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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUALLA VILLAGE

Prepared by: Donald E. Jordan, Attorney

Qualla Village, LLC as "Declarant" or "Developer" is the owner and developer of the real property, "Qualla Village" in Dunns Rock Township, Transylvania County, North Carolina, described in the attached Exhibit "A".

Developer intends to sell and convey lots to be platted within Qualla Village and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, and charges for the benefit of the future owners of all of the lots in Qualla Village.

Developer declares that all of the lots and parcels in Qualla Village are held and shall be held, conveyed, and used subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for Qualla Village, improvement and sale of the lots. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of the lots in favor of all other lots; to create reciprocal rights between the owners of all lots; to create privity of contract and estate between the owners of such lots; and shall, as to the owner of each such lot, operate as covenants running with the land for the benefit of all other parcels in Qualla Village and their owners, present and future.

ARTICLE 1 - DEFINITIONS

As used in this Declaration and the Bylaws attached, and all Amendments, unless the context otherwise requires, the following definitions shall prevail:

Section 1. Area of Common Responsibility, refers to the common area, together with those areas upon a lot the maintenance, repair or replacement of which is the responsibility of the Association. The area of common responsibility described in this Declaration may not be reduced by amendment to the Declaration or by any other means except with the prior written approval of the Declarant.

Section 2. Association, refers to the association of all owners in Qualla Village, known as Qualla Village Property Owners Association, a North Carolina nonprofit corporation.

Section 3. Articles of Incorporation, or Articles, refers to the Articles of Incorporation of the Association, as filed with the Secretary of the State of North Carolina.

Section 4. Board of Directors, or Board, means the Board of Directors of the Association.

Section 5. Bylaws, means the Bylaws of the Association, attached to this Declaration as Exhibit "B".

Section 6. Common Elements or Common Area, means and includes all real property and all tangible personal property now or later owned by the Association or otherwise held for the common use and enjoyment of the owners. The initial common area to be owned by the Association shall be conveyed to the Association after the construction of improvements on the final residential lots in each phase of Qualla Village.

Section 7. Common Expenses, means and includes: (1) all expenses incident to the administration, maintenance, repair and replacement of the common elements, and any other areas included within the area of common responsibility, after excluding any expenses which are the responsibility of a lot owner; (2) all expenses determined by the Association to be common expenses which shall include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association; and (3) all sums lawfully assessed against each lot owner by the Association.

Section 8. Eligible Votes, means those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 9. Lot, means a portion of the Properties other than the common area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey to be filed by the Developer. Where the context indicates or requires, the term "lot" includes any structure on the lot.

Section 10. Majority, means those eligible votes, owners, or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

Section 11. Member, means and refers to a person or entity entitled to membership in the Association, as provided in this Declaration.

Section 12. Owner, means and refers to one or more persons or entities, including the Declarant, who hold the record title to any lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the owner.

Section 13. Person, means an individual, firm, corporation, partnership, association, trustee, or other legal entity.

Section 14. Voting Member, means the representative of each lot who shall be responsible for casting the vote attributable to the lot which he or she represents for election of directors, amendment of this Declaration or the Bylaws, and other matters provided for in this Declaration and the Bylaws. The registered voter shall be the same as is registered with the Connestee Falls Property Owners Association.

ARTICLE 2 - LAND USE AND STRUCTURE TYPE

Each lot shall be used for residential purposes only and no trade or business of any kind may be conducted on any lot, except that the Developer may operate an office and one or more model units in Qualla Village while lots are being sold. No modification may be made to the exterior of a building, and no change in the landscaping may be made, without the advance consent of the Association.

ARTICLE 3 - MAINTENANCE OF LOTS

All lots which are subject to these restrictions, whether occupied or unoccupied, and any improvements placed on them, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. Commencing in the calendar year 1998, in order to ensure that all lots and common areas which are subject to these restrictions are properly maintained, the Association, shall be responsible for maintaining the grounds in Qualla Village, including all common areas, lawns, shrubbery,

trees and exteriors of all residences in Qualla Village. The Association shall not repair or maintain improvements unique to a particular unit, such as skylights or enclosed porches, as may be determined by the Association. The Association shall have an easement across the grounds of Qualla Village, including each lot, for the purpose of performing its maintenance responsibilities under this Declaration.

ARTICLE 4 - INSURANCE

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain fire and extended coverage hazard insurance insurance, if reasonably available, for all insurable improvements in Qualla Village. If reasonably available, it is anticipated that this insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

If reasonably available, the Board shall also obtain a public liability policy covering the common area, the Association, and its members for damage or injury caused by the activities of the Association or any of its members or agents. The Board shall have the authority to obtain other insurance, such as worker's compensation, excess liability (umbrella) coverage, and directors and officers liability coverage.

Premiums for all insurance shall be included in the general assessment, subject to the special allocation of hazard insurance premiums as is provided below. The policy may contain a reasonable deductible, which amount shall be borne by the individual lot owner in the event of an insured loss. Insurance proceeds shall be held by the Association as Trustee for the benefit of the lot owner or owners, in proportion to the extent of the damage to the building. The affected Lot Owners shall have the power to determine whether to use the insurance proceeds to repair or rebuild the damaged structures. With the Lot Owners' consent, the Association may use the insurance proceeds on behalf of the owners for such repairs or reconstruction. Any insurance proceeds in excess of the cost of repair shall be paid to the affected lot owners, and any shortfall in the amount required shall be paid by the affected lot owner. In the event that a structure is totally destroyed and the Association and both lot owners determine not to rebuild or to reconstruct, the individual owners shall clear the lots of all debris and return them to substantially the natural state which existed prior to the beginning of construction.

Section 2. Individual Insurance. Insurance carried by the Association is not expected to cover personal property. Lot owners may secure such coverage at their own expense.

ARTICLE 5 - QUALLA VILLAGE PROPERTY OWNERS ASSOCIATION

Each owner of a lot situated in Qualla Village shall, upon acquiring ownership of such lot, become a member of Qualla Village Property Owners Association, and be subject to its Bylaws and all of its rules and regulations.

ARTICLE 6 - CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION

Each owner of a lot situated in Qualla Village other than Developer shall, upon acquiring ownership of such lot, be obligated to become a member of Connestee Falls Property Owners Association, Inc., and be subject to all of its rules and regulations.

ARTICLE 7 - ASSESSMENTS

Section 1. Purpose of Assessment. The assessments shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of lots, as set forth in this Declaration.

Section 2. Creation of Assessments. Each owner of any lot by acceptance of a deed, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association annual assessments. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made.

Section 3. Payment of Assessments. Each owner of an improved lot which is subject to these restrictions (other than the Developer) shall be obligated, commencing on March 1, 1998, to pay to the Association on or before March 1 of each calendar year the lot owner's prorata share of the estimated cost for the coming fiscal year of performing the maintenance and other responsibilities of the Association. The Developer shall maintain at its expense the exterior of its own units, as well as the common area immediately surrounding them. In addition to an equal share of the maintenance costs, each unit ower (including the Developer) shall on an annual basis pay the owner's share of the cost of hazard insurance. Each owner's share shall be based if possible on the underwriting calculations of the insurance company, and if such calculations are not available, the Association may use the relative fair market value of units, heated square footage, or some other equitable method for apportioning the cost of insurance.

Each assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of such lot at the time of the assessment; provided, however, no first mortgagee who obtains title to a lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in the manner and on the dates fixed by the Board of Directors.

The Association is specifically authorized to enter into contracts with Declarant or other entities for the payment of some portion of the Common Expenses. Such contract or contracts shall be for the benefit of and enforceable by the Association and its members.

Section 4. Subordination of the Lien to First Deeds of Trust and First Mortgages. The sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to judicial or nonjudicial foreclosure of a first priority deed of trust or mortgage shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from lien rights for any assessments thereafter becoming due.

Section 5. Date of Commencement of Annual Assessments. The annual assessments shall commence as to each lot on the first day of the month following the completion of construction of permanent improvements on the Lot, prorated according to the number of months then remaining in that fiscal year.

Section 6. Exempt Property. All common area shall be exempt from payment of general assessments, special assessments and all other assessments.

Section 7. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each owner an assessment notice shall not be deemed a waiver, modification, or a release of any owner from the obligation to pay

assessments. In such event, each owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE 8 - TERM

All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity.

ARTICLE 9 - AMENDMENT

These restrictions may be amended at any time by a vote of a majority of all Lot owners. Any amendment shall be documented by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions with a certification from the Secretary of the Association as to the adoption of the Amendment.

ARTICLE 10 - ENFORCEMENT

Developer and each person to whose benefit these restrictions inure, including the Association, and other lot owners in Qualla Village, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

ARTICLE 11 - SEVERABILITY

Invalidation of any one of these restrictions by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 12 - OWNER'S EASEMENTS

Each Lot owner shall have an easement for access and utility purposes over the common area for a driveway to connect the Lot to the Connestee Falls road system. Lot owners shall also have an easement for the use and enjoyment of the common area, subject to regulation by the Board. The Board shall have the power to deal with the common area in any manner it considers appropriate. Each Lot owner shall have an easement for any minor (less than three feet) encroachments of a building onto the common area, and for a minor encroachment onto the adjoining lot of the common wall separating the two units of a building.

Qualla Village LLC has caused this instrument to be signed in its name by its Managers on November 18, 1997.

QUALLA VILLAGE, LLC

By: _____ [Seal]

By: _____ [Seal]

By: _____ [Seal]

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STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, Sharon M. Jenkins, a Notary Public of said State and County, do hereby certify that Richard F. Smith, Frank A. Latell, and Mark Latell personally came before me this day and acknowledged that they are Managers of Qualla Village LLC, a North Carolina Limited Liability Company, and that the instrument is the act and deed of the LLC.

WITNESS my hand and official seal, this the 18th day of November, 1997.

Sharon M. Jenkins
Notary Public

My Commission Expires: 11-23-97

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

The foregoing certificate of Sharon M. Jenkins, notary public is certified to be correct. This instrument was presented for registration and recorded in this office in Book 424, Page 554.

This 21 day of Nov., 1997, at 3:30 o'clock P M.

Vicki L. Edwards
Register of Deeds

By: Cindy M. Dunbar, Asst.
~~Deputy~~ Register of Deeds

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EXHIBIT A TO

QUALLA VILLAGE COVENANTS

Unit 1, Revised, of Connestee Falls Development, as shown by Plat recorded in Plat File 1, Slides 39-39L, Records of Plats for Transylvania County, North Carolina:

Lots 1 and 2

Unit 2 of Connestee Falls Development, as shown by Plat recorded in Plat Book 4, Pages 52-52F, and as was revised by Plat recorded in Plat Book 4, Pages 63-63B, Records of Plats for Transylvania County, North Carolina:

Lots: 324, 325 (excluding the portion conveyed to Trufant), 381, 382, 383, 384, 385, 386, 387, 388, 389, 391, 392, 393, 394, 397, 398, 399, 400, 401, 423, 424, 425, 426, and 427.

Unit 5 of Connestee Falls Development, as shown by Plat recorded in Plat Book 4, Pages 65-65C, Records of Plats for Transylvania County, North Carolina:

Lots: 22, 23, 24, 25, 26, 58, 59, 60, 61, 62, 63, 64, 65, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107.

Any lots not owned by the Developer at the time the Covenants are recorded shall not be subject to the Covenants until acquired by the Developer.

EXHIBIT B

BYLAWS

OF

QUALLA VILLAGE PROPERTY OWNERS ASSOCIATION

ARTICLE 1 - NAME

Section 1. The name of this association is Qualla Village Property Owners Association

Section 2. The Corporation shall have a seal on which there shall be inscribed the words, "Qualla Village Property Owners Association."

ARTICLE II - MEMBERSHIP

The members of this Association shall be the lot Owners in Qualla Village and purchase of a lot in the Qualla Village Development shall automatically make the new Owner or Owners members upon recordation of the Deed.

ARTICLE III - MEMBERS' MEETING

Section 1. The annual members' meeting shall be held at a specified location at 7:30 o'clock p.m. on the Friday preceding the annual meeting of the Connestee Falls Property Owners Association, Inc. each year for the purpose of electing directors and transacting any other business authorized to be transacted by the members. If that day is a legal holiday, the meeting shall be held the same hour on the next day.

Section 2. "Special members" meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-third of the votes of the entire membership.

Section 3. Notice of all members' meetings, stating the time and place and the objects for which the meeting is called, shall be given by the President or Vice President or Secretary, unless waived in writing. Such notice shall be in writing to each member at the

address as it appears on the books of the Association and shall be mailed or hand delivered not less than ten days, nor more than sixty days, prior to the date of the meeting. Proof of such mailing or delivery shall be given by the certificate of the person giving the notice. Notice of meeting may be waived before or after meetings.

Section 4. A quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership, represented in person or by proxy. If any meeting of the members cannot be organized because a quorum has not attended, the members who are present, whether in person or by proxy, may adjourn the meeting for at least ten days and adequate notice of the new date shall be given as described in Section (3) of this Article.

Section 5. Voting shall be on the basis of one vote per lot, to be cast by any owner of the lot present at the meeting, or a legally authorized representative registered with the Secretary prior to the meeting.

Section 6. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary before the appointed time of the meeting.

ARTICLE IV - DIRECTORS

Section 1. The affairs of this Association shall be managed by a Board of Directors elected by the members at their annual meeting, who shall hold office for one year and until their successors are elected and qualified. Each member of the Board of Directors shall be either the Owner of a lot, or in the event of ownership by other than individuals, be an Owner or designated agent of the entity.

Section 2. Any Director may be removed by concurrence of two-thirds of the votes of the entire membership at a special meeting of the members called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members of the Association at the same meeting. All other vacancies in the Board during a term of office shall be filled by the remaining Board.

Section 3. The organization meeting of a newly elected Board of Directors shall be held within ten days of its election, and may be held immediately following the annual meeting of Members.

Section 4. Special meetings may be called by any member of the Board of Directors. Notice of the meeting shall be given personally or by mail, telephone, or telecopy at least three days prior to the day named for such meeting, which notice shall state the time, place and purpose of the meeting.

Section 5. A quorum at the Director's meetings shall consist of two Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors.

ARTICLE V - POWERS AND DUTIES OF THE BOARD

Section 1. All of the powers and duties of the Association existing under the Declaration of Covenants for Qualla Village, the Articles of Incorporation, and these Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by lot Owners when required. A contract for management of the Development may be entered into with a Director.

Section 2. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association.

Section 3. The Board of Directors may adopt, amend or rescind administrative rules and regulations governing the details of the operation and use of the common areas and facilities at any regular or special meeting called and held in accordance with the provisions of Article IV of the Bylaws.

ARTICLE VI - OFFICERS

Section 1. The principal officers of the Association shall be a President, a Vice President, a Secretary-Treasurer, all of whom shall be elected by and from the Board of Directors.

Section 2. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office for one year and until their successors are elected and qualified.

Section 3. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. The President shall be the Chief Executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors, and shall have all of the general powers and duties which are usually vested in the office of President of an Association, including but not limited to the power to appoint committees from among the Owners, to assist in the conduct of the affairs of the Association.

Section 5. The Vice President shall take the place of the President whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors.

Section 6. The Secretary or Assistant Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association, and shall have charge of such books and papers as the board of Directors may direct, and shall in general, perform all the duties incident to the office of Secretary.

Section 7. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association, in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VII - OBLIGATIONS OF THE OWNERS

Section 1. All Owners are obligated to pay in advance assessments imposed by the Association to meet all projects and communal expenses, including a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of fire or other hazard.

Section 2. Assessments for common expense or emergencies which cannot be paid from the annual assessments for common expenses shall be made only after notice to the lot Owners. After such notice and upon approval in writing by persons entitled to cast more than one-half of the votes of the lot Owners, the special assessment shall become effective, and it shall be due after thirty days notice in such manner as the Board of Directors may require.

Section 3. Assessments made pursuant to the provisions of this Article shall be a lien upon the individual lots and the liens may be foreclosed in the same manner as a mortgage.

Section 4. All present or future Owners, tenants, future tenants, or their employees, or any other person who might use the facilities of Qualla Village in any manner, are subject to the regulations set forth in these Bylaws and to rules and regulations adopted pursuant hereto.

Section 5. The acquisition of any lot or the act of occupancy of a lot shall constitute acceptance and ratification of the provisions of these Bylaws and any rules and regulations.

Section 6. Every resident shall observe as rules of conduct, the rules and regulations adopted by the Board. Either the Board of Directors or the Owners, at a regular meeting or duly called special meeting, may adopt or amend the rules and regulations in whole or in part.

ARTICLE VIII - AMENDMENTS

These Bylaws may be amended by the Association in an annual or special meeting for such purpose, upon the vote of the Owners of at least a majority of the lots.