

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
THE VILLAGE AT AVERY'S CREEK

THIS DECLARATION made and entered into this the 27th day of February, 1991, by and between NAPPYER & GUNNELLS CONSTRUCTION COMPANY, INC., hereinafter referred to as "Developer" and all future purchasers and owners of lots within the Subdivision to be known and designated as "The Village at Avery's Creek" hereinafter described;

WITNESSETH

THAT WHEREAS, Developer is the owner of all the real property described in that deed from Andy M. Johnston and wife, Thelma G. Johnston to Nappier & Gunnells Construction Company, Inc., a North Carolina Corporation, dated May 10, 1990 which deed is duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1606 at Page 720, reference to which is hereby made for purposes of a more particular description of said real property, and wishes to develop such real property into a well planned residential community; and

WHEREAS, Developer has subdivided a portion of such real property into lots as shown on plat entitled "Section 1 The Village at Avery's Creek" which plat is duly recorded in the office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 58 at Page 32, reference to which is hereby specifically made. Developer is the owner of all the lots shown on said plat; and

WHEREAS, Developer purposes to sell and convey the lots shown on the aforesaid plat to be used for residential purposes and to develop said lots, together with the remaining real property within the Development Area as that term is hereinafter described, into a well planned residential community; and

WHEREAS, Developer desires, for the benefit of such property and for the benefit of future purchasers and owners of said lots within said Subdivision, including lots located within the Development Area hereafter added to this Subdivision, that said Subdivision property shall be developed and used as hereinafter set forth; and

WHEREAS, Developer, prior to selling and conveying the aforesaid residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants, conditions and charges for the benefit and complement of all of the residential lots in the Subdivision in order to promote the best interests and protect the investments of Developer and the future owners of such lots.

NOW, THEREFORE, in consideration of the premises and for the advantage which the Developer will receive from the sale of such lots in a restricted subdivision, Developer, for itself, its assigns and successors in title, covenants and agrees, and hereby declares that the real property shown on said plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 58 at Page 32 and any additional real property located in the Development Area as that term is hereinafter defined that may by subsequent amendment be added to and subjected to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and the following covenants, conditions and restrictions:

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1. Definitions. As used herein the following words shall have the following meaning:

a. "Common Areas" shall mean all real property within the Development Area which may be deeded to the Homeowners Association for the common enjoyment of all lot owners and any real property designated on the plats of the Subdivision as Common Area.

b. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek.

c. "Developer" shall mean Nappier & Gunnells Construction Company, Inc., its successors or assigns.

d. "Development Area" shall mean all the real property described in that deed from Andy M. Johnston and wife, Thelma G. Johnston to Nappier & Gunnells Construction Company, Inc. dated May 10, 1990 which deed is duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1606 at Page 720, reference to which is hereby made for purposes of a more particular description of said real property.

e. "Homeowners Association" shall mean The Village at Avery's Creek Homeowners Association, Inc., a North Carolina non-profit corporation organized under Chapter 55A of the North Carolina General Statutes.

f. "Lot" or "lot" shall mean the separately numbered parcels of land depicted on the above mentioned plat and any other separately numbered parcels of land shown on any plat subsequently filed with a Supplementary Declaration of Covenants, Conditions and Restrictions adding land to the Subdivision.

g. "Subdivision" shall mean "The Village at Avery's Creek" and shall include all the real property shown on the above mentioned plat and any portion of the Development Area hereinafter added to the Subdivision by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions as is hereinafter provided for.

2. Applicability. The covenants, conditions and restrictions set forth in this Declaration shall apply to the real property shown on said above referred to plat and any additional real property located within the Development Area which may hereafter be added to the Subdivision by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions.

3. Addition of Land to Subdivision. It is the present intention of Developer to develop all of the real property described in said deed from Andy M. Johnston and wife, Thelma G. Johnston to Nappier & Gunnells Construction Company, Inc. dated May 10, 1990 recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1606 at Page 720 in accordance with the provisions of this Declaration. Developer shall have the right, at its election, without the necessity of consent of any lot owner or owners or any other person, to expand the Subdivision and bring within the coverage and operation of these restrictions additional real property within the Development Area as may be developed in the future. The addition of real property authorized hereby shall be made by filing of record in the Office of the Register of Deeds for Buncombe County, North Carolina a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property, together with a plat showing such real property added, which shall extend the operation and effect of the covenants, conditions and restrictions of this Declaration to such additional real property. Any such Supplementary

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Declaration may contain such complimentary additions to and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgment of Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

4. Land Use. All lots in said Subdivision shown on the above referred to plat shall be known and described as private residential lots and no lots shall be used for any other purpose. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed three (3) stories in height (excluding any basement level or attic, whether or not such basement or attic are finished as a living area) and a detached private garage for not more than two (2) automobiles, provided, however, that it shall be permissible to have a detached garage for not more than two (2) automobiles only if there is no garage or carport attached to the dwelling located on the lot. In the event there is a garage or carport which is attached to or is a part of the dwelling it shall not be permissible to have a separate detached garage on such lot. No mobile or modular home may be erected or permitted to remain on any lot. Notwithstanding the above it is specifically provided that Developer, during the development and sales stage, may maintain a dwelling on any lot for use as a model home and/or sales office. Notwithstanding the above Developer shall also be entitled to maintain a construction trailer and office on said real property.

5. Subdivision of Lots, Combination of Lots. Only one residence may be built on any lot as shown and designated on said plat. None of the lots shown on said plat shall be subdivided. No portion on any lot less than the whole shall be sold or conveyed. It shall be permissible, however, for two or more of the lots shown on said plat to be combined into one building lot. An owner of two (2) or more adjoining lots may construct a dwelling or other structure permitted hereunder upon and across the dividing line between such lots, all such structures to comply with the minimum building set back lines from the actual boundary line of the combined lot and thereafter such combination of lots shall be treated for all purposes under this Declaration as a single lot. In the event two (2) or more lots are combined into one lot all side set backs and all easements reserved along the side lot lines shall pertain only to the side lot lines of the combined lot. This shall not permit any lot owner to construct a dwelling or other permitted structure over any water or sewer easement shown on said plat.

6. Commercial Use Prohibited; Nuisances. No trade or business may be operated upon any lot or from any dwelling located on any lot. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No lot shall be used in whole or in part for the storage of rubbish of any nature, nor for the storage of any property or thing, including but not limited to, junk or unlicensed motor vehicles that will cause such lot to appear in an unclean or unkept condition or that will be obnoxious in appearance; nor shall any substance, thing or material be kept upon any lot which will emit foul or obnoxious odors or which will cause noise which will disturb the peace, quiet, comfort or serenity of the occupants of surrounding lots. No wrecked or junked motor vehicle shall be permitted to remain on any lot. It is specifically provided, however, that notwithstanding the above or any other provision of this Declaration Developer, its successors or assigns may, until such time as Developer, its successors or assigns have sold and conveyed all of the property within the Development Area, maintain a dwelling on any lot for use as a model home and/or sales office. Developer shall also

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be entitled to maintain a construction trailer and office on said real property.

7. Dwelling Size. Every dwelling constructed on any lot shall contain a minimum of one thousand fifty (1050) square feet of heated living area exclusive of any garage, carport, unenclosed porches or decks and patios. This minimum square footage requirement applies to the house constructed on any lot and does not apply to any permitted garage.

8. Dwelling Quality. All dwellings and other structures erected on any lot shall be constructed of material of good grade, quality and appearance and all construction shall be performed in a good and workman like manner. The exterior construction of any dwelling shall not be of asbestos shingle siding, imitation brick, stoneroll siding or concrete blocks. There shall be no exposed block. All exterior wood surfaces of any dwelling shall be painted or stained as appropriate. Any permitted garage shall be of the same material, quality, general appearance and workmanship as the dwelling on the lot.

9. Temporary Structures. No structure of a temporary character, including, but not limited to, trailers, mobile homes, tents, shacks or any other outbuilding shall at any time be used as a residence, either temporarily or permanently. Nor shall any trailer or mobile home be placed on any portion of the Subdivision. This restriction shall not however apply to shelters used by contractors during the course of construction of any dwelling.

10. Setback Lines. No building or other structure shall be located on any lot nearer to the front, side or rear lines of any lot than the minimum building setback lines shown on said plat or required applicable zoning regulations. In any event, no building shall be located on any lot nearer than twenty (20) feet to the front or rear lot line or nearer than ten (10) feet to any side line. For purposes of this covenant eaves, steps, decks and open porches shall not be considered as part of a building, and any encroachment of such over the setback lines shall not constitute a violation of the setback lines provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Developer reserves the right to waive unintentional violations of the setback lines by executing waivers of such violations which waivers shall be valid upon recording in the Office of the Register of Deeds for Buncombe County, North Carolina. The term "front lot line" means the boundary line of the lot that abuts and is contiguous to and bounded by the named street as shown on the recorded Subdivision map. The term "rear lot line" means the boundary line of the lot that is furthest from and substantially parallel to, the line of the street on which the lot abuts. The term "side line" or "side lot line" means the boundary line of the lot that extends from the front lot line to the rear lot line.

On a few of the lots shown on said above mentioned plat it is difficult to determine which is the front lot line, which is the rear lot line and which are the side lot lines. The following shall control for those lots specifically mentioned:

Lot 41 as shown on said plat of Section 1 of The Village at Avery's Creek shall be deemed to have a front lot line on Pine Ridge Trail.

Lot 40 as shown on said plat of Section 1 of The Village at Avery's Creek shall be deemed to have a front lot line on Avery's Creek Lane.

Lot 39 as shown on said plat of Section 1 of The Village at Avery's Creek shall be deemed to have a front lot line on Turkey Toe Lane.



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Lots 34 and 84 as shown on said plat of Section 1 of The Village at Avery's Creek shall be deemed to have a front lot line on Pine Ridge Trail.

Lot 59 as shown on said plat of Section 1 of The Village at Avery's Creek shall be deemed to have a front lot line on both Turkey Toe Lane and Pine Ridge Trail.

Lots 46, 50 and 51 as shown on said plat of Section 1 of The Village at Avery's Creek shall have front, side and rear set back lines as more specifically shown on said plat.

11. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved five (5) feet in width along the side lot lines of each lot and ten (10) feet in width along the front and rear lot lines of each lot and within the roads and road rights-of-way shown on said plat. Such utilities shall include, but not be limited to, lines for water, sewer, electricity, natural gas, telephone and cable television. Developer may, without the consent or joinder of any lot owner or any other person, execute an easement for the installation and maintenance of such utilities within such areas to any appropriate company or governmental authority. Additional drainage easements, water and sewer easements and utility easements are reserved to Developer, its successors and assigns, which easements are more particularly shown and delineated on said above mentioned plat which plat is hereby incorporated by reference and made a part hereof for a more particular description of such easements and rights-of-way. Within these easements, no structure, planting or other material shall be placed or permitted to remain which might interfere with the installation or maintenance of utilities or which may change the direction or flow of water or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible. Neither Developer or any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to the grass, shrubbery, trees, flowers or other property of the owner situated on the land covered by these easements.

Easements for water and/or sewer lines are hereby reserved as shown on said plat to Developer, its successors and assigns, which plat is incorporated herein by reference and made a part hereof for a more particular description of such easements and rights-of-way. Developer hereby reserves the right, without the necessity of joinder of any lot owner or any other person, to convey any such water or sewer easements shown on said plat to any appropriate utility company, government or governmental authority who may hereafter take over maintenance of such water or sewer lines.

Additionally, each owner of a lot within the Subdivision shown on the above mentioned plat, as an appurtenance to such lot, shall have a perpetual easement over and upon the Common Areas of the Subdivision as defined herein and as shown on said plat for each and every purpose or use to which such Common Areas were intended as determined by their type or for which such Common Areas are generally used subject to the rules and regulations governing use of such Common Areas established by the Homeowners Association. Such easement shall be appurtenant to and shall pass with the title to each lot shown on said plat, whether or not specifically included in a deed thereto.

Developer reserves the right to create and impose additional easements or rights-of-way over any road or road right-of-way as shown on said above mentioned plat and over any lot or lots it owns for street, drainage and/or utility installation and maintenance purposes by the recording of appropriate instruments in the Office of the Register of Deeds

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for Buncombe County, North Carolina and such shall not be construed to invalidate or be in violation of any of these covenants. Developer further reserves unto itself, its successors and assigns an easement and right-of-way over, across and upon all roads and road rights-of-way shown on said above referenced plat for access to all real property in the Development Area it being understood that it is the intention of Developer to expand the Subdivision by adding additional sections to the Subdivision and that the roads shown on said above referenced plat will be extended to provide access to such additional property. Developer further reserves unto itself, its successors and assigns an easement and right-of-way over, across and upon all roads and road rights-of-way shown on the above mentioned plat for purposes of providing access to and from all portions of the Development Area for any and all purposes, including, but not limited to, construction of and access to any additional improvements subsequently located thereon.

12. Travel Trailers, Campers, Boats and Recreational Vehicles. Travel trailers, campers, boats and recreational vehicles (RV's) shall not be used as a residence on any lot at any time, either permanently or temporarily. In addition all travel trailers, campers, boats, trailers of any kind and recreational vehicles must be kept indoors at all times and are not permitted to be kept, parked or permitted to remain on any lot outside the dwelling or garage.

13. Automobiles, Trucks and Commercial Vehicles. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No unlicensed, uninspected or non-operable vehicles shall be kept, parked or allowed to remain on any lot outside the dwelling or garage. Except for emergency repairs, no person shall repair or restore any vehicle, boat, trailer or recreational vehicle on any lot outside a dwelling unit or garage. No automobiles, trucks or vehicles of any kind may be parked or permitted to remain on any portion of the roads shown on said plat above mentioned.

No trucks larger than a one ton pickup truck may be parked or permitted to remain on any portion of any lot or on any road shown on said plat. Tractor trailer cabs and/or tractor trailer trucks of any kind may not be parked, stored or permitted to remain on any portion of any lot or on any road shown on said plat.

14. Trash. No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All waste and refuse shall be kept in clean and sanitary containers until properly disposed of.

15. Grass and Weeds. Grass and weeds are to be kept down on all lots, including vacant lots, to prevent any unsightly or unsanitary condition. This is the obligation of each lot owner and is to be done at his or her expense.

16. Walls, Fences and Hedges. No wall, fence or hedge shall be erected on any lot beyond the front edge of the dwelling except for walls, fences or hedges which may be an integral part of the residence or otherwise essential to the design of the home but in any such event only with approval of Developer. Any wall or fencing on any portion of any lot must be of attractive and durable materials; barbed wire, field fencing, chicken wire and other similar types of fencing are prohibited. No fence which exceeds six (6) feet in height may be erected on any portion of any lot.

17. Tanks. All fuel oil tanks or other containers shall be buried underground or enclosed in a structure in a manner consistent with all appropriate safety precautions and regulations.

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18. Wells. No wells for water may be constructed in the front yard of any lot. Any wells must be constructed in the rear yard of any lot, behind the dwelling located on such lot.

19. Pools, Sporting and Play Equipment. All sports and play equipment, including but not limited to, childrens' playground equipment, shall be kept only in the rear yard of any lot, behind the dwelling located on such lot and shall be concealed from view. All swimming pools or tennis courts must be constructed in the rear yard of any lot behind the dwelling built on such lot and must be built inside all setback lines.

20. Animals and Livestock. No animals, livestock or poultry including, but not limited to, cows, pigs, goats, chickens, sheep or horses shall be raised, bred or kept on any lot but this shall not be construed to prohibit the keeping of dogs, cats or other household pets in reasonable numbers provided they are not kept, bred or maintained for commercial purposes or in a manner which becomes a nuisance or annoyance to adjacent property owners. All such household pets must be kept on the lot of its owner, under the control of its owner. Household pets are not permitted to run at large within the Subdivision.

21. Outside Radio Antennas, Television Antennas and Satellite Dishes. No radio antennas (including, but not limited to, short wave radio antennas) or satellite dishes shall be placed or erected on any lot or dwelling. However, standard television antennas of customary size attached to the roof of a dwelling shall be permitted but must be approved as to size and location by Developer, its successors or assigns as provided in paragraph 30 herein.

22. Signs. No sign or billboard of any kind shall be erected upon or displayed on any lot except one sign of not more than six (6) square feet advertising the property for sale or rent or signs used by Developer to advertise the property during the construction and sales period. Nothing herein shall be construed to prevent Developer from erecting an entrance sign or street signs which right shall pass to the Homeowners Association.

23. Driveways and Parking Areas. All driveways and parking areas must be paved with either asphalt or concrete or such other paving material as Developer may authorize and such paving shall be completed upon occupancy of the dwelling or within sixty (60) days thereafter.

24. Completion of Construction. Once begun, construction of a dwelling on any lot in the Subdivision shall be completed within one (1) year. This provision shall not, however, apply to Developer. The contractors or builders on any lot are required to keep the street in front of the lot free of dirt, rubbish, boards, cans and paper.

25. Native Growth. It shall be the obligation of the lot owner to preserve, so far as it is practicable, the native appearance of each lot within the Subdivision; no clear-cutting shall be allowed. It is the intention hereof that large trees shall be allowed to exist on all lots and that plantings and landscaping be provided so that each lot shall be maintained in such a way as to conform with its natural surroundings.

26. Exterior Maintenance. The exterior maintenance of each lot, including the maintenance of the trees, shrubs, grass, sidewalks, buildings and improvements shall be the responsibility of each individual lot owner. Each individual lot owner shall properly maintain the exterior of his property and shall provide for proper repair, replacement and care of roofs, gutters, downspouts, doors, windows or any mechanical or non-mechanical equipment and facilities which service the

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dwelling unit on each lot, the painting or staining of the normally painted or stained surfaces at normal intervals, the mowing, trimming, pruning and general care of trees, shrubs and other landscaping items.

27. Common Areas. Certain areas shown on said plat are designated as Common Areas. The Common Areas shall be all the real property designated on said plat as Common Area and any portion of the Development Area which may be deeded to the Homeowners Association for the common use and enjoyment of all lot owners and their families. The Homeowners Association shall be responsible for the maintenance and upkeep of these areas. The Homeowners Association will also be responsible for establishing and enforcing rules and regulations regarding the use of all Common Areas. Developer or the Homeowners Association, whichever shall own fee simple title to the Common Areas, shall have the right to grant easements for utility purposes for the benefit of the Subdivision and the lots now or hereafter included therein, over, under, along and through the Common Areas; provided, however, that no such grant of an easement shall have a material adverse effect on the use or enjoyment of any lot.

28. Homeowners Association. There has been established prior to the recording of this document a North Carolina non-profit corporation named The Village at Avery's Creek Homeowners Association, Inc. (herein referred to as "the Homeowners Association"). Each owner of a lot in the Subdivision shall automatically be a member of the Homeowners Association as is more fully provided for in the Articles of Incorporation and Bylaws for said corporation. Membership in the Homeowners Association shall relate to and have a unity of interest with each individual lot which may not be separated from ownership of said lot. By the acceptance of a deed for a lot in the Subdivision the grantee(s) agrees to membership in the Homeowners Association and agrees to abide by all applicable rules, regulations and Bylaws of said corporation, including, but not limited to, the obligation to pay all assessments properly levied by the Homeowners Association. A copy of the Bylaws of the Homeowners Association is attached hereto as Exhibit "A" and incorporated herein by reference. The Homeowners Association has been created for the following purposes: (1) to own certain of the Common Areas which have been or will be conveyed to the Homeowners Association; (2) to provide for the maintenance of the Common Areas shown on said plat; (3) to provide for the maintenance of all roads in the Subdivision until such time as the North Carolina Department of Transportation takes over the responsibility for such maintenance; (4) to provide for the enforcement of these restrictions; (5) to establish rules and regulations regarding the use of all Common Areas in the Subdivision; and, (5) to provide for any other matters which relate to the general welfare of the owners of the lots in the Subdivision.

As provided in the Bylaws of The Homeowners Association, the Homeowners Association shall have the right to levy periodic assessments which may be either general or special assessments as provided for in the Bylaws of the Homeowners Association for purpose of carrying out its purposes including, but not limited to, the maintenance and upkeep of all Common Areas in the Subdivision and all roads in the subdivision. Assessments shall be levied and collected so as to assess the owner(s) of each lot one share of the total assessment. Assessments shall be levied equally on each lot in the Subdivision and shall be payable by the owner(s) of such lot. However, no assessment shall be due on any lot until it is first conveyed out by Developer as an individual lot. Developer shall not be responsible for payment of assessments on any lots it owns. Notice of assessments shall be mailed by first class mail to each lot owner. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of twelve percent (12%) per



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annum. Any unpaid assessment, whether general or special, levied by the Homeowners Association in accordance with these restrictions or the Bylaws of the Homeowners Association shall be a lien upon the lot against which such assessment was levied and shall be the personal obligation of the owner(s) of the lot at the time the assessment fell due. The Homeowners Association may record notice of such lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina or may file a suit to collect such delinquent assessments together with court costs and reasonable attorney fees. The Association may bring an action at law against the owner(s) personally obligated to pay the same or for foreclosure of its lien against the lot upon which the delinquent assessment has been levied. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of common facilities or abandonment of his lot.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage or deed of trust foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent and any mortgagee may, at its option, pay any delinquent obligations of a property owner.

29. Roads. All roads shown on the above referenced plat have been constructed in accordance with the requirements of the North Carolina Department of Transportation in order that they be eligible for the North Carolina Department of Transportation Division of Highways to assume responsibility for maintenance of such roads and it is the intention of Developer that such roads become public when accepted by the North Carolina Department of Transportation for maintenance. However, until such time as said roads are taken over by the North Carolina Department of Transportation all roads shown on said plat shall be private roads and it shall be the responsibility of all lot owners to properly maintain said roads in good repair and condition, equally, on a pro-rata basis. By the acceptance of a deed for a lot in the Subdivision the grantee(s) shall take title subject to this obligation to contribute on an equal, pro-rata basis toward the proper maintenance of all roads shown on said plat, each lot contributing one share of the overall expense of maintaining all roads in the Subdivision not maintained by the State. It shall not be a defense as to liability for such road maintenance that there is no residence on any particular lot or that any particular lot does not front on or use a particular road. All lots will share equally in the expense of maintaining all roads in the Subdivision whether or not there is a residence on the lot. Developer shall pave all roads shown on said plat and shall thereafter turn over to the Homeowners Association the responsibility for maintenance of such roads. All roads shall be maintained so as to have proper and adequate ditching and drainage and shall be adequately paved at all times so as to keep all roads in the Subdivision in stable condition, free of ruts and potholes, sufficient to allow comfortable passage by any type of motor vehicle over and across said roads. Maintenance of all roads shall include patching, repairing or resurfacing the paving thereof, clearing ice, snow and debris therefrom, maintaining ditches, shoulders and culverts for the roads and removing trees within the road right-of-way which are a danger to the roadway or which cause an obstruction to sight lines required for safe travel along said roads. Such maintenance obligation on the part of all lot owners shall be administered and enforced by the Homeowners Association but failure of the Homeowners Association to act or enforce such obligation shall in no way limit or reduce the liability or responsibility of the individual lot owners. In addition to all other remedies provided elsewhere in this document or in the

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Bylaws of the Homeowners Association it is agreed that any lot owner in this Subdivision who fails to pay his or her proportionate share of the costs of maintaining the roads in the Subdivision shall subject himself or herself to liability in favor of the other parties having contributed or contributing their proportionate part of such costs. Such liability may be enforced by the contributing parties by instituting suit against the non-contributing party, obtaining judgment against him or her, and enforcing the judgment through execution.

In the event some but not all of the roads shown on said plat are taken over by the North Carolina Department of Transportation for purposes of maintenance, it shall remain the obligation of all lot owners, regardless of the location of their lots, to continue to properly maintain those portions of the roads in the Subdivision which are not taken over for maintenance by the North Carolina Department of Transportation in good condition and repair, equally on a pro-rata basis as hereinabove provided. In this regard it should be noted that two (2) small portion of Pine Ridge Trail which will exist in later sections of the Subdivision will not be taken over for maintenance by the Department of Transportation as they are too narrow and will therefore be at all times maintained as a private road as hereinabove provided.

When and if all or any portion of the roads in the Subdivision shall be accepted for maintenance and taken over by the North Carolina Department of Transportation, no permission or agreement shall be required of Developer or any lot owners, it being understood that Developer and the lot owners for themselves, their heirs, successors and assigns agree that all or any portion of such roads shown on said plat or any plat hereafter recorded showing any portion of the Subdivision shall become part of the State Road System at such time as the Department of Transportation assumes responsibility for the maintenance and upkeep thereof. Each and every lot owner, by acceptance of a deed in the Subdivision hereby appoints Developer as his, her or its agent and attorney-in-fact, coupled with an interest, to execute in their name, place and stead any and all documents necessary to transfer all or any portion of the roads shown on said plat to the North Carolina Department of Transportation.

30. Approval of Plans. No building (including any permitted garage or other structure) shall be erected, placed or altered on any lot until the plans and specifications for such, including a site plan showing locations of all improvements and all elevations, have been approved in writing by Developer, its successors or assigns or by the duly appointed Architectural Committee appointed for this purpose by the Board of Directors of the Homeowners Association if the Developer has transferred its right to review and approve plans and perform all other duties required by this paragraph as hereinafter provided for. Developer shall have the sole duty, right and responsibility to review and approve or disapprove all building plans and specifications and to perform all functions set forth in this paragraph until such time as it transfers in writing such right and responsibility to an Architectural Committee appointed by the Board of Directors of the Homeowners Association. Developer shall have the right, at any time, to transfer the duty, right and responsibility for reviewing and approving or disapproving all building plans and performing all functions set forth in this paragraph to an Architectural Committee of five (5) persons appointed by the Board of Directors of the Homeowners Association for this purpose, which committee shall function as provided in the Bylaws of the Homeowners Association. In the event Developer wishes to transfer its right, duty and responsibility for approving or disapproving building plans and performing all other functions set forth in this paragraph it shall execute a written document transferring such right, duty and responsibility to the Architectural Committee appointed by the Board of Directors of the Homeowners Association which

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document shall be delivered by Developer to the Homeowners Association and shall be entered into the corporate book of the Homeowners Association. All building plans and specifications shall show the location of all buildings and improvements to be erected including all elevations and the location of all driveways and parking areas. Such plans shall also indicate the composition and color of all exterior surfaces. House numbers, mail boxes and outdoor television antennas as permitted by this Declaration shall also be subject to the approval of Developer, its successors or assigns or the duly appointed Architectural Committee. All exposed foundations shall be veneered with brick, stone or other masonry product or stuccoed; no block shall remain exposed. Developer, its successors and assigns or the duly appointed Architectural Committee shall have authority to review and approve all plans for the construction of any building or improvements in order to insure, among other things, harmony of the proposed building(s) with the general surroundings and adjacent structures.

Developer, its successors or assigns, including any duly appointed Architectural Committee if Developer has transferred its responsibility for approval of building plans to an Architectural Committee appointed by the Homeowners Association, shall have the absolute right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of this Declaration; if the design, color scheme, or location upon the lot of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans or specifications are incomplete; or in the event Developer, its successors or assigns or the duly appointed Architectural Committee deems the plans, specifications or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or the owners thereof.

Developer, its successors or assigns, including any duly appointed Architectural Committee if Developer has transferred its responsibility for approval of plans to an Architectural Committee appointed by the Homeowners Association, shall approve or disapprove plans, specifications and details submitted within thirty (30) days from the receipt thereof. Decisions of the Developer, or its successors or assigns or the duly appointed Architectural Committee shall be final and not subject to appeal or review. Provided, however, that the plans, specifications and details may be revised in accordance with recommendations from Developer, its successors or assigns or the Architectural Committee and may be thereafter resubmitted for approval. In the event Developer, its successors or assigns, or the duly appointed Architectural Committee fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same, approval, for the purposes of this paragraph shall be deemed to have been given.

Developer, its successors or assigns, including any duly appointed Architectural Committee, shall have the right to inspect all construction to insure that it is performed in strict compliance with the approved plans, specifications and details and shall have the right to take any steps necessary to prevent any attempted construction which is not in compliance with the approved plans, specifications and details, including, but not limited to, the seeking of an injunction to prevent such construction.

Developer, its successors or assigns, including any duly appointed Architectural Committee and the Homeowners Association, shall not be responsible in any way for defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein, nor for any structural or other defect in any construction.

The requirements of this paragraph shall not constitute a

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lien or encumbrance on any lot on which construction is completed, and any subsequent purchaser thereof for value without notice thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof. The requirements of this paragraph 30 shall not apply to the Developer with regard to original construction of a dwelling on a lot by Developer.

31. Contract with Carolina Power and Light Company. Developer reserves the right to subject the real property in this Subdivision to a contract with Carolina Power and Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light Company by the owner of each lot.

32. Waiver of Unintentional Violation. Developer may waive any unintentional violation of these restrictive covenants by appropriate instrument in writing recorded in the Register of Deeds Office for Buncombe County, North Carolina.

33. Enforcement. Enforcement of this Declaration shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction either to restrain such violation or to recover damages.

34. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which remain in full force and effect.

35. Warranty. Developer hereby warrants that it is the owner of all the real property shown on the recorded plat above referred to and has good and sufficient right to execute this Declaration.

36. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the 1st day of August, 2020, at which time these covenants shall be automatically extended for successive periods of ten (10) years unless by a vote of those persons then owning a majority of the lots in the Subdivision it is agreed to change these covenants in whole or in part.

37. Captions. The captions for the various paragraphs of this Declaration are for convenience of reference only.

38. Singular, Plural, Masculine, Feminine, Owners. As used herein, the singular includes the plural and where there is more than one owner of a lot, said owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

39. Liberal Construction. The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of lots and buildings for residential purposes in a well planned community for the benefit of all lot owners.

Asheville Federal Bank - A Federal Savings Bank (formerly Asheville Federal Savings and Loan Association) joins in the execution hereof solely for the purpose of consenting to the terms of this Declaration as it pertains to the real property shown on said above mentioned plat and no more.

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed by its duly authorized officers with its corporate seal hereunto affixed all with proper authority from its Board of Directors on the date first above written.





ATTEST:

NAPPIER & GUNNELLS  
CONSTRUCTION COMPANY, INC.

Renee B. Mace  
SECRETARY

BY: [Signature]  
PRESIDENT



ATTEST:

ASHEVILLE FEDERAL BANK - A FEDERAL  
SAVINGS BANK

Barbara Z. Sisk  
SECRETARY

BY: [Signature]  
PRESIDENT

\*\*\*\*\*

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Renee B. Mace, personally came before me this day and acknowledged that she is Secretary of Nappier & Gunnells Construction Company, Inc., a North Carolina 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 herself as its Secretary.

Witness my hand and official stamp or seal this the 27<sup>th</sup> day of February, 1991.

Patricia C. Brown  
NOTARY PUBLIC

My Commission Expires:  
1-20-96

\*\*\*\*\*

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Barbara Z. Sisk, personally came before me this day and acknowledged that she is Secretary of Asheville Federal Bank - A Federal Savings Bank, a corporation organized and existing under the laws of the United States of America, 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 herself as its Secretary.

Witness my hand and official stamp or seal this the 28th day of February, 1991.

Patricia C. Brown  
NOTARY PUBLIC

My Commission Expires:  
1/20/96



State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Patricia C. Brown

a notary or Notaries public of the State and County designated is certified to be correct.

This 28 day of February, 19 91

OTTO W. DEBRUHL  
Register of Deeds, Buncombe County  
By: [Signature] Deputy

Filed for registration on the 28 day of February, 19 91 at 1:50P M.

OTTO W. DEBRUHL  
Register of Deeds, Buncombe County  
By: [Signature] Deputy

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BYLAWS  
OF  
THE VILLAGE AT AVERY'S CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

PLAN, NAME, APPLICABILITY, NONPROFIT NATURE

1.1. Plan. The real property located on Brevard Road in Buncombe County, North Carolina shown on plat recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 58 at Page 32, is a planned residential community known as "The Village At Avery's Creek" (hereinafter "the Subdivision"). In addition, Developer presently intends to add the remaining portion of the real property described in that deed from Andy M. Johnston and wife, Thelma G. Johnston to Nappier & Gunnells Construction Company, Inc. recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1606 at Page 720 to the Subdivision. In these Bylaws the word "Subdivision" shall mean "The Village at Avery's Creek" and shall include all the real property shown on the above mentioned plat and any portion of the remaining real property described in said deed to Nappier & Gunnells Construction Company, Inc. which may hereafter be added to the Subdivision by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions as provided for in the Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek recorded in the Office of the Register of Deed for Buncombe County, North Carolina (hereinafter "Declaration"). For the benefit of the present and future owners of the residential lots in the Subdivision a set of restrictions regarding the use of said real property has been developed and recorded and a homeowners association has been formed to provide for the management, maintenance and upkeep of the Common Areas of said Subdivision as such term is hereinafter defined, to own certain of the Common Areas which have been or may be conveyed to the homeowners association; to provide for the maintenance of all roads in the Subdivision until such time as the North Carolina Department of Transportation assumes responsibility for maintenance of all or any portion of such roads; to provide for the enforcement of the restrictions and to provide for any other matters which relate to the general welfare of the owners of the lots in The Village At Avery's Creek.

1.2 Definitions. The definitions set forth in paragraph 1 of the Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek which is duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina are hereby incorporated herein by

Prepared By and Return to:  
Thomas K. McClellan

EXHIBIT "A"

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reference as if set forth in their entirety.

1.3. Formation of Association; Name. THE VILLAGE AT AVERY'S CREEK HOMEOWNERS ASSOCIATION, INC. (hereinafter "the Association") is a North Carolina nonprofit corporation which has been formed for the purpose of administering the operation, repair and maintenance of the Subdivision and to provide for the health, welfare and well being of the owners of the various lots in the Subdivision. The Association shall be governed by a Board of Directors as is hereinafter provided.

1.4. Applicability of Bylaws. The provisions of these Bylaws are applicable to all affairs of the Association. All present and future owners of the various lots located in the Subdivision, all mortgagees, leasees and occupants of all residences constructed on said lots and their agents and employees, and any other persons who may use the Subdivision in any way are subject to the provisions of the Declaration applicable to the Subdivision, the Articles of Incorporation, these Bylaws and any Rules and Regulations made pursuant hereto and to any amendment of said documents. The acceptance of a deed of conveyance for a lot in the Subdivision or the entering into of a lease or the act of occupancy of a residence shall constitute an agreement that these Bylaws (and any Rules and Regulations made pursuant hereto) and the provisions of the Declaration and said Articles of Incorporation are accepted, ratified, and will be complied with.

1.5 Nonprofit. This is a nonprofit corporation and except as otherwise provided in these Bylaws no net income shall inure to the benefit of any of its officers, directors or members.

ARTICLE II

Membership, Meetings and Voting

2.1. Membership. Membership in the Association shall be confined to and consist exclusively of all the lot owners of the various lots in the Subdivision at any given point in time. If additional lots have been added to the Subdivision by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions the owners of these additional lots shall also be members of the Association. All lots in the Subdivision, whether in the Subdivision by virtue of the above mentioned plat or in the Subdivision by virtue of the filing of a later Supplementary Declaration of Covenants, Conditions and Restrictions adding property to the Subdivision shall be treated the same, entitled to membership in the Association and one vote in the Association. Each lot owner shall be a member of the

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Association and shall remain a member until he ceases to be a lot owner. Membership in the Association shall be appurtenant to and inseparable from lot ownership. No lot owner shall be required to pay any consideration whatsoever for his membership. Membership in the Association shall inure automatically to lot owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more lots and shall end automatically upon the conveyance of such lot. The date of registration of the conveyance in the Register of Deeds Office for Buncombe County, North Carolina shall govern the dates of ownership of each particular lot.

2.2. Annual Meetings. The annual meeting of the members of the Association shall take place at 7:00 o'clock P.M. on the second Tuesday in December of each and every year for the purpose of transacting business as may be properly brought before the meeting. If the day for the annual meeting is a legal holiday, the meeting will be held at the same time on the next business day which is not a holiday.

2.3. Place of Meetings. All meetings of the membership shall be held in the County of Buncombe, State of North Carolina at the registered office of the Association or at such other place within Buncombe County, North Carolina as is convenient to the members as may be designated by the Board of Directors of the corporation in the notice of any meeting.

2.4. Substitute Annual Meetings. If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.5 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

2.5. Special Meetings. After the first Annual Meeting of the members, special meetings of the members may be called at any time by the President, a majority of the Board of Directors, or pursuant to a written request to the Secretary of the Association made by lot owners having not less than twenty percent (20%) of the votes in the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. Business to be acted upon at all special meetings shall be confined to the objects stated in the notice of such special meeting.

2.6. Notice of Meetings. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary of the Association shall cause notice of such meeting to be hand-delivered or mailed first class mail, postage prepaid to the members of the Association at the mailing address of each lot owner as set forth on his deed



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or at the address of his lot or to any other mailing address designated in writing by the lot owner. The notice shall state the time and place of the meeting and shall state the items on the agenda, including the general nature of any proposed amendment to the Bylaws, any budget changes and any proposal to remove a director or officer. If such notice is mailed, notice shall be deemed given upon the deposit of such notice in an official depository of the United States Postal Service in an envelope properly addressed to the lot owner(s) at his mailing address or at such other address supplied to the Association by the lot owner, with sufficient postage affixed thereto. When a meeting is adjourned for less than thirty (30) days in any one adjournment, it is not necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which the adjournment is effective.

2.7. Quorum. The presence in person or by proxy at any meeting of members having a majority of the total votes in the Association shall constitute a quorum. If there is no quorum at the opening of the meeting, such meeting may be adjourned from time to time by the vote of a majority of the members present, either in person or by proxy; and at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the original meeting.

2.8. Voting. Voting is based upon equality with each lot in the Subdivision being entitled to one vote in the Association. This shall include any lots hereafter added to the Subdivision. The owner(s) of each lot in the Subdivision shall be entitled to one vote. Where the ownership of a lot is in more than one person, the person who shall be entitled to cast the vote for such lot shall be the person named in a certificate executed by all of the owners of such lot and filed with the Secretary of the Association (if such a certificate is on file). If there is no such certificate on file or in the absence of such person named on the certificate from the meeting, the person who shall be entitled to cast the vote of such lot shall be the lot owner of such lot who is present. If more than one person owning such lot is present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the vote allocated to that lot without protest being made promptly to the person presiding over the meeting by any other owners of the lot. If a lot owner is not a natural person, the vote for such lot may be cast by any natural person having authority to vote on behalf of such lot owner, which authority shall be evidenced by a certificate properly executed by such lot owner who is not a natural person, which certificate shall be filed with the Secretary of the Association prior to any meeting at which

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the appointed person is to vote.

2.9. Majority Vote. Except where a greater number or percentage is required by the Articles of Incorporation of the Association, these Bylaws or applicable State law, a simple majority vote of all members entitled to cast votes present at any meeting at which a quorum shall be present shall be sufficient to adopt decisions at any meeting of the Association which decisions shall be binding on all lot owners for all purposes.

2.10. Proxies. Members may vote either in person or by agents duly authorized by written proxy executed by the subject member or by his duly authorized attorney-in-fact. A proxy shall be valid only for the particular meeting designated therein, unless the person executing it specifies therein the length of time for which it is to continue in force, which time shall not extend beyond eleven (11) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary of the Association or duly acting Secretary prior to the meeting in question. All of the above provisions concerning the voting by co-owners shall apply to votes cast for one lot by two or more proxy holders.

2.11. Order of Business. The order of business at all annual meetings of the Association of members shall be as follows:

- (A) Roll Call.
- (B) Proof of notice of meeting or waiver of notice.
- (C) Reading of minutes of preceding meeting.
- (D) Reports of Officers.
- (E) Report of Board of Directors.
- (F) Reports of Committees.
- (G) Election of Inspectors of Election (when so required).
- (H) Election of members of the Board of Directors (when so required).
- (I) Unfinished business.
- (J) New Business.

2.12. Waiver of Notice. Any lot owner may at any time waive notice of any meeting of this Association in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a lot owner at any meeting of the Association shall constitute a waiver of notice by him of the time and place thereof, except where a lot owner attends a meeting and indicates immediately upon the meeting's being called to order that his sole purpose in attending is to object to the transaction of business

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because the meeting has not been lawfully called.

2.13. Minutes of Meetings. The Secretary of the Association shall prepare or cause to be prepared, and keep accurate minutes of every meeting of the lot owners. Such minutes shall be made available for examination and copying by any lot owner at any reasonable time.

2.14. Actions Without Meeting. Any action which may be taken at a meeting of the membership may be taken without a meeting if a consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by one hundred percent (100%) of the persons who would be entitled to vote at a meeting and such consent is filed with the Secretary of the Association and inserted in the Minute Book of the Association.

ARTICLE III

Board of Directors

3.1. General Powers. The business and property of the Association shall be managed, governed and directed by the Board of Directors of the Association (the "Board") or by such Executive Committees as the Board may establish pursuant to these Bylaws. The Board of Directors of the Association is the body designated to act on behalf of the Association.

3.2. Number. The Board of Directors shall be composed of five (5) persons. The initial Board, who shall serve until their replacements are elected or appointed shall be composed of three (3) persons who need not be lot owners, members of the Association or residents of the State of North Carolina.

3.3. Qualification and Term. Except for members of the Board of Directors (hereinafter "Directors") designated by Nappier & Gunnells Construction Company, Inc. (hereinafter "Developer") and initial Board of Directors appointed by Developer, all members of the Board shall be a lot owner, or a spouse of a lot owner, provided, however, that in the event a lot owner is a corporation, partnership, trust or other legal entity other than a natural person, then an officer, director, agent or appointee of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a director. Other than the Directors appointed by Developer each Director shall hold office for a term of one year or until his death, resignation, retirement, removal, disqualification.

3.4. Election; Initial Board.

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(a) Election. Except as provided in this Article regarding Developer's right to appoint and remove members of the Board, the members of the Board of Directors shall be elected annually at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected.

(b) Initial Board. The initial Board shall be composed of those Directors named in the Articles of Incorporation for the Association who shall serve until their replacements are appointed or elected as the case may be.

3.5. Appointment of Board by Developer.

Until such time as Developer shall have sold and conveyed to third parties ninety percent (90%) of the residential lots in the Subdivision Developer shall have the right to appoint a majority of the Board of Directors. This calculation shall be based on the total number of lots in the Subdivision at any given point in time. If additional lots are added to the Subdivision these lots, upon being added to the Subdivision, shall be added to the total number of lots in the Subdivision and Developer shall have to have conveyed ninety percent (90%) of the combined total of the lots then currently in the Subdivision. Developer shall have the right to remove any person appointed by it to serve as a Director and to replace such person with another person selected by Developer to act and serve in the place of any Director so removed. Any Director designated, selected and appointed by Developer need not be a lot owner, a member of the Association or a resident of the State of North Carolina. Any representative of Developer serving on the Board shall not be required to disqualify himself from any vote upon a management contract or any other contract or lease between Developer and the Association where the Developer may have a pecuniary or other interest. Developer shall designate, appoint, remove, and reappoint directors when entitled to do so by written statement addressed to the Association and a copy of such statement shall be placed in the minute book.

Developer can turn over control of the Association prior to the sale of ninety percent (90%) of all the residential lots by so informing the Association of its intent to do so in writing and by causing all or part of its appointed Directors to resign and by not appointing replacement Directors. Thereupon a special meeting of the members may be called to fill any vacancies on the Board of Directors. In all events when Developer has conveyed ninety percent (90%) of all lots in the Subdivision to third parties it shall cause all Directors appointed by it to resign, whereupon a special meeting of the members may be called to elect Directors to serve until the next annual



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meeting of the members.

3.6. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and the Subdivision. In addition to the powers, duties and responsibilities granted to or imposed on the Board of Directors by these Bylaws or by any resolution of the members of the Association that may hereafter be adopted, the powers and duties of the Board of Directors shall include, but not be limited to, the following:

(a) Determining the Common Expenses required for the affairs of the Subdivision, including, without limitation the operation, maintenance and repair of the Common Areas and the obtaining of insurance on all Common Areas and all property, real and personal owned by the Association.

(b) Preparing and adopting an annual budget in which there shall be established the annual assessment against each lot owner for the Common Expenses. The Board shall also have the power and authority to create such additional reserve funds as it shall deem prudent and necessary and fund the same as a part of the Common Expenses.

(c) Making assessments against the lot owners to pay the Common Expenses of the Association, including allocations to reserves; establishing the means and methods of collecting such assessments from the lot owners; and to collect the Common Expenses from the lot owners. Unless otherwise determined by the Board of Directors, the annual assessment against each lot owner for his proportionate share of the Common Expenses shall be payable in one annual installment due and payable in advance on the first day of each calendar year;

(d) Providing for and supervising the operation, care, upkeep, maintenance, repair and replacement, as necessary, of the Common Areas;

(e) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Areas and providing services for the property, and where appropriate, providing for the compensation of such personnel. Further, to purchase the equipment, supplies and material to be used by such personnel in the performance of their duties which supplies and equipment shall be deemed the common property of all lot owners to be used by the Association in the performance of its duties and obligations.

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(f) Collecting the assessments against the lot owners, depositing the proceeds thereof in a bank depository which it shall approve, and using such funds to carry out the administration, operation, maintenance and repair of the Common Areas of the Subdivision and for such other purposes as may be permitted under these Bylaws and applicable State law.

(g) Adopting and amending, from time to time, any rules and regulations it may deem advisable for the maintenance, conservation, enjoyment, and beautification of the Common Areas of the Subdivision. Written notice of such Rules and Regulations shall be provided to all lot owners and occupants.

(h) Opening of bank accounts on behalf of the Association and designating the signatories required therefor, and depositing and withdrawing Association funds from such accounts. This includes the authority to open and maintain one or more checking accounts in the name of the Association and designate the persons authorized to write checks on such checking account(s). The Board has the duty and authority to pay from the funds of the Association the Common Expenses of the Association and all other duly authorized expenditures.

(i) Purchasing of lots at foreclosure or other judicial sales in the name of the Association, or its designee, corporate or otherwise, on behalf of all lot owners.

(j) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations or restorations of the Common Areas of the Subdivision.

(k) Enforcing by legal means the provisions of the restrictions applicable to the Subdivision, these Bylaws and any Rules and Regulations for the use of the Common Areas, and bringing any proceedings which may be instituted on behalf of the lot owners.

(l) Obtaining and carrying insurance against casualties, loss and liabilities as it may deem appropriate and paying the cost and expense thereof as a part of the Common Expenses. This shall include the power and authority to obtain any and all types of insurance it may deem advisable on any real property the Association may own and charge the expense of such insurance as a Common Expense.

(m) Paying the cost and expense of all authorized services, materials and work rendered to the Common Areas of the Subdivision.

(n) Keeping books with detailed accounts in

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chronological order of the receipts and expenditures of the Association specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be made available for the examination by the lot owners, their duly authorized agents or attorneys at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the lot owners. All books and records shall be kept in accordance with good and accepted accounting practices.

(o) To enter into and execute on behalf of the Association any and all agreements, contracts, notes, deeds, deeds of trust and vouchers for payment of expenditures and any other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary of this Association.

(p) Contracting for all goods, services and insurance necessary for the maintenance, operation, replacement and repair of the Common Areas of the Subdivision the payment of which is to be made by the Association as part of the Common Expenses.

(q) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep, maintenance, repair, replacement or improvement of the Common Areas of the Subdivision or the acquisition of property, and granting mortgages, deeds of trust or security interests in Association owned property in accordance with these Bylaws regarding the creation of any lien on the Common Areas, or to pledge and pay assessments, and any and all other revenue and income for such purpose; provided, however, that the consent of the lot owners shall be required for the borrowing of any sum in excess of \$5,000.00.

(r) Imposing charges for late payment of assessments.

(s) Exercising (i) all powers and performing all the duties and obligations granted to the Board in the Articles of Incorporation and these Bylaws, as amended from time to time; (ii) all powers incidental thereto, and (iii) all other powers of a nonprofit North Carolina corporation.

(t) To do such other things and acts as the Board may deem necessary and prudent and to do such things as it may be authorized to do by a resolution of the Association.

3.7. Removal of Members of the Board. At any

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regular or special meeting duly called, any one or more of the members of the Board of Directors may be removed with or without cause by lot owners owning a majority of the votes in the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and he shall be given the opportunity to be heard at the meeting. Notwithstanding anything in this Section to the contrary, no person selected and appointed by the Developer as a member of the Board of Directors may be removed without the written consent of the Developer and in such event the Developer shall select and designate his successor.

A Director who was a lot owner when elected shall be deemed to have resigned upon conveyance of such Directors' lot in the Subdivision or if such Director is not in attendance at three (3) consecutive regular meetings of the Board, unless the minutes reflect the Board's consent to such absence. Any time Developer has, in accordance with the rights set out in this Article, appointed any person to serve as a member of the Board of Directors, Developer shall have the absolute right at any time, in its sole discretion, to remove any such person so appointed and to replace such person with another person. Replacement of any person designated by Developer to serve on the Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name of the person to be replaced and the name of the person designated as successor to the person so removed from the Board. The removal of any such Director and the designation of his successor shall be effective immediately upon delivery of such written instrument by Developer to any officer of the Association.

3.8. Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the members of Association or vacancies caused by Developer causing his appointed Directors to resign shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors until a successor shall be elected at the next annual meeting of the Association of lot owners; provided, however, that the vacancy of any Director designated and appointed by Developer pursuant to a right of Developer to make such appointment shall be filled by the Developer.

3.9. Organizational Meeting of Board, Regular Meetings. An organizational meeting of the Board shall be

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held immediately after, and at the same place as the Annual Meeting or substitute Annual Meeting of the Association. This meeting shall be the organizational meeting of the new Board each year. No notice of this organizational meeting of the Board held following the annual meeting of the membership shall be necessary in order to legally constitute such meeting, providing a quorum is present. In addition, regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be given to each Director by mail or telephone at least three (3) business days prior to the day named for such meeting and need not specify the purpose of, or agenda for, the meeting. Meetings of the Board shall be open to all lot owners and notices of such meetings shall be posted conspicuously for the attention of lot owners in advance of the meeting.

3.10. Special Meetings. Special meetings of the Board of Directors may be called by the President of the Association or by any two (2) Directors on three (3) business days' notice of each Director, given by mail or telephone, which notice shall state the time, place and purpose of the special meeting.

3.11. Notice of Meetings. Notice of all meetings of the Board shall be given as required herein by the Secretary of the Board or in his absence or unavailability by the President of the Board. Notice may be by either mail or telephone. Notices of regular meetings of the Board need not specify the purpose of or agenda for the meeting.

3.12. Waiver of Notice. Any Director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at a meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place of such meeting. If all of the Directors are present at any meeting of the Board no notice shall be required and any business may be transacted at such meeting.

3.13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the vote of a majority of the Directors present at any meeting at which a quorum is present shall constitute the act and decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.



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3.14. Fidelity Bonds. The Board of Directors may obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a part of the Common Expenses. This provision shall not require that the Treasurer be bonded if, under the terms of any management agreement in effect from time to time, the person, firm or corporation serving as management agent is responsible for collecting and disbursing assessment funds and required to account to the Association for said funds at least annually.

3.15. Compensation. No Director shall receive any compensation for acting as such unless expressly allowed by the Board.

3.16. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a Minute Book recording therein the minutes of all meetings of the Board. Roberts Rules of Order shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Declaration, these Bylaws, or applicable State law. All minutes of Board meetings shall be available for inspection by the lot owners during reasonable business hours.

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

3.18. Executive Committees. The Board may by resolution designate two (2) or more Directors to constitute an Executive Committee, which Committee to the extent provided in such resolution shall have and may exercise all of the authority of the Board in the management of the Association.

3.19. Liability of the Board. The members of the Board shall not be liable to the lot owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The lot owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or knowingly contrary to the provisions of the Declaration or these Bylaws. Said indemnity obligation, and all costs reasonably incurred in enforcing it, including reasonable Attorneys' fees, shall be secured by a lien in favor of the Board and each of its members individually

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identical to that provided in connection with Common Expenses. It is intended that the members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent they are lot owners.

ARTICLE IVCommittees

4.1. Creation. The Board, by resolutions adopted by a majority of the number of Directors then holding office, may create such committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Subdivision and the Association. Each committee so created shall have such authority as contained in the resolution creating such committee. The Board shall elect the members of such committees. Each committee shall have in its membership at least one (1) member of the Board.

4.2. Vacancy. Any vacancy occurring on a committee shall be filled by a majority vote of the number of Directors then holding office at a regular or special meeting of the Board.

4.3. Removal. Any member of a committee may be removed at any time with or without cause by a majority of the Directors then holding office.

4.4. Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

4.5. Responsibility of Directors. The designation of committees and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility or liability imposed upon it or him by law. If action taken by a committee is not considered formally thereafter by the Board, a Director may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

4.6. Nominating Committee. The Board may appoint a nominating committee.

4.7. Architectural Committee. Under the terms of the Declaration, Developer has the right, duty and responsibility for reviewing and approving or disapproving all building plans and specifications for any improvements on the lots and for performing other obligations set forth in paragraph 30 of the Declaration. However, Developer has the right to transfer this right duty and responsibility to an Architectural Committee composed of five (5) persons

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appointed by the Board of Directors of the Association. In the event the Developer transfers such right, duty and responsibility as provided in the Declaration, the Board of Directors shall appoint an Architectural Committee composed of five (5) persons all of whom shall be lot owners. Such committee shall thereafter be a permanent standing committee who shall meet as often as necessary to perform its duties of reviewing and approving or disapproving all building plans submitted for approval. The vote of a majority of the members of this Architectural Committee shall constitute the act and decision of the Committee.

ARTICLE VOfficers

5.1. Designation. The principal officers of the Association shall be the President, Vice-President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice-President shall be members of the Board of Directors. Any other officer may be, but shall not be required to be, members of the Board of Directors. The office of the Secretary and Treasurer may be combined and held by one person.

5.2. Election of Officers and Term. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors, which follows the annual meeting of the members of the Association, and shall hold office at the pleasure of the Board of Directors. The officers elected by the initial Board or by any Board to which Developer is entitled to appoint a majority of the Directors are not required to be lot owners.

Each officer shall hold office for a period of one (1) year, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified.

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

5.4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all the general powers and duties

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which are incident to the office of President of a stock corporation organized under the Business Corporation Act of the State of North Carolina, including but not limited to, the power to appoint such committees from among the lot owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

5.5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

5.6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors, and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the Office of Secretary.

5.7. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements and books belonging to the Association, and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association, in such depositories as may from time to time be designated by the Board of Directors; provided, however, that the Treasurer shall not be responsible for such of the foregoing matters as have been delegated to a Managing Agent. The Treasurer shall, in general, perform all the duties incident to the Office of the Treasurer of a stock corporation organized under the Business Corporation Act of the State of North Carolina.

5.8. Assistant Secretaries and Treasurers. The Assistant Secretaries and Assistant Treasurers, if any, shall, in the absence or disability of the Secretary or Treasurer, respectively, have all the powers and perform all of the duties of those officers, and they shall in general perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President.

ARTICLE VIAssessments, Liens, Collection

6.1. Assessments for Common Expenses. The

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Association shall have the right, duty and obligation to levy periodic assessments which may be either the general annual assessment against all lot owners or any special assessment for the purpose of carrying out its purposes, including, but not limited to, the maintenance and upkeep of all Common Areas in the Subdivision and all roads in the Subdivision.

6.2. Fiscal Year. The fiscal year for the Association shall be the calendar year.

6.3. Common Expenses. The Common Expenses of the Association shall be any and all expenses incurred in carrying out the purposes of the Association including, but not limited to, the maintenance and upkeep of all Common Areas in the Subdivision, all roads in the Subdivision and all private water and sewer lines used by more than one lot owner until such time as such lines are maintained by an appropriate governmental authority.

6.4. Assessments. Assessments shall be levied equally on all residential lots in the Subdivision provided however that no lot shall be assessed its proportionate share of the Common Expenses until after such lot has been conveyed by Developer to some third party. Developer shall not be responsible for paying assessments on each lot it owns.

6.5. General Annual Assessments payable Annually; Notice; Interest. The general annual assessment against lot owners shall be payable in one annual payment due within thirty (30) days after its due date as provided in the notice of assessment mailed to each lot owner. Notice of each assessment shall be mailed by first class mail to each lot owner. Any assessment not paid within thirty (30) days of the due date shall accrue interest at the rate of twelve percent (12%) per annum.

6.6. Budget. Each year on or before November 15, the Board of Directors of the Association shall prepare and adopt a budget for the Association, for the purpose of (i) providing for the payment of all Common Expenses together with such amounts as considered necessary by the Board for contingencies and reserves; (ii) determining the amount of the Annual Assessment to be collected from the lot owners in order to provide for the payment of such Common Expenses and necessary reserves of the Association taking into consideration any expected income and any surplus from the prior year's operation; and (iii) to allocate and assess such Common Expenses among the lot owners. Such budget shall project all expenses for the forthcoming year and shall contain an estimate of the total amount which it considers necessary to pay the Common Expenses of the Association which shall include, but not be limited to, the



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amounts necessary to pay for the cost of the administration, operation and management of the Association; the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the provisions of these Bylaws; the cost of maintenance, management, operation and repair of the Common Areas; the cost of wages, materials, services, supplies and other expenses that may be declared to be Common Expenses by the Board of Directors of the Association; the amount necessary to make up any deficit in the budget for any prior year; and any other expenses lawfully agreed upon. The budget may include a reasonable amount for contingencies and reserves. Upon adoption of the annual budget by the Board of Directors, the Board shall cause to be sent to each lot owner, on or before December 1 preceding the fiscal year to which the budget applies, a copy of the budget in a reasonably itemized form which sets forth the amount of Common Expenses and provides notice of the amount of the annual assessment against each lot. Any increase in the annual assessment which exceeds the annual assessment for the previous year by more than thirty percent (30%) must be approved by a majority of the lot owners at a meeting specially called for such purpose after notice being duly given.

6.7. Reserves. The Board shall create, fund and maintain the following reserves:

(a) General Operating Reserve. The Board of Directors may build up and maintain reasonable reserves for working capital, operations, and contingencies, to defray unforeseen expenses, and to provide a measure of financial stability to the Association in times of special financial stress. This fund may also be used to meet deficiencies from time to time as a result of delinquent payments, losses due to insurance deductibles or co-insurance amounts not covered by insurance, or other contingencies. Unanticipated expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against this reserve.

(b) Reserve for Repairs and Replacement. The Board of Directors in establishing the annual budget may designate a reasonable sum to be collected and maintained as a reserve fund for the repair and replacement of the capital improvements for which the Association is responsible for maintenance and repair which shall be for the purpose of enabling the Association to maintain and repair such property including any equipment owned by the Association.

6.8. Special Assessments. If the reserves hereinabove provided for are inadequate for any reason, for the payment of necessary expenditures, the Board of Directors may at any time levy special assessments against

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the lot owners provided that any special assessment in an amount of more than thirty percent (30%) of the annual assessment for the year shall first be approved by a majority of the lot owners at a special meeting of the members called for such purpose. The Board of Directors shall serve notice of any such special assessment on all lot owners by a statement in writing giving the amount of the requested assessment and the reasons therefor.

6.9 Funds of the Association. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating, managing, maintaining, repairing or replacing the Common Areas of the Subdivision or to the proper undertaking of all acts and duties imposed upon it by the Articles of Incorporation of the Association and these Bylaws. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein except as an appurtenance to his lot. When a lot owner shall cease to be a member of the Association, the Association shall not be required to account to such person for any share of the fund or assets of the Association, or for any amount which may have been paid to the Association by such person, as all funds which any lot owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Association and the Subdivision.

6.10 Accounting. At the end of each calendar year the Board of Directors shall provide an accounting to all lot owners of all expenditures made in the prior calendar year.

6.11. Initial Budget and First Payment of Lot Owners.

(a) Initial Budget. Upon taking office the initial Board of Directors shall prepare and adopt a budget for the Association which budget shall pertain to the time period from the day of conveyance of the first lot by Developer to a third party to the end of the calendar year in which such conveyance is made.

(b) First Payment by Lot Owners. Upon the closing and conveyance of each lot by Developer, the purchaser(s) of such lot shall pay to the Association the pro-rata portion of the annual assessment attributable to such lot for the remainder of the year in which such conveyance takes place.

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6.12. Failure of Board to Prepare Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of any lot owner's obligation to pay his allocable share of the Common Expenses as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget adopted by the Board, each lot owner shall pay the annual assessment established for the previous fiscal year.

6.13. Personal Liability for Assessments. All lot owners of each lot shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against his lot while such person or persons are the owner or owners of such lot. In the event that any lot owner is in default in payment of any assessment or installment of an assessment owed to the Association, all owners of such lot shall be personally liable, jointly and severally, for payment of any late charge and interest on such delinquent assessment or installment of assessment as above provided for, and for all costs of collecting such amounts including, but not limited to, reasonable attorney's fees whether suit be brought or not.

6.14. No Exemption From Liability. No lot owner may exempt himself from liability for any assessment levied against him or his lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of his lot or in any other way.

6.15. Collection of Assessments. The Board shall take prompt action to collect any assessments due from any lot owner which remains unpaid for more than thirty (30) days after its due date.

6.16. Lien for Assessments and Enforcement of Lien. All assessments provided for in this Article, together with late payment charges, interest and expenses, including reasonable attorneys' fees (as permitted by law) relating to such assessment, shall be a charge on and a continuing lien upon the lot against which the assessment is made when a notice of such lien has been filed of record in the Office of the Clerk of Superior Court for Buncombe County, North Carolina in the manner provided therefor by Article 8 of Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of thirty (30) days after the same shall become due. Said notice of lien shall also secure all assessments against the lot becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner of a deed of trust on real property under a power of sale under Article 2A of Chapter

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45 of the North Carolina General Statutes. The lien granted the Association for unpaid assessments by this Article shall further secure advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the rate of twelve percent (12%) per annum on any such advances.

6.17. Personal Liability for Assessments and Suit for Such Assessments. In addition to the remedies provided in Section 6.16 of this Article regarding liens for assessments and foreclosure of such liens, each lot owner shall at all times be personally liable, jointly and severally, for payment of any and all assessments made against his lot becoming due and payable while he is the owner of such lot. Nothing in this Article shall prevent an action by the Association against any lot owner(s) to recover a money judgment for unpaid assessments. Any such action may be brought without foreclosing the lien hereinabove provided and any such action against the lot owner for such a money judgment shall not be a waiver of the lien hereinabove provided or of the Association's right to foreclose such lien. Nor shall proceeding by foreclosing the lien against any lot in default be deemed to be an election or waiver of the right of the Association to bring an action at law against the lot owner on his personal liability for such unpaid assessments.

6.18. Priority of Assessment Lien. The lien for assessments provided for in this Article shall be prior and superior to all other liens except (a) ad valorem taxes, and (b) all sums unpaid on deeds of trust, mortgages or other encumbrances against the lot recorded prior to the docketing of the assessment lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina. The sale or transfer of any lot shall not affect the assessment lien against such lot or the ability to record, perfect and enforce such lien pursuant to the provisions of this Article and the Act. Provided, however, the sale of a lot pursuant to a foreclosure sale or execution sale instituted by a superior lien holder or the conveyance to a First Mortgagee of a deed in lieu of foreclosure shall extinguish the inferior assessment lien against the subject lot but no such sale or transfer shall relieve any lot owner from liability for any assessment thereafter becoming due or for any future lien in connection therewith. Such extinguishment of the lien shall not in any way do away with the personal liability for such assessment of the owner(s) of the lot when such assessment was made. The Association shall share in the excess, if any, realized by the sale of any lot pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

6.19. Assessment Roll, Statement of Assessments. All

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assessments shall be set forth upon a roll of the lots, which shall be available in the office of the Association for inspection at all reasonable times by members and 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 shall promptly provide any lot owner or mortgagee of any lot so requesting the same in writing with a written statement of all unpaid charges due from the owner of any lot, for which it may institute a reasonable charge at its discretion.

ARTICLE VIIAmendment to Bylaws

7.1. Amendments. These Bylaws may be amended, replaced or altered in whole or in part by vote of the lot owners representing eighty percent (80%) of the lots in the Subdivision at any regular member's meeting or at any special meeting, where such purpose has been announced in the call and notice of the meeting provided however that no amendment of Developer's right to appoint a majority of the Board of Directors or of Developer's lack of obligation to pay annual assessments on any lot it owns shall be effective without the written consent of Developer.

ARTICLE VIIIRoster of Members

8.1. Association to Maintain Register of Lot Owners and Mortgagees. The Association shall maintain a Register setting forth the names of the owners of all of the lots and their correct mailing address. In the event of the transfer of any lot to a third party, the transferee shall notify the Association in writing of his interest in such lot, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. Each lot owner shall also notify the Association of the parties holding any deed of trust on his lot, the amount secured by such deed of trust and the recording information necessary to identify the deed of trust. The holder of any deed of trust upon any lot may notify the Association of the existence of such deed of trust and the Association shall register in its records all pertinent information relating thereto.

ARTICLE IXOffices, Registered Agent, Seal

9.1. Registered Office. The initial registered office of the Association shall be located at One Tunnel Road, Asheville, Buncombe County, North Carolina 28801. The



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mailing address of the Association is Post Office Box 150, Asheville, North Carolina 28802.

9.2. Registered Agent. The initial Registered Agent of the Association located at said initial registered office is D. Brent Nappier.

9.3. Seal. The seal of the Association shall contain the name of the Association, the word "Seal" and such other words and figures as may be desired by the Board of Directors.

ARTICLE X

Miscellaneous

10.1. Powers of the Association. The Association shall have all the powers granted to a nonprofit corporation under Chapter 55A of the North Carolina General Statutes. Without limiting the foregoing, the Association shall have all those powers set forth in North Carolina General Statutes Section 55A-15 which powers are hereby incorporated herein by reference as they exist on the date of this instrument to the same extent as if set forth herein in their entirety. In addition the Association shall have all of those powers granted to the Board of Directors in Section 4.6 of these Bylaws which powers are incorporated herein by reference. The Association shall also have all those powers granted or reserved to it in the Articles of Incorporation of the Association.

10.2. Notices. All notices, demands, bills, statements or other instruments called for in or these Bylaws shall be deemed to have been duly given, if made in writing, upon deposit in a receptacle of the United States Postal Service with the mailing address of the unit or such other address as provided to the Association by the unit owner or mortgagee thereon in a postage pre-paid, first class mail envelope, or if delivered personally.

10.3. Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with North Carolina law or these Bylaws.

10.4. Fidelity Bond. The Board of Directors may require that all employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the Association as a Common Expense.

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10.5. Common Areas. As used in these Bylaws the term Common Areas means those areas shown on said plat designated as Common Areas. The term Common Areas shall also include any real property conveyed to the Homeowners Association for the common use and enjoyment of all lot owners and their families.

10.6. Waiver. No provision of these Bylaws or of the Rules and Regulations promulgated pursuant thereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

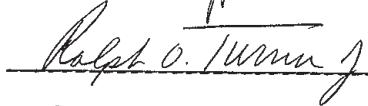
10.7. Severability. The provisions of these Bylaws are severable, and the invalidity of any one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

10.8. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these Bylaws or the intent of any provision hereof.

10.9. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, we, being the initial Directors of The Village At Avery's Creek Homeowners Association, Inc. have hereunto set our hands and seals this the 27<sup>th</sup> day of February, 1991.

  
D. BRENT NAPPIER (SEAL)

  
Ralph O. Wynn, Jr. (SEAL)

  
Renie B. Mace (SEAL)

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CERTIFICATION

I, the undersigned, do hereby certify: that I am the duly elected and acting Secretary of The Village At Avery's Creek Homeowners Association, Inc., a North Carolina nonprofit corporation; and that the foregoing Bylaws constitute the original Bylaws of said corporation as duly adopted at a meeting of the initial Board of Directors thereof, held on the 27th day of February, 1991.

IN WITNESS WHEREOF, I have hereunto subscribed my name this the 27th day of February, 1991.

Renee B Mace  
RENEE B. MACE