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STATE OF NORTH CAROLINA COUNTY OF BUNCOMBE
DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS
GOVERNING REEMS CREEK VILLAGE SUBDIVISION IN BUNCOMBE COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS, made and entered into this the 25th day of March 2005, by and between **RABBIT RIDGE PROPERTIES, LLC**, a North Carolina limited liability company, hereinafter referred to as "Declarant", and the future owners of Lots within the Reems Creek Village subdivision, a planned community located off Reems Creek Road, Buncombe County, North Carolina.

WITNESSETH:

WHEREAS, Declarant is the owner of a tract(s) of land described in deed recorded in Deed Book 2212, at Page 709 and Deed Book 3247 Page 144 and 160 of the Buncombe County, North Carolina Register's Office (hereinafter "the Property"); and **WHEREAS**, the Declarant plans to develop on some or all of the Property parcels of land or Lots for a residential community along with supporting infrastructure to be locally known as the Reems Creek Village Subdivision; and **WHEREAS**, Declarant desires for the benefit of future purchasers of Lots, Parcels or Living Units making up Reems Creek Village that Reems Creek Village shall be developed as a restricted area and used exclusively as hereinafter set forth. **NOW THEREFORE**, in consideration of the premises and for the advantage which the Declarant and Future Owners will receive from the sale and ownership of restricted land, Declarant and its successors and assigns do hereby covenant and agree with all other persons, firms, or corporations now owning or hereafter acquiring any portion of Reems Creek Village, for full value received, and the landowner covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the Lots, Parcels or Living Units making up Reems Creek Village that Reems Creek Village is hereby subjected to the following restrictions as to the use and occupancy thereof, running with the land by whomsoever owned, to wit:

ARTICLE I : PURPOSE; LAND SUBJECT TO RESTRICTIONS

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of the same has been the creation of a planned community which is aesthetically pleasing, functionally convenient and environmentally-sound; attracting residents seeking privacy and security in a beautiful environment; and providing a community which enriches the surrounding Reems Creek-Weaverville area. Subject to the Special Declarant Rights as hereinafter defined, the Declarant submits the land described on Exhibit A attached hereto and incorporated herein by reference to the covenants, restrictions, easements and reservations contained in this Declaration.

ARTICLE II : DEFINITIONS

The following are terms that shall be considered as defined terms under this Declaration and the same definition shall be applicable whether the word is shown as singular or plural, capitalized or not.

1. "Act" shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and amendments thereto.
2. "Annexed Properties" shall mean any tract of land not included within the boundaries of Reems Creek Village as described on Exhibit A attached hereto and incorporated herein by reference which may be added to the Reems Creek Village planned community as provided in Article IX below.
3. "Association" shall mean Reems Creek Village Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and/or assigns. The articles of incorporation of the Association are attached hereto as Exhibit B and incorporated herein by reference.
4. "Architectural Review Committee" shall mean the Declarant or any committee created pursuant to Article VII hereof.
5. "Board" shall mean the Board of Directors of the Association and the Executive Board referred to in the Act.
6. "Bylaws" shall mean the bylaws of the Association and any amendments thereto. The original Bylaws of the Association are attached hereto as Exhibit C and incorporated herein by reference.
7. "Common Elements" or "Common Areas" shall mean those areas (i) expressly designated by the Declarant as "Common Elements" or "Common Areas" on recorded plats for the use and enjoyment of all owners of Lots, Parcels or Living Units within Reems Creek Village; and (ii) described in a Supplemental Declaration filed in the Buncombe County Register of Deeds Office. Prior to the expiration of the Declarant Control Period as provided below, the Declarant shall convey by Special Warranty or Non Warranty deed or by an easement instrument ownership and/or use of the Common Elements to the Association. PROVIDED HOWEVER, before the recording of the Supplemental Declaration as provided above, the Declarant has the right to remove any portion of the property denoted as "Common Elements" or "Common Areas" on a Plat and subject said area to its exclusive control whether for future sale and/or to build upon and without the need for any Lot owner approval or Association consent. "Common Elements" or "Common Areas" do not include those areas denoted as "Future Development", "Reserved", "Rabbit Ridge Properties, LLC" or those areas not labeled on the plats of record for Reems Creek Village. The term "Common Elements" shall be interchangeable with the term "Common Areas".
8. "Declarant" shall mean Rabbit Ridge Properties, LLC, its successors or assigns.
9. "Declarant Control Period" shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, Special Declarant Rights as hereinafter defined. The Declarant Control Period shall be the earlier of (i) twenty-five (25) years after the date of the recording of this Declaration, (ii) when all of Reems Creek Village (platted at such times and in such sections as determined in Declarant's sole discretion) has been sold or transferred to parties other than a Declarant, or (iii) such earlier time as determined in Declarant's sole discretion by the recording of a written instrument in the Buncombe County Registry executed by Declarant and expressly terminating the Declarant Control Period.
10. "Declaration" shall mean this Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions and any amendments thereto.

11. "Future Development" shall mean any parcel of land now or in the future owned by the Declarant or Declarant's designee depicted on Site Plans or other advertising material for Reems Creek Village as "Future Development", "Reserved", or "Rabbit Ridge Properties, LLC" which may or may not be included within Reems Creek Village as determined in the Declarant's sole discretion and wherein the Declarant reserves the right to impose use restrictions that may be significantly different from those set forth in this Declaration.
12. "Governmental Entity" shall mean any and all federal, state or local governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of Reems Creek Village.
13. "Reems Creek Village" shall mean that planned community made up of Lots, Parcels, Living Units, Common Elements and infrastructure located within the boundaries described on Exhibit A attached hereto and incorporated herein by reference and described on future recorded plats and Supplemental Declarations executed by the Declarant at such times and in such sections as determined in Declarant's sole discretion.
14. "Limited Common Elements" shall mean a portion of the common elements for the exclusive use of one or more but fewer than all of the Lots. "Limited common elements" shall be designated on plats for Reems Creek Village or on other recorded written instruments and may include, but not be limited to, shared driveways.
15. "Living Unit" shall mean residential space occupied by a single family and intended for separate ownership. Living units can include, but are not limited to, townhouses, condominiums or apartments.
16. "Lot" shall mean a physical portion of Reems Creek Village designated with a number on a plat of Reems Creek Village, intended for separate ownership or occupancy by an Owner. A Lot designated on a recorded plat of Reems Creek Village shall be deemed "Improved" when a residence has been completely constructed thereon and an Occupancy Permit has been issued by the Architectural Review Committee as provided herein. All other Lots designated on a recorded plat of Reems Creek Village shall be deemed "Unimproved".
17. "Owner" shall mean and refer to the owner or owners as shown by the real estate records in the Office of the Register of Deeds of Buncombe County, North Carolina, of fee simple title to any Lot, Parcel or Living Unit situated within Reems Creek Village. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.
18. "Parcel" shall mean any physical portion of Reems Creek Village that is surveyed and affixed with a separate tax identification number by the Buncombe County Register of Deeds which is not necessarily intended to be subdivided into traditional lots. Examples of Parcels would include, without limitation, property on which apartments or commercial uses are located.
19. "Plat" shall mean any existing or future plat of Reems Creek Village signed by the Declarant and placed of record in the Buncombe County, N.C. Register's Office, together with all amendments thereto, as approved by the governmental entity, if any, having authority to regulate subdivisions.
20. "Reasonable attorneys' fees" shall mean attorneys' fee as allowed by the Act.
21. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.
22. "Single-Family Residence" shall mean a dwelling constructed in accordance with the restrictions and conditions set forth in Article VI hereof.
23. "Single-Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration. Buildings designed by the Declarant for attached single-family residences, including townhouses, patio homes, and condominium units, are permitted within Reems Creek Village subdivision as single-family residential uses.
24. "Special Declarant Rights" shall mean rights reserved for the benefit of the Declarant including, but not limited to, the right (i) to complete improvements indicated on plats and plans filed with the Declaration or supplemental Declaration; (ii) to add properties to Reems Creek Village as provided in Article IX below (iii) to remove properties from Reems Creek Village, except for Common Elements or Common Areas unless in conformity with the Act as provided in Article IX below; (iv) to maintain sales offices, management offices, signs advertising Reems Creek Village and models; (v) to use or grant easements through the Common Elements or Common Areas for the purpose of accessing properties or making improvements in Reems Creek Village or areas outside Reems Creek Village, whether or not said areas are added to Reems Creek Village and regardless of the use of said areas; (vi) to use or grant easements, without limitation, that are reserved to the Declarant in Article III, Section 4 below; (vii) to make Reems Creek Village part of a larger planned community or group of planned communities; (viii) to make the planned community subject to a master association; (ix) to appoint or remove any member of the Board of Directors of the Association during the Declarant Control Period; (x) to exercise special voting rights as provided in the Bylaws; (xi) to define or establish the use of any Parcel on any Plat; or (xii) any other rights provided Declarant in this Declaration or by North Carolina law, including, but not limited to, the Act.
25. "Structure" shall mean any building, (including, but not limited to, house, barn, garage), tree house, lampposts, driveway lights, fence, wall, swimming pool, tennis court, detached antennae, satellite dishes or other receivers/transmitters, mailboxes, fuel tanks, septic systems, dog lots, play sets, and sports equipment or any other thing artificially erected or installed on or under a Lot.

ARTICLE III: PROPERTY RIGHTS AND EASEMENTS

Section 1. Owner's Easements of Enjoyment to Common Elements. Subject to the provisions of this Declaration, and the rules and regulations established by the Board, every Owner of a Lot shall have a permanent and perpetual right and easement of enjoyment in and to the Common Elements, existing now or in the future, which shall be appurtenant to and shall pass with the title to any Lot, subject to:

- (a) the right of the Board to convey any Common Element or subject same to a security interest with a concurring vote of 80% of the members of the Association;
- (b) the right of the Board to lease or grant easements or licenses of use over the Common Elements without a vote of the members of the Association;
- (c) the right of the Board to dedicate any road and utility rights of way within Reems Creek Village to any Governmental Entity or public utility without a vote of the membership of the Association;
- (d) the right of the Board, after an opportunity for a hearing as provided in the Act, to suspend the use of the Common Elements (except for access to a Lot) by an Owner, his tenant or their invitees for any period during which any assessment against his Lot remains unpaid or for any infraction of the use restrictions contained in this Declaration or the rules and regulations promulgated by the Board;
- (e) the right of the Board to reasonably regulate, locate, and direct access routes and to designate parking locations;
- (f) the right of Declarant, as determined in the Declarant's sole discretion, to grant and reserve unto itself, its successors and/or assigns the right of access for road and utility purposes over or under the Common Elements, Lots or Parcels owned by Declarant to any parcel of land, whether located within or outside Reems Creek Village planned community, whether owned or not owned by the Declarant and regardless of the use of the beneficial parcel; and
- (g) the right of Declarant to add additional properties to be subject to this Declaration and to allow the owners of those properties to become members of the Association.

Section 2. Easements to Government Entities. Subject to the provisions of this Declaration, Declarant does hereby grant a permanent, perpetual and non-exclusive easement to each department, branch or agency of any Governmental Entity, and to any

agents or employees of said Governmental Entity, over, across and through all roads within Reems Creek Village, now or in the future, for the purpose of performing such duties and activities as may be necessary or desirable for the common welfare of all owners or for the Association which may include, but are not limited to, duties and activities related to law enforcement, fire protection, garbage collection, mail delivery and medical and emergency services.

Section 3. Easements to Utilities. Subject to the provisions of this Declaration, Declarant does grant to the Association, Progress Energy, Verizon, PSNC Energy, Charter Communications and to any other utilities designated by the Declarant, and their successors and/or assigns, a permanent, perpetual and non-exclusive easement over, across, under and through:

- (a) all Common Elements;
- (b) 10 feet inside the boundaries of all Lots; and
- (c) as shown on the Plat

now or in the future, for the purpose of installing, replacing, constructing, maintaining, and operating utilities or utility systems which are necessary or desirable for the use of any part of Reems Creek Village which include, but are not limited to, publicly or privately owned and operated electrical service, communication service, water service, sewer service, gas service, cable television, drainage systems, pipes, lines, conduits, storage devices, equipment, machinery or other devices necessary to the provision of such utility services. The easements established, reserved and granted herein shall include the right, where reasonably necessary, to cut and remove trees and other vegetation, to dig, excavate fill and take any other action necessary to provide for the installation, maintenance, replacement, relocation or operation of any utility service.

Provided, however, that the easements herein granted or reserved shall not cause any undue interference with the use or occupancy of any Lot or Common Element and further, that Declarant and/or the Association shall use good faith efforts to attempt to cause any utility provider, utilizing this easement, to repair any damage caused by such utility.

Section 4. Easements Reserved to Declarant.

(a) **Easements for Access.** Declarant reserves to itself, its successors and/or assigns, a perpetual alienable right to provide access over and across the roads and other Common Elements, if any, or across any Lot owned by Declarant to any parcels of land, whether within or outside Reems Creek Village, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(b) **Easements for Utilities.** The Declarant reserves to itself, its successors and/or assigns the utility easements referred to in Section 3 above and Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Reems Creek Village, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(c) **Easements for Stormwater and Drainage.** Declarant, its successors and/or assigns, may cut drainways or utilize existing natural drainways for surface or storm water wherever and whenever such action may appear to Declarant to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance. Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Reems Creek Village, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(d) **Easements for Vegetative, Pest or Fire Control.** Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on and over and under all areas within Reems Creek Village to dispense pesticides and take other action which in the opinion of Declarant is necessary or desirable to control insects, vermin and undesirable vegetation. The Declarant reserves the right to cut fire breaks and other activities on, over and under all areas within Reems Creek Village which in the opinion of Declarant are necessary to control fires. Declarant, however, is under no duty to take such actions as herein above provided.

(e) **Easements for Trails/Bike Paths.** Declarant reserves unto itself, its successors and/or assigns, the right to locate trails and bike paths within the property on a Lot making up the required setbacks (imposed by a Governmental Entity or by this Declaration) or across any portion of a Common Element, for the development of a trail and/or bike system as a Common Element for the use and enjoyment of all Lot owners.

Section 5. Easements Appurtenant Upon Transfer of Lot or Common Element

All easements referred to in this Article III that are reserved unto the Declarant, its successors and/or assigns or the Association shall be automatically appurtenant to any Lot or Common Element at the time of transfer of said Lot or Common Element from the Declarant, its successors and/or assigns, regardless of whether the deed of conveyance expressly reserves such easements.

ARTICLE IV : ASSOCIATION MEMBERSHIP AND ASSESSMENTS

Section 1. Membership in the Association. Every Owner of a Lot shall be a member of the Association and bound by this Declaration, the Articles of Incorporation of the Association and its Bylaws and rules and regulations as hereafter promulgated. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Powers of the Association. The Association shall have such powers as are enumerated in its Articles of Incorporation, its Bylaws or as provided in the Act.

Section 3. Creation of the Lien and Personal Obligation Assessments. Each and every Owner of a Lot by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and as stated in the Bylaws. All such annual and special assessments, together with interest, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Lot and its improvements. The amount owed shall be a continuing lien upon the applicable property against which such assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration.

Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Lot owner or owners at the time when the assessments became due. The personal financial obligation for delinquent assessments shall not pass to successors in title to any such Lot unless expressly assumed by such purchaser: PROVIDED, HOWEVER, the same shall be and remain a charge and lien upon any such Lot and improvements until paid or otherwise satisfied except as may herein otherwise be provided.

Section 4. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Owners and residents of Reems Creek Village and for the improvements, maintenance and repair of the Common Elements, and easements appurtenant thereto, for the protection of the community from pollution or erosion; for the enforcement of these covenants; the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Association, when necessary, and for payment of local taxes, insurance and special governmental assessments on or to the Common Elements together with payment of services, if any, provided to the residents by the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in accordance with its Bylaws, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including, but not limited to, fixtures and personal property (such as road signs) related thereto and to pay special governmental assessments.

Section 6. Rate of Assessment. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board. The Board shall allocate assessments for common expenses in such

amounts to be fixed from year to year and the Board may establish different rates for various general classifications of lots according to the use and location of said lots. Notwithstanding the above, the Board shall allocate assessments for Common Expenses based, at least, in part on whether a Lot is improved or unimproved. It is within the Board's discretion to determine what assessment is warranted in cases where a Lot is combined or subdivided.

Section 7. Effect of Nonpayment of Assessments.

(a) **Remedies of the Association.** Any assessments which are not paid when due as determined by this Declaration and the Board shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all members of the Association. The Association, acting on behalf of its members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. No owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. After notice and opportunity to be heard, the Association may restrict the use of Common Elements (not including rights of access to Lots) by a Lot owner who is delinquent in paying assessments.

(b) **Remedies of Declarant.** To the extent that any Lot owner fails to pay his assessments relating to the Common Elements, then Declarant shall have during the Declarant Control Period, the right, but not the obligation, in addition to the Association, to use any of the remedies enumerated above, including filing a lien against the defaulting owner and pursuing the enforcement of such lien and other remedies as set forth in the Act.

The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

Section 8. Association Responsibility of Maintenance/Repair/Improvement. The Association and its members shall be responsible for the maintenance, repair and improvement of all Common Elements as identified on recorded plats for Reems Creek Village and in a Supplemental Declaration.

Section 9. Reserve Funds, Operating Expense Surplus and Surplus Funds. The Board shall have the right, but not the obligation, within its sole discretion, to impose assessments on Lot owners for the maintenance of reserve funds or operating expense surpluses. The Association, within its sole discretion, may apply surplus funds to any purpose of a non-profit corporation or may credit such funds to its members as provided for in North Carolina General Statutes §47F-3-114.

Section 10. Architectural Review fees; Impact fees; Cash Bonds. The Board shall have the right, but not the obligation, within its sole discretion, to impose a uniform schedule of fees to be applied to any Owner of a Lot at the time that Owner applies for approval to construct a residence on the Lot to offset the costs of architectural review or to mitigate the effect that Owner's development plans will have on the infrastructure and environment within Reems Creek Village. These fees may take the form of Architectural Review fees and/or Impact fees and any such fees may be non-refundable in the sole discretion of the Board.

Section 11. Usage charges. The Board shall have the right, but not the obligation, within its sole discretion, to charge usage fees to Lot owners, their guests and invitees for the use of Common Elements to be fixed from year to year and the Board may establish different usage fee rates for various general classifications of Lots, Parcels or Living Units according to the burden that such properties may place on the Common Elements.

ARTICLE V : COMMON ELEMENTS

Section 1. During the Declarant Control Period, the Declarant may, but is not obligated to, provide properties within Reems Creek Village as Common Elements. The designation and transfer of these areas are solely in the discretion of Declarant and no parole or oral agreement or claims of estoppels shall be asserted by any resident providing rights to areas not explicitly denoted as "Common Elements" or "Common Areas" on the Plats for Reems Creek Village and described in a Supplemental Declaration. Before the Association and its members shall assume the responsibility for maintenance, repair and improvement of a Common Element not specifically defined in this Declaration, the Declarant shall record a Supplemental Declaration and plat reasonably identifying the Common Element.

Section 2. Conveyances.

Any Common Element conveyed by the Declarant to the Association shall be conveyed subject to:

- (a) All restrictions on use contained in this Declaration;
- (b) All existing mortgages, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgage;
- (c) The right of access for ingress, egress and regress, utilities or other easements reserved in this Declaration to the Declarant, its successors and/or assigns, over and across such property;
- (d) The right of the Declarant, its successors and/or assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Element prior to the commencement of such activities or location of any object therein; and
- (e) The right of the Declarant or Association to dedicate the maintenance of said

Common Element to a Governmental Entity with such terms that are required by said Governmental Entity in accepting such dedication.

The recording of a Deed or an Easement instrument from the Declarant to the Association of a Common Element in the Buncombe County, NC Register's Office shall be conclusive evidence that the Association has accepted such transfer.

ARTICLE VI : SITE IMPROVEMENT REVIEW AND APPROVAL

Section 1. Construction Within Reems Creek Village. Except as provided for the Declarant below, no structure shall be commenced, erected or maintained upon any Lot in Reems Creek Village; nor shall any exterior addition or exterior change to any existing structure occur, nor shall any site work be done until complete final construction plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, configuration on Lot, location, and floor plan thereof, and showing front, side and rear elevations thereof, have been submitted to and approved in writing by an Architectural Review Committee (herein "Committee") as provided in Article II or as appointed by the Board as provided in Article VII below. Prior to the construction or erection of any structure, a site plan to scale must be approved on a topographical map that shows the location of the structure, including all drives, walks and parking areas, with each clearly indicated. A landscaping plan must also be submitted and approved by the Committee, also indicating what measures shall be taken to insure the longevity and vitality of any landscaping improvements.

Prior to any physical disturbance of a Lot, special drainage and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes large and/or specimen trees, rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wild flowers. Silt fences shall be required prior to any physical disturbance. Culverts needed for ingress or egress shall be provided by the Owner of a Lot and shall be as specified by the Committee. The Owner of a Lot shall insure that all development performed by said owner conforms with all applicable federal, state and local laws and regulations. The Committee shall have the right to establish reasonable procedures for the preparation, submission, and determination of applications for any structure construction or alteration or landscaping work. Prior to construction, every Lot owner, except the Declarant, shall comply with the erosion control provisions in Article VIII, Section 15 below.

Section 2. Declarant/ William Dorf Exemption. Notwithstanding any other provision in this Declaration to the contrary, during the Declarant Control Period, Declarant or any entity in which William Dorf has an ownership interest, for any Lot owned by Declarant or said entity, shall have the right to erect or alter a Structure without the need to submit any plans or obtain the prior approval of the Association, Board or Committee. And is hereby exempted from any requirement set forth herein of obtaining the approval from the Association, Board or the Committee for any development work or paying any fees, including, but not limited to, impact fees.

Section 3. Approval of Plans, Contractors and Enforcement. The Committee's refusal or approval of plans, specifications, or location of any structure may be based upon any grounds including purely aesthetic considerations which at the sole discretion of the Committee, for projects within Reems Creek Village, shall be deemed sufficient. In passing upon construction plans, specification plans, or landscaping plans, and without any limitation of the foregoing, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other structure on the appearance from neighboring property. Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every structure must also meet high neighborhood standards and the Committee is hereby granted broad discretion in judging the compatibility of proposed structures for the neighborhood. In any case, it is intended that the Committee will not approve plans, materials or specifications that do not comply with Sections 4 and 5 below.

Any contractor or landscaper prior to performing any work within Reems Creek Village must be approved by the Board in its sole discretion. No person, firm or entity shall be approved as a building contractor unless such person, firm or entity is licensed by the State of North Carolina for his services, if applicable. Notwithstanding the above, a Lot owner shall not hold the Board or its members or the Declarant responsible for approving any particular building contractor in the event of said contractor's negligence in the construction of a building on a Lot.

The Committee is presumed to have approved any plans referenced above, upon failure to respond within sixty (60) days after receipt of each completed application and particular plan. In the event any Owner violates the terms of this Article, the Association shall give written notice to the Owner or responsible party to cure such violation within thirty (30) days. The Association or its agents shall be entitled to enter upon the property of the Owner and remedy such defect including removal of any structure built in violation hereof, all at the expense of the Owner. This right of the Association shall be in addition to all other general enforcement rights which the Association may have for a breach or violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Association or its agents.

Section 4. Minimum Standards for Environmentally Sensitive Buildings.

The Declarant or its successors and/or assigns shall have the right to impose construction standards for any new building within Reems Creek Village relating to the installation of environmentally-sensitive components in said building, including, without limitation, the mechanical systems and electrical systems ("the Interior Standards"). By way of example only, the Interior Standards may require energy star certifications in the construction of a dwelling on a Lot. As part of the Committee review process referenced above, the Owner shall be required to comply with the Interior Standards or seek such variances or modifications as Declarant may allow in its sole discretion.

Section 5. Minimum Floor Areas/Floor Plan; Setbacks.

Any single-family dwelling structure built on a Lot shall be 2,700 square feet of heated living space above grade. The main floor roof area shall be no less than 2,200 square feet including garages, covered decks, screen porches etc. Variances from this minimum floor area requirement may be granted by the Committee in writing as determined in the Committee's sole discretion. In granting or denying such variances, the Committee may consider, among other things, the following factors:

- The topography of the Lot;
- The location of the structure in terms of the character of the neighborhood being promoted within the particular section of Reems Creek Village;
- The access to the Lot and structure;
- The utilities for the Lot and serving the structure, if any;
- The aesthetics of the structure on the Lot;
- Any environmental matters related to the Lot;
- The impact on adjoining uses or structures, planned or existing, including, but not limited to, views and privacy; and
- The costs of construction.

This Section is to be construed to give the most flexibility to the Committee in tailoring the compatibility of any new structure with the environment on the Lot and surrounding area.

The setbacks for the construction of any building on a Lot shall be governed by the minimum setbacks required by the Governmental Entity with zoning jurisdiction over said Lot in Reems Creek Village.

Section 6. Minimum Site Improvement Requirements.

- (a) All driveways and parking areas must be designed and approved by the Committee using pavers, asphalt, concrete or combinations of other acceptable surfaces.
- (b) All play equipment shall be placed so that it is not visible from any street.
- (c) No outside clothesline shall be permitted.
- (d) No decorative features such as sculptures, bird baths, bird houses, fountains or other decorative embellishments shall be permitted that are visible from any street unless approved in writing from the Committee.
- (e) The exterior material of all buildings shall extend to ground level and shall be brick veneer, stone veneer, wood, fiber cement, stucco, or a combination of same or other material approved by the Committee. No foundation footings shall be visible. Other conditions may be taken into consideration that allows the alteration of the materials to come to the finish grade at the sole discretion of the Committee.
- (f) No bright-finished or bright-plated metal exterior door, screen door, window, window screen, louver, or other closure may be used. However, a factory painted or an anodized finish may be used, the color of which must be approved by the Committee.
- (g) All fencing or landscaping walls must be approved and be of wood, brick, stone, wrought iron, or other material approved by the Committee. The use of chain link or other like metal fencing will not be permitted except when approved and where concealed by a wood fence and, provided, that said chain link or metal fencing is black, charcoal, dark brown or some other color, as approved by the Committee.
- (h) Outdoor lighting and general landscape planting and design must be approved by the Committee.

- (j) Mailboxes will conform to the model selected by the Committee with specifications made available to the lot owner at the time of plan approval. Variations will be approved only after Committee review.
- Section 6. Occupancy Permit.** At the completion of all construction in accordance with the plans submitted, the Owner shall request an on-site inspection by the applicable review entity set forth above. No residence or building may be occupied until an Occupancy Permit has been issued by the Committee, when applicable. This provision is in addition to any local governmental requirements that regulate occupancy. Approvals will not be unreasonably withheld, but in addition to the above, the following will be required:
- (a) Final as-built plans must be submitted in conformance with plans approved by the Committee for the construction of the structure, unless waived in writing by the Committee;
 - (b) Exterior lighting must be approved; and
 - (c) All clean-up must be completed.

ARTICLE VII : ARCHITECTURAL REVIEW COMMITTEE

Section 1. Organization, Power of Appointment and Removal. There shall be an Architectural Review Committee organized as follows:

- (a) **Committee Composition.** The Committee shall consist of five (5) members, being a Chairperson and four additional members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association.
- (b) **Quorum and Meetings of Members.** The Committee shall meet upon the call of the Chairman or of any three (3) members. At any meeting, three (3) members, one of which may be the Chairman, shall constitute a quorum.
- (c) **Terms of Office.** The term of the Committee shall be staggered with the initial Committee members designated to serve one year, two year or three year terms and thereafter, each Committee member will serve a three year term. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.
- (d) **Appointment and Removal.** The right to appoint and remove all members of the Committee at any time, and for any reason, shall be and is hereby vested solely in the Board, provided, however, that no member may be removed from the Committee by the Board except by the vote or written consent of three-fifths of all of the members of the Board.
- (e) **Resignations.** Any members of the Committee may at any time resign from the Committee by giving written notice thereof to the Declarant and to the Board.
- (f) **Vacancies.** Vacancies of the Committee, however caused, shall be filled by the Board.
- (g) **Declarant.** Notwithstanding the above, the Declarant reserves unto itself the right but not the obligation, to perform the functions of the Committee during the Declarant Control Period.

Section 2. Duties. It shall be the duty of the Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms set forth in Article VI above, to adopt appropriate rules establishing policies for site improvements within Reems Creek Village, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Committee shall meet from time to time (not more often than once each month except in extraordinary circumstances) as necessary to perform its duties hereunder. Subject to the provisions of Paragraph (b) of Section 1 above, the vote or written consent of any three members, at a meeting, shall constitute the act of the Committee. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the Committee who is a member of the Association shall receive from the Association, any compensation for services, provided that the Board may pay reasonable compensation to any member of the Committee who is not a member of the Association. All members of the Committee shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Committee functions.

Section 4. Architectural Review Committee Rules. The Committee may, but shall not be required to, from time to time in its sole discretion, adopt, amend, and repeal rules and regulations to be known as "Architectural Review Committee Rules" which shall establish policies for review procedures and standards for site improvements within Reems Creek Village.

Section 5. Waiver. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

Section 6. Liability. Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, drawings, specifications, whether or not defective.
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- (c) The development of any property, including, but not limited to, defective construction of residences.
- (d) The execution and filing of any estoppels certificate, whether or not the facts therein are correct.

Section 7. Appeal of Committee Decisions. Any party aggrieved by a decision of the Committee may appeal such decision to the Board, and such decision of the Committee is final, unless overridden by a vote of two-thirds of the Board. No Owner or any other party shall have recourse against the Committee or the Board for its refusal to approve any plans, specifications or contractors.

ARTICLE VIII : USE RESTRICTIONS

Subject to the Special Declarant Rights, the following use restrictions shall apply to all property within Reems Creek Village:

Section 1. Single-family Residential Purposes: Principal Building; Accessory Structures; Guesthouse. All Lots shall be used for single-family residential purposes only, except as otherwise designated on a Plat or recorded supplemental declaration. No more than one principal building shall be permitted on any Lot. Accessory structures may be allowed subject to Committee approval.

Section 2. Subdividing, Combination and Boundary Relocation. No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns except, however, Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Lot or Lots, shown on the recorded plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. These restrictions herein apply to each Lot which may be so created. Following the combination of two Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the consent of the Declarant, its successors and/or assigns. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the assessments for that modified Lot.

Section 3. Non single family residential use. Except for home occupations as defined below, no commercial or industrial enterprise, undertaking or use or any other non single family residential use (such as apartments) is permitted within Reems Creek Village, unless specifically shown on a recorded Plat that has been signed by Declarant prior to the conveyance of the Lot or Parcel shown on said Plat. If no such enterprise, undertaking or use is shown on a signed recorded plat, then no such enterprise undertaking or use is permitted. Notwithstanding the above, a "home occupation" on a Lot is allowed with the written consent of the Declarant or

Association and in accordance with zoning regulations. A "home occupation" is a use of a residence by an Owner-occupant wherein not more than 25% of the residence is dedicated to business use and there is no traffic generated by the business, and no noise, odor or smoke is emitted off-site as a result of said business.

Section 4. Duty to Maintain and Rebuild.

(a) Each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) Each Owner shall keep the grass on the lot properly cut, shall keep the lot free from trash, and shall keep it otherwise neat and attractive in appearance. This shall not be construed as requiring natural areas on a Lot to be mowed.

(c) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such apparent condition existing immediately prior to the casualty. Alternatively, the Lot owner shall completely raze the residence and sod or seed the entire Lot until such time construction of a new residence is begun.

Section 5. Temporary Structures; Mobile Home; Camping sites. No structure of a temporary character shall be placed upon any portion of Reems Creek Village at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any single family residence. Basements or partially complete single-family residences will be considered temporary and may not be inhabited. Mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as temporary or permanent residences or be permitted to remain on any portion of Reems Creek Village after completion of construction thereon as herein above provided, except that the Declarant or the Board may designate areas within Reems Creek Village as camping sites.

Section 6. Exterior Construction. The exterior of a single-family residence on a Lot as well as site work and landscaping must be completed within eighteen (18) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of a Lot due to strikes, fire, natural emergencies or natural calamities. Single family residences may not be occupied until the exterior thereof has been completed. If the exterior is not completed within eighteen (18) months, the Board may require a responsible Lot owner to pay the Association the sum of one hundred fifty dollars (\$150.00) in liquidated damages for each day after (18) months that the exterior is not completed.

Section 7. Trees. No trees, living or dead, shrubs or wildflowers may be removed or cut without the written approval of the Committee, unless said trees [wildflowers, etc] are located within fifteen (15) feet of a residence or within the right-of-way of driveways and walkways. Notwithstanding the above, any tree which poses a threat to life or property may be removed without the written consent of the Committee. Should a party remove any tree or vegetation as herein provided without the above-described written approval, the Board may fine a party the sum of one thousand five hundred dollars (\$1500.00) for every tree cut without permission, and thereafter one hundred fifty dollars (\$150.00) per tree for each day that a replacement plan acceptable to the Board is not completed. In addition to the above remedies, the Association and its agents may enter the property to replace the removed tree or vegetation and charge the violating owner the costs of such replacement. The Declarant is exempted from this provision.

Section 8. Trash. No Lot shall be used or maintained as a dumping ground or disposal site for rubbish, trash, or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers and at all times stored inside of a garage or residence (except for trash pickup days established by the applicable Governmental Entity or private waste hauling company, if applicable). This restriction shall not apply during the period of construction of a residence on the Lot or adjoining Lots, however, upon completion of construction the owner shall comply with all restrictions with respect to disposal of trash and maintenance of the Lot and property in a neat and attractive manner.

Section 9. Utilities; Antennae; Wireless Communication. All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios) must be placed underground except as may be expressly permitted and approved in writing by the Committee. No wireless communication towers or antennae shall be permitted within Reems Creek Village, except with the written permission of the Committee and the Declarant.

Section 10. Off-street Parking; Garages Required. Each Owner of a single-family residence on a Lot shall provide sufficient space for parking of any and all of said Owner's vehicles within a garage, except in areas designated by the Declarant or the Board for parking. Guest vehicles shall be parked off the roadways or in the designated parking areas reference in this section. Garage doors must be closed at all times when not in use.

Section 11. Vehicles. The Declarant or the Board reserves the power to place any reasonable restrictions upon the use of roadways as may be allowed by law, including but not limited to the types and sizes of vehicles, including motor cycles, using the roads, the maximum and minimum speeds of vehicles, all other necessary traffic and parking regulations and the maximum noise level of vehicles.

Section 12. Vehicle Storage. Any recreational vehicles, boats, motor homes, campers and the like must be parked in an area screened from view as determined by the Committee.

Section 13. Lot Upkeep. It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds to exist on the Lot Owner's property. The Declarant or the Association shall have the right, but not the duty, to enter upon any property for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds which tend to decrease the beauty of the specific area or the neighborhood as a whole. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and said entry shall not be deemed a trespass.

Section 14. Nuisances. No obnoxious or offensive activity shall be carried on upon any portions of Reems Creek Village nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner of a Lot, tenant or guest thereof in any area of Reems Creek Village thereby diminishing the enjoyment of other Lots by their owners. No hazardous or toxic substances or wastes as defined by applicable law shall be dumped within Reems Creek Village. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of Reems Creek Village by the Lot owners, tenants, and guests thereof, may be maintained. The Board has the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by the Board, the activity must cease. The board reserves the right to restrict the times allowed for the use of outdoor noise creating landscaping machines and any other noise creating devices that may prove to be a nuisance or annoyance.

Section 15. Erosion Control. Declarant and/or the Association shall have the right to protect from erosion the land designated as areas upon which residential building shall take place, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by Declarant and/or Association to provide and insure against such erosion. The Declarant or the Association, however, is under no duty to take such actions as herein above provided. During the improvement of any Lot, every Owner of a Lot shall use best management practices as that term is defined by applicable State of North Carolina environmental regulations to control erosion and prevent off-site damages so long as one-fourth (1/4) acre of land is disturbed. The Committee may require any Lot owner disturbing more than one-fourth (1/4) acre of land to submit for Committee approval an erosion control and drainage plan, and therein may require that such plan be signed off by a licensed Engineer. In order to implement effective and adequate erosion control and protect the beauty and purity of the water courses within Reems Creek Village, the Association and its agents shall have the right, but not the obligation, to enter any Lot for the purpose of correcting or remedying any erosion control violations. Any costs of remediation attributable to a Lot Owner's failure to comply with best management practices in erosion control incurred by the Association shall be the responsibility of the Lot Owner. The Declarant is exempted from this provision.

Section 16. Fires. No outdoor fire, leaves, trash, garbage or similar debris shall be burned except as permitted in writing by the Board or Declarant. Outdoor grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution.

Section 17. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except temporary construction signs not greater than nine (9) square feet in size; provided, however, Declarant shall have the right to (i) erect signs when advertising the property, (ii) place signs on Lots designating the lot number of Lots, and (iii) following the sale of the lot, place signs of such Lot indicating the name of the purchaser of that Lot. This restriction shall not prohibit placement of occupant name signs and Lot numbers. Notwithstanding the above, the Declarant may require an owner of a Lot to install, at Owner's expenses, and at a location designated by Declarant, common address signage for easy identification for emergency services.

Section 18. Water Courses. No lake shall be constructed, neither shall the course of any stream, spring or other water course be changed, nor any culverts installed in any water course without prior written approval of Declarant.

Section 19. Storage Tanks. Underground gasoline storage tanks are not permitted within Reems Creek Village. Underground propane or liquid gas tanks and above ground storage tanks may be allowed subject to Committee written approval.

Section 20. Animals. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets may be kept, provided that they are not bred, maintained or housed (i.e. kennels) for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of a Lot Owner's property, except as may be permitted on Common Elements by Board rules and regulations. At all other times, they must be kept securely on a leash. No pets are permitted if they are kept so as to constitute a nuisance as determined by the Board in their sole discretion.

Section 21. Vacant Lots, Reserved Areas and/or Future Development. Unused and/or vacant lots, or property designated herein as reserved areas or as Future Development are not to be trespassed upon for any reason, except that Declarant on a case-by-case basis may give a revocable, written license to an individual Lot owner to hike in these areas. Any Lot owner who is provided a license for hiking by the Declarant in its sole discretion agrees to indemnify and hold harmless the Declarant from any and all costs, expenses (including reasonable attorney's fees), damages, or losses that may arise from the use of the license. Any such Lot owner agrees to assume all risks associated with being on the property that is the subject matter of the license, and no easement rights to the land shall accrue to the Lot Owner from the issuance of the license.

Section 22. Hunting and Firearms. Hunting, trapping, or the harassing of animals, fowl or game is prohibited, and the discharge of firearms or bows and arrows for any purpose shall be prohibited.

Section 23. Fishing. Fishing rules are to be governed by the State of North Carolina and rules as circulated to the owners of Lots by the Declarant and/or the Board.

Section 24. Trespass. Whenever the Association or the Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of Reems Creek Village, including Lots and Parcels, entering such areas and taking such action shall not be deemed a trespass on the part of the Association or the Declarant or their agents.

Section 25. Septic Systems. Septic tanks, drain and repair fields are prohibited on any Lot or Parcel.

Section 26. Enforcement.

(a) All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

(b) Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in the Act, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action.

Section 27. Responsibility for Others. Owners of a Lot are obligated to assume the responsibility that any and all dependents, guests, servants, visitors and building contractors working for the Lot Owner observe and maintain all the rules, regulations, covenants and restrictions binding the Lot Owners themselves.

Section 28. Leasing or Renting. A Lot Owner may lease or rent the family residence owned by such Owner; provided, however, that the tenant or lessee shall be bound by all covenants and restrictions contained herein. Except for garage apartments which are permitted, at no time may a Lot Owner lease or rent a portion of the family dwelling unit unless the entire family dwelling unit is leased or rented.

Section 29. Variances. In case of hardship and for good cause shown, the Declarant during the Declarant Control Period or the Board or the Committee may in their sole discretion grant variances from any of these covenants and restrictions. The decision of Declarant or the Board to grant or not grant variances as herein provided is based upon the Declarant's or Board's sole and absolute discretion.

ARTICLE IX : FUTURE SECTIONS; ANNEXED PROPERTIES; AND REMOVAL OF PROPERTIES

During the Declarant Control Period, the Declarant reserves the right to subject Annexed Properties as herein defined to the terms of this Declaration and the general plan of development for Reems Creek Village by the filing of a supplement to this Declaration with corresponding plat that identifies the property to be added to Reems Creek Village. Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the Supplemental Declaration the permitted uses within the Annexed Properties, which may be other than residential, and any other development restrictions affecting the use and enjoyment of said land. Notwithstanding the differences, if any in the use restrictions for Annexed Properties, it is the intent of the Declarant that properties once annexed be part of the general plan of development for Reems Creek Village ; provided, however, during the Declarant Control Period, the Declarant reserves the right to modify the boundaries of Reems Creek Village to remove unsold properties from the Reems Creek Village planned community. This right to remove properties from the general plan of development for Reems Creek Village does not apply to Common Elements unless such removal is in conformity with Section 47F-3-112 of the Act. This Article is to be construed to give the Declarant the broadest flexibility to add Annexed Properties to the Reems Creek Village planned community with use restrictions tailored for each additional tract or to modify the boundaries of Reems Creek Village when determined in the sole discretion of the Declarant to be in the best interest of Reems Creek Village.

ARTICLE X : AMENDMENTS

During the Declarant Control Period, the Declarant reserves the right, without the consent of the Association or any other Lot owner, to amend this Declaration or any amendments thereto if necessary for the exercise of or protection of any Special Declarant Rights. Otherwise, this Declaration may be amended only by affirmative vote or written agreement signed by Owners of Lots to which sixty-seven percent (67%) of the votes in the Association are allocated. During the Declarant Control Period, any amendments to this Declaration require the written consent of the Declarant.

ARTICLE XI : MISCELLANEOUS

Section 1. Severability. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 2. Construction of this Declaration.

This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of North Carolina. Except for Special Declarant Rights and other rights herein reserved to the Declarant, the Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret the provisions hereof, and its good faith determination, construction or interpretation shall be final and binding.

IN WITNESS WHEREOF, the Declarant, has caused these presents to be signed this the 3 day of October, 2005.

DECLARANT: RABBIT RIDGE PROPERTIES, LLC

By: [Signature] (SEAL)
Print Name and Title: William C. Dore Mgr

STATE OF NORTH CAROLINA
COUNTY OF ~~BUNCOMBE~~ Madison

I, a Notary Public of the County and State aforesaid, certify that personally came before me this day executing the foregoing instrument.

Witness my hand and official stamp or seal, this 3 day of October, 2005

Shawna E. Shelton
Notary Public

My commission expires: 09/29/2007 (SEAL)



EXHIBIT A

Property Subject to Declaration of Covenants, Restrictions, et al.
for Reems Creek Village, a Planned Community

BEING all of Section I of Reems Creek Village Subdivision as shown on a plat prepared by Vaughn and Melton and recorded in plat book 88 pg 184, of the Buncombe County, North Carolina Register's Office, reference to said plat being made for a more particular description of said property.

EXHIBIT B

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: REEMS CREEK VILLAGE PROPERTY OWNERS ASSOCIATION INC.

2. _____ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCOS §55A-1-40(4).

3. The street address and county of the initial registered office of the corporation is:

Number and Street 11 RABBIT RIDGE DRIVE

City, State, Zip Code WEAVERVILLE NC 28787 County BUNCOMBE

4. The mailing address if different from the street address of the initial registered office is:

5. The name of the initial registered agent is:

WILLIAM C DORE

6. The name and address of each incorporator is as follows: WILLIAM C DORE

11 RABBIT RIDGE DRIVE WEAVERVILLE NC 28787

7. (Check either a or b below.)

- a. The corporation will have members.
- b. The corporation will not have members.

8. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.

9. Any other provisions which the corporation elects to include are attached. SEE ATTACHED PROVISIONS FOR ASSET DISTRIBUTION ON DISSOLUTION

10. The street address and county of the principal office of the corporation is:

Number and Street 11 RABBIT RIDGE DRIVE

City, State, Zip Code WEAVERVILLE NC 28787 County BUNCOMBE

11. The mailing address if different from the street address of the principal office is:

12. These articles will be effective upon filing, unless a later time and/or date is specified: _____

This is the 23 day of MARCH, 2005.

W C Dore
 Signature of Incorporator
WILLIAM C DORE

Distributions Upon Dissolution

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for religious, charitable, educational, scientific or literary purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code as the Board of Directors shall determine, or to federal, state, or local governments to be used exclusively for public purposes. Any such assets not so disposed of shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organizations, such as the court shall determine, which are organized and operated exclusively for such purposes, or to such governments for such purposes.

**EXHIBIT C: BYLAWS OF REEMS CREEK VILLAGE PROPERTY OWNERS ASSOCIATION
A NORTH CAROLINA NON-PROFIT CORPORATION**

ARTICLE I: Identity:

These are the Bylaws of the REEMS CREEK VILLAGE PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association"). For purposes of these Bylaws, terms specifically defined either in the Declaration of Covenants, Restrictions, et al. (the "Declaration") for the residential community to be known as "Reems Creek Village" and located off Reems Creek Road in Buncombe County (herein "the Village"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes (herein "the Community Act") shall have the same meaning herein. Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Community Act. In the event of any conflict between the Corporation Act or the Community Act, the Community Act shall control.

ARTICLE II: Qualifications and Responsibilities of Members

- 2.1. **Members.** Every Owner of a Lot in the Village shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Lot .
- 2.2. **More Than One Owner.** When there is more than one Owner of a Lot, all such persons shall be members of the Association.
- 2.3. **Registration.** It shall be the duty of each Owner of a Lot to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Lot does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In addition, an Owner of a Lot shall register with the Secretary the name and mailing address of any applicable person, firm or company holding a note secured by a first deed of trust lien on that Lot (the "First Mortgage"). In no event shall an Owner of a Lot avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.
- 2.4. **Prohibition of Assignment.** The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Lot .

ARTICLE III: Members' Meetings and Voting

- 3.1. **Place.** Meetings of the members shall be held at such place within the Village or within Buncombe County, North Carolina, as may be designated from time to time by the Board of Directors of the Association (the "Board").
- 3.2. **Annual Meeting.** The members shall meet at least once each year in January, the day being specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members may transact any business properly coming before them.
- 3.3. **Special Meetings.** Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by members of the Association entitled to cast at least fifty-one percent (51%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.
- 3.4. **Notices.** Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Lots and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least sixty (60) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on.
- 3.5. **Quorum; Adjournment if no Quorum.** A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty-one percent (51%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be twenty-six (26%) percent of the total votes in the Association.
- 3.6. **Vote.** Except for Lots owned by the Declarant, each Lot is entitled to one (1) vote. Prior to the expiration of the Declarant Control Period, Declarant is entitled to cast two (2) votes for every Lot that Declarant owns. The reference in the Community Act to the number of votes allocated in the Association shall include the votes the Declarant is entitled to vote as provided above. When there is more than one Owner of a Lot, said Owners shall designate in writing the person authorized to vote for said Lot.
- 3.7. **Manner of Casting Votes.** Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all owners of the Lot, the votes of which are subject to the proxy, be given only to another member or to a Security Holder of that Lot, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.
- 3.8. **Required Votes.** All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.
- 3.9. **Action by Members Without Meeting.** Any action that may be taken at a meeting of the members may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.
- 3.10. **Prohibition of Cumulative Voting.** There shall be no cumulative voting.
- 3.11. **Declarant Control Period.** "Declarant Control Period" shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, appointing and/or removing the Board of Directors of the Association and vetoing certain amendments to the Declaration. The Declarant Control Period shall be the earlier of twenty-five (25) years after the recording of the Declaration or when all of Reems Creek Village (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than a Declarant or such earlier time as determined in Declarant's sole discretion.

ARTICLE IV: Directors

- 4.1. **First Board.** The first Board shall consist of 5 persons, whose names are set forth as follows: William Dorf, Janet Dorf, Kevin Volpe, Dorin Dragomir and Greg Siegel
- 4.2. **Number and Qualifications of Directors.** The Board shall consist of 5 natural persons, as determined in the sole discretion of Declarant during the Declarant Control Period, and thereafter by a majority of the members. During the Declarant Control Period, a Director need not be a member of the Association or be a resident of North Carolina. A Board member may be a representative of Declarant. After the Declarant Control Period expires, a Director must be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual.

4.3. Election of Directors. During the Declarant Control Period, the Declarant reserves the right to appoint all the members of the Board. After the end for the Declarant Control Period the election of Directors by the members shall occur at an annual meeting of the members and at each subsequent meeting after the term of the Directors have expired. Members shall elect the Directors by a majority of the votes cast in the election.

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

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

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

4.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least 2 times a fiscal year (as that term is defined in Sections 4.13(a) and 7.2 below). Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile or telegraph, at least thirty (30) days prior to the meeting.

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

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

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

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

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

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

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

(i) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(ii) A statement of the financial condition of the Association for the last Fiscal Year.

(iii) A statement of the status of any pending suits or judgments in which the Association is a party.

(iv) A statement of the insurance coverage provided by the Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE V: Officers

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

5.2. **Election of Officers.** Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

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

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

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

5.6. **Powers and Duties of Officers.**

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

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

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

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

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

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

ARTICLE VI: Indemnification of Directors and Officers

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

ARTICLE VII: Fiscal Management

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

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

ARTICLE VIII: Assessments

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

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

8.3. **Preparation of Budget and Levying of Assessment.** For each Fiscal Year, beginning with the Fiscal Year commencing, January 1st, 2006 the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Within 30 days after adoption of any proposed budget, the Board shall provide the members of the Association with a summary of the budget and a notice of the meeting to consider ratification by the membership of the budget, including a statement that the budget may be ratified without a quorum. There shall be no requirement that a quorum be present at the meeting, annual or special, when the budget is considered for ratification. The budget shall be ratified unless at that meeting a majority of all the members of the Association entitled to vote rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board. After the ratification of the budget by the membership as provided above, the Board shall give each member notice of the assessment made against that member's Lot based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after filing of the Declaration and the conveyance of the first Lot within the Village shall be prepared and adopted by the Board only for the balance of the then Fiscal Year of the Association.

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

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

8.6. **Notice to First Mortgagees.** Although the lien of assessments may be superior to the lien of a First Mortgagee, any

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

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

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

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

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

8.9. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Lots and Units which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

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

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

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

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

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

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

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

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

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Lot when required under Section 8.6 of these Bylaws, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default or failures specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary

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

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in Section 9.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefore as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

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

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

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

ARTICLE X: Amendment

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

ARTICLE XI: General Provisions

11.1. Rules and Regulations.

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

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

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

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

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

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

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

LOT OWNER OR

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

ASSOCIATION: 11 Rabbit Ridge Dr., Weaverville, NC 28787

THESE BYLAWS adopted and approved at a duly called meeting of the Board of Directors, this the 21 day of March, 2005