and repairing and/or replacing the Septic System if an Owner fails to repair or replace the Septic System within thirty (30) days of notification by the Association. The Board of Directors shall have the right to levy a Special Individual Assessment against such Lot Owner pursuant to Section 6 of Article V hereof to recover the costs and expenses incurred by the Association in maintaining, repairing or replacing the Lot Owner's Septic System.

Section 26. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes and septic emergency alarms, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot unless required by law.

Section 27. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. All construction and landscaping must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved in writing by the Architectural Control Committee. Any damage to the Roadways, including swales and medians, or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Architectural Control Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements.

Section 28. No Public Water System; Private Individual Wells, Irrigation Restrictions. All well water systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. No individual well shall be located closer than forty (40) feet from any side lot line unless an exception in writing is granted by the Declarant or the Association and the neighboring affected Lot Owner. Declarant does not make any representations regarding the future availability of municipal central water or sewer service.

Section 29. Marine Toilets. No water craft equipped with a marine toilet having a fixed or portable holding tank shall be permitted at the Piers or Boatslips or any Waterfront Lot Owner's dock or pier. In addition, no water craft shall be moored at the Piers or Boatslips or any Waterfront Lot Owner's dock or pier if equipped with a through hull or overboard discharge toilet which has not been certified by the United States Coast Guard as an approved marine sanitation device.

Section 30. Docks and Piers. Only the Owner of a Waterfront Lot may construct one (1) pier within the Pier Zone, if any, adjacent to said Waterfront Lot (in accordance with the applicable provisions of the Guidelines), provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a dock or pier as determined by Duke Energy Corporation and/or any governmental entity having jurisdiction at the time such improvements are to be constructed. Any waterfront improvement shall have a low profile and open design to minimize obstruction of neighbors' views, and all such improvements must be submitted to the Architectural Control Committee for review and approval in accordance with the Guidelines and the applicable provisions of this Declaration. Enclosed docks or boat houses and two-story docks will not be allowed. However, roof covered docks may be allowed subject to the approval of the Architectural Control Committee. No dock shall contain any solid or other storage-like surface at any level beyond three (3) feet above the dock floor area.

The placement, construction, or use of any pier, dock, boatslip structure or other improvement within or upon the waters of the Lake is and shall be subject to each of the following:

- (a) the Guidelines and any easements, restrictions, rules and regulations for construction and use promulgated by the Board and/or the Association;
- (b) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereon, including without limitation the Federal Energy Regulatory Commission; and
- (c) rules and regulations, privileges and easements affecting the Property and the waters and submerged land of the Lake established by Duke Energy Corporation, its successors and assigns. (Duke Energy Corporation controls access to, and the use and level of, the waters of the Lake. All Owners, the Association and the Declarant must receive a permit from Duke Energy Corporation [or a successor manager of the Lake, under authority from the Federal Energy Regulatory Commission] prior to any alterations therein.)

No pier, dock, boatslip structure or other similar improvement shall be constructed by Waterfront Lot Owners outside of the area designated as "Pier Zone" on the Plat(s) or in any Supplemental Declaration or other document which may be filed pursuant to the provisions of this Declaration. Additionally, no boat (including a houseboat) docked at a fixed pier or a floating boat dock (appurtenant to any Waterfront Lot) shall be located outside the Pier Zone. Furthermore, each Waterfront Lot Owner shall be entitled to construct only one (1) Pier within the applicable Pier Zone, and in no event shall mooring posts or similar improvements be constructed within such Pier Zone. ALL WATERFRONT LOT OWNERS, BY PURCHASING PROPERTY SUBJECT TO THIS DECLARATION, ACKNOWLEDGE THAT THEY SHALL BE RESPONSIBLE FOR OBTAINING (AND FOR CONDUCTING ALL REQUIRED ACTIVITIES NECESSARY IN CONNECTION WITH OBTAINING) ANY PERMIT, LICENSE OR LEASE ALLOWING FOR THE CONSTRUCTION AND USE OF ANY PIER, DOCK, BOATSLIP STRUCTURE OR OTHER SIMILAR IMPROVEMENT WITHIN OR UPON THE WATERS OF THE LAKE AND THAT SUCH PERMIT, LICENSE OR LEASE SHALL BE LIMITED IN DURATION, AND NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS OR AFFILIATES OF EITHER OF THEM, SHALL HAVE ANY LIABILITY ARISING DIRECTLY OR

INDIRECTLY OUT OF OR IN ANY WAY RELATED TO ANY SUCH PERMIT, LICENSE OR LEASE.

Section 31. Boat Ramps. No boat ramps of any kind shall be permitted on any Lot, and no boat shall be placed in (or removed from) the waters of the Lake from any Lot; provided, however, small watercraft such as canoes, dinghies, and kayaks may be launched from any Lot if launched without a ramp. All other watercraft shall be launched at a public boat ramp outside the Project. Finally, all boats shall be refueled and maintained at a public boat ramp outside the Project.

Section 32. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner (including, without limitation, applicable zoning and watershed laws, rules, regulations and ordinances). Furthermore, each Owner shall comply with the conditions, limitations and restrictions set forth in the Guidelines. Furthermore, each Owner, by purchasing a Lot, acknowledges that there exists the possibility that American Bald Eagles or other endangered species may be present upon the Property, and that certain federal, state or local laws or regulations may regulate the construction of Improvements on a Lot as a result of the presence of any such endangered species. Each Owner acknowledges that he or she is solely responsible for determining whether any such laws or regulations may be applicable to his or her Lot, and shall comply with all such laws and regulations.

Section 33. Occupants Bound. All provisions of this Declaration, any Additional or Supplemental Declaration and the Bylaws and any and all rules and regulations, use restrictions or Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 34. Additional Shoreline Improvements Requirements. Duke Energy Corporation has prepared maps of the Lake and Lake shoreline which show areas of shoreline within the Project that Duke Energy Corporation (as Lake manager, under authority granted by FERC) has designated as "Environmental Areas" and "Impact Minimization Zones" ("IM Zones"). If a Lot has an "Environmental Area" or "IM Zone" on and/or adjacent to it, the ability to develop and use the Lot may be affected, and the Owner may be required to obtain the permission of Duke Energy Corporation before undertaking certain development activities upon or constructing improvements on or adjacent to the Lot, as set forth below. All shoreline improvement must have written approval from the Architectural Control Committee.

(a) Environmental Areas. Environmental Areas are vegetated areas or cove heads with stream confluence located on them. Duke Energy Corporation restricts any construction (including, but not limited to, the construction or placement of piers and docks), and any related excavation or shoreline stabilization within these Environmental Areas in the following circumstances:

(i) if stable, emergent vegetation (minimum lakeward width of 5 feet) composes greater than 50% of the are between full pond elevation and a depth of five (5) feet from full pond for a minimum linear distance of 100 feet;

(ii) if intermittent or permanent streams enter the upper ends of shallow coves (with or without vegetation); and

(iii) for cove heads with a stream, but lacking emergent vegetation, the environmental classification extends fifty (50) feet from the edge of the intersection of the stream centerline or the sediment delta, when present, and the full pond contour.

To the best of Declarant's knowledge, based on a review of the Duke Energy Corporation maps, it appears that portions of the shoreline on Lots 1, 2, 3, 9, 10, 11, 12, 15, 16, 17, 25, 26, 36, 38, 41 and 44 have been identified as Environmental Areas.

(b) Impact Minimization Zones. The maps prepared by Duke Energy Corporation also identify certain lands and waters within certain areas of the Project as Impact Minimization Zones ("IM Zones"). These IM Zones are areas that have specifically identified importance on the Lake from a scenic, environmental, or cultural standpoint. Protection of those important values does not necessarily preclude access to the Lake. To the best of Declarant's knowledge, based on a review of the Duke Energy Corporation maps, portions of Lots 18, 19, 25, 26, 34, 35, 44, 45 and 47 contain IM Zones. The owners of Lots containing IM Zones must use efforts to avoid any disturbance of IM Zones, but if avoidance is not a practicable alternative, then the following specific Lake use restrictions will apply:

No boat ramps (except those required for public recreation), no excavation and no stabilization will be allowed within the boundaries of the IM Zones. Construction within these area may also be subject to specific mitigation requirements imposed by the Federal, State or local resource agencies.

Section 35. Removal of Trees and Other Vegetation. All trees, shrubs and ground cover are considered to be "protected" vegetation in that cutting and clearing is not permitted therein without the prior written consent of Declarant or Architectural Control Committee. Mechanized equipment will not be allowed in the Protected Lake Buffer.

All Lot Owners within two hundred fifty (250) feet of the Duke Power Company Lake James Project Boundary of 1,200 feet above mean sea level must also comply with any applicable requirements of the "Lake James Protection Ordinance" attached hereto as Exhibit D and incorporated herein by reference.

Declarant hereby reserves the right and easement benefiting Declarant and the Association to go upon any Lot or other portion of the Property to replant or order the replanting of any trees, shrubs or other vegetation removed within the Subdivision in violation of the terms of this Article VII, Section 35. Should Declarant or the Association exercise its easement rights pursuant to the terms of this Article VII, Section 35, the Owner of the nonconforming Lot shall reimburse Declarant or the Association (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of the easement rights contained in this Article VII, Section 35 shall be subject to the discretion of the Declarant and the Association and neither Declarant, nor the Association shall have the obligation to exercise such rights.

Declarant and/or the Association shall have the authority but not the obligation, in their sole discretion, to assess penalties against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Areas, its Lot or any other Lot or Common Area, contrary to the above provisions.

The penalties authorized by this Article VIII, Section 35, as well as all related expenses to be reimbursed, shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article VI of this Declaration.

Section 36. Catastrophic Loss of Vegetation. In circumstances of catastrophic events such as fire, insect infestation, and severe wind damage, native vegetation shall be allowed to regenerate naturally once dying, dead or diseased material is removed under the guidance of the ACC. Management of natural regeneration shall be in accordance with procedures established by the Architectural Control Committee.

ARTICLE VIII

ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or in the Protected Lake Buffer (as defined in Section 3(b) of this Article VIII) or Restricted Zone, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article VIII, Section 7 hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines (as defined in Section 3 of this Article VIII); (b) the fees set forth in or contemplated in this Article VIII have been paid; and (c) the contracts identified in this Article VIII have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Except as otherwise expressly provided herein, the provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas or Maintenance Areas.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article VIII.

Section 2. Composition of Architectural Control Committee. So long as Declarant owns any Lot or other portion of the Property, the members of the Architectural Control Committee shall be appointed by Declarant in its sole discretion. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3), and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Architectural Control Committee need not be Owners of property in the Project. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article VIII.

Section 3. Architectural, Landscape, and Lake Buffer Guidelines.

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural, design, landscape, and lake buffer guidelines (collectively, the "Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Article VIII, Section 7 hereof. In any event, the Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Architectural Control Committee for approval. Furthermore, the Architectural Control Committee may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

(b) The Guidelines shall also be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for landscape Improvements. The Guidelines shall also set out, among other things, the following:

(i) The procedures for submission, review and approval of landscape plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Article VIII, Section 7 hereof;

(ii) Standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees; and

(iii) With respect to any Waterfront Lot or Waterview Lot, standards, methods and procedures for landscaping, landscape management and landscape maintenance of any part of a Waterfront Lot or a Waterview Lot that is within seventy-five (75) feet of the property line or the 1200' contour line of the Lake (each, a "Protected Lake Buffer") and within the Restricted Zone.

Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Property shall be based upon the conformity of such plan or improvement with the Guidelines.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all Dwelling Units and other buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; piers, docks and boatslips; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees);

hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 6. Variances. Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, the Architectural Control Committee may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any

variance granted shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including, without limitation, local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws.

Section 7. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee and shall be set forth in the Guidelines.

Section 8: No Construction Without Payment of Fees. Notwithstanding anything contained in this Article VIII to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the Architectural Control Committee to be paid in connection with such Improvements, as provided in Article VIII, Section 7 above, shall have been paid to the Architectural Control Committee or Declarant as required.

Section 9. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 10. Separate Committee for Changes to Existing Improvements. The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Architectural Control Committee to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot or other portion of the Property (herein, the "Architectural Changes Committee"). Should the Board appoint such an Architectural Changes Committee, then the Architectural Control Committee shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes Committee shall be solely responsible for review and approval of the same. The composition of the Architectural Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Architectural Control Committee shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article VIII and the Guidelines.

Section 11. Limitation of Liability. No member of the Architectural Control Committee or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Architectural Control Committee, nor the Architectural Changes Committee (if applicable), nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or the Architectural Changes Committee (as the case may be), Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 12. Miscellaneous. Members of the Architectural Control Committee and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Article IX, Section 5 hereof.

ARTICLE IX

INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Board of Directors. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) **Fire.** All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance

company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Article IX, Section 3 and Section 4, the fire and casualty insurance described herein shall contain the following provisions:

- (1) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (2) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (3) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- (4) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners from collecting the proceeds.

(b) Public Liability. The Board shall also be required to obtain and maintain, to the extent obtainable, public liability insurance and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such public liability insurance ever be less than \$2,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$2,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Association Members, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$2,000,000.

(c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and

reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to the terms of this Declaration.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and
- (c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. Neither the Association nor Declarant shall be liable, in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability

or other insurance for damage to or loss of such property. Neither the Association nor Declarant shall be responsible or liable for any damage or loss to or of any boat, its tackle, gear, equipment or other property located thereon, or any other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Storage Areas, Parking Area or other Common Areas. Each Owner shall be solely responsible for all such boats and other personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling Unit or other property located thereon.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting its interest in the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

ARTICLE X

EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities

hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

Section 4. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained

herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 5. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 6. Easements Regarding Trail System. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and non-motorized vehicular, over and across any and all hard surface or soft surface trails, biking, walking or jogging paths, or similar pathways located upon those portions of the Property designated by Declarant as part of a system of hard surface or soft surface sidewalks, trails, biking, walking or jogging paths within the Property, including those trails shown as "Trail Easement" on the Plat (collectively, the "Trail System").

Section 7. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(i) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" on the Plats (herein referred to as "Landscape Easements").

(ii) Easements for the installation, maintenance, repair and removal of hard surface or soft surface sidewalks, trails, walking or jogging paths, or similar pathways over, across and under those portions of the Property being part of the Trail System.

(iii) Easements over the Piers and Boatslips for the performance of the maintenance thereof as set forth herein.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development.

Section 8. Easements for Common Driveways. The following groups of Lots in the Project are served by Common Driveways, as herein defined, which will run over and across certain areas of the Property, as hereinafter described: Lots 4 and 5; Lots 6 and 7; Lots 9 and 10; and Lots 13 and 14. All Lots served by one Common Driveway shall herein be referred to as a "Group."

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and

to each Owner of a Lot in a particular Group, their successors and assigns, a perpetual non-exclusive easement over, across and under the area of the Property shown and designated as "Private Drive" or similar designation (the "Common Driveways") on the Plat of such Group and running to such particular Group. The above-described easement is hereby reserved and granted for the purposes of (a) paving, maintaining and repairing a Common Driveway to be erected on such easement area (the "Common Driveway"), and (b) laying, maintaining, repairing and replacing utility lines over, under and across such easement area, which non-exclusive easement shall include the right to go upon such easement area and any portion of the Property in the area of or adjacent to such easement area necessary to perform such work; provided, however, and notwithstanding the foregoing, no utility lines or equipment shall be placed or maintained within the Common Driveway area without the express prior written approval of the Architectural Control Committee, and absent such approval, utility lines servicing the Common Drive Lots shall access those Lots exclusively from publicly dedicated rights-of-way. In addition, Declarant hereby grants to each Owner of a Lot in a Group, their successors and assigns, a perpetual, non-exclusive easement over and across any areas of the Property necessary for such Owner to tie his Lot into the Common Driveway and Utility Easement serving his Lot (the "Tie-In Easement"), which Tie-In Easement may also be used for the above-described purposes.

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot in a particular Group, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the above-described Common Driveway and Utility Easement serving such Group, and over and across any Tie-In Easement necessary, for the purpose of providing access, ingress and egress to and from the Lots in such Group.

Any Owner or Occupant of a Lot within a Group may and must use only the Common Driveway and Utility Easement serving such Group as its means of access to a Roadway. Within the Common Driveway and Utility Easements and the Tie-In Easements, no structure, planting or other material shall be placed or permitted to remain which could interfere with the use of the Common Driveway and Utility Easements and the Tie-In Easements for the above-stated purposes.

The Owner of each Lot within a Group shall pay for its attributable share of the construction of that Group's Common Driveway in accordance with the provisions of the Guidelines.

Each Owner of a Common Drive Lot shall pay annually to the Association, within ten (10) days of the Board sending notice thereof to Owner, an amount (the "Common Drive Reserve Assessment") to be held in escrow and used by the Board to pay for maintenance and repair of the Common Driveway. The Common Drive Reserve Assessment shall be set annually by the Board in its discretion. If at any time the amount in reserve is insufficient for the Board's then contemplated or actual expenses for repair or maintenance of the Common Drive, the Board may make a Special Assessment as to the Owners of Common Drive Lots pursuant to the provisions of this Declaration to pay for such repair or maintenance and replenish the reserve.

The Owner of each Lot in a Group shall have the right to lay, maintain, repair and replace within the Common Driveway and Utility Easement, and within any Tie-In Easement as necessary, utility lines servicing its Lot, provided, that any such work shall be carried out in such a way so as not to interfere with the other Owners' reasonable use of the Common Driveway, and provided further that any Owner performing such work and causing disturbance to the pavement, concrete, landscaping or other features of the Common Driveway and Utility Easement, or to other property in the Project, shall repair the same to its condition prior to such work.

Section 9. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement"; and
- (b) "Public Storm Drainage Easement."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along (a) a ten (10) feet-wide strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property (except that, with respect to any Lot fronting on the Lake there shall be no such easement along the portion of such Lot fronting on the Lake) and (b) all Landscape Easements, for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, septic system, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 10. Irrigation Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, non-exclusive perpetual easements over, across and under those portions of the Property shown and designated as "Irrigation Easement" on the Plats for the installation, maintenance, repair and removal of irrigation systems to service the landscaping to be installed and maintained in the Landscape Easement areas (herein referred to as the "Irrigation Easements"). Within the Irrigation Easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, repair and maintenance of irrigation systems. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 11. Declarant's Right to Assign Easements, Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 12. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and

upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 13. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 14. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

ARTICLE XI

RIGHT OF FIRST REFUSAL

Section 1. Applicability. Except for sales and conveyances by Declarant, no unimproved Lot may be sold by any Owner except in compliance with the provisions of this Article XI.

Section 2. Right of First Refusal. Before any unimproved Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors for less than the "Adjusted Original Purchase Price" (as defined below), the Owner or Owners of such Lot shall first offer in writing to sell the Lot to Declarant or its successors at a price equal to the lower of: (1) the contract purchase price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date of such written offer to sell the Lot to Declarant or its successors, in the CPI, less the cost of removing all liens and encumbrances on the Lot and customary seller's closing costs (including, without limitation, the cost of preparing the deed and any documentary or transfer tax stamps to be affixed to said deed) (the "Adjusted Original Purchase Price"), or (2) the price for which the Owner has agreed to sell the Lot to a Person other than the Declarant. In the event the aforesaid Lot is a Boatslip Lot, the fee (if any) paid by such Lot Owner pursuant to and as described in the applicable Boatslip Lease shall be added to the contract purchase price referenced in (1) above. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. For the purposes of this Article, a Lot shall be considered as unimproved unless and until any proposed Improvements to such Lot have been approved by the Architectural Control Committee and the good faith commencement of the construction of such Improvements (i.e., at a minimum, completion of footings and foundation of the approved residence and bona fide evidence of total expenditures for Improvements to the Lot of at least \$50,000.00) shall have occurred. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, such Owner shall send to Declarant a

copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this right of first refusal. If Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owner or Owners of such Lot shall have the right to sell the Lot to the third party making such bona fide offer pursuant to such bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for the purchase of an unimproved Lot. Any Owner who buys an unimproved Lot from another Owner shall be governed by the provisions of this Article and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any unimproved Lot. Provided, however, the right of first refusal reserved by Declarant pursuant to this Article XI, Section 2 shall be valid and enforceable with respect to any unimproved Lot only for a period of fifteen (15) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant, and upon the expiration of said fifteen (15) year period, the Owner or Owners of such Lot shall have the right to sell the unimproved Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Article XI, Section 2 shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on an unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase an unimproved Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Article XI, Section 2 and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Article XI, Section 2, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Article XI, Section 2.

Section 3. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article.

Section 4. Transfers to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Article XI, Section 2 above, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Article XI, Section 2 above, in cash or cash equivalent. The Owner shall deliver to Declarant a special warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 5. No Further Documentation Required. The right of first refusal reserved by Declarant in this Article shall run with the title to each Lot in the Project and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner

purchased such Lot from Declarant or from a third party. The provisions of this Article shall constitute record notice to all purchasers of Lots in the Project of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Project subject to the provisions of this Article.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot which the Association may elect to maintain or repair hereunder, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (4) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

- (1) Lawn mowing on a regular basis;
- (2) Tree and shrub pruning;
- (3) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (4) Keeping exterior lighting and mechanical facilities in working order;
- (5) Keeping lawn and garden areas alive;
- (6) Removing and replacing any dead plant material;
- (7) Maintenance of natural areas and landscaping in accordance with the Guidelines;
- (8) Keeping parking areas and driveways in good repair; Repainting of Improvements; and
- (10) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements

are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements.

In addition to the foregoing, each Owner must maintain, in accordance with the terms hereof, any Common Area and/or Maintenance Area located within the boundaries of its Lot, to the extent such Common Area and/or Maintenance Area is not maintained by the Association as provided in this Declaration.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a Plat showing such Lot being recorded in the Office of the Register of Deeds of McDowell County and upon the conveyance of such Lot by Declarant. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

Section 2. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein, as the same may be amended in accordance with Article XII, Section 2 below, shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Office of the Register of Deeds of McDowell County, North Carolina. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by two-thirds (2/3) vote of the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of Declarant to

amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Article XII, Section 3 below.

Section 3. Amendment. Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Article XII, Section 3 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of McDowell County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Article XII, Section 3.

Notwithstanding the terms of the immediately preceding paragraph of this Article XII, Section 3, for a period of ten (10) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto (i) which are correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein, (ii) which are necessary to cause this Declaration or any Additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other governmental agency, and (iii) to change the location of any Pier Zone or designation of any Lot (including Waterfront Lots and Waterview Lots) then owned by Declarant.

Section 4. Release of Property. For a period of ten (10) years after the recordation of this Declaration, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Association Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deeds of McDowell County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 5. Enforcement; Litigation. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements; development guidelines, charges and liens for which provision is made in this

Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than two-thirds of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 6. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 7. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Association Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is P.O. Box 1003, Charlotte, North Carolina 28201-1003.

Section 8. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

Section 10. Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time,

the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed tunder seal by its duly authorized member as of the day and year first above written.

BLACK FOREST ON LAKE JAMES, LLC

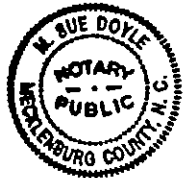
By: [Signature]
Name: A.P. Raymond
Title: V.P.

STATE OF NORTH CAROLINA
COUNTY OF MECKLEBURG

I, M. SUE DOYLE a Notary Public of the County and State aforesaid, certify that ART RAYMOND personally came before me this day and acknowledged that s/he is VICE President of BLACK FOREST ON LAKE JAMES, LLC, a Delaware limited liability company, and that he/she, as V. P., being authorized to do so, executed, the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal this 7 day of Nov., 2003.

[SEAL]



M. Sue Doyle
Notary Public
My Commission Expires: 5-27-08

EXHIBIT A

**ARTICLES OF INCORPORATION
OF
BLACK FOREST ON LAKE JAMES PROPERTY OWNERS ASSOCIATION, INC.**

A Nonprofit Corporation

The undersigned incorporator hereby forms a nonprofit corporation (the "Corporation") under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina entitled the "North Carolina Nonprofit Corporation Act" (the "Act"), and to that end hereby sets forth:

1. The name of the Corporation is "Black Forest on Lake James Property Owners Association, Inc."

2. The street address and county of the initial registered office of the Corporation are Wachovia Building, 400 South Tryon Street, 13th Floor, Charlotte, Mecklenburg County, North Carolina 28202, and the name of the initial registered agent of the Corporation at such address is M. Troy Lucas. The mailing address of the initial registered office of the Corporation is the same as the street address.

3. The name and address of the incorporator are Brian P. Evans, Kennedy Covington Lobdell & Hickman, L.L.P, Hearst Tower, 47th Floor, 214 North Tryon Street, Charlotte, NC 28202.

4. The Corporation shall have members, divided into such classes, and with such designations, qualifications, rights and obligations, as shall be set forth in the Bylaws.

5. The purposes for which the Corporation is organized are:

(a) To carry on one or more exempt functions of a homeowners association under the Internal Revenue Code of 1986, as amended (the "Code"), including those activities related to the acquisition, construction, management, maintenance, and care of "association property" (as defined in Section 528(c)(4) of the Code), all pursuant to such rules and policies as shall be set forth in its Bylaws; and

(b) To do such other acts and things, and engage in any lawful act or activity, for which corporations may be organized under, and as are authorized and permitted by, the Act and to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Corporation is organized;

provided, however, that in all events and circumstances, no part of any net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any member of the Corporation or to the benefit of any private shareholder or individual (as defined in accordance with Treasury Regulations Section 1.528-7 promulgated under the Code), the Corporation being organized to provide, among other things, for the acquisition, construction, management, maintenance, and care of association property.

6. In the event of a dissolution and/or liquidation of the Corporation, all of the residual assets of the Corporation shall be distributed to such organizations that are exempt under Section 501(c)(3) or Section 528(c)(4) of the Code or corresponding sections of any prior or future Internal

Revenue Code at the time of dissolution as shall, in the judgment of the directors, be most likely to fulfill the purposes of the Corporation.

7. To the fullest extent permitted by applicable law, no director of the Corporation shall have any personal liability arising out of any action whether by or in the right of the Corporation or otherwise for monetary damages for breach of any duty as a director. This Article shall not impair any right to indemnity from the Corporation that any director may now or hereafter have. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation hereunder on the personal liability of a director with respect to acts or omissions occurring prior to such repeal or modification.

8. The number of directors of the Corporation shall be fixed by the Bylaws. The number of directors constituting the initial Board of Directors shall be five (5) and the names and addresses of the persons who are to serve as directors until their successors are duly elected and qualified are:

<u>Name</u>	<u>Address</u>
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M. Troy Lucas Wachovia Building 400 South Tryon Street, 13th Floor (P.O. Box 1003) Charlotte, North Carolina 28202 (28201)	
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Susan L. Foster Wachovia Building 400 South Tryon Street, 13th Floor (P.O. Box 1003) Charlotte, North Carolina 28202 (28201)	
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Jason S. White Wachovia Building 400 South Tryon Street, 13th Floor (P.O. Box 1003) Charlotte, North Carolina 28202 (28201)	
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IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation, this day of _____, 2003.

Brian P. Evans, Incorporator

EXHIBIT B

BYLAWS

OF

BLACK FOREST ON LAKE JAMES PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1. Name. The name of the corporation is Black Forest on Lake James Property Owners Association, Inc. (the "Association").

Section 2. Location. The principal office of the Association shall be located in Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE II

DEFINITIONS

All capitalized terms when used in these By-Laws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Black Forest on Lake James entered into by Black Forest on Lake James, LLC, and duly recorded in the Office of the Register of Deeds for McDowell County, North Carolina (hereinafter referred to as the "Declaration").

ARTICLE III

MEETINGS OF ASSOCIATION MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association Members shall be held at a date and time determined by the Board in its discretion, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Association Members, and each subsequent regular annual meeting of the Association Members shall be held on the anniversary of such date each year thereafter, provided, however, the Board shall have the right, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Association Members, to change the month, date and time of any annual meeting. If the day for the annual meeting of the Association Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Association Members may be called at any time by (a) the President or by the Board or (b) by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting upon the delivery to the Association's Secretary of one or more signed and dated written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Association Members in the manner described in (b) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least ten percent (10%) of the votes entitled to be cast at such meeting.

Section 3. Place of Meetings. All meetings of the Association Members shall be held at such place, within Mecklenburg or McDowell County, North Carolina, as shall be determined by the Board.

Section 4. Notice of Meetings. Written notice of each meeting of the Association Members shall be given by, or at the direction of, the Association's Secretary or other person authorized to call the meeting, by first class, registered or certified mail, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Association Member entitled to vote thereat, addressed to the Association Member's address last appearing on the books of the Association, or supplied by such Association Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5. Membership in the Association. Each and every Owner of a Lot shall automatically become and be an Association Member. In addition, for so long as Declarant owns any part of the Property, Declarant shall be an Association Member.

Section 6. Classes of Voting Right. The Association shall have two (2) classes voting membership:

Class I. Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. At any meeting of the Association Members, a representation by any one such owner that the owners of said Lot have agreed to a vote shall be conclusive unless another such owner contests such representation at such meeting prior to the casting of such vote.

Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Lot owned by Declarant.

Section 7. Cessation of Class II Membership. Notwithstanding anything contained herein to the contrary, the Class II Association Membership shall cease and be converted to a Class I Association Membership on the earlier to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that its Class II Membership cease and be converted to Class I Membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2030. The earliest to occur of (a), (b) or (c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 8. Quorum and Voting. The presence at the meeting of Association Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes entitled to be cast by all classes of the Association Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws; if, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Proxies. At all meetings of Association Members, each Association Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable.

Section 10. Action by Association Members. Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, the vote of a majority of all votes entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association Members. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Project or any part thereof; or (2) assert a claim against or sue Declarant.

Section 11. Waiver of Notice. Any Association Member may, at any time, waive notice of any meeting of the Association Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by an Association Member at any meeting of the Association Members shall constitute a waiver of notice by him of the time and place thereof except where an Association Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Association Members are present at any meeting of the Association Members, no notice shall be required and any business may be transacted at such meeting.

Section 12. Informal Action by Association Members. Any action which may be taken at a meeting of the Association Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Association Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number and Appointment. The business and affairs of the Association shall be managed by a Board of five (5) directors who are appointed by Declarant so long as Declarant owns any Lot or other portion of the Property, and by a Board of at least five (5) directors elected by the Association Members as provided by these Bylaws thereafter. The directors need not be Association Members. Notwithstanding the foregoing, the Declarant may choose, in its sole discretion, to relinquish its right to appoint the members of the Board prior to the time that it owns no portion of the Property, whereupon the Association Members shall thereafter elect the members of the Board in accordance with these Bylaws.

Section 2. Initial Directors. The initial directors shall be appointed by the Declarant. Such initial directors shall serve from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina, until such time as their successors are duly appointed or elected and qualified.

Section 3. Nomination. Subject to Section 1, of this Article N, nominations for the first election of directors on the Board shall be made from the floor at a meeting of the Association Members. After such first election of directors, nominations for election to the Board shall be made by a Nominating Committee. Subject to Section 1 of this Article IV, nominations may also be made from the floor at the annual meeting. Subject to Section 1 of this Article IV, the Nominating Committee shall consist of a Chairman, who shall be an Association Member or a member of the Board, and two (2) or more Association Members. The Nominating Committee shall be appointed by the Board prior to the annual meeting following the first election of directors and each annual meeting of the Association Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall

make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4. Election. Except as otherwise provided in this Article, including Section 1 hereof, directors shall be elected at the annual meeting of the Association Members and said election shall be by written ballot. At such election, the Association Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

Section 5. Term of Office. Each director shall hold office for the term four which he was appointed or elected, or until his death, resignation, retirement, removal, disqualification or until his successor is appointed or elected and qualified. Subject to Section 1 of this Article IV, at the first election of directors, the Association Members shall elect one (1) member of the Board for a term of three (3) years, who shall be the person receiving the largest number of votes, two (2) members of the Board for a term of two (2) years, who shall be the people receiving the second and third largest number of votes, and two (2) members of the Board for a term of one (1) year, who shall be the people receiving the fourth and fifth largest number of votes. At all annual elections thereafter but subject to Section 1 of this Article IV, director(s) shall be elected by the Association Members to succeed the director(s) whose term(s) then expire(s), and thereafter each director's term shall be three (3) years. Nothing herein contained shall be construed to prevent the election of a director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 6. Removal. Subject to Section 1 of this Article IV, any newly elected director may be removed from the Board, with or without cause, by a majority vote of the Association Members. In the event of the death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Association Members may elect a director at any time to fill any vacancy not filled by the directors or, if applicable, not appointed by the Declarant.

Section 7. Compensation. No director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

ARTICLE V

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 6. Participation by Conference Telephone. Any one or more directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

ARTICLE VI

POWERS OF THE BOARD

The Board, for the mutual benefit of the Association Members and the Owners., shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

- (a) To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas and Maintenance Areas or portions thereof;
- (b) To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;
- (c) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas and Maintenance Areas and/or the Association;
- (d) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association;
- (e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Association Members see fit; provided; however, until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;
- (f) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (g) To the extent permitted in the Declaration and these Bylaws, to sue or defend in any court of law in behalf of the Association;
- (h) To levy assessments in accordance with the provisions of the Declaration;

- (i) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;
- (j) To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Association Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;
- (k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;
- (l) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- (m) To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Project, and to require that all Owners building Improvements on Lots use only a Featured Builder;
- (n) To retain the services of legal and accounting firms;
- (o) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (p) To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Declaration and any Additional or Supplementary Declaration and any rules made thereunder or hereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of the Declaration;
- (q) To contract with any third party or any Association Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;
- (r) To employ or retain the services of professional architects or other Persons to serve on or advise the Architectural Control Committee and/or the Architectural Changes Committee;
- (s) To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- (t) Subject to the requirements of North Carolina General Statutes § 47F-3-112, to convey fee simple title to all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;

- (u) To contract with any third party, including any other property owners association, for the sharing of costs of maintaining Maintenance Areas;
- (v) To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association;
- (w) To adopt reasonable rules from time to time governing conduct of Owners and other Persons occupying or otherwise located on the Property;
- (x) To grant licenses to third parties, on such terms and conditions as the Board deems desirable, for the use of all or a portion of the Common Areas, including, without limitation, the Amenity Areas; and
- (y) To exercise any and all other powers provided for in the Declaration or in the North Carolina Planned Community Act.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Association Members.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Association Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9. Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a) President: The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, promissory notes and other written instruments and may co-sign all checks;

(b) Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Association Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board; and

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Association, shall keep proper books of account, and shall prepare an annual report to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Association Members.

ARTICLE VIII

COMMITTEES

Subject to Section 1, of Article IV of these Bylaws, the Board shall appoint a Nominating Committee as provided in Section 3, of Article IV of these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE IX

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Association Member. The Declaration, the Articles and the Bylaws shall be available for inspection by any Association Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X

ASSESSMENTS

As described more particularly in, and subject in all respects to, the Declaration, each Member is obligated to pay to the Association, among other assessments, charges and amounts, Annual Assessments, Special Assessments and Special Individual Assessments, all of which are secured by a continuing lien upon each Lot in the Property. Any Assessments which are not paid when due shall be delinquent. If an Assessment is delinquent, as more particularly described in the Declaration, the Assessment shall bear interest from the due date until the date such Assessment and interest thereon is paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the portions of the Property and improvements thereon owned by the defaulting Owner as of the Assessment due date. Additionally, the late charges, costs of collection and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such Assessment, all as more particularly described in the Declaration. No Owner may exempt himself or herself from liability for Assessments or waive or otherwise escape liability from the Assessments by non-use of the Common Areas or abandonment of his or her property.

ARTICLE XI

CORPORATE SEAL

The Association shall have a seal circular in form having within its circumference the name of the Corporation, the state of its incorporation, the year of its incorporation, and the word "SEAL."

ARTICLE XII

AMENDMENTS

Subject to the limitations hereinafter contained, the Articles and these Bylaws may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if fifty-one percent (51%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then the Articles and these Bylaws may be amended by obtaining the vote of fifty-one percent (51%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to the Articles and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Association Member or any other Owner or Owners other than Declarant, may make amendments or modifications to the Articles and these Bylaws which either (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Article XII shall become effective with respect to these Bylaws when an instrument is filed of record in the Office of the Register of Deeds for Mecklenburg County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain

a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Article XII and when, with respect to the Articles, any amendment or modification is filed of record in the Office of the North Carolina Secretary of State. In addition to the foregoing rights, Declarant may, at Declarant's option, amend and modify the Articles and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause the Articles and these Bylaws to comply with the requirements of FHA, VA, the Federal National Mortgage Association or any other governmental agency.

ARTICLE XIII

MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

ARTICLE XIV

LIABILITY LIMITS; INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

Neither Declarant, nor any Association Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be

adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, these Bylaws, agreement, vote of Association Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity; or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

EXHIBIT C

EROSION CONTROL PRACTICES

GENERAL EROSION CONTROL NOTES

1. EROSION CONTROL MEASURES SHALL BE PROVIDED FOR EACH LOT AS IT IS DEVELOPED.
2. THE OWNER SHALL BE RESPONSIBLE FOR INSTALLING AND MAINTAINING THE EROSION CONTROL MEASURES FOR EACH LOT OWNED BY SUCH OWNER.
3. THE OWNER SHALL INSTALL A #5 WASHED STONE CONSTRUCTION ACCESS TO EACH LOT OWNED BY SUCH OWNER. ACCESS TO EACH LOT SHALL BE VIA THIS DRIVE ONLY. THE OWNER SHALL NOT ENCROACH OR ALLOW ANY ENCROACHMENT INTO THE UNDISTURBED GRASS AREA BETWEEN THE BACK OF CURB AND THE RIGHT-OF-WAY LINE WITH MATERIAL OR VEHICLES.
4. THE OWNER SHALL PROVIDE A MATERIAL STORAGE AREA ON EACH LOT OWNED BY SUCH OWNER. THIS STORAGE AREA SHALL BE ACCESSED ONLY FROM THE LOT OR THE CONSTRUCTION ACCESS DRIVE.
5. THE TYPICAL LOT EROSION CONTROL MEASURES SHOWN SHALL BE FIELD LOCATED AND ADJUSTED TO REFLECT THE FINAL GRADES AND ACTUAL FIELD CONDITIONS OF EACH LOT.
6. THE OWNER SHALL PROVIDE MAINTENANCE INSPECTIONS OF ALL LOT EROSION CONTROL MEASURES ON A DAILY BASIS AND AFTER RAINFALL. REPAIRS SHALL BE PERFORMED IMMEDIATELY.
7. THE OWNER SHALL AT ALL TIMES REMAIN COGNIZANT OF AND IN OBEYANCE WITH THE RESTRICTON PROHIBITING CLEARING, GRADING OR CONSTRUCTION OF ANY KIND WITHIN THE LIMITS OF THE LAKE BUFFER AREAS.

EXHIBIT D

LAKE JAMES PROTECTION ORDINANCE

LAKE JAMES PROTECTION ORDINANCE
OF
MCDOWELL COUNTY, NORTH CAROLINA
MAY 19, 2003

LAKE JAMES PROTECTION ORDINANCE
OF
McDOWELL COUNTY, NORTH CAROLINA

ARTICLE I. TITLE

This ordinance shall be known as "The Lake James Protection Ordinance of McDowell County, North Carolina."

ARTICLE II. AUTHORITY AND GENERAL REGULATIONS

Section 201. Authority and Enactment.

In pursuance to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A, Article 18, Part 3, the County Commissioners of McDowell County, North Carolina, hereby ordain and enact into law the following articles and sections.

Section 202. Intent.

It is the intent of this Ordinance to protect water quality, public safety, aesthetics, fish and wildlife habitat, and recreational use of Lake James by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining healthy tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the shoreline. It is also the intent of this Ordinance to encourage responsible development of the shoreline of Lake James in compliance with this Ordinance.

Section 203. Jurisdiction.

The provisions of this ordinance shall apply to all lands in McDowell County within two hundred fifty (250) feet, (measured horizontally) of the Reference Line of Lake James. The Reference Line is the Duke Power Company Lake James Project Boundary of 1,200 feet above mean sea level.

Section 204. Penalties.

This ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 153A-123 and 153A-324.

Section 205. Remedies.

(A) If the Planning Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto;

discontinuance of any illegal work being done; replacement of vegetation or humus layers; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Planning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

(B) Violation of any provision of this ordinance shall subject the offender to a civil penalty in an amount not less than five-hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000) per occurrence of the violation, depending upon the nature and severity of the violation. The removal of each protected tree may be considered as a separate violation. Such penalty shall be recovered by the County in a civil action in the nature of a debt if the offender does not pay the penalty within a period of seventy-two (72) hours after being cited. Citations shall be in writing and signed by the Planning Administrator, and shall be delivered or mailed to the offender either at his residence or at his place of business or at the place where the violation occurred. Each day that the violation continues shall constitute a separate and distinct offense without multiple citations being issued.

(C) A notification of violation shall be issued and the activity causing the problem shall cease immediately upon receipt of the notification. Work to correct the problem shall begin within ten (10) days unless the person involved can show just cause, which will provide an extension of time long enough to repair the damage.

Section 206. Severability.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 207. Conflict With Other Laws.

Where the provisions of any other law, ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of such law, ordinance or regulation shall govern.

Section 208. Effective Date.

This Ordinance shall take effect and be in force on the 19th day of May, 2003.

Andrew K. Webb, Chairman,
McDowell County Board of Commissioners

Attest:

Carrie Padgett, Clerk to the Board

ARTICLE III. DEFINITIONS OF TERMS USED IN THIS ORDINANCE

Section 301 General Definitions.

Accessory Building or Structure. A building or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure. Examples of accessory uses are private garages, storage sheds, playhouses, swimming pools, satellite dish antenna and fuel pumps.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Board of Adjustment. The McDowell County Board of Adjustment. A quasi-judicial board composed of residents of McDowell County empowered to hear appeals from decisions of the Planning Administrator or his designee and grant variances from provisions of the Lake James Protection Ordinance.

Board of Commissioners. The McDowell County Board of Commissioners; the governing body.

Building Inspector. The building official named by the County Manager to administer and enforce the provisions of the building code, or his designated representative or agent.

Building Permit. A permit which is issued by the building inspector before a building or structure is started, improved, enlarged or altered as proof that such action is in compliance with county building code.

Built-upon area. Built-upon areas shall include that portion of a development project that is covered by impervious cover including buildings, pavement, gravel areas (e.g., roads, parking lots, paths), recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

County. McDowell County, North Carolina.

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Ground Cover. The small plants in a natural area, except young trees, or a planting of low-growing plants that covers the ground in place of turf grasses.

Hand Tools. Hand held tools such as axes and mattocks, including power equipment such as chainsaws and weed trimmers.

Humus Layer. Decayed leaf litter and other organic material in or on the soil.

Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner.

Leaf Litter. Normal fallen leaves from trees.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Marina. Any use of the project lands and waters of Lake James for facilities where water craft can be launched, retrieved or moored and facilities for food services and convenience retailing, including petroleum dispensing, wet and dry storage of water craft and other activities customarily associated with marinas, campgrounds and yacht clubs are provided. This definition does not include private residential boat slips and ramps.

Mechanical Clearing. Any clearing of trees, shrubs, understories, stumps or humus layers by wheeled or tracked vehicles or equipment such as a bulldozer or backhoe. Mechanical clearing does not include clearing by hand held power equipment such as chainsaws.

Planning Administrator. The McDowell County official charged with the responsibility of enforcing this ordinance, or his/her designee.

Planning Board. The McDowell County Planning Board.

Primary Structure. A structure or building on a parcel which contains the primary use of a parcel of land. Typically the largest building, on a parcel.

Prune. To cut off or cut back parts of a plant above the ground in order to achieve a better shape or better growth. In order to reduce erosion potential, pruning shall not include the removal of any part of a plant below the surface of the soil.

Reference Line. The Duke Power Company Lake James Project Boundary of 1,200 feet elevation above mean sea level.

Setback Line. A line parallel to the shoreline and extending the full width or length of the lot for a specified distance at all points from the property line, and thus defining an area on which no building or structures, or portions thereof, may be constructed.

Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Turf Grasses. Normal yard grasses, including sod and fescue.

Understories. Small trees and shrubs (e.g. mountain laurel, dogwood.)

Variance. A reasonable deviation from those provisions regulating the size, area or location of a building, road or structure when the strict application of the provisions of this ordinance would result in an unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of this ordinance.

Variance, Minor. A variance whose deviation from the numerical requirement is ten (10) percent or less and can be granted by the Planning Administrator.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Section 302. Word Interpretation.

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building."

The word "lot" shall include the words, "plot," "parcel," or "tract."

The word "shall" is always mandatory and not merely directory.

The word "will" is always mandatory and not merely directory.

ARTICLE IV. DEVELOPMENT REGULATIONS

Section 401 Natural Woodland Buffer.

Where existing, a natural woodland buffer shall be maintained within one hundred (100) feet (measured horizontally) of the Reference Line.

Section 401.01 General Provisions.

Within the natural woodland buffer, the following provisions shall apply within fifty (50) feet (measured horizontally) of the Reference Line:

1. All trees, shrubs and ground cover are considered protected vegetation.
2. Clearing, thinning, pruning, and planting shall be accomplished with hand tools. Burning shall not be used as a method of clearing or thinning.
3. All existing forest floor humus layers, leaf litter and soil shall remain undisturbed and intact except for the construction of foot paths and clearing permitted by this section.
4. Accessory structures such as storage sheds and gazebos but excluding automobile garages may be permitted within 50 feet of the Reference Line provided that:
 - a. The footprint of the structure does not exceed 150 square feet.
 - b. The structure is usually customary and incidental to a legally authorized use.
5. Within fifty (50) feet of the Reference Line, existing trees with a diameter of six inches or greater, other than those considered hazardous to the home or cleared under other conditions of this article, may be removed when replaced by a quantity of trees totaling the diameter of the tree removed. Replacement trees are not to be less than one and a half (1 1/2) inch-diameter (i.e., four 1 1/2" trees may replace one 6" tree). Diameter shall be

measured at a height of three feet from the base of the tree. The replacement trees shall be uniformly placed throughout and within fifty (50) feet of the Reference Line. The location and species of replacement trees shall be approved by the Planning Administrator.

6. Individual trees may be pruned to remove only lateral limbs from no more than the lower fifty (50) percent of the trees total height.

401.02 Activities Permitted Within Fifty Feet of the Reference Line.

The following activities are permitted within fifty (50) feet of the Reference Line, with the approval of the Planning Administrator.

1. Dead, diseased, hazardous or unsafe trees, shrubs or ground cover may be removed.
2. Fallen trees may be removed.
3. Vines, shrubs, ground covers and small trees (2 inch diameter or less) may be selectively pruned in order to facilitate a better view or a more aesthetically pleasing landscape.
4. Understories of trees may be thinned, but no grubbing and grinding of stumps is allowed.
5. Ground cover other than permanent turf grasses may be planted. Any replacement ground cover must prevent surface water runoff under normal precipitation conditions.
6. Shoreline stabilization is permitted, subject to approval of the plan for stabilization by the Planning Administrator. Stabilization materials shall not exceed a vertical height of four feet (4') above the Reference Line. Land disturbing activities in connection with shoreline stabilization shall not extend more than ten feet (10') measured horizontally from the Reference Line.
7. With approval of the Planning Administrator, permanent grasses other than turf grasses, may be permitted in special situations in conjunction with shoreline stabilization projects where the slopes will not support a natural mulch ground cover.
8. Clearing is allowed to create a single corridor, not to exceed ten (10) feet in width, for equipment access, and to allow slopes to be laid back to create a stable condition. Protected trees removed to accommodate the stabilization shall be replaced as provided in Section 401.01(5).
9. Structures that support water dependent uses (i.e., boat ramps, docks, and piers, but not parking areas) are permitted within fifty (50) feet of the Reference Line if they comply with all applicable Duke Power, local, state, and federal regulations.
10. Any land disturbing activity or tree removal (in excess of two (2) inch diameter) within fifty (50) feet of the Reference Line must be pre-approved by the Planning Administrator.

Section 401.03 Activities Not Permitted Within Fifty (50) Feet of the Reference Line.

The following provisions are not permitted within fifty (50) feet (measured horizontally) of the Reference Line.

1. Topping of trees.
2. Grubbing or grinding of stumps of any size.
3. Chemicals shall not be used to kill stumps and other vegetation.
4. Mechanical clearing shall not be used unless it is used in conjunction with a shoreline stabilization project.

Section 401.04 Setback Provisions.

All permanent structures shall adhere to the following, setback provisions.

1. Primary structures shall be set back at least sixty-five (65) feet (measured horizontally) from the Reference Line. On lots with a slope greater or equal to 2:1 (horizontal to vertical), the setback requirement is increased to seventy-five (75) feet from the Reference Line. Uncovered wooden slatted decks attached to a primary structure are allowed to extend fifteen (15) feet from the primary structure.
2. Roads and/or driveways shall be set back at least seventy-five (75) feet (measured horizontally) from the Reference Line, and shall be designed to minimize disturbance to existing natural vegetation and topography, except for bridges and bridge approaches and access ways for emergency vehicles.
3. Primary structures shall be set back at least fifteen (15) feet (measured horizontally) from the side property lines.

Section 401.05 Natural Woodland Buffers.

Within the natural woodland buffer the following restrictions shall apply between fifty (50) and one hundred (100) feet (measured horizontally) of the Reference Line.

1. Existing natural woodland buffers must be maintained.
2. Dead, diseased, hazardous or unsafe trees, saplings, shrubs, or ground cover may be removed. Fallen trees may also be removed. Removal of lateral limbs of no more than fifty (50) percent of a tree's total height will be permitted.
3. Between fifty (50) and one-hundred (100) feet of the Reference Line, existing trees with a diameter of six inches or greater, other than those considered hazardous to the home or cleared under other conditions of this article, may be removed when replaced by a quantity of trees totaling the diameter of the tree removed. Replacement trees are not to be less than one and a half (1 1/2) inch-diameter (i.e., four 1 1/2" trees may replace one 6" tree). Diameter shall be measured at a height of three feet from the base of the tree. The replacement trees may be placed anywhere within one-hundred (100) feet of the Reference Line.
4. Removal of these trees with a diameter of six inches or greater is permitted to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas.

The establishment of turf grass in this area is permitted.

Section 401.06 Protected Shoreline Limit.

The following shall be adhered to within 250 feet of the Reference Line.

1. Planting efforts that are beneficial to wildlife are encouraged to be undertaken.
2. Trees that fall into the lake, and do not pose a navigational hazard or other safety concern shall be left in place to benefit fish habitat.
3. Foot paths for individual lots shall be four feet or less in width and designed in a winding manner to prevent surface runoff and erosion. Foot paths serving common areas or multiple lots shall be six feet or less in width. Plant root systems adjacent to the foot path shall be protected by a layer of wood chips or other organic material.
4. Buildings shall be fitted to the natural topography to avoid extensive grading that would alter the drainage patterns or create very steep slopes, minimize the potential for erosion and maintain existing vegetation.
5. Total parcel coverage by impervious surfaces including building footprint, impervious roads, or other impervious cover shall not exceed twenty-four (24) percent of the parcel.
6. Activities conducted by state regulated public utilities (i.e., utility, right of way, construction, and maintenance) are not subject to the provisions of this article. However, such activities, where practical, shall be conducted in a manner that is consistent with this article.
7. The provisions of this article shall not apply to activities which were permitted and/or approved by McDowell County prior to the adoption of these requirements.

Section 401.07 Dimensional Requirements for Lots

Lots created after the effective date of this Section and subject to the provisions of this Ordinance shall meet the following requirements:

1. The minimum lot size shall be one and one-half (1.5) acres; provided however, that the minimum lot size may be reduced to three-quarters (0.75) of an acre if the subdivision in which the lot is located has an average lot size of at least one and one-half (1.5) acres.
2. The minimum lot width at the Reference Line shall be one hundred fifty (150) feet; provided however, that the minimum lot width may be reduced to seventy (70) feet at the Reference Line if the average lot width of all of the lakefront lots in the subdivision in which the lot is located have an average lot width at the Reference Line of at least one hundred fifty (150) feet.

Section 402 Stormwater Management and Erosion Control.

The following provisions shall apply to land disturbing activities within two hundred fifty (250) feet of the Reference Line:

1. A storm water management and erosion control plan, sealed by a registered surveyor,

engineer, architect, landscape architect or approved by a representative of the McDowell Soil and Water Conservation District, shall be submitted for any construction development and/or grading activities which disturb soil.

2. The following standards shall be applied in designing storm water management and erosion control measures:

- a. All measures in the storm water management and erosion control plan shall meet the Best Management Practices set forth in the North Carolina Erosion and Sediment Control Planning and Design Manual.
- b. Whenever practical, natural vegetation shall be retained, protected or supplemented.
- c. Appropriate erosion and sediment control measures shall be installed prior to the removal of vegetation.
- d. Erosion and sediment control measures shall be placed immediately downstream of disturbed areas and shall not be placed within fifty (50) feet of the Reference Line, if feasible.
- e. The area of disturbance and the duration of exposure shall be kept to a minimum. Disturbed areas remaining idle for more than thirty (30) days shall be stabilized.
- f. Measures shall be taken to control sediment and retain it within the project area. Sediment in runoff water shall be trapped and retained within the project area using approved measures. Approved measures shall protect very poorly drained soils and surface waters within the project area as identified by the United States Department of Agriculture's Soil Survey of McDowell County.
- g. Off-site surface water runoff from undisturbed areas shall be carried non-erosively through the project area, or diverted away from disturbed areas where feasible.
- h. Priority shall be given to protecting natural drainage systems including perennial and intermittent streams, wetlands, swales, and drainage ditches for conveyance of runoff leaving the project area.
- i. All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within thirty (30) days.
- j. Disturbance of one acre or more requires a permit from the Division of Land Quality under the North Carolina Sedimentation Control Act.
- k. No collected stormwater, such as water from gutter downspouts and driveway storm drains, shall be discharged within fifty feet (50') of the Reference Line.

Section 403 Marina and Mooring Provisions.

The purpose of this section is to regulate marinas and mooring areas on Lake James. North Carolina G.S. 143.215 does not allow the discharge of any pollutant or untreated wastes into the waters of North Carolina. A marina or mooring area is defined as any use of the project lands and waters of Lake James for facilities where water craft can be launched retrieved or moored and facilities for food services and convenience retailing, including petroleum dispensing, wet and dry storage of water craft and other activities customarily associated with marinas, campgrounds and yacht clubs are provided. This definition does not include private residential boat slips and ramps. All requirements of this ordinance must also be met.

1. All marinas and mooring areas permitting overnight use of water craft shall have

pump-out stations, gray water disposal facilities, on shore trash disposal facilities and containment materials for oil and gas spills.

2. All water craft operating or moored on Lake James that have sleeping, kitchen and/or bathing facilities shall have a fixed or portable holding tank or other approved marine sanitation device for the collection of wastewater.

Section 404. Shoreline Protection Permit.

1. No building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any clearing or grading commence, nor shall any building permit be issued until a Shoreline Protection Permit has been issued by the Planning Administrator or an agent of the Planning Administrator. No Shoreline Protection Permit shall be issued except in conformity with the provisions of this ordinance.

2. Shoreline Protection Permit applications shall be filed with the Planning Administrator by the property owner or his/her designated agent. Property owners are responsible for evaluating their respective parcels, thereby placing the burden on the homeowner to comply with the Ordinance, including the need for shoreline stabilization, as part of the overall site planning process. Equipment access corridors should be planned and coordinated with other land disturbance on the property. The application shall include a completed application form and a site plan(s) which shall include the following:

Ownership and contact information

Name and address of person who prepared the plan

Date of the plan and an accurate record of any later revisions

North arrow

Property boundaries

Approximate contour lines at 10' intervals

Location and dimensions of existing and/or proposed structures

Location and dimensions of roads, driveways walks, paths and, any proposed access corridor

The Reference Line and 50' setback line

The location of any trees proposed for removal and the location of replacement trees and other proposed plantings

Sedimentation and erosion control plan

Location of proposed area of disturbance for any shoreline stabilization and description or plan of proposed stabilization measures

The property owner shall provide sufficient staking to readily identify on the property the fifty foot (50') setback from the Reference Line.

3. Prior to issuance of a Shoreline Protection Permit, the Planning Administrator may request additional supporting documentation deemed necessary and consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance. The property owner or his/her designated agent shall meet with the Planning Administrator on site to review the proposed plan.

4. A Shoreline Protection Permit shall expire if a Building Permit or Certificate of Occupancy for such use is not obtained by the applicant within twelve (12) months from the date of issuance, unless an extension is approved by the Planning Administrator.

5. The cost of a Shoreline Protection Permit shall be the amount specified in the County's Schedule of Fees and shall be payable to the County of McDowell at the time the application for a Shoreline Protection Permit is made.

Section 405. Building Permit Required.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Shoreline Protection Permit is required until that permit has been issued.

Section 406. Certificate of Occupancy.

1. The Planning Administrator or his duly authorized agent shall issue a Certificate of Occupancy certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved.
2. A Certificate of Occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a Shoreline Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.
3. If the Certificate of Occupancy is denied, the Planning Administrator shall notify the applicant in writing stating the reasons for denial.
4. No building or structure which has been erected, moved, or structurally altered may be occupied until the Planning Administrator or his duly authorized agent has approved and issued a Certificate of Occupancy.

Section 407. Existing Development.

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption date of this ordinance, or a lot described by a metes and bounds description, the description of which has been so recorded prior to the adoption of this ordinance is grandfathered from this ordinance. However, all new construction shall protect the natural existing environment by complying with the requirements herein.

ARTICLE V: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section 501. Planning Administrator and Duties Thereof

The County shall appoint a Planning Administrator, who shall be duly sworn in. It shall be the duty of the Planning Administrator to administer and enforce the provisions of this ordinance as follows:

1. The Planning Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the County. The Planning Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.
2. The Planning Administrator shall issue Shoreline Protection Permits and Certificates of

Occupancy as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

3. The Planning Administrator shall serve as clerk to the Planning Board.

4. The Planning Administrator shall have the authority to grant minor variances of less than ten (10) percent of a numerical number.

5. The Planning Administrator or his/her designee shall respond to violations or complaints within three (3) business days of such notification.

Section 502. Appeal From the Planning Administrator.

Any order, requirement, decision or determination made by the Planning Administrator may be appealed to and decided by the Board of Adjustment. An appeal from a decision of the Planning Administrator must be submitted to the Board of Adjustment within thirty (30) days from the date the order, interpretation, decision or determination is made, all appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Planning Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

Section 503. Establishment of the Board of Adjustment

1. There shall be and hereby is created the Board of Adjustment, consisting of eleven (11) members appointed by the McDowell County Board of Commissioners. Five (5) residents of McDowell County shall be appointed for three year terms. Three (3) residents of McDowell County shall be appointed for two (2) year terms. Three residents of McDowell County shall be appointed for one (1) year terms. Thereafter, all new terms shall be for three (3) years, and members may be reappointed.

2. Two (2) alternate members shall be appointed to serve on the Board of Adjustment in the absence of any regular member and shall be appointed for three (3) year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member.

3. The Board of Adjustment shall be cited and referred to as the McDowell County Planning Board.

Section 504. Rules of Conduct for Members.

Members of the Board may be removed by the McDowell Board of Commissioners for cause, including violation of the rules stated below:

1. Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.
2. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).
3. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Planning Administrator or any other member of the Board, its secretary or clerk prior to the hearing.
4. Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.
5. Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.
6. No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

Section 505. Powers and Duties of the Board of Adjustment.

1. **Administrative Review.** The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Planning Administrator in the enforcement of this ordinance.
2. **Variances.** The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(A) Applications for a variance shall be made on the proper form obtainable from the Planning Administrator and shall include the following information:

- (1) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application.

(B) Before the Board of Adjustment may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

(a) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

(b) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.

(e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

(3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(4) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(5) The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(6) A variance issued in accordance with this Section shall be considered a Shoreline Protection Permit and shall expire if a Building Permit or Shoreline Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

Section 506, Appeals from the Board of Adjustment.

As provided in G.S. 153A-345(e), appeals from the Board of Adjustment must be filed with the Clerk of Superior Court within 30 days from the date of the decision. Review of appeals by the Superior Court will be in the manner of certiorari.