

2006006997  
TRANSYLVANIA CO, NC FEE \$110.00  
PRESENTED & RECORDED:  
08-21-2006 03:45:32 PM  
CINDY M OWNBEY  
REGISTER OF DEEDS  
BY: TERESA D MORTON  
DEPUTY REGISTER OF DEEDS  
BK: DOC 366  
PG: 21-53

Prepared by and return to:  
Erin F. Dunnuck, Esq.  
Dungan & Associates, P.A.  
One Rankin Avenue, Third Floor  
Asheville, North Carolina 28801

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

Deed References:  
Condominium Book 2, Page 263  
Condominium Book 5, Page 284  
Condominium Book 6, Page 219  
Condominium Book 6, Page 120  
Condominium Book 6, Page 316  
Condominium Book 7, Page 112

**AMENDED AND RESTATED DECLARATION AND BYLAWS  
FOR  
GLEN CANNON CONDOMINIUMS ASSOCIATION FOUR**

WHEREAS, Glen Cannon Condominiums, Inc., as original Declarant, executed and filed a Declaration of Unit Ownership of Glen Cannon Condominiums Association Four pursuant to the provisions of the North Carolina Unit Ownership Act (N.C. Gen. Stat. 47A-1-101, et seq.) recorded in Condominium Book 2, Page 263 in the Registry of Deeds for Transylvania County, North Carolina on August 27, 1973 (hereinafter referred to as "Original Declaration"); and

WHEREAS, Declarant recorded Bylaws as an exhibit to the Original Declaration for the association of condominium unit owners known as Glen Cannon Condominiums Association Four, a nonprofit corporation under the North Carolina Nonprofit Corporation Act (N.C. Gen. Stat. 55A-1-01 et seq.) ("Association"); and

WHEREAS, the Original Declaration and Bylaws have been supplemented and amended by documents recorded in the Registry of Deeds of Transylvania County, North Carolina as referenced above; and

WHEREAS, Glen Cannon Condominiums Association Four, Inc. desires to amend its Declaration of Unit Ownership and Bylaws to take advantage of and to continue to benefit from

the provisions of the North Carolina Condominium Act (N.C. Gen. Stat. 47C-1-101, et seq.); and

WHEREAS, Glen Cannon Condominiums Association Four, Inc. desires to amend and restate the Original Declaration and Bylaws as amended for the purposes of simplifying and clarifying them; and

WHEREAS, the Original Declaration may be amended by the appropriate affirmative vote of the members owning Units in the Condominium; and

WHEREAS, the Original Bylaws may be amended by the appropriate affirmative vote of the owners of the Condominium Units in the Condominium; and

WHEREAS, at the annual meeting of the Association held on July 11, 2005, Members owning the appropriate percentage of the Units in the Condominium voted or consented in writing to adopt the North Carolina Condominium Act and the following Amended and Restated Declaration of Condominium and Bylaws for Glen Cannon Condominiums Association Four, Inc. for the purposes stated above;

NOW, THEREFORE, the Original Declaration as amended and the original Bylaws as amended are now amended by striking them in their entireties except for the purpose of preserving legal descriptions and the whole of the Condominium Property as found in the Original Declaration as amended, and by the simultaneous adoption of new Bylaws which are not required to be recorded and simultaneously substituting therefor the following Amended and Restated Declaration:

DECLARATION OF CONDOMINIUM  
FOR GLEN CANNON CONDOMINIUMS  
ASSOCIATION FOUR, INC.

## Table of Contents

## DECLARATION OF CONDOMINIUM

## FOR GLEN CANNON CONDOMINIUMS ASSOCIATION FOUR, INC.

## TABLE OF CONTENTS

<b><u>Article 1</u></b>	<b><u>Submission to North Carolina Condominium Act</u></b> .....	1
<b><u>Article 2</u></b>	<b><u>Description of Condominium</u></b> .....	1
	Section 2.1 <b><u>Name</u></b> .....	1
	Section 2.2 <b><u>Location</u></b> .....	1
<b><u>Article 3</u></b>	<b><u>Definitions</u></b> .....	1
	Section 3.1 <b><u>Allocated Interests</u></b> .....	1
	Section 3.2 <b><u>Assessments</u></b> .....	1
	Section 3.3 <b><u>Association or Unit Owners Association or Condominium Association</u></b> .....	1
	Section 3.4 <b><u>Board or Boards of Directors</u></b> .....	2
	Section 3.5 <b><u>Bylaws</u></b> .....	2
	Section 3.6 <b><u>Charter or Corporate Charter</u></b> .....	2
	Section 3.7 <b><u>Common Elements</u></b> .....	2
	Section 3.8 <b><u>Common Expenses</u></b> .....	2
	Section 3.9 <b><u>Common Expense Liability</u></b> .....	2
	Section 3.10 <b><u>Condominium</u></b> .....	2
	Section 3.11 <b><u>Declaration</u></b> .....	2
	Section 3.12 <b><u>Documents</u></b> .....	3
	Section 3.13 <b><u>Limited Common Element</u></b> .....	3
	Section 3.14 <b><u>Majority of the Total Votes</u></b> .....	3
	Section 3.15 <b><u>Mortgage</u></b> .....	3
	Section 3.16 <b><u>Notice and Opportunity to be Heard</u></b> .....	3
	Section 3.17 <b><u>Officer</u></b> .....	3
	Section 3.18 <b><u>Person</u></b> .....	3
	Section 3.19 <b><u>Plans</u></b> .....	3
	Section 3.20 <b><u>Resident</u></b> .....	3
	Section 3.21 <b><u>Supplemental Declaration(s)</u></b> .....	3
	Section 3.22 <b><u>Unit or Condominium Unit</u></b> .....	3
	Section 3.23 <b><u>Unit Owner or Owner or Member</u></b> .....	3
<b><u>Article 4</u></b>	<b><u>Units</u></b> .....	4

	Section 4.1	<b><u>Unit Designations and Descriptions</u></b> .....	4
<b><u>Article 5</u></b>		<b><u>Common Elements</u></b> .....	5
	Section 5.1	<b><u>Common Elements</u></b> .....	5
	Section 5.2	<b><u>Percentage Interest</u></b> .....	6
	Section 5.3	<b><u>Inseparability of Percentage Interest</u></b> .....	6
	Section 5.4	<b><u>No Partition</u></b> .....	6
	Section 5.5	<b><u>Use of Common Elements</u></b> .....	6
<b><u>Article 6</u></b>		<b><u>Limited Common Elements</u></b> .....	7
<b><u>Article 7</u></b>		<b><u>Use Restrictions and Purpose</u></b> .....	7
	Section 7.1	<b><u>Residential</u></b> .....	7
	Section 7.2	<b><u>Restrictions in General</u></b> .....	7
	Section 7.3	<b><u>Business Activities</u></b> .....	8
	Section 7.4	<b><u>Alterations and Attachments by Unit Owner</u></b> .....	8
	Section 7.5	<b><u>Signs</u></b> .....	8
	Section 7.6	<b><u>Prohibitions in Use of Common Elements</u></b> .....	8
	Section 7.7	<b><u>Animals</u></b> .....	8
	Section 7.8	<b><u>Access to Units</u></b> .....	9
	Section 7.9	<b><u>Subdividing</u></b> .....	9
	Section 7.10	<b><u>Nuisances</u></b> .....	9
	Section 7.11	<b><u>Antenna</u></b> .....	9
	Section 7.12	<b><u>Lawful Use</u></b> .....	9
	Section 7.13	<b><u>Weatherization of Units</u></b> .....	9
	Section 7.14	<b><u>Restriction on Transfer of Common Areas</u></b> .....	9
	Section 7.15	<b><u>Rules and Regulations</u></b> .....	10
	Section 7.16	<b><u>Leasing of Units</u></b> .....	10
	Section 7.17	<b><u>Prohibition of Time-Sharing</u></b> .....	10
	Section 7.18	<b><u>Prohibition of Propane and Propane Tank</u></b> .....	10
	Section 7.19	<b><u>General</u></b> .....	10
<b><u>Article 8</u></b>		<b><u>Insurance</u></b> .....	10
	Section 8.1	<b><u>Coverage</u></b> .....	10
	Section 8.2	<b><u>Property and Casualty Insurance</u></b> .....	11
	Section 8.3	<b><u>Liability Insurance</u></b> .....	11
	Section 8.4	<b><u>Policy Requirements</u></b> .....	11
	Section 8.5	<b><u>Association as Trustee</u></b> .....	11
	Section 8.6	<b><u>Other Insurance</u></b> .....	11
	Section 8.7	<b><u>Unit Owner's Insurance</u></b> .....	12
<b><u>Article 9</u></b>		<b><u>Damage, Repair and Reconstruction</u></b> .....	12

Section 9.1	<b><u>Duty to Repair</u></b> .....	12
Section 9.2	<b><u>Repair and Reconstruction</u></b> .....	12
(a)	<b><u>Cost Estimates</u></b> .....	12
(b)	<b><u>Source and Allocation of Proceeds</u></b> .....	13
(c)	<b><u>Plans and Specifications</u></b> .....	13
(d)	<b><u>Encroachments</u></b> .....	13
(e)	<b><u>Construction Fund</u></b> .....	13
(f)	<b><u>Method of Disbursement</u></b> .....	13
<b><u>Article 10</u></b>	<b><u>Easements and Additional Rights</u></b> .....	13
Section 10.1	<b><u>Encroachments</u></b> .....	13
Section 10.2	<b><u>Owner's Easement of Enjoyment</u></b> .....	14
Section 10.3	<b><u>Easements of Association</u></b> .....	14
Section 10.4	<b><u>Utility Easements</u></b> .....	14
Section 10.5	<b><u>Emergency Entry</u></b> .....	15
Section 10.6	<b><u>Right to Submit Real Property</u></b> .....	15
<b><u>Article 11</u></b>	<b><u>Assessment and Collection of Common Expenses</u></b> .....	15
Section 11.1	<b><u>Purpose of Assessments</u></b> .....	15
Section 11.2	<b><u>Apportionment of Common Expenses</u></b> .....	15
Section 11.3	<b><u>Common Expenses Attributable to Fewer than all Units</u></b> .....	15
Section 11.4	<b><u>Lien for Assessments</u></b> .....	16
Section 11.5	<b><u>Computation of Operating Budget And Annual Assessment</u></b> .....	16
Section 11.6	<b><u>Personal Liability of Unit Owners</u></b> .....	17
Section 11.7	<b><u>Acceleration</u></b> .....	17
Section 11.8	<b><u>No Waiver of Liability for Common Expenses</u></b> .....	17
Section 11.9	<b><u>Special Assessments</u></b> .....	17
Section 11.10	<b><u>Capital Budget and Contribution</u></b> .....	17
Section 11.11	<b><u>Interest, Late Charges and Payments</u></b> .....	18
Section 11.12	<b><u>Surplus Funds</u></b> .....	18
<b><u>Article 12</u></b>	<b><u>Association of Unit Owners</u></b> .....	18
Section 12.1	<b><u>Association Authority</u></b> .....	18
Section 12.2	<b><u>Association Membership</u></b> .....	18
Section 12.3	<b><u>Powers and Duties</u></b> .....	18
Section 12.4	<b><u>Maintenance Responsibility</u></b> .....	19
Section 12.5	<b><u>Additions and Alterations by the Board of Directors</u></b> .....	19
<b><u>Article 13</u></b>	<b><u>Leases and Sales</u></b> .....	20

	<u>Section 13.1</u>	<b><u>Renting or Leasing of Units</u></b> .....	20
	<u>Section 13.2</u>	<b><u>Notice of Sale or Lease</u></b> .....	22
<b><u>Article 14</u></b>	<b><u>Amendments</u></b> .....		22
<b><u>Article 15</u></b>	<b><u>Architectural Standards and Control</u></b> .....		22
<b><u>Article 16</u></b>	<b><u>Enforcement Powers</u></b> .....		23
	<u>Section 16.1</u>	<b><u>Rules Making Authority</u></b> .....	23
	<u>Section 16.2</u>	<b><u>Fining Powers</u></b> .....	23
<b><u>Article 17</u></b>	<b><u>Enforcement Procedures</u></b> .....		24
	<u>Section 17.1</u>	<b><u>Demand</u></b> .....	24
	<u>Section 17.2</u>	<b><u>Notice</u></b> .....	24
	<u>Section 17.3</u>	<b><u>Hearing</u></b> .....	24
<b><u>Article 18</u></b>	<b><u>Condemnation</u></b> .....		24
<b><u>Article 19</u></b>	<b><u>Termination</u></b> .....		25
<b><u>Article 20</u></b>	<b><u>Miscellaneous Provisions</u></b> .....		25
	<u>Section 20.1</u>	<b><u>Captions</u></b> .....	25
	<u>Section 20.2</u>	<b><u>Gender</u></b> .....	25
	<u>Section 20.3</u>	<b><u>Waiver</u></b> .....	25
	<u>Section 20.4</u>	<b><u>Invalidity</u></b> .....	25
	<u>Section 20.5</u>	<b><u>Conflict</u></b> .....	25
	<u>Section 20.6</u>	<b><u>Preparer</u></b> .....	25
	<u>Section 20.7</u>	<b><u>Service of Process</u></b> .....	25

## Article 1

### Submission to North Carolina Condominium Act

The real property and improvements which comprise Glen Cannon Condominiums Association Four, are hereby submitted to the provisions of the North Carolina Condominium Act (N.C. Gen. Stat. § 47C-1-101 et seq.) (Referred to hereafter and in the Bylaws as the “Condominium Act”) in accordance with the provisions of the Condominium Act and particularly as is permitted by N.C. Gen. Stat. § 47C-1-102(b). Submission of the governance, administration, and operation of the Condominium to the Condominium Act is for the benefit of all Owners at Glen Cannon Condominiums Association Four, Inc. and to allow the Owners to take advantage of the expanded statutory basis for the governance of condominiums offered by the Condominium Act.

## Article 2

### Description of Condominium

**Section 2.1. Name.** The name of the condominium is Glen Cannon Condominiums Association Four (hereinafter referred to as the “Condominium” or “Glen Cannon Condominiums Association Four”).

**Section 2.2. Location.** The Condominium is located in Transylvania County, North Carolina. Metes and bounds, graphic descriptions, and plans of the improvements constituting the Condominium, identifying the Units and the common elements thereof are more precisely set forth in Exhibits attached to the Original Declaration and any supplements to the Original Declaration, recorded with the Original Declaration and any supplements to the Original Declaration in the Transylvania County, North Carolina Registry of Deeds at the references to Deed Books and page numbers set forth above.

## Article 3

### Definitions

In accordance with Section 47C-1-103 of the Condominium Act and unless specifically provided otherwise or the context otherwise requires, the following terms as used in the Declaration and Bylaws for the Condominium shall have the following meanings:

**Section 3.1. Allocated Interests** means the undivided interest in the common elements, the common expense liabilities, and votes in the Association allocated to each Condominium Unit.

**Section 3.2. Assessments** means any and all sums levied by the Association against any Unit and its Owner as common expenses or other charges to include but not be limited to common expense liabilities, special assessments, specific assessments, late charges, interest and attorney’s fees as set forth in the Declaration and Bylaws.

**Section 3.3. Association or Unit Owners Association or Condominium Association or Glen Cannon Condominium Association Four** means Glen Cannon Condominiums Association



Four, Inc., a North Carolina non-profit corporation and its successors.

**Section 3.4. Board or Board of Directors** means the Board of Directors of Glen Cannon Condominiums Association Four, Inc. which is the governing body on behalf of and for the Association designated the Executive Board in N.C. Gen. Stat. § 47C-1-103(13); **Director or Directors** means a member or members of the Board.

**Section 3.5. Bylaws** means the Bylaws of Glen Cannon Condominiums Association Four, Inc.

**Section 3.6. Charter or Corporate Charter** means the Articles of Incorporation of Glen Cannon Condominiums Association Four, an incorporated non-profit condominium association.

**Section 3.7. Common Elements** means all portions of the Condominium other than the Units, including Limited Common Elements.

**Section 3.8. Common Expenses** mean expenses or financial liabilities for the operation of and connected in any way with the administration of the Condominium. These include:

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

**Section 3.9. Common Expense Liability** means the liability for common expenses allocated to each Unit pursuant to N.C Gen. Stat. § 47C-2-107 and for any other common expense or charge in accordance with the Declaration and Bylaws.

**Section 3.10. Condominium** means Glen Cannon Condominiums Association Four, being that real estate, and improvements thereon, as described in Article 2 of this Declaration and in the exhibits and instruments referenced therein.

**Section 3.11. Declaration** means this Amended and Restated Declaration of Condominium, Glen Cannon Condominiums Association Four, the Documents filed of record in accordance with the Condominium Act for the purpose of creating the Condominium, and including any duly recorded amendments to such Documents.

**Section 3.12. Documents** mean the Declaration, Plans recorded and filed, the Corporate Charter, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

**Section 3.13. Limited Common Element** means a portion of the common elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units, including, but not limited to those areas so designed in the Plans filed as exhibits to the Original Declaration and any supplements thereto, which are hereby incorporated by reference and those elements so designated in Article 6 of this Declaration. Such limited common elements include all balconies, decks, terraces, outside stairways and entrance areas, parking spaces and any other area so designated on the Plans or designated by the Board of Directors as a limited common element appurtenant to a Unit.

**Section 3.14. Majority of the Total Votes** in the Association means something more than fifty percent (50%) of the percentage of undivided interest of the Unit Owners entitled to vote.

**Section 3.15. Mortgage** shall refer to any mortgage, deed of trust, deed to secure debt or other transfer, or conveyance for the purpose of securing the performance of an obligation.

**Section 3.16. Notice and Opportunity to be Heard** means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon.

**Section 3.17. Officer** shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Vice President, Secretary, Treasurer and such other support and offices as the Board may determine necessary.

**Section 3.18. Person** means a natural person, corporation, business, trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

**Section 3.19. Plans** means those Plans recorded in the Condominium Book of the Transylvania County Registry which are referenced by the Original Declaration and Supplemental Declarations.

**Section 3.20. Resident** means and includes owners, their immediate family members, tenants, and lessees.

**Section 3.21. Supplemental Declaration(s)** means those supplements, if any, to the Original Declaration recorded in the Transylvania County Registry of Deeds by Glen Cannon Condominiums Association Four, which are referenced above in the Recital hereto, including all Exhibits and Plans recorded therewith, which

**Section 3.22. Unit or Condominium Unit** means the physical portion of the Condominium designated for separate ownership or occupancy whose boundaries are as set forth in Article 4 in this Declaration.

**Section 3.23. Unit Owner or Owner or Member** means a person or persons who own a Unit

that is (are) the record Owner(s) of a unit within the Condominium but shall not mean a mortgage holder.

#### Article 4

##### Units

**Section 4.1. Unit Designations and Descriptions.** The Condominium consists of twenty-two (22) Separate Condominium Units designated and identified as follows:

<b>BUILDING, UNIT #. OF CONDOMINIUM</b>	<b>PERCENTAGE OF UNDIVIDED INTEREST</b>
Building 7, Unit 1A	4.409
Building 7, Unit 2A	4.409
Building 7, Unit 1B	4.409
Building 7, Unit 2B	4.409
Building 8, Unit 1A	4.909
Building 8, Unit 2A	4.909
Building 9, Unit 1A	4.909
Building 9, Unit 2A	4.909
Building 10, Unit 1A	4.909
Building 10, Unit 2A	4.909
Building 10, Unit 1B	4.409
Building 10, Unit 2B	4.409
Building 11, Unit 1A	4.409
Building 11, Unit 1B	4.409
Building 11, Unit 2A	4.409
Building 11, Unit 2B	4.409
Building 12, Unit 1A	4.409
Building 12, Unit 2A	4.409
Building 12, Unit 1B	4.409
Building 12, Unit 2B	4.409
Building 13, Unit 1A	4.409
Building 13, Unit 2A	4.409

The principal materials of which the buildings are constructed are as follows: The buildings are wood frame buildings with cement footings and concrete or cinder block foundations. The exterior is cedar siding. The roofs are covered with fiberglass or asphalt shingles on plywood underlayment.

- (a) Description of Buildings: Glen Cannon Condominiums Association Four are comprised of seven (7) residential buildings. Each building contains either two (2) or four (4) units which

are connected to one another. Each unit is designated on the Plans recorded in the Condominium Book in the Transylvania County Registry of Deeds as referenced by the Original Declaration and any supplemental declarations thereto.

(b) **Unit Dimensions:** Each unit shall include all the space within the boundaries thereof. Each unit is bounded both as to horizontal and vertical boundaries by the unexposed facing of drywall (the facing next to studs or structural portion of buildings) and unexposed facing of finish molding or wood or paneling of its walls and ceilings, and the unfinished upper surface of floors or ceiling treatment. It is the intent hereof that the unit will include all interior drywall, paneling and molding and any surface finish or wallpaper, and all finished flooring, such as exposed wooden flooring, vinyl or linoleum floor covering, matting and carpeting, but will not include studs, supports and wall insulation, concrete slabs, floor or ceiling joists. Each unit shall be deemed to include the interior and exterior of any and all doors, windows, sliding glass doors, and other closure. The Association shall have the responsibility for maintaining and replacing the doors and windows but each Unit Owner shall be responsible for replacement of broken or damaged windows panes and screening. The Association shall have the responsibility for maintaining the exterior to include painting of doors and windows and the Association shall have sole control over the choice of paint color. Included as part of a unit are all door locks or security systems, the heating and air conditioning systems serving the unit, wherever located, the electrical wiring and service system, wherever located, from the service meter to the place where it connects with all users within the unit, the plumbing for water service, the drainage or sewer plumbing from its collection point in a unit to their junction with a line serving any other unit and television and radio antenna or cable systems serving the unit, wherever located. All outdoor lights except light fixtures built into the stairs or walks to individual units which are controlled from within the unit shall be part of the unit. The repair and replacement of all items denominated herein shall be the responsibility of the unit owner.

In interpreting this Declaration and its Plans, the actual physical boundaries of a unit as originally constructed, or of a unit reconstructed in substantial compliance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in this Declaration, or its Plan, regardless of settling or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans, and those of the Unit. Each Unit designation, type unit, and percentage interest in the Common Elements are set out in Article 4, Section 4.1 of this Declaration.

## Article 5

### Common Elements

**Section 5.1. Common Elements.** Common elements include all parts of the Condominium located outside the boundaries of the respective Units, including but not limited to:

(a) The land on which the buildings are erected and all the land surrounding the buildings that lies within the boundaries of the land from time to time subject to this Declaration, and exterior walls, roofs, interior walls (except the drywall, paneling, molding and floor covering), ceilings, floors, etc., and every part of the buildings and property other than the condominium units.

- (b) The foundation and structural members, including columns, girders, beams and supports.
- (c) All installations designed and intended for common use or to serve more than one unit such as, but not limited to, electrical service and plumbing, and telephone, whether located in common elements or in condominium units, excluding from such installations all parts thereof, and all items affixed or connected thereto not designed or intended for common use or by more than one unit.
- (d) Easements for access, maintenance, repair, reconstruction, or replacement of the above-mentioned common areas and facilities and all other services necessary or convenient to the existence, maintenance, safety and use of the property.
- (e) The yards, landscaping, fences, non-public roads and driveways, parking areas, walks, retaining walls, and all paved areas.
- (f) All maintenance and recreational areas.
- (g) All sewer lines and septic systems, including septic tanks, drain fields, and associated items.
- (h) Any portion of the property shown and designated on the Plans as Common Area or Limited Common Area (i.e., Common Elements and Limited Common Elements).

The maintenance of the common elements shall be as set forth in this Declaration and the Bylaws of the Association.

**Section 5.2. Percentage Interest.** The unit owners shall own the Common Elements, including the Limited Common Elements as tenants in common, with each unit having appurtenant thereto the percentage interest in said Common Elements as set forth in Article 4, Section 4.1 hereof, provided, however, the use of the Limited Common Elements shall be restricted as set forth in Article 6 of this Declaration.

**Section 5.3. Inseparability of Percentage Interest.** The percentage interest in the Common Elements cannot be separated from the Unit to which it appertains and shall automatically be conveyed or encumbered with the unit, even though such interest is not expressly mentioned or described in the deed or other instrument.

**Section 5.4. No Partition.** The Common Elements shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Condominium Act, this Declaration, and the Bylaws. Nothing contained herein, however, shall be deemed to prevent ownership of a condominium unit by more than one person, either as tenants by the entireties, or as tenants in common, or in any other form by law permitted.

**Section 5.5. Use of Common Elements.** Each unit owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises,

determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of some or all of the Common Elements to unit owners and their guests and to promulgate rules and regulations to provide for the exclusive use of a part of the Common Elements by a unit owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any unit owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations of the Board, his right to use the Common Elements to the immediate members of his family living in the Unit, to a limited number of guests, or to tenants who reside in his condominium unit.

## **Article 6**

### **Limited Common Elements**

The limited common elements are designated in Exhibits to the Original Declaration and Supplemental Declaration, and in the Plans therein referenced as "Limited Common Areas and Facilities". A Unit Owner shall be entitled to the exclusive use or use with other Unit Owners served by the limited common elements appurtenant to certain Units. Limited common elements shall not be separate and apart from the common elements in general, being limited only in that they are reserved to the use of certain Units. Such limited common elements include all balconies, decks, terraces, outside stairways and entrance areas, parking spaces, crawl spaces, carports and any other area so designated on the Plans or designated by the Board of Directors as a limited common element appurtenant to a Unit.

Exclusive use of the limited common elements may be delegated by an Owner to the immediate members of his family, his guests, or tenants who reside in the Unit. Owners may place plants, furniture, or similar items within the limited common elements adjacent to or appurtenant to the Unit, subject to reasonable rules and regulations duly adopted by the Board. No Owner shall build or construct any storage or workshop facility or similar structure within the limited common elements without the prior written approval of the Board of Directors or its designee.

## **Article 7**

### **Use Restrictions and Purpose**

**Section 7.1. Residential.** Each of the units now constructed or to be constructed on the property shall be, and the same hereby are, restricted exclusively to single-family residential use, and shall be occupied only by a single family, its nurses, aides, servants, or caretakers, and guests. In addition, there shall only be two people per bedroom in each of the units constructed on the property. The provisions of this Paragraph do not apply to property being used by the Association as incidental to the operations and organization of the Association.

**Section 7.2. Restrictions in General.** The Units and common elements of the Condominium are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other persons are subject to these restrictions and subject to the enforcement sanctions as are set forth in the Condominium Act, this Declaration, and Bylaws.

**Section 7.3. Business Activities.** No business activities shall be conducted on any portion of the property, provided, however, the foregoing restrictions shall not apply to the Association as provided above; provided further, private offices may be maintained in a unit so long as such use is incidental to the primary residential use of the unit. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Unit or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes a health hazard or unreasonable disturbance. No Owner shall make any use of a Unit or store or keep anything in a Unit which will increase the insurance rates for the Association or for other Unit Owners.

**Section 7.4. Alterations and Attachments by unit Owner.** No unit owner shall make structural alterations or modifications to his unit without the written approval of the Board of Directors. The Board of Directors shall not approve of any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or overall appearance of the Condominium Property.

**Section 7.5. Signs.** With one exception, no sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the exterior or interior (if visible from the outside) of any Unit or on any portion of the common elements without written permission from the Board. However, Owners are allowed to erect one political sign with the maximum dimensions of 24" x 24" on their property. The political sign may only be erected forty-five (45) days before an election day and must be removed seven (7) days after an election day. Further, nothing herein shall be construed to prevent the Board of Directors from erecting an entrance sign or street signs.

**Section 7.6. Prohibitions in use of Common Elements.** Except where indicated on the Plans and exhibits attached to the Original Declaration and Supplemental Declarations, or on specific approval of the Board, the Common Elements, including Limited Common Elements, shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, nor shall they be used in any way for the drying or airing of clothing, rugs, or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried on nor condition maintained by any unit owner either in his unit or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Condominium Property. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners on the condominium property and is necessary for the protection of the unit owners and is enforceable by the Board.

**Section 7.7. Animals.** No animal shall be kept on the Condominium Property, except normal, small household pets ordinarily kept in homes. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance. No savage or dangerous animal shall be kept or permitted on the Condominium Property. No pets may be permitted to run loose upon the Common Elements, and any unit owner who causes or permits any animal to be brought or kept upon the Condominium Property shall indemnify and hold the Board harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal on the Condominium Property, regardless of whether the Board has given its permission therefor. Whenever such pet is allowed outside the living unit, any animal droppings which

occur during such time as the pet is outside the living unit must be immediately collected by the owner.

**Section 7.8. Access to Units.** The Board or its agent shall have access to each unit from time to time during reasonable working hours, upon oral or written notice to its owner, as may be necessary for the maintenance, repair, or replacement of any of the Common Elements, including Limited Common Elements. The Board or its agent shall also have access to each unit at all times without notice as may be necessary to make emergency repairs to prevent damage to Common Elements, to another unit, or to the unit itself. Each Unit Owner shall submit keys for all locks to the President. If locks are changed, the Unit Owner is responsible for submitting the new key(s) to the Board. In an emergency situation, the Unit Owner will be responsible for any additional damages resulting from the delay related to the Unit Owner not submitting the correct key(s) to the Association.

**Section 7.9. Subdividing.** No unit may be divided or subdivided into smaller units, nor any portion thereof sold or otherwise transferred, without first amending the Declaration to show the changes in the units to be affected thereby; provided that any amendment to this Declaration providing for the subdivision into smaller units must be approved by ninety percent (90%) of the unit owners entitled to cast votes at a meeting of the membership called for such purpose.

**Section 7.10. Nuisances.** No nuisances shall be allowed upon the Condominium Property and no person shall engage in any use, practice, or activity upon such property which is noxious, offensive, or a source of annoyance to unit owners or which reasonably interferes with the peaceful possession and proper use of the property by any unit owner. The Board, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the property shall be kept in a clean and sanitary condition. No rubbish, refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any unit owner (or his family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the property shall be liable to the Board for the actual cost of removal thereof and the same shall be added to and become a part of the assessment next coming due to which the unit owner is subject.

**Section 7.11. Antenna.** There shall be no Over the Air Reception Devices (OTARD), including but not limited to, Satellite Dish Antennas, no exterior antenna for television, radio, citizen band, ham radio, nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals on a lot, whether attached to a building or free standing, except with the express written permission of the Board of Directors. The restrictions under this Section and any Rules and Regulations promulgated by the Board of Directors shall be in compliance with the then-current provisions of the Federal Communications Commission OTARD Rules.

**Section 7.12. Lawful Use.** No immoral, improper, or unlawful use shall be made of the Condominium Property nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

**Section 7.13. Weatherization of Units.** At all times a unit owner shall properly weatherize his unit to prevent the freezing of any water pipes and to protect the unit, other units, and the Common Elements from damage. If applicable, unit owners shall follow similar weatherization procedures as established by the Board from time to time.

**Section 7.14. Restriction on Transfer of Common Areas.** The Association shall not seek to



abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of owners and mortgage holders of units totaling ninety percent (90%) of the percentage interest in the Common Elements, and one hundred percent (100%) of those having use of Limited Common Areas thereby affected. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

**Section 7.15. Rules and Regulations.** The Board may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Article, but such rules and regulations shall be consistent with these restrictions and not in derogation of or intended as an amendment thereof.

**Section 7.16. Leasing of Units.** Leasing of Units shall be conducted as set forth in Article 13 of this Declaration.

**Section 7.17. Prohibition of Time-Sharing.** Time-sharing and time shares as defined in the North Carolina Time Share Act (N.C. Gen. Stat. § 93A-39 et seq.) of any Unit in the Condominium is prohibited.

**Section 7.18. Prohibition of Propane and Propane Tanks.** The use of any and all types of propane and propane tanks, including but not limited to buried tanks, propane grills and tiki torches, is prohibited.

**Section 7.19. General.** The Board of Directors may, from time to time, promulgate, modify, or delete rules and regulations applicable to the Units, Common Elements, or Condominium Property as a whole. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Owners holding a majority of the total votes in the Association. Such rules and regulations may be enforced by the Association in accordance with the Condominium Act, the Declaration and By-Laws.

The Board of Directors shall give notice to all owners in writing of any and all changes.

All Unit Owners, tenants, mortgagees, and occupants of Units shall comply with the Declaration, Bylaws, and Rules and Regulations. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Declaration, Bylaws, and Rules and Regulations are accepted by, ratified by, and are binding on all Unit Owners, tenants, mortgagees, occupants and their guests and invitees.

## **Article 8**

### **Insurance**

**Section 8.1. Coverage.** To the extent available, the Board shall obtain and maintain insurance coverage, as a common expense in accordance with Section 47C-3-113 of the Condominium Act and as set forth in this Article. If such insurance is not available, and the Board determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-

delivered or sent prepaid by United States mail to all Unit Owners at their respective last known addresses.

**Section 8.2. Property and Casualty Insurance.** The Association shall procure and maintain property and casualty insurance on the common elements and Units insuring against all risks of direct physical loss, including fire and extended coverage, for and in an amount equal to the replacement costs of all structures within the Condominium.

**Section 8.3. Liability Insurance.** The Association shall maintain liability insurance in reasonable amounts covering all occurrences, insure against death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the common elements and covering the Association, the Board of Directors, Officers, and all agents and employees of the Association and all Unit Owners and persons entitled to occupy any Unit or other portion of the Condominium Property.

**Section 8.4. Policy Requirements.** In accordance with Section 47C-3-113(d) of the Condominium Act, the insurance policies carried in accordance with Section 8.2 and 8.3 above must provide that:

1. Each Unit Owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the Association;
2. The insurer waives its right of subrogation under the policy against any Unit Owner or members of his or her household;
3. No act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and
4. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**Section 8.5. Association as Trustee.** All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the mortgagees of Owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Unit Owners and mortgagees of Owners. It shall be the duty of the Board of Directors bi-annually to conduct an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify insurance policies in existence to meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Unit Owners, and their respective mortgagees as their interests may appear. Improvements and betterments made by the individual Unit Owners may be excluded from required coverage. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage.

**Section 8.6. Other Insurance.** The Board of Directors shall obtain as a common expense:

1. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
2. Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;
3. Such other insurance as the Board of Directors may determine to be necessary.

**Section 8.7. Unit Owner's Insurance.** Each Unit Owner may obtain insurance at his or her own expense for contents and personal property coverage or any other coverage obtainable and to the extent in an amount such Owner deems necessary to protect his/her interest; provided, however, that any such insurance shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the pro-ration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction upon demand and shall assign the proceeds of that Unit Owner's insurance to the extent of such reduction to the Association.

Additionally, each owner shall pay for and keep in force comprehensive personal liability insurance for damage to person or property of others occurring within such Owner's Unit, another Unit, or upon the Common Elements, in such amounts as the Board of Directors from time to time determines, but in no case less than Three Hundred Thousand Dollars (\$300,000.00) for each occurrence. If an Owner does not carry such insurance and, as a result, the Association or another Owner incurs any costs or damages; then any and all such costs and costs of repair shall be an assessment against the uninsured Owner.

## **Article 9**

### **Damage, Repair and Reconstruction**

**Section 9.1. Duty to Repair.** In the event that all or any part of the Condominium Property shall be damaged or destroyed, such Units and common elements shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-13 of the Condominium Act.

**Section 9.2. Repair and Reconstruction.** The Board of Directors or its duly authorized agents shall arrange for and supervise the prompt repair and restoration of the damage in accordance with the original plats and plans or reconstruction compatible with such plats and plans.

The procedure for repair and construction shall be as follows:

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to the Condominium, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against all of the Unit Owners, but any such assessment shall be limited to the amount needed to restore the Common Elements. No such assessment shall be made to repair the Unit, such costs, if any, would be the responsibility of the Unit owner or the insurance carrier for the Unit. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

(c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the Plans and specifications under which the Condominium was originally constructed.

(d) **Encroachments.** Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

(f) **Method of Disbursement.** The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

## Article 10

### Easements and Additional Rights

**Section 10.1. Encroachments.** In addition to the easements created by Section 47C-2-114 of the Condominium Act, in the event that, by reason of destruction, reconstruction, rehabilitation, alteration or improvement of the building or improvements compromising a part of the Condominium Property, any part of the common elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the common elements or upon any part of another Unit, an easement for the continued existence and maintenance of each encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the common elements or Units so encroached upon.

**Section 10.2. Owners' Easement of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the common elements, and the easement granted herein shall be appurtenant to and shall pass with the title to every Unit, subject to the following provision:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against that Owner's Unit remains unpaid for a period of sixty (60) days or more or for any infraction of its published rules and regulations.
- (b) The right of the Association, after providing the Unit Owner with notice and opportunity to be heard, to suspend privileges and services provided by the Association during any period that assessments or other amounts are due for a period of thirty (30) days or longer.

If an Owner leases his/her Unit, the Owner shall transfer and assign to the lessee for the term of the lease any and all rights and privileges that the Owner has to use the common elements and limited common elements of the Condominium, to include, but not be limited to, the use of any and all recreational facilities or other amenities. Such Owner shall during the term of such lease have no rights to the use of any recreational facilities or the common elements.

**Section 10.3. Easements of Association.** There shall exist the following easements from each Unit Owner to the Association for the benefit of the Association and each other Unit Owner (as the case may be):

- (a) Easements through the common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of the Documents;
- (b) Easements through the Units, facilities, and common elements for maintenance, repair, and replacement of the Units and common elements including control of pests. Use of these easements, however, for access to the Units shall be limited to reasonable hours, except that access may be had at any time in case of emergency;
- (c) Every portion of a Unit which contributes to the structural support of the condominium buildings shall be burdened with an easement of structural support for the benefit of the common elements; and
- (d) Easements through the Units and through the common elements for all facilities for the furnishing of utility services within the building, which facilities shall include, but not be limited to, conduits, drainage, plumbing, and wiring.

**Section 10.4. Utility Easements.** There is hereby created a blanket easement upon, across, over and under all of the Condominium Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage, gas, telephones, and electricity. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the common elements in the performance of their duties. Further, an easement is hereby granted to the Association, its respective officers, agents and employees, and to any management company selected by the Association to enter in or to cross over the common elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said property

except as approved by the Board of Directors. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable Document, the Board of Directors shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this article shall in no way affect any other recorded easement on said premises.

**Section 10.5. Emergency Entry.** In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, or the Managing Agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Should no key be available for a Unit into which emergency entry is required, in such time frame as the Association or its designated representatives shall in its sole discretion determine, then the Association has the right to make a forcible entry. The Association shall be held harmless from and not be liable for any damage caused by or resulting from such forcible entry.

**Section 10.6. Right to Submit Real Property.** The Association through its Board of Directors shall have the right and authority to submit real properties owned by the Association to the control and governance of this Declaration and Bylaws. The Board can submit such properties by executing an instrument submitting described real property to the Declaration of Condominium and recording it in the Registry of Deeds of Transylvania County, North Carolina.

## **Article 11**

### **Assessment and Collection of Common Expenses**

**Section 11.1. Purpose of Assessments.** The assessments for common expenses as described in Section 47C-3-1 15 of the Condominium Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.

**Section 11.2. Apportionment of Common Expenses.** Except as set forth in this Article, common expenses shall be assessed against all Units in accordance with the allocation of percentage interest in the common expenses as set forth in this Declaration pursuant to Section 47C-2-107(a) of the Condominium Act.

**Section 11.3. Common Expenses Attributable to Fewer than All Units.**

(a) If a common expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

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

**Section 11.4. Lien for Assessments.**

(a) Any assessment levied against a Unit remaining unpaid for a period of 60 days or longer shall constitute a lien on that Unit when filed of record in the Office of the Clerk of Superior Court of Transylvania County in the manner provided therefor by Article 8 of N.C. Gen. Stat. § 44. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in their discretion, substitute a trustee in accord with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, collection costs, attorneys fees, and interest charged pursuant to Sections 47C-3-102(10), (11), and (12), 47C-3-107(d), 47C-3-107.1, and 47C-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

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

(c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(d) This Section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

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

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

**Section 11.5. Computation of Operating Budget and Annual Assessment.** It shall be the duty of the Board by December 1st of each year to prepare and approve a budget covering the estimated costs of operating for the Association during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and

replacements. The Board shall cause the budget and the annual assessments to be levied against each Unit for the coming fiscal year by giving each unit owner written notice of such assessment within thirty (30) days following the approval of the budget by the Board. If, for whatever reason, the budget for the succeeding year is not approved by the Board, then the budget in effect for the current year shall continue for the succeeding year.

**Section 11.6. Personal Liability of Unit Owners.** The Unit Owner of a Unit at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred.

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

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

**Section 11.7. Acceleration.** If the Unit Owner shall be in default in payment of any assessment or charge, including, but not limited to, the regular installments based on the annual budget, the Board of Directors may accelerate the remaining assessments, including regular installments based on the annual budget, special assessments, and specific assessments, upon ten (10) days written notice to such Unit Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

**Section 11.8. No Waiver of Liability for Common Expenses.** No Unit Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Unit against which the assessments are made.

**Section 11.9. Special Assessments.**

(a) If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.

(b) The Board of Directors may levy special assessments for capital improvements upon the common elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of the total votes in the Association at a special meeting duly called for that purpose.

**Section 11.10. Capital Budget and Contribution.** The Board shall annually estimate a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may recommend an annual capital contribution from each unit owner in an amount sufficient to meet the projected capital needs of



the Association in respect to both to amount and time. Such recommendation, to become effective, shall be approved by an affirmative vote of a majority of the votes of the owners at a special meeting duly called for that purpose.

**Section 11.11. Interest, Late Charges and Payments.** In accordance with N.C. Gen. Stat. 47C-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof shall bear interest at the maximum rate allowed by law.

The Board shall set a late charge to be assessed against Unit Owners for late payment of any common expense assessments or installment thereof.

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

**Section 11.12. Surplus Funds.** Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Unit Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

## **Article 12**

### **Association of Unit Owners**

**Section 12.1. Association Authority.** The Association shall manage and administer the Condominium and shall have all powers and duties granted to it in the Condominium Act and the Documents.

**Section 12.2. Association Membership.** All Unit Owners by virtue of their ownership of a Unit in the Condominium are members of the Unit Owners' Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Act and the Documents, such Owners shall be entitled to vote the allocated percentage interest for each Unit as set forth in Article 4 in which they hold the interest required for membership.

**Section 12.3. Powers and Duties.** Acting by and through its Board of Directors and/or its membership in accordance with the provisions of the Documents, the Association shall have the powers and duties necessary for the administration of the affairs of the Condominium which shall include, but not be limited to, the following:

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;

- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to Section 47C-3-112 of the Condominium Act;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
- (11) Impose charges for late payment of assessments, not to exceed the greater of twenty dollars (\$ 20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred dollars (\$ 100.00) (Section. the Condominium Act) for violations of the declaration, bylaws, and rules and regulations of the association;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by Section 47C-4-109, or statements of Section 47C-3-107.1 of unpaid assessments of the Condominium Act;
- (13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (14) Assign its right to future income, including the right to receive common expense assessments.
- (15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
- (16) Exercise any other powers necessary and proper for the governance and operation of the association.

**Section 12.4. Maintenance Responsibility.** The respective maintenance responsibilities, to include preventive maintenance, of the Association and the Unit Owners shall be as provided in the Bylaws.

**Section 12.5. Additions and Alterations by the Board of Directors.** Whenever in the judgment of the Board of Directors the Common Elements shall require additions, alterations, or improvements costing in excess of Twenty-five Thousand Dollars (\$25,000.00) during any period of twelve (12) consecutive months, and the making of such additions, alterations, or improvements shall have been approved by a majority of the total votes in the Association at a special or annual meeting or by written consent, the Board of Directors shall proceed with such additions, alterations, or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Twenty Five Thousand Dollars (\$25,000.00) or less during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute part of the Common Expense.

## Article 13

### Leases and Sales

In order to assure a community of congenial resident Owners and thus protect the value of the Units, the sale or leasing of a Unit by an Owner shall be subject to the following provisions so long as the Condominium shall be owned in accordance with the terms and conditions of the Documents and the Condominium Act:

**Section 13.1. Renting or Leasing of Units.** Units may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be permitted. All leases must be for a term of not less than six (6) months, and continue for the term of the lease, except by written permission of the Board of Directors in its sole discretion. The Unit Owner must make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations.

“Leasing” for purposes of this Declaration is defined as regular occupancy of a Unit by any person other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity or emolument.

Any lease of a Unit in the Condominium shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not incorporated into a lease such covenants nevertheless apply to the Unit through the existence of this covenant. Any lessee, by occupancy in a Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(a) **Liability for Assessments.** Upon written request by the Association, lessee shall pay to the Association all unpaid common expense assessments, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, lessee need not make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Association’s request. All such payments made by lessee shall reduce, by the same amount, lessee’s obligation to make monthly rental payments to lessor. This provision shall not be construed to release the Unit Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(b) **Compliance with Declaration, Bylaws, and Rules and Regulations.** Lessee agrees to abide by and comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or Rules and Regulations for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee’s

failure to pay the fine. Unpaid fines constitute a lien against the Unit in accordance with the Condominium Act and Declaration. Any lessee charged with a violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction as set forth in the Bylaws.

Any violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees actually incurred and court costs associated with the eviction, shall be assessed against the Unit and the Owner thereof as a common expense, such being deemed hereby as an expense which benefits the leased Unit and the Owner thereof.

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

No more than two (2) units at Glen Cannon Condominiums Four may be leased at any time. Before entering into a lease of any units at Glen Cannon Condominiums Four, Unit Owners shall present the lease to the Board of Directors, or their designated representative, for approval at least twenty (20) days before the effective date of such proposed lease. Upon presentation of a proposed lease for approval, the Board of Directors shall determine the number of units leased at that time and shall not approve any lease which causes the number of units leased to exceed the maximum. The Board, however, shall have the option in its sole discretion to allow leasing of more than two (2) units at any time to avoid undue hardship. The Owner of a unit who believes that leasing is necessary to avoid undue hardship shall make written application to the Board setting forth the pertinent circumstances and giving other notice as required herein. Circumstances which the Board may determine to impose undue hardship may include, by way of example but not limitation, (i) where a Unit Owner must relocate and cannot, within ninety (90) days from the date the unit was placed on the market, sell the unit for the current appraised market value, having made reasonable efforts to do so; (ii) the death of the Owner when the Estate's representative makes a request to lease; and (iii) where the Owner is required by his or her employer to relocate temporarily, and intends to return to reside in the unit. The Board shall approve or disapprove the lease pursuant to the terms of the Declaration as amended, and shall give written notice of its action to the Owner within ten (10) business days of receipt of the proposed lease.

The Board of Directors shall have authority to make and to enforce reasonable rules and regulations in order to enforce this provision.

If a Unit Owner is interested in leasing a unit but the maximum two (2) units are already leased and the Unit Owner does not qualify for an undue hardship exemption, the Unit Owner can request that the unit be placed on the Lease Waiting List. If a lessee's occupancy of one of the two (2) leased units ends, the Unit Owner of said unit must replace the lessee within ninety (90) days. If the Unit Owner fails to replace the lessee of said unit within ninety (90) days, the Unit Owner shall lose its leasing privileges for said unit. After one Unit Owner loses its leasing privileges for a unit, the Board shall promptly notify the Unit Owner of the unit at the beginning of the Lease Waiting List of the availability.

**Section 13.2. Notice of Sale or Lease.** Any owner selling his or her Unit shall give notice in writing to the Board of Directors at the time the Unit is under contract and a closing date has been set and provide information as the Board may reasonably require. After an Owner receives written approval from the Board of Directors to lease its unit, the Owner shall provide to the Board or its designated agent a copy of the signed lease within fifteen (15) days of the signing of the lease and prior to occupancy. The Board of Directors shall have authority to make and to enforce reasonable rules and regulations in order to enforce this provision.

## **Article 14**

### **Amendments**

Except for certain cases of amendments as referenced in Section 47C-2-117(a) of the Condominium Act, and in those cases whereby this Declaration requires a greater majority for such an amendment, this Declaration may be amended only by vote or written agreement of Unit Owners of Units to which at least Seventy-Five Percent (75%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47C-2-117 of the Condominium Act. No amendment shall become effective until recorded in the office of the Register of Deeds in Transylvania County, North Carolina.

## **Article 15**

### **Architectural Standards and Control**

No Owner, occupant, lessee or lessor, or any other person may make any encroachment onto the common elements, exterior change, alteration, or construction, or erect, place, or post any sign, object, light, or thing on the exterior of the buildings or any other common element, or on any place or thing in the Condominium visible from the outside of a Unit, without first obtaining the written approval of the Board of Directors of the Association or its designee.

To obtain such permission for any aforementioned change or alteration, the plans and specifications showing the nature, kind, shape, height, materials, and location shall have been submitted in writing to the Board or its designee. The Board or its designee may promulgate written guidelines for the exercise of the review of such plans. The Board or its designee, in its sole discretion, may hire an architect or other professional designer to analyze the plans and specifications to help in the review. Any costs incurred will be paid for by the Unit Owner proposing such plans.

The Board or its designee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in

violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours, to enter upon any Unit to inspect any Unit and any improvements thereon for the purpose of ascertaining whether these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In the event said Board or its designee fails to approve or to disapprove such design and location within ninety (90) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. If the request for alteration is of such a magnitude to require an architect, civil engineer, or other expert the cost of same must be borne by the owner/requestor.

An Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, and replacements and for insurance to and on such change, modification, addition, or alteration.

## **Article 16**

### **Enforcement Powers**

**Section 16.1. Rules Making Authority.** The Condominium shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Units and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written consent of a majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.

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

**Section 16.2. Fining Powers.** Pursuant to Sections 47C-3-102(a)(11) and 47C-3-107.1 of the Condominium Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Condominium Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Unit in accordance with Article 12 hereof, and become a personal obligation of the Unit Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote. In the event that any occupant of a Unit violates the Condominium Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Unit Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Condominium Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Unit Owners waive and release any defense that

enforcement is or may be selective. Charges for late payments of assessments under Article 12 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

## Article 17

### Enforcement Procedures

In accordance with Section 47C-3-107.1 of the Condominium Act, the Board of Directors or its designated representatives or committee shall not impose a fine or charge for damages against a Unit Owner unless and until the following procedure is followed:

**Section 17.1. Demand.** Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Article 11 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

**Section 17.2. Notice.** Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Board of Directors or its designated committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

**Section 17.3. Hearing.** If the hearing is requested, it shall be held before the Board of Directors or a committee designated by the Board and the violator shall be given a reasonable opportunity to be heard. The Board or designated committee shall render its final decision regarding imposition of the fine no later than five (5) days after the hearing. The Board or its designated committee shall issue a written statement of the results of the hearing.

## Article 18

### Condemnation

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

**Article 19**

**Termination**

Termination of the Condominium shall be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

**Article 20**

**Miscellaneous Provisions**

**Section 20.1. Captions.** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe neither the scope of the Documents nor the intent of any provision thereof.

**Section 20.2. Gender.** The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

**Section 20.3. Waiver.** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 20.4. Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

**Section 20.5. Conflict.** The Documents are intended to comply with the requirements of the Condominium Act and Chapter 55-A of the North Carolina General Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

**Section 20.6. Preparer.** This Declaration was prepared by Dungan & Associates, P.A., One Rankin Avenue, Third Floor, Asheville, North Carolina 28801.

**Section 20.7. Service of Process.** The person to receive service of process shall at all times be the registered agent of the Association as set forth in the Articles of Incorporation or as may be changed from time to time by filing the appropriate change of registered agent form with the North Carolina Secretary of State.

IN WITNESS WHEREOF, the undersigned President of Glen Cannon Condominiums Association Four, Inc. hereby certifies that the above Amended and Restated Declaration of Condominium for Glen Cannon Condominiums Association Four was duly adopted by the Association and its membership in accordance with and pursuant to the Original Declaration as amended and the Bylaws of the Association.



This the 18 day of August, 2006.

Glen Cannon Condominiums Association Four, Inc.

By: [Signature]  
President

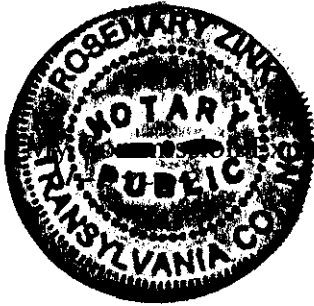
Attest: [Signature]  
Secretary



STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, [Signature], a Notary Public of the County and State aforesaid, certify that he/she is Secretary of Glen Cannon Condominiums Association Four, Inc. a North Carolina corporation, and that by authority duly given and as that act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Wilma L. Wollenweber as its Secretary

Witness my hand and official stamp or seal, this 18<sup>th</sup> day of August, 2006.



es:  
11/8/09

[Signature]  
Notary Public