

2009005114
TRANSYLVANIA CO, NC FEE \$95.00
PRESENTED & RECORDED:
09-01-2009 03:02:42 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: D REE MCCALL
DEPUTY REGISTER OF DEEDS
BK:DOC 512
PG:224-251

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

**FOURTH RESTATEMENT
OF DECLARATION OF RESTRICTIVE COVENANTS
FOR CONNESTEE FALLS**

WHEREAS, Conneffee Falls Development Corporation, a North Carolina Corporation subjected certain real property in Transylvania County known as CONNESTEE FALLS (the Community) to certain restrictive covenants by means of an instrument entitled Declaration of Restrictive Covenants Conneffee Falls recorded in Deed Book 189 at page 443 in the Transylvania County, North Carolina Register of Deeds; and,

WHEREAS, CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC. (the Association) is the successor to Conneffee Falls Maintenance Corporation as shown in that instrument recorded in Deed Book 265 at page 157 and is the association comprised of members who are home owners and lot owners in the Community who are empowered and obligated as set forth in those instruments and documents governing the Community; and,

WHEREAS, certain properties have been added to the Community, and certain amendments have been made to the Declaration of Restrictive Covenants for Conneffee Falls by means of a number of instruments which have been recorded in the Transylvania County, North Carolina Register of Deeds, said instruments having been referenced in the Second Restatement of Declaration of Restrictive Covenants for Conneffee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds, the Recital of which is hereby incorporated by reference for the purpose of identifying those instruments which added properties and changed the restrictive covenants which govern the Community; and,

WHEREAS, the Second Restatement of Declaration of Restrictive Covenants for Conneffee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds may be amended by the affirmative vote of a majority of the votes entitled to be cast by members present or represented by proxy at a meeting called for that purpose recording an amendment to this Declaration duly executed by (a) the requisite number of such owners required to effect such amendment, or (b) by the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such amendment, certified by the Secretary of the Association; and,

WHEREAS, such an affirmative vote was made by a majority of the votes entitled to be cast by members present or represented by proxy at a duly called meeting for that purpose on August 26, 2009;

NOW, THEREFORE, the Association does hereby revoke and replace all prior declarations of restrictive covenants, and amendments thereto, except to the extent incorporated herein, with this Fourth Restatement of Declaration of Restrictive Covenants for Connestee Falls.

FOURTH RESTATEMENT OF DECLARATION OF RESTRICTIVE COVENANTS
FOR CONNESTEE FALLS

NOW, THEREFORE, the Association reaffirms, restates and declares that all of the Lots and Parcels in Connestee Falls are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitude upon each of said Lots and Parcels in favor of each and all other Lots and Parcels; to create reciprocal rights between the respective Owners of all such Lots and Parcels; to create privity of contract and estate between the grantees of such Lots, their heirs, successors and assigns; and shall, as to the Owners of each such Lot or Parcel, his heirs, successors or assigns operate as covenants running with the land for the benefit of each and all other such Lots and Parcels in Connestee Falls and their respective Owners, present and future.

ARTICLE I
DEFINITIONS

The terms used in this Declaration are defined as follows:

- A. "Assessments" means any and all sums levied by the Association against any Lot and its Owner as common expenses or other charges to include but not be limited to common expense liabilities, unimproved lot assessments, improved lot assessments, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in the Declaration and Bylaws.
- B. "Association" means the Connestee Falls Property Owners Association, Inc., a not-for-profit corporation organized under the laws of North Carolina.
- C. "Board" means the Board of Directors of Connestee Falls Property Owners Association, Inc.
- D. "By-Laws" means the By-Laws of the Association.
- E. "Committee" means all Board or Permanent Committees, including, but not limited to, Architecture and Environment ("A&E"), Judicial, Election, Finance, and Strategic Planning Committees.
- F. "Common Area" means the real property so described and conveyed to the Association in that deed recorded in Deed Book 211 at page 542, together with those areas designated as common areas in those Supplemental Declarations referenced in the Second Restatement of Declaration of Restrictive Covenants for Connestee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds; all real property which may be later annexed to Connestee Falls as Common Area; and, all real property acquired by the Association, so designated together with all improvements which may be at anytime constructed thereon, including, but not limited to, recreational and community facilities, lakes, parks, and streets. To the extent necessary to interpret applicable sections of the North Carolina Planned Community Act ("Planned Community Act"), Common Areas is deemed to mean and be synonymous with the term Common Elements as defined in the Planned Community Act NCGS Section 47F-1-103(4).

G. "Common Expenses" means expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Community. These include:

- (a) Expenses of administration, maintenance, repair or replacement of the common elements;
- (b) Expenses defined, referred to, or declared to be common expenses by the Declaration or by the Planned Community Act;
- (c) Expenses agreed upon as common expenses by the Association;
- (d) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the common elements or any other real or personal property acquired or held by the Association; and
- (e) Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

H. "Community" means the community of Connestee Falls, a gated residential development located in Transylvania County, North Carolina as the same may be shown on the maps and plats thereof recorded from time to time and which is governed by the Restated Articles of Incorporation of Connestee Falls Property Owners Association, Inc., the Declaration and the By-Laws.

I. "Converted Lot" means any Lot or Parcel of real property which has previously been designated as a residential Lot, has been acquired by the Association, and which is converted from a specific lot to common area by designation of the Board. Converted Lots owned by the Association shall be available as common areas for the use and enjoyment of all Owners in Connestee Falls as park lands while owned by the Association. Notwithstanding the designation of a converted Lot as a common area, whether so designated on a Deed or through action of the Board, any converted Lot acquired by the Association shall be available for sale or development in the discretion of the Board, and any such Lots sold in the past or the future shall no longer be considered a common area after conveyance by the Association.

J. "Declaration" means this Fourth Restatement of Declaration of Restrictive Covenants for Connestee Falls.

K. "Housing unit" means any form of housing to include but not limited to detached single family, attached single family, and condominiums.

L. "Improved Lot" means any Lot upon which is located, found, placed, or constructed any improvement. As used herein, "Improvement" means all buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennae and any other structure of any type or kind. The Association gives a revocable license to lake front lot owners to construct docks. These docks are not appurtenant to the lot nor is any easement on the lake created.

M. "Improved Lot Assessment" means the charge established by Article VII, Section A, that is levied against an Improved Lot.

N. "Lot" means any numbered Lot designated on the plat, any Lot actually subdivided, platted, or otherwise identified as a Lot in a multi-family residential area, any apartment or living unit in a multi-family dwelling, or such portion of a multi-family residential area as the Board shall designate.

O. "Multi-Family Residential Dwelling" means a residential dwelling structure, or building containing two or more single family residential units or apartments, such as, by example and not by limitation, duplexes, multi-plexes, townhouses, condominiums, and constructed on a Lot or Parcel whose use is designated on the Plats or in a Supplemental Declaration as multi-family residential.

P. "Owner" or "Lot Owner" means a person or legal entity who owns a Lot, and has legal title thereto through recording of a deed but does not include a person having an interest in a Lot solely as security for an obligation. The Association is not an "owner" for purposes of this Declaration since it does not pay assessments on and does not vote the lots to which it holds legal title.

Q. "Plat" means the maps or plats of Connestee Falls as they are from time to time recorded.

R. "Parcel" means any tract of land that is described or delineated on a plat.

S. "Restated Articles of Incorporation" means the currently Restated Articles of Incorporation of Connestee Falls Property Owners Association, Inc. and any subsequent restatements.

T. "Single Family Attached Dwelling" means a dwelling whereby two single family residences share a common wall so that there will be two single family dwellings per building and which may be constructed on a Lot or Parcel located solely within the area of Connestee Falls known as Qualla Village as described in that Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds.

U. "Single Family Residential Dwelling" means a residential structure built and intended for use and occupancy by a single-family and which is constructed on a Lot designated as a single family residential Lot on any recorded Plat for the community or in any Supplemental Declaration. Such structure must therefore be built to accommodate only single meter service for any utilities including but not limited to electric, water, and gas.

V. "Single Family" means a traditional family unit, a single housekeeping unit, or persons substantively structured as an integrated family unit such that any of these must function, as a family within the dwelling or unit and the composition of the family unit must be relatively stable and permanent.

W. "Supplemental Declaration" means:

1. The recorded Supplemental Declarations, and Agreements with individual Owners of Parcels of land to change the designation of these certain Parcels of land from a Multi-Family Residential designation to a Single Family Residential designation, referenced in the Recital to this Declaration, or,

2. In the event of real property being annexed to the Community, the recorded Supplemental Declaration which incorporates the provisions of this Declaration therein by reference.

X. "Unimproved Lot Assessment" means the charge established by Article VII, Section A, that is levied against an Unimproved Lot.

Y. "Unit" means a portion of the Connestee Falls Community made up of a number of lots as laid out and developed by the original developer and any successors. For example Unit 6, Lot 90 means platted lot 90 located in Unit 6.

ARTICLE II
LAND USE

Lots and Parcels in the Community shall be as designated on the Plats or in Supplemental Declarations and in absence of a designation, the default designation is single family residential as to their permissible uses and shall thereupon become subject to the restrictions or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein (e.g., commercial, governmental, school, etc.), the same may be set forth in such Supplemental Declaration.

A. Single Family Residential. Only single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot designated as single family residential. The following restrictions shall apply specifically to said Lots:

1. Changes in Minimum Square Footage Requirements for Single Family Dwellings Not to Affect Existing Dwellings. Prior to this Declaration minimum square footage requirements for single family residential dwellings in different Units varied depending upon the requirements contained in the various recorded instruments which added different Units to the community. The new square footage requirements contained in this Declaration do not apply to nor affect dwellings currently standing or in the construction process nor are they intended to lower the requirements under any recorded Supplemental Declarations. Similarly, these new square footage requirements will not prevent owners of existing dwellings which are less than these requirements from reconstructing the dwelling if damaged or destroyed, or from expanding the homes, even if the reconstructed or expanded home will be less than the minimum square footage requirements contained herein.

2. Minimum Area. Each dwelling hereafter constructed shall have fully enclosed and heated habitable floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) with not less than the number of square feet based on using outside wall dimensions as follows:

Location

All lots in all Units unless otherwise herein specified: Single-story Building – 1500, Multi-story building: Main Floor – 1000, Total 1500

Units 40, 41, 42: Single-story building – 1750, Multi-story Building: Main Floor – 1000, Total 1750

Unit 13 & Unit 43: Single-story building – 2000, Multi-story Building: Main Floor – 1200, Total 2000

Except with express approval of the A&E Committee, in determining the square footage within a dwelling, no consideration shall be given to any area which is wholly or substantially below ground level.

3. Setbacks. Each dwelling shall be at least:

- a. 25 feet from the front Lot line; on corner Lots, the property lines along both streets shall be considered front property lines;
- b. 25 feet from the rear Lot line;
- c. 7 1/2 feet from the side Lot lines;
- d. At or above the elevation of the top of the dam on the lake abutting a lakefront Lot;
- e. The limitations contained herein shall be applicable to accessory outbuildings but they

shall not be applicable to the construction of a pier or dock at or adjacent to the shoreline of lakefront Lots which the A&E Committee has approved;

f. In the event that the A&E Committee determines that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the A&E Committee may grant a variance to the Owner of said Lot from the provisions of the setback restrictions.

4. Change of Designation of Use of Lot from Single Family Residential. An affirmative vote of a majority of the Members present in person or by proxy at an annual or special meeting called for such purpose is required before any parcel of land currently designated as Single Family Residential can be changed by the Board to any other designation such as Multi-Family Residential or Single Family Attached Residential. Only Board approval is required should an owner want to make a less intense use of a lot than is allowed. For example, if an owner of a Multi-Family parcel wanted to build Single Family homes.

5. Lot Combination. It has been and shall be the policy of the Association to allow the combination of contiguous Lots with the end result that two (2) individually platted Lots become one (1) Lot. The Community benefits by allowing two lots which may be unbuildable as platted to become buildable if combined. This can also promote the Community policy of less density. Nevertheless, the Association recognizes the loss of potential assessment income through Lot combinations. Lot combinations are allowed and permitted subject to and in accordance with the Association's Rules and Regulations covering lot combinations. Once two or more Lots are combined, they can not be re-subdivided again. Furthermore, in consideration of the permission to combine and in light of lost assessment revenue, the applying owner shall pay a Lot Combination Fee to the Association, which Fee shall be set from time to time in the sole discretion of the Board.

B. Multi-Family Residential. Only multi-family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot or Parcel designated as multi-family residential. The following restrictions shall apply specifically to such Lots or Parcels:

1. Zoning. Multi-family residential use shall be approved by the appropriate governmental authorities.

2. Minimum Areas. There shall be not more than one dwelling unit for each 3,000 square feet of land area in such Lot or Parcel and the amount of fully enclosed and heated floor area devoted to living purposes in each such unit shall not be less than 1000 square feet.

3. Carport or Garage. A carport, garage or parking space shall be constructed for each dwelling unit constructed.

4. Type of Construction. Subject to the approval of the A&E Committee, multi-family dwellings may be of single or multiple story construction, and may be detached or joined by common walls.

5. Setbacks and Lakefront Elevations. Setbacks and lakefront elevations for multi-family dwellings shall be the same as for single family dwelling as set forth in subparagraph II.A.3 above.

C. Single Family Attached Residential. The property within the area of the Community known as Qualla Village as described in the June 6, 1996 Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds may be used for the construction of either detached single family dwellings or single family attached dwellings subject to the following restrictions:

1. Minimum Area. Each dwelling constructed shall have fully enclosed and heated floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) of not less than the number of square feet established in this Declaration for Single Family Residential Dwellings for the Unit in which the dwelling is situated.
2. Setbacks. Each single family attached building, (i.e. two living units) shall be at least:
 - a. 25 feet from the edge of the street right of way,
 - b. 15 feet from any other residential building.
 - c. In the event that the A&E Committee determines that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the A&E Committee may grant a variance to the Owner of said Lot from the provisions of the setback restrictions.
3. Parking. A carport, garage or parking space shall be constructed for each single family attached dwelling unit constructed.
4. Type of Construction. Subject to the approval of the A&E Committee, two single family dwellings may be attached by a common wall.
5. These restrictions for single family attached dwellings modify any conflicting provisions of the Supplemental Declarations for Units 1, 2, and 5, but only as to the Lots within Qualla Village.

D. Common Areas.

1. Use. The use and enjoyment of Common Areas and improvements thereon shall be subject to the powers of the Association as set forth in its Restated Articles of Incorporation and By-Laws and to Rules and Regulations governing the use of such property and improvements as may from time to time be adopted by the Association Board.
2. Maintenance. Maintenance of common property and repairs to any improvements thereon shall be the obligation and responsibility of the Association.
3. Subsequent Dedication. The Association may, upon the affirmative vote of two-thirds of its members voting in person or by proxy at a meeting called for that purpose, offer any common areas for dedication to public use. Such offer shall be subject to acceptance by the appropriate governmental authority pursuant to its then applicable standards.
4. Improvements. All improvements must be approved by the General Manager as hereinafter provided.

ARTICLE III
RESIDENTIAL RESTRICTIONS

The following shall be applicable to all Lots and Parcels within the Community designated as residential in character and use, and each Owner, as to his Lot or Parcel, covenants to observe and perform the same:

A. Residential Use. Each of the Lots, or living units in the case of multi-family Lots in the Community (except for any parcel specifically designated as commercial on a plat or in a supplemental declaration) shall be, and the same hereby are, restricted to single-family residential use and shall be occupied only by a single family as defined hereinabove.

B. Business Activities. No business activities shall be conducted on any residential Lot in the Community, provided, however, private offices may be maintained in residences constructed on residential Lots so long as such use is incidental to the primary residential use of the residential Lot. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners.

C. Restrictions in General. The Lots and Common Areas of the Community are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other persons are subject to these restrictions and subject to the enforcement sanctions as are set forth in the North Carolina Planned Community Act NCGS 47F-1-101 et seq., this Declaration, and Bylaws.

D. Accessory Outbuildings. Without the approval of the A&E Committee no accessory outbuildings shall be erected on any Lot or Parcel prior to the erection thereon of a dwelling. In no event shall any such accessory outbuildings, partially completed or temporary structure ever be used for human occupancy or habitation. Neither a separate guest house nor a garage apartment can be constructed on a lot.

E. Completion of Construction. Construction of any improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) days or which have been partially or totally destroyed and not rebuilt within twelve (12) months shall be deemed a violation of the Declaration and of these residential restrictions. The Association, at its sole discretion, may complete, repair, or remove the improvement or impose a fine against the Owner in accordance with the Declaration and the North Carolina Planned Community Act. Any and all cost incurred by the Association including reasonable attorneys fees actually incurred connected with the completion, repair, or removal of such improvement shall be charged to and paid by the owner. All costs shall, furthermore, be considered as an assessment against the Lot and shall be collected in accordance with the provisions of Article VII of the Declaration. The A&E Committee, at its sole discretion, may grant an extension of time under extenuating circumstances.

F. Prohibition Against Used Structures. No used or modular buildings or structures, or used or modular structural components, which are intended for use as a dwelling, shall be placed on any Lot.

G. Maintenance. All Lots and Parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all time be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual assessment to which such Lot is subject. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.

H. Disposal of Sanitary Waste. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank or other sewage system approved by the A&E Committee and the appropriate governmental authority.

I. Fences. All property lines shall be kept free and open and no fences, hedges or walls shall be permitted thereon without A&E Committee approval.

J. Golf Course Lots. Owners of Lots adjacent to golf course fairways shall permit reasonable entrance upon their Lots for retrieval of golf balls. The Association shall have no liability nor responsibility for any damage caused to either person or property by errant golf balls.

K. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any Lot or Common Areas.

L. Signs. No person shall erect or maintain upon any Lot or Improvement any sign or advertisement. Home identification and builders' signs may be excepted by the A&E Committee.

M. Animals. No animals shall be kept or maintained on any Lot except the usual household pets which shall be kept reasonably confined so as not to become a nuisance.

N. Garbage and Refuse Disposal. No owner shall burn trash, garbage or other like household refuse, nor shall any owner accumulate on his Lot junked vehicles, or litter, refuse or garbage, except in receptacles provided for such purposes.

O. Concealment of Fuel Storage Tanks and Trash Receptacles. Fuel storage tanks on any Lot shall be either buried below the surface of the ground or screened to the satisfaction of the A&E Committee. Every receptacle for ashes, rubbish or garbage shall be installed underground or be so placed and kept as not to be visible from any street, lake or Common Area within the Community except at the times when refuse collections are made.

P. Restrictions on Temporary Structures. No travel trailer, mobile home, manufactured home, or tent shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.

Q. Removal and Trimming of Trees. No tree may be trimmed or cut down on any Lot without the prior written consent of the A&E Committee.

R. Limited Access. There shall be no access to any Lot on the perimeter of the Community except from designated streets or roads within the Community.

S. Docks and Piers. No dock, pier or other similar structure shall extend more than 20 feet into any lake, nor shall any such structure be constructed without express written permission by the A&E Committee, which permission shall constitute a revocable license.

T. Ditches and Swales. Each owner shall keep drainage ditches and swales located on his Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required for proper drainage.

U. Resubdivision of Lots. No Lot shall be subdivided. This provision shall, however, not prohibit the replatting of two or more adjacent lots owned together providing that the number of homesites may not be increased by such replatting.

V. Drilling and Mining. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

W. Water and Sewage Disposal Services. While water coming from wells located on Common Areas belongs to the Association, in most parts, but not all, of the Community, water distribution and sewer services are provided by a privately-owned public utility corporation not affiliated nor connected in any way with the Association, and their fees are in accordance with a schedule of fees as approved by the North Carolina Public Utilities Commission. A home on a Lot which is not provided with a sewer hook-up must utilize a septic disposal system which shall be installed and maintained in accordance with public health laws and regulations of the State of North Carolina and of Transylvania County.

ARTICLE IV
LAKES AND LAKEFRONT LOTS

A. Ownership of Lakefront Lots. The boundary of any Lot shown on the Plat as being contiguous to a lake shall be the shoreline thereof as said shoreline would be if the water level in said lake were one vertical foot above the design elevation of the lake.

B. Limitations of Water Rights. No Owner of a Lot contiguous to a lake or stream shall have any rights with respect to such lake or stream, the land thereunder, the water therein, or its or their elevation, use of conditions, nor shall such Owner have any riparian rights incident or appurtenant thereto. No persons shall acquire title to any land in the Community by accretion, reliction, submergence or changing water levels. It is prohibited for a lot owner to pump out water from any lake without the written permission of the Association.

C. Right to Remove Accretions. The Association shall have the right at any time to dredge or otherwise remove any accretion or deposit from the lakefront Lot in order that the shoreline of the lake to which Lot is contiguous may be moved inland toward or to the boundary of said Lot.

D. Responsibility for Damages. The Association shall not be liable for damages caused by erosion, washing or other action of the water of any lake or stream.

E. Right to Change Level of Lake. The Association shall have the right to raise and lower the water level of the lake in the Community; provided however, that such right shall not permit raising the water level over one vertical foot above the design elevation of the lake.

ARTICLE V
ARCHITECTURAL AND ENVIRONMENTAL CONTROL

A. General Powers. The Board of Directors shall have the authority to appoint an Architecture and Environment Committee to oversee architectural and environmental controls as set forth in the Declaration, Bylaws, and Rules and Regulations. All improvements constructed or placed on any Lot must first have the written approval of the Architecture and Environment Committee ("A&E Committee"). Such approval shall be granted only after written application has been made to the A&E Committee in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all improvements, if any, existing upon said Lot, the location of the improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the A&E Committee may require, including but not limited to, reports, drawings and recommendations by registered architects or engineers for soil stabilization and retention, maximum slopes for driveways, walks or disturbed areas, contoured drawings, retaining walls and drainage facilities.

B. A&E Committee Membership. The A&E Committee shall be composed of members appointed by the Board. A&E Committee members shall be subject to removal by the Board and any vacancies from time to time existing shall be filled by appointment of the Board. Actions by the A&E Committee shall need a majority approval of the members in attendance at meetings where actions are taken. A quorum of three members shall be required.

C. Grounds for Disapproval. The A&E Committee may disapprove any application:

1. If such application does not comply with this Declaration;
2. Because of the reasonable dissatisfaction of the A&E Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, height of foundation, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
3. If in the judgment of a majority of the A&E Committee reasonably exercised, the proposed improvement will be inharmonious with the Community, or with the improvements erected on other Lots.

D. Rules and Regulations. The Board of Directors shall, from time to time, adopt written rules and regulations of general application governing the A&E Committee's procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a reasonable time period for approval by reason of failure to disapprove; and otherwise as the Board deems appropriate.

E. Variances. The A&E Committee may grant reasonable variances from architectural and environmental requirements to accommodate construction of improvements on lots where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

F. Certification of Compliance. At any time prior to completion of construction of an improvement, the A&E Committee may require a certification, upon such form as it shall furnish, from the contractor, Owner, or a licensed surveyor that such improvement does not violate any setback, ordinance or statute, nor encroach upon any easement or right-of-way of record or create drainage issues.

G. Administrative Fees. As a means of defraying its expenses, the A&E Committee may institute and require a reasonable filing fee to accompany the submission of plans and specifications, which fee is subject to change with the approval by the Board of Directors.

H. Other New Construction Fees. All Owners of Lots who apply to the A&E Committee for new construction, major renovation, and/or demolition with reconstruction understand, agree, and accept that, depending on the construction project, Owners shall pay other fees and charges as follows and as applicable: (a) new home impact fee; (b) major renovation, expansion, and/or demolition and reconstruction fee; and (c) amenities fee. Such fees shall be reasonably determined from time to time by the Board of Directors in its sole discretion.

I. Liability. Notwithstanding the approval by the A&E Committee of plans and specifications or its inspection of the work in progress, neither it, the Association, nor any person acting on behalf of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the A&E Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be, and shall agree to be, solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto. The Association shall not be liable for damages caused by erosion, washing, other action of water, falling trees or limbs, wind, or any other natural causes.

J. Appeals. Any applicant shall have the right to appeal to the Board from any decision of the A&E Committee within 30 days after entry of such decision.

K. Restriction on Construction of Model Homes. Model or exhibit homes shall be built only with the prior written permission of the A&E Committee and Board.

ARTICLE VI
THE CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC.

A. General. The Association is a North Carolina not-for-profit corporation organized to further and promote the common interests of property Owners in the Community. The Association shall have such powers in the furtherance of its purposes as are set forth in its Restated Articles of Incorporation and By-Laws.

B. Membership. The Association shall have Members, and Associate Members, as defined in the By-Laws.

ARTICLE VII
ASSESSMENTS AND FEES

A. General. The Board shall have the power to levy common expense annual assessments against all Lots based on the budget. Assessments for common expenses are also authorized and provided for in Section 47F-3-115 of the Planned Community Act. The common expense annual assessments shall be levied against Improved Lots and Unimproved Lots as determined by the Board and the Finance Committee; however, the annual assessment for Unimproved Lots shall be not less than 44% or more than 60% of the annual assessment for Improved Lots. The Board also has the power to levy fees and charges including, but not limited to, a fee for the impact of construction and renovation of homes upon the Community, tenant fees for the use of the Community's amenities such as the golf course, tennis courts, swimming pool, and clubhouse facilities, for individual services provided to Members and their guests and for the registration of tenants. Such charges and fees are the personal obligation of the Owner, Member or guest who incurs such charge or fee.

(1) If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

(2) Any Common Expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.

(4) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

B. Lien for Assessments.

(1) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Transylvania County in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102 (11) and (12), 47F-3-107 (a) and (b), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

(2) The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(3) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(4) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (A) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(5) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(6) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Lot Owners including such purchaser, and its heirs, successors and assigns.

C. Personal Liability of Lot Owners. The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

D. No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

E. Special Assessments. The Board of Directors may levy special assessments for capital improvements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of the lot owners voting in person or by proxy at an annual meeting or a special meeting of the Association duly called for that purpose.

F. Interest, Late Charges and Payments. In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at not more than 18% per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

G. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.

H. Suspension. The Association shall not be required to transfer membership on its books from an Owner to a third party or to allow the exercise of any rights or privileges of membership to any persons claiming them unless or until all Assessments, fees, and charges to which they are subject have been paid by the Owner or a third party.

I. Annual Assessment. The annual common expense assessments shall be used for the maintenance, improvement, care, operation, upkeep, preservation, and protection of the common areas, common properties, and other real, personal, or intangible properties owned by the Association and, furthermore, may be used to advance, protect and secure, through any means authorized by the Board, the interest of the Association, including, but not limited to, insurance, repair, replacement, renovation, improvement, of all common area, common property and other real, personal, or tangible property owned by the Association and all legal expenses, accounting expenses, staff expenses, fees for management and supervision of the Association's affairs, office expenses, and overhead, security, utility charges in connection with the property not separately metered or charged to individual members, and the establishment and maintenance of reasonable reserve funds.

J. Liquor license. The Association holds a State of North Carolina license to buy, store, and sell alcoholic beverages; fees, procedures, and regulations relating thereto shall be determined by the Board.

ARTICLE VIII
EASEMENTS

A. Reservations. The following easements over each Lot or Parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to:

1. Utilities. A five-foot-wide strip running along the inside of all Lot lines except those Lot lines coincident with street right-of-way lines in which case such strip shall be 10 feet wide, for the installation, maintenance and operation of utilities, including radio and TV transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation.

2. Shoreline Maintenance. A 15-foot-wide strip running along the inside of all Lot lines coincident with the shoreline of any lake or watercourse in the Community for the purpose of shoreline maintenance.

3. An easement for access for Board members, A&E Committee members and Association employees in connection with administration, oversight, and enforcement of architectural and environmental controls, including but not limited to rules and regulations.

4. Slope and Drainage. A 20-foot-wide easement running along the inside of all Lot lines coincident with street right-of-way lines for the purpose of cutting, filling, drainage and maintenance of slopes and drainage courses.

5. Flooding Easement. A flowage and flooding easement running along the inside of all Lot lines coincident with the shoreline of any lake equal to the lakefront building setback line for such Lot as herein set forth.

6. Private Streets. An easement on, over, and under all streets in the Community for the purpose of installing, maintaining and operating utilities thereon or thereunder; for purposes of drainage control; for access to any Lot or Parcel; and for purposes of maintenance of said streets.

7. Other Easements. Easements not specifically stated if they are shown on a recorded Plat for Connestee Falls.

B. Maintenance of Easement Areas. Maintenance of all easement areas of any Lot shall be the responsibility of the Lot Owner with the exception of those areas for which a public authority or utility company is responsible. Improvements made in easement areas, in the form of plantings or otherwise, shall be allowed if they do not damage or interfere with the use of said easements herein set forth, including the necessity of frequent access by maintenance and utility vehicles relative to the shoreline Lots. Any Owner who constructs or places any structure or other improvement within a recorded easement does so at such Owners sole risk that such encroachment could be removed or demolished.

C. Liability for Use of Easements. No Owner shall have any claim or cause of action against the Association or its licensees arising out of the exercise or nonexercise of any easement reserved hereunder or shown on the Plat except in cases of willful or wanton misconduct.

ARTICLE IX
ADDITION OF LAND

A. Property To Be Added. The Association may, from time to time, with the approval of a majority of the members voting in person or by proxy at an annual or special meeting of the Association called for that purpose, add or submit to the Community other real property which is contiguous or adjacent to the Community.

B. Manner of Addition. The Association shall effect such addition by recording a Plat of the real property to be added and by recording a Supplemental Declaration which shall:

1. Describe the real property being added and designate the permissible uses thereof;
2. Set forth any new or modified restrictions or covenants which may be applicable to such additional property, including limited or restrictive uses of Common Areas; and
3. Declare that such additional property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration. Upon the recording of such Plat and Supplemental Declaration, the additional area shall become a part of the Community, as fully, as if such area were part of the Community on the date of recording of this Declaration.

ARTICLE X
ENFORCEMENT POWERS

A. Rules Making Authority. The Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common areas, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote of a majority of the members voting in person or by proxy at an annual meeting or a special meeting of the Association duly called for that purpose.

B. Fining Powers. Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Judicial Committee, having been authorized by the Board, shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article VII hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common areas; and to suspend an Owner's right to vote. In the event that any occupant of a Resident Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Judicial Committee, the Resident Lot Owner shall pay the fine upon notice from the Association. The failure of the Judicial Committee to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Judicial Committee to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective.

C. Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard before the Judicial Committee. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

All remedies provided in this Article are cumulative.

ARTICLE XI ENFORCEMENT PROCEDURES

In accordance with Section 47F-3-107.1 of the Planned Community Act and the Rules and Regulations of the Association, the Judicial Committee shall not impose a fine or charge for damages against a Lot Owner unless and until the following procedure, is followed:

A. Demand. Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is a continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property.

B. Notice. Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Judicial Committee may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine; (iii) that the violator will have the opportunity to be heard at a hearing before the Judicial Committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and that the violation may be represented.

C. Hearing. If the hearing is requested, it shall be held before the Judicial Committee and the violator shall be given a reasonable opportunity to be heard. The Judicial Committee shall render its final decision regarding imposition of the fine no later than five (5) days after the hearing.

D. Appeal to Board. An Owner may appeal a decision of the Judicial Committee to the Board by delivering written notice of the appeal to the Board within fifteen (15) days after the date of the decision. The Board, represented by at least a quorum, may affirm, vacate, or modify the prior decision of the Judicial Committee. The Board shall make its decision based on a review of the record only without any further hearing.

ARTICLE XII
GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any Lot or Parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, right, powers, privileges and immunities of the Association. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with the Association and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

ARTICLE XIII
SEVERABILITY

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XIV
CAPTIONS

Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

ARTICLE XV
PROHIBITION OF TIME-SHARES

A. General Intent and Purpose. The purpose of this Article is to prohibit the use of any Lot, Common Area, Improvement, Parcel, single-family dwelling, multi-family dwelling, or any other property or land within the Connestee Falls Community, for Time-Share Programs or Time-share-like arrangements, taking into account the impact of the development of such a program on the existing development within the Connestee Falls Community that is not subject to any Time-Share Programs at Connestee Falls. In addition, the further intent of this Article is to preserve the character of Connestee Falls as a residential community of low intensity use with minimum disturbance from move-in and move-out of Owners or occupants and use by Owners.

Time share-like arrangements including but not limited to multi-party purchasing and use schemes but which do not fit within the definition of time-shares, are likewise prohibited at Connestee Falls. By way of illustration but not limitation, an owner(s) is prohibited from setting up a timeshare arrangement in which one owner is on the deed but that owner arranges dates of separate occupancy and use for other individuals. It is furthermore prohibited for multiple owners as tenants in common to divide up the occupancy of the unit on any time-based formula. If an owner(s) devises a time share-like arrangement that does not meet the North Carolina statutory definition of a time-share, this arrangement could still be considered a time-share in the sole discretion of the Association and therefore be prohibited.

B. Definitions. For the purposes of this Article, the following words shall have the meanings ascribed herein:

1. "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, single-family dwelling, living unit, or any other private or commercial structure designed for occupancy by one or more individuals.

2. "Offer to Sell", "Offered for Sale", "Offer", or "Offering" means any offer to sell, solicitation, inducement, taking of reservations, advertisement, whether by radio, television, newspaper, magazine or by mail, or any other method of solicitation of Purchasers whereby a person is given an opportunity to acquire a Time-Share Interval or participate in a Time-Share Program.

3. "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.

4. "Purchaser" means any person who is buying, who has bought, or who acquires an interest in a Time-Share Interval or Time-Share Program.

5. "Time-Share Estate" means an ownership or leasehold estate subject to a Time-Share Program, including tenants-in-common, interval ownership, time-span ownership, or any other type of ownership or leasehold Time-Share Program.

6. "Time-Share Interval" means a Time-Share Estate or Time-Share Use.

7. "Time-Share Program" means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy-in-common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Time-Share Interval is created and whereby the use, occupancy or possession of an Accommodation, Lot, Improvement, Multi-Family Dwelling, Single-Family Dwelling, Parcel, Common Area or any other land or property within the Community, has been or becomes subject to a Time-Share Interval whereby such use, occupancy or possession circulates among purchasers of the Time-Share Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

8. "Time-Share Use" means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "Time-Share Estate", including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

C. Prohibition of Time-Share Program. Time-Share Programs and Time-Share-like arrangements are expressly prohibited in any respect within the Community of Connestee Falls.

D. Miscellaneous. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a Single-Family Dwelling nor Multi-Family Dwelling, but instead shall be considered solely in accordance with the terms of this Article.

E. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a "residential use" under the terms of this Declaration, but instead shall be solely considered in accordance with the terms of this Article.

F. Despite anything to the contrary, notwithstanding under the terms of the Declaration, no person shall have any right whatsoever to add to the Community any real property used or to be used as Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use.

G. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word in this Article, or any part hereof is for any reason held by any court of competent jurisdiction to be unconstitutional, invalid, ineffective or otherwise unenforceable, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Association and its membership, by adoption hereof does hereby declare that it has enacted each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Article irrespective of the enactment of any other and irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or words be declared unconstitutional, invalid, ineffective or otherwise unenforceable.

ARTICLE XVI
TERM

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Community until January 1, 2010, after which time the same shall be extended for successive periods of 10 years each, unless voted to the contrary by 90% of the votes entitled to be cast by Members present or represented by proxy at a meeting called for the purpose.

ARTICLE XVII
AMENDMENT

This Declaration may be amended at any time by a majority of the votes of Members present or represented by proxy at an annual meeting or a special meeting of the Association duly called for that purpose. The Board of Directors may, in the alternative, conduct a vote on a proposed amendment by mail written ballot as provided by the North Carolina Non-Profit Corporation Act. In such case, the Declaration will be amended if a majority of the ballots received are in favor of the proposed amendments. Any amendments to the Declaration will become effective upon recordation and the President of the Association shall certify that the required affirmative vote was obtained and the Secretary of the Association shall attest to the certification.

ARTICLE XVIII
RENTING OR LEASING OF LOTS

In order (i) to protect the equity of the individual property owners in the Association, (ii) to carry out the purpose for which the Community was formed by preserving the character of the Community as a residential community of owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied apartment complex, and (iii) to comply with the eligibility requirements for financing in the secondary mortgage market in so far as such criteria provide that the Community shall be substantially owner-occupied, Lots may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be permitted. No lots may be subleased.

"Leasing" for purposes of this Declaration is defined as regular occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, exchange, service, gratuity or emolument. Occupancy of a residence by a "guest" shall be deemed a lease if the Owner is not present at the residence and the "guest" is deemed a "tenant" and is liable for and required to pay tenant fees. Even if the owner is present, any "guest" who remains more than thirty (30) days is also deemed to be a tenant and is liable for and required to pay tenant fees.

All tenants are required to pay Tenant Fees as determined and set from time to time by the Board of Directors. These tenant fees give tenants access to all amenities as if they were owner members at Connestee Falls. If the tenant does not pay Tenant Fees, then the Owner of the Lot is responsible and those fees will be assessed against the Owner.

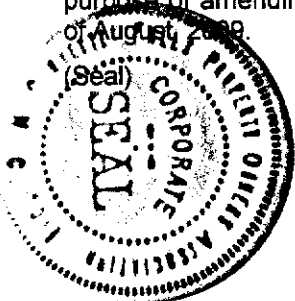
All leases and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The Lot Owner shall make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations.

Any lease of a Lot in the Community shall be deemed to contain the provisions of the form lease attached as Exhibit "A" to the Declaration, whether or not expressly therein stated, and each Owner covenants and agrees that if such language is not incorporated into a lease document it shall be deemed to be so incorporated by the existence of this covenant on the Lot. Any lessee, by occupancy in a Lot, agrees to the applicability of this covenant and incorporation of those provisions into the lease:

All Lot Owners shall register any and all changes in the status of a rental/leased lot with the Association, including but not limited to, vacancies, the renewal of leases and new tenants, within fourteen (14) days. All Lot Owners that are currently leasing their lot at the time of recording this amendment shall register information regarding a rental/leased lot with the Association within fourteen (14) days of the recording of this Amendment with the Transylvania County Registry of Deeds. In order to properly register a rental/leased lot with the Association, the Lot Owner of a rental/leased lot must provide the Association, through the Board of Directors, or their designated representative, the name(s) of the tenants in the rental/leased lot, a telephone number by which the tenant(s) may be contacted by the Association if the need arises and the term (duration) of the lease.

The failure of any Lot Owner to comply with this section shall be considered a violation of the Declaration. The Association may, after providing the Lot Owner with notice and opportunity to be heard, impose fines up to one hundred dollars (\$100.00) a day pursuant to N.C.G.S. 47F-3-107.1 for such a violation.

IN WITNESS THEREOF the undersigned Board of Directors of the Connestee Falls Property Owners Association, hereby adopts and approves the aforesaid amended Declaration of the Connestee Falls Property Owners Association which were duly adopted and approved by the members of the Association by a majority of votes entitled to be cast in person or by proxy at a meeting duly called for the purpose of amending the Declaration of Connestee Falls Property Owners Association, Inc. this 26th day of August, 2009.



NORTH CAROLINA, TRANSYLVANIA COUNTY

Connestee Falls Property Owners Association, Inc.

By:

[Signature]
R. Nicholas Funston, President

Attest:

[Signature]
Douglas C. Whitney, Acting Secretary

I Sharon M. Jenkins, Notary Public for said County and State, certify that Douglas C. Whitney personally came before me this day and acknowledged that he is Acting Secretary of Connestee Falls Property Owners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him as its Acting Secretary.

Witness my hand and official seal, this the 26th day of August, 2009.

[Signature]
Sharon M. Jenkins, Notary Public

My commission expires: 11-23-2012.

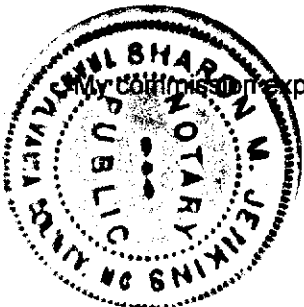


EXHIBIT "A "

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

LEASE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between _____, (hereinafter called "Lessor"), and _____, hereinafter called "Lessee");

WITNESSETH

That in consideration of the mutual covenants hereinafter set forth, the parties do hereby covenant and agree as follows:

1. **PREMISES LEASED, TERM OF LEASE, AND OCCUPANCY.** Lessor does hereby rent and lease to Lessee Lot # _____ at _____ in Connestee Falls (hereinafter the "Premises"), for a term of _____ month(s) commencing on _____, 20____, and ending on _____, 20____, midnight. Either Lessor or Lessee may terminate the tenancy at the expiration of the Initial Term by giving written notice to the other at least _____ days prior to the expiration date of the Initial Term. In the event such written notice is not given or if the Lessee holds over beyond the Initial Term, the tenancy shall automatically become a _____ to _____ period period tenancy upon the same terms and conditions contained herein and may thereafter be terminated by either Lessor or Lessee by giving the other days written notice prior to the last day of the then current period of the tenancy.

2. **RENT.** Lessee covenants and agrees to pay to Lessor at _____ a monthly rent equal to \$ _____ promptly on the first day of each rental month in advance during the term of this Lease. The first rental payment, which shall be prorated if the Initial Term commences on a day other than the first day of the applicable rental payment period, shall be due on _____ date and shall constitute payment for the period ending _____ date in the amount of \$ _____.

3. **LATE PAYMENTS AND RETURNED CHECKS.** Time is of the essence in this Agreement, and if Lessor elects to accept rent after the _____ day of the month, a late charge, upon request of Lessor, of \$ _____ may be charged as additional rent. In the event Lessee's rent check is dishonored by the bank, Lessee agrees to pay Lessor \$ _____ as a handling charge and, if appropriate, the late charge. Returned checks shall be redeemed by cash, a cashier's check, certified check, or money order. If more than two checks are returned, Lessee agrees to pay all future rents and charges in the form of cash, a cashier's check, a certified check, or money order.

4. **SECURITY DEPOSIT.** The Lessee shall deposit with the Lessor the sum of \$ _____ to secure the faithful performance of the Tenant's promises and duties contained herein (the "Security Deposit"). The Lessor will deposit the Security Deposit in a Trust Account with _____ having an address of _____ to secure the performance of the Lessor's obligation to refund the Security Deposit as herein provided.

The Security Deposit shall be held, and upon the termination of the tenancy be returned to Lessee within thirty (30) days after the residence is vacated if:

- (i) The lease term has expired or this Agreement has been terminated by both parties;
- (ii) All monies due Lessor by Lessee have been paid; and
- (iii) The Premises are not damaged and are left in the same condition as exists at the execution of this Lease, normal wear and tear excepted.

The deposit may be applied by Lessor to satisfy all or part of Lessee's obligations, and such application shall not prevent Lessor from claiming damages in excess of the deposit. Lessee agrees not to apply the deposit to any rent payment and also agrees to pay \$ _____ for re-keying locks if all keys are not returned. Lessee acknowledges receipt of _____ keys.

In the event that any part of the deposit has been used by Lessor in accordance with the terms of this Agreement or applicable law, Lessee shall upon demand immediately deposit with Lessor a sum equal to the amount so applied by Lessor so that Lessor shall have the full deposit on hand at all times during the lease term including any extension, renewal or holdover term. In the event of any permitted assignment or sublease of this Agreement by Lessee, the deposit shall be deemed to be held by Lessor as a deposit made by Lessee's assignee and Lessor shall have no further liability to return such deposit to the assignor.

THE SECURITY DEPOSIT MAY, IN THE DISCRETION OF EITHER THE LESSOR OR THE AGENT, BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT WITH THE BANK OR SAVINGS INSTITUTION IDENTIFIED ABOVE. ANY INTEREST EARNED UPON THE SECURITY DEPOSIT, WHETHER THE SECURITY DEPOSIT IS DEPOSITED IN A TRUST ACCOUNT OR HELD OTHERWISE, SHALL ACCRUE FOR THE BENEFIT OF, AND SHALL BE PAID TO, THE LESSOR, OR AS THE LESSOR DIRECTS. SUCH INTEREST, IF ANY, MAY BE WITHDRAWN BY LESSOR OR AGENT FROM SUCH ACCOUNT AS IT ACCRUES AS OFTEN AS IS PERMITTED BY THE TERMS OF THE ACCOUNT.

5. **ASSOCIATION IS THIRD PARTY BENEFICIARY.** Lessee and Lessor acknowledge that Connestee Falls Property Owners Association, Inc., a North Carolina non-profit corporation, (hereinafter called the "Association") is a third-party beneficiary of the promises made in this Lease Agreement.

6. **COMPLIANCE AND ENFORCEMENT BY ASSOCIATION.** Lessee shall comply strictly with the Third Restatement of Declaration of Restrictive Covenants for Connetsee Falls ("Declaration"), as amended, the By-Laws of the Association (hereinafter the "By-Laws"), and with the Rules and Regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any occupant or person living with Lessee of any provision of the Declaration, By-Laws, or the Rules and Regulations adopted thereunder shall constitute a default under this Lease.

In order to enforce the provisions of this Lease Agreement, the Association may bring an action against the Lessor or Lessee for damages or injunctive relief or may impose any other sanction authorized by the Declaration or By-Laws or available at law or in equity including, without limitation, all remedies available to a landlord upon breach or default of a lease (including eviction). Failure by the Association to enforce any of its rights shall not be deemed a waiver of the right to do so thereafter.

Lessor hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the Lessee for breaches resulting from the violation of the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the Lessee on behalf and for the benefit of the Lessor, in accordance with the terms thereof. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the lot and the Lessor, such being deemed hereby as an expense which benefits the Lessor.

Lessor hereby represents that Lessee has been given a copy of Declaration, By-laws and the Rules and Regulations of Connetsee Falls Property Owners Association, Inc., ("Association"), that Lessee has read them, and that Lessee is bound by them.

If a Lessee or a person living with the Lessee, violates the Declaration, By-Laws or a Rule or Regulation for which a fine is imposed, such fine may be assessed against the Lessee; provided, however, if the fine is not paid by the Lessee within the time period set by the Board of Directors of the Association, Lessor shall pay the fine upon notice from the Association of Lessee's failure to pay the fine. Unpaid fines shall constitute a lien against Lessor's lot.

7. **PAYMENT OF ASSESSMENTS.** Upon written request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the term of this Agreement and any other period of occupancy by Lessee; provided that Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made under this Paragraph shall reduce, by the same amount, Lessee's obligation to make monthly rental payments. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, interest, and costs of collection including, but not limited to, reasonable attorney's fees

actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the owner of the Premises during the term of this Agreement and any other period of occupancy by the Lessee.

8. **POSSESSION.** Lessor shall not be liable for damages to Lessee for failure to deliver possession of the Premises to Lessee at the commencement of the term if such failure is due to no fault of the Lessor. Lessor shall use his or her best efforts to give possession of the Premises to the Lessee at the beginning of Lessee's term.

9. **MAINTENANCE AND INDEMNIFICATION.** Lessee accepts Premises in the condition in which they are now and as suited for the use intended by Lessee. Lessor shall not be required to make any repairs or improvements on the Premises, except that on written notice from the Lessee of any defect rendering the Premises unsafe or untenantable, Lessor shall remedy such defective condition. Lessee shall comply with all notices and other requirements, including the Declaration, By-Laws and Rules and Regulations of the Association concerning maintenance and repair. Lessee shall be liable for and shall indemnify and hold Lessor harmless from any damage or injury to the person or property of Lessee or any other person if such damage or injury be due to the act or neglect of the Lessee or any other person in his control or employ, or if such damage or injury be due to any failure of Lessee to report in writing to Lessor any defective condition which Lessor would be required to repair under the terms hereof on notice from Lessee. Lessee releases Lessor from liability for and agrees to indemnify Lessor against all losses incurred by Lessor as a result of (a) Lessee's failure to fulfill any condition of this Agreement; (b) any damage or injury happening in or about the Premises to Lessee's invitees or licensees or such person's property; (c) Lessee's failure to comply with any requirements imposed by any governmental authority and as provided in Paragraph 6 hereof; and (d) any judgment, lien, or other encumbrance filed against the Premises as a result of Lessee's action. Lessor shall not be liable for damage to Lessee's property of any type for any reason except where such is due to Lessor's negligence.

10. **USE.** Lessee shall not use or allow the Premises to be used for any disorderly or unlawful purposes or in any manner offensive to others, and Lessee shall comply with all applicable laws and ordinances. Lessee shall not remodel or make any structural changes to the Premises, nor shall Lessee remove any fixture therefrom.

Lessor transfers and assigns to Lessee for the term of the lease any and all rights and privileges that Lessor has to use the common elements of the Development, to include, but not be limited to, the use of any and all recreational facilities or other amenities.

11. **UTILITIES.** All utility bills for services separately metered or billed to the Premises during the lease term shall be paid by _____. To avoid any freeze damage, heat must be maintained at not lower than 55 degrees F during the winter.

12. **PETS.** To the extent that Lessor permits Lessee to keep any pets, Lessee shall be permitted to keep only those common household pets which are permitted by the Declaration, By-Laws, and Rules and Regulations of the Association.

13. **VEHICLES; PARKING.** The Lessee agrees to park motor vehicles in the areas designated by the Board of Directors of the Association.

14. **ASSIGNMENT AND SUBLEASING.** Lessee shall not assign this Lease or sublet.

15. **CASUALTY.** If the Premises are rendered untenable by fire, storm, earthquake or other casualty, this Lease shall terminate as of the date of such destruction or damage, and rental shall be accounted as of that date.

16. **ACCESS.** Lessor, his or her agents, and the agents of the Association shall have the right of access to the Premises, upon notice to Lessee, between the hours of 8:00 a.m. and 8:00 p.m., for inspection and maintenance. In case of emergency, such parties may enter at any time to prevent property damage or personal injury.

17. **DISCLOSURE.** The owner of record of the Premises or person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for demands and notice is:

_____ (owner) (agent)

_____ (address)

The person authorized to manage the Premises is:

_____ (address)

18. **HOLDOVER.** Lessee shall not remain in possession of the within-leased Premises after the expiration of this Lease. Any holding over of the within-leased Premises by Lessee after the expiration of this Lease without a written renewal thereof or written consent from Lessor or Lessor's agents and the Board of Directors of the Association, shall not constitute a tenant-at-will interest on behalf of Lessee, but Lessee shall become a tenant at sufferance. There shall be no renewal whatsoever of this Lease by operation of law.

19. **SURRENDER.** Whenever under the terms hereof Lessor is entitled to possession of Premises, Lessee shall at once surrender same to Lessor in as good condition as at present, natural wear and tear excepted, and Lessee shall remove all of Lessee's effects therefrom. Lessor may forthwith re-enter Premises and repossess himself or herself thereof and remove all persons and

effects therefrom, using such force as may be necessary without being guilty of forcible entry or detainer, trespass, or other tort.

20. **ABANDONMENT**. If Lessee removes or attempts to remove property from the Premises other than in the usual course of continuing occupancy without first having paid Lessor all monies due, the Premises may be considered abandoned, and Lessor shall have the right without notice, to store or dispose of any property left on the Premises by Lessee. Lessor shall also have the right to store or dispose of any of Lessee's property remaining on the Premises after termination of this Agreement. Any such property shall be considered Lessor's property, and title thereto shall rest in Lessor. Lessor shall have the right to re-rent the Premises after Lessee abandons same.

21. **DEFAULT**. Any breach or violation of any provision of this Agreement by Lessee shall give Lessor the right to terminate this Agreement or to take possession and hold Lessee liable for the remainder of the term. Should possession be obtained, Lessor, at Lessor's option, may re-rent the Premises as Lessee's agent at the risk and cost of the defaulting Lessee, whose default shall not relieve him or her of liability for the difference between the rent herein reserved and the rent actually received by Lessor during the term remaining after such default occurs.

22. **CONDEMNATION**. In the event that the Premises or any part thereof (other than common elements, the taking of which does not prevent continued occupancy of the Premises) is taken by any authority exercising the power of eminent domain, this Lease shall terminate as of the date possession shall be taken by the condemnor. Lessee waives all claims against Lessor or any condemning authority by reason of the complete or partial taking of the Premises, and shall not be entitled to receive any part of any award which Lessor may receive, hereby quitclaiming all interest therein to Lessor.

23. **SUBORDINATION OF RIGHTS**. Lessee's and Lessor's rights shall be subject to all rights of the Association and any bona fide mortgage or deed of trust which is now or may hereafter be placed upon the Premises by Lessor.

24. **ENTIRE AGREEMENT AND WAIVER**. This Agreement contains the entire agreement of the parties, and no representation, inducement, promises or agreements not contained herein shall be of any force or effect. No failure of Lessor to exercise any power given Lessor hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Lessor's right to demand exact compliance with the terms hereof.

25. **REMEDIES CUMULATIVE**. All remedies under this Agreement or by law or equity shall be cumulative. If suit for any breach of this Agreement establishes a breach by either Lessor or Lessee, the party found in breach shall pay to the other party all expenses incurred in connection therewith, including, but not limited to, attorney's fees.

26. **APPROVAL OF BOARD OF DIRECTORS**. This Agreement is subject to the approval of the Board of Directors of the Association and shall become effective only upon such written approval.

27. **ILLEGAL ACTIVITIES.** The conduct of any unlawful activities on the Premises shall constitute a breach of this Agreement.

28. **SUCCESSORS.** This Agreement shall inure to the benefit of and shall bind the heirs, successors, personal representatives and assigns of all parties to this Agreement.

29. **SPECIAL STIPULATIONS.**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

LESSOR: _____ (signature)

Name: _____ (please print)

LESSEE: _____ (signature)

Name: _____ (please print)

LESSEE: _____ (signature)

Name: _____ (please print)

____ Approved

____ Not Approved

This _____ day of _____, 20_____.

By:

For the Board of Directors