

DECLARATION OF COVENANTS
AND RESTRICTIONS
MILLER MOUNTAIN SUBDIVISION, SECTION IV

THIS DECLARATION made this 10th day of November, 1989, by JACK L. STORY and Wife, LOUISE STORY, hereinafter referred to as the Developer.

WHEREAS, the Developer is the owner of the real property described in Section 1.1 and desires to create a residential community in accordance with a uniform plan of development to preserve property values, to maintain open spaces and the natural beauty of the real property, to guard against construction thereof of poorly designed or proportioned structures built of improper or unsuitable materials, to obtain a harmonious architectural scheme and to create a livable environment, for the benefit of future purchasers of the real property; and

WHEREAS, in order to accomplish the said purpose the Developer deems it desirable to create an agency to which should be delegated the powers of administration of some of the aforesaid functions and of collecting and disbursing the assessments hereinafter provided; and

WHEREAS, Developer will incorporate under the laws of the State of North Carolina, as a non-profit corporation, an appropriately named Association for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, for and in consideration of the premises and in further consideration of the mutual covenants, conditions, reservations, and restrictions herein created for the benefit of the Developer, its successors and assigns and the future owners of the real property, the Developer hereby declares, creates and imposes upon the real property described in Section 1.1 the following covenants, reservations and restrictions which are hereby declared covenants running with the land as follows:

ARTICLE I

REAL PROPERTY SUBJECT
TO THIS DECLARATION

1.1 Real Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is that real estate shown on a Plat of Miller Mountain, Section IV, prepared for the Developer by Butler Associates, dated August 31, 1989, and recorded in the Polk County Registry on the 11th day of October, 1989 in Card File A, Page 276, and additions thereto which may be accepted under the provisions of Section 9.1.

1.2 Residential Area. All Numbered Lots shown on the Plats to be recorded, hereinafter referred to collectively as the "Residential Area," are hereby set aside for use only for single family residential dwellings upon the terms and conditions hereinafter provided.

1.3 Recreational Area. The area on the Plat specifically designated as "Park" is hereby set aside for use by the owners of the Numbered Lots for private recreational and beautification purposes, subject to the terms and conditions hereinafter provided.

1.4 Proposed Park. Any area designated on the Plat as a proposed park site or area shall in no way be deemed a representation that a park will be developed on such site by Developer, and such designation shall not bind Developer to prepare a park; however, if any park shall be constructed or partially constructed by Developer, such area shall be deemed a Recreational Area.

1.5 Existing Structures. In the event these Covenants shall be extended to additional real property, all then existing structures and uses thereon shall not be affected by the terms hereof, but shall be deemed in compliance herewith; but thereafter any future structures and uses, or the alteration of existing structures, on such additional real property shall comply with the terms hereof.

1.6 Conflict with Zoning Statutes. In the event of any conflict of the provisions hereof with any zoning ordinance or statute, or subdivision law or regulation in effect on the date of recording of this Declaration, which would require a more stringent or strict standard, regulation or use than required herein, then the terms, conditions and requirements of such more stringent zoning or subdivision law, statute or ordinance shall prevail.

ARTICLE II

USES PERMITTED AND PROHIBITED IN RESIDENTIAL AREA

The uses permitted and prohibited and the terms, conditions and limitations hereinafter set forth in this Article II shall apply only to the "Residential Area."

2.1 Numbered Lots. The term "Numbered Lot" as used herein shall refer to a numbered lot as shown on the Plats. A Numbered Lot shall also be construed to mean a combination of Numbered Lots or portions thereof which are contiguous and which shall form an integral unit of land; provided, nevertheless, that any resubdivision of any Numbered Lot as shown on the Plats as originally recorded shall be prohibited if such resubdivision shall result in a parcel of land the total square footage of which is less than that contained in original Numbered Lot before resubdivision.

2.2 Use for Single Family Residence. All Numbered Lots as herein defined shall be used exclusively for a single family residence.

2.3 Business Prohibited. No single family residence shall be used for any business, commercial, amusement, hospital, sanitarium, school, clubhouse, religious, charitable, philanthropic or manufacturing purposes, or as a professional office; and no billboards or advertising signs of any kind shall be erected or displayed thereon, except such signs as are hereinafter permitted; provided, nevertheless, that nothing contained herein shall prevent the owner of a residence from renting or leasing his entire residence for use as a single family residence at any time and for any term. No duplex residence, garage apartment or apartment house shall be erected or permitted to remain on any Numbered Lot in the Residential Area, and no structure at any time therein shall be converted into a duplex residence, garage apartment, apartment house, boarding house, rooming house, hotel or motel.

2.4 Street Obstructions. No fence, wall, hedge, shrub, bush, tree or other object, natural or artificial, shall be placed or located on any Numbered Lot if the location of the same will in the judgment of the Architectural Committee obstruct the vision of any motorist upon any street or avenue shown on the Plat.

2.5 Utility Areas. Each residence shall have at least one screened utility area which shall be constructed at the same time a main residence is constructed. Each Utility Area shall be hedged, or fenced on all sides thereof, except the entrance thereto, using such materials, with such height and design as shall be approved by the Architectural Committee, so that the structures and objects located therein shall not be visible from the exterior. No pens, yards or houses for pets, above-ground

storage of construction materials, coal, oil or other fuels, clothes racks and clothes lines, clothes washing and drying equipment, laundry rooms, tool shops, workshops, garbage and trash cans and receptacles, children's playhouses, lawn maintenance equipment or other mechanical and household equipment or any other structures and objects as determined by the Architectural Committee to be of any unsightly nature and appearance shall be placed or permitted to remain upon any Numbered Lot unless the same shall be erected, maintained and allowed to remain wholly within a Utility Area.

2.6 Setback Lines. No building shall be erected on any Numbered Lot nearer to the lot lines than as follows:

- (a) from the front property line-----25 feet,
- (b) from the side property line-----15 feet,
- (c) from the rear property line-----25 feet,
- (d) from the side property line which abuts the street-25 feet;

provided, however, that where unique topographical problems may exist on a given lot, the Architectural Committee may approve minor deviations from the requirements of this paragraph so that such lot may be effectively utilized.

2.7 Carports. No open air carports shall be permitted on any Numbered Lot.

2.8 Fences, walls and hedges. Except for driveways and walkways, no permanent improvements of any kind shall be erected, placed or allowed to remain outside of the front and rear setback lines; provided, nevertheless that hedges, fences and walls which extend not more than six (6) feet above the surface of the ground and which do not violate other paragraphs contained in these covenants may be erected, placed or allowed outside the setback lines if such is approved by the Architectural Comm.tee.

2.9 Used Structures. No used buildings or structures shall be placed or permitted to remain upon the Real Property unless prior approval by the Architectural Committee is obtained.

2.10 Signs and Advertising. Except as stated in Paragraph 2.17 hereinbelow, no sign shall be displayed or placed upon any Numbered Lot, except "for rent" or "for sale" signs, which signs shall refer only to the particular premises on which displayed, shall not exceed six (6) square feet in size and shall not extend more than four feet above the surface of the ground, and shall be limited to one sign per Numbered Lot. The Architectural Committee may enter upon any Numbered Lot and summarily remove and destroy any signs which do not meet the provisions of this paragraph without any liability whatsoever.

2.11 Construction delays. The construction of any residence or structure once commenced by laying of foundation must be fully completed within one (1) year unless rendered impossible as a direct result of strikes, fires, national emergencies or natural calamities. Any building or structure not so completed or upon which construction has ceased for a period of at least ninety (90) consecutive days, or any building or structure which has been totally or partially destroyed by fire or other casualty and not rebuilt or removed within one year, are hereby declared nuisances which may be removed by the Association at the expense of the owner thereof, which expense shall be payable by such owner to the Association on demand and shall become a lien on the property from the date said payment is requested.

2.12 Trash. No trash, rubbish, debris, waste material or other refuse shall be deposited or allowed to accumulate or remain on any part of any Numbered Lot except in a utility area. No fires for the burning of trash, leaves, clippings or other debris or refuse shall be permitted on any Numbered Lot.

2.13 Tents and Shacks. No shed, shack, trailer, tent or other temporary or movable building or structure of any nature or kind shall be erected, placed or permitted to remain on the real property; provided, however, that nothing contained herein shall prevent the use of a temporary construction shed during the period of actual construction of a dwelling, temporary sanitary toilet facilities for workmen during the period of such construction.

2.14 Trailers and Vehicles. No trailer, garage or any outbuilding of any kind, shall at any time be used as a residence, either temporarily or permanently.

2.15 Restriction on Vehicles. No trucks or mobile equipment larger than one (1) ton shall be kept on any part of the real property except during the period of construction as permitted herein nor shall any vehicle be parked or stored on any part of the real property unless it is in a driveable condition and regularly used.

2.16 Fuel Tanks. Fuel storage tanks shall be either buried below the surface of the ground or located within the Utility Area. Every receptacle for ashes, garbage or rubbish shall be installed underground, or if installed above ground, shall be placed only in a Utility Area.

2.17 Boats. No boats may be kept or parked on any Numbered Lot unless the same are completely inside a garage or contained within a Utility Area.

2.18 Name and Number Plates. Notwithstanding Paragraph 2.10 hereinabove a plate or sign showing the number and name of the residence and the name of the occupants may be placed on any Numbered Lot on which a building is located at the option of the property owner in accordance with the size, location, design and type of materials approved by the Architectural Committee.

2.19 Window Air Conditioning Units. No window air conditioning unit shall be installed on any side of any building which faces a street.

2.20 Television Antennae. No radio or television aerial or antennae, nor any other exterior electronic or electric equipment or devices of any kind, shall be installed or permitted to remain on the exterior of any structure located on the real property unless the location, size and design thereof shall have been approved by the Architectural Committee. The provisions of this paragraph shall not apply to equipment or devices above mentioned located wholly within a Utility Area.

2.21 Animals. Any household animal or pet shall be kept under control and only for the pleasure and use of occupants of the lot and not for any commercial or breeding use or purpose. If in the discretion of the Association, any household animal or pet becomes dangerous or an annoyance or nuisance to other residents or destructive of wildlife or property, they may not thereafter be kept on the lot. Other than usual and customary household animals and pets, all other animals, including but not limited to horses, cows, sheep, goats, chickens, ducks, and geese shall not be kept, housed, or allowed on the premises of any Numbered Lot.

2.22 Nuisance. No illegal, noxious or offensive activity shall be permitted on any part of the Real Property nor shall anything be permitted which may be or become a public or private nuisance, a source of embarrassment, discomfort or annoyance to the neighborhood.

2.23 Water Supply. Water supply shall be the responsibility of each property owner by means of an individual well on each Numbered Lot.

2.24 Utility Easements. Easements ten (10') feet in width along the side, front and rear boundary lines of each Numbered Lot are hereby reserved for furnishing of normal utility services to the said Numbered Lot. No permanent structures shall be built in any

easement area. Landscaping is permitted in easement area; however should such landscaping be disturbed in the routine maintenance or construction of facilities designated for these easement areas, the responsibility for replacement of such landscaping will be solely that of the individual lot owner.

2.25 Trees. No living tree having a diameter greater than ten inches at a height of four feet from ground level may be cut on any land without first obtaining the written consent of the Architectural Committee, except such trees as shall be growing within twenty (20) feet of any building located on the Real Property.

2.26 Rubbish Removal. The owner of each Numbered Lot, improved or unimproved, shall keep the same free of tall grass, undergrowth, dead trees, dangerous or dead tree limbs, weeds, trash, and rubbish, and each Numbered Lot shall at all times be maintained in a neat and attractive condition, and such a manner as to prevent the same from becoming unsightly, unsanitary or a hazard to health. In the event the owner of any Numbered Lot fails to comply with the terms of this paragraph, the Association shall have the right (but not the obligation) to enter upon such Numbered Lot and to cut and remove tall grass, undergrowth, weeds, rubbish, and any other unsightly or undesirable things and objects therefrom, and to do all other things and perform and furnish any labor necessary or desirable in its judgment to maintain the Numbered Lot in a neat and attractive condition, all at the expense of the owner of such Numbered Lot, which expenses shall become payable by the owner to the Association on demand, and if not paid on demand by such owner, the reasonable cost of such shall be added to and become a part of the annual assessments hereinafter provided in Article VII. Neither the Association, nor any of its agents, employees or contractors shall be liable for any damages which may result from the exercise of any of the rights conferred upon them as set forth in this paragraph.

ARTICLE III

STREETS AND RECREATIONAL AREAS

All property designated on the Plats as streets and the park area shall remain privately owned by Developer until sixty (60%) percent of the Numbered Lots have been sold by the Developer, or at the end of five (5) years from the date of this Declaration, whichever shall occur earlier, at which time all such property shall be conveyed by the Developer, its successors or assigns, by deed to the Association, and the Association shall accept such conveyance for the full use and enjoyment of all Numbered Lot owners.

3.1 Streets. A perpetual easement for ingress and egress over and across all streets and roads as shown on the Plat is hereby reserved unto the Developer, its successors or assigns, for the benefit of all owners of Numbered Lots, their heirs, successors, and assigns forever.

3.2 Proposed Garden Site and Common Areas. If any park site or common area shall be set aside by the Developer during the period in which Developer retains ownership of such site, a non-exclusive and perpetual right to utilize and enjoy such site is granted to all owners of Numbered Lots.

3.3 Recreation Areas. A non-exclusive and perpetual right to utilize and enjoy any area shown on the Plat as a Park Area is granted to all owners of Numbered Lots subject to the following:

- (a) No trees, shrubs, undergrowth, or flowers shall be cut or removed from such property.
- (b) No fires or littering shall be allowed.
- (c) Care shall be exercised to assure the preservation of such property in its natural state.
- (d) The right of the Association to dedicate or transfer all or any part of, or any interest in the Recreation Area and streets and roads to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by

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two-thirds of the members of the Association.

ARTICLE IV

APPROVAL OF PLANS AND SPECIFICATIONS

4.1 There shall be established by the Association a permanent Committee to be known as the Architectural Committee, for the purposes and with such powers and limitations as are set forth hereinbelow.

4.2 Architectural Committee. For the purpose of insuring the development of the real property as an area with an aesthetic and pleasing appearance, and except as excluded in Paragraph 4.4, no building, structure, fence, wall, utility area, driveway, swimming pool or other permanent structural improvement, regardless of size or purpose whether attached to or detached from a main residence, located in the Residential Area shall be commenced, placed, erected or allowed to remain on any Numbered Lot, nor any additions, or exterior changes, or alterations thereto shall be made unless building plans and specifications covering the same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes, location and orientation on the Real Property together with such other information as shall be reasonably required by the Architectural Committee shall have been submitted to and approved in writing by the Architectural Committee hereinafter established. Once approval has been obtained from the Architectural Committee, the plans submitted to it may not be changed materially without resubmission to the Committee. Additionally, the Architectural Committee shall have all powers and authorities elsewhere conferred upon it under the terms and conditions of this Declaration.

4.3 Committee Members. The Architectural Committee shall be composed of three (3) owners of Numbered Lots elected by the Association in accordance with its By-Laws. In all matters a simple majority of the Committee shall govern. It is provided, nevertheless, that at the end of three (3) years from the date of the first sale of a Numbered Lot, or whenever the Developer shall have sold thirty (30%) percent of the Numbered Lots, whichever event shall first occur, the right of the Developer to exercise its voting rights in the Association in the election of members to the Architectural Committee shall be limited to the election of not more than one (1) member thereto.

4.4 Standards of Disapproval. The Architectural Committee shall have the absolute and exclusive right to refuse to approve any building plan, specification, materials, design, lot grading or landscaping plan of any thing or structure which in the opinion of the Architectural Committee is not suitable or desirable for any reason whatsoever, including purely aesthetic reasons. In passing upon such matters the Architectural Committee shall take into consideration the suitability of proposed materials, the quality of proposed workmanship, harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring properties; provided, however, that it shall not be necessary to obtain the approval of the Architectural Committee for any structure which is to be erected and maintained wholly within and obscured by a Utility Area.

4.5 Failure to Approve or Disapprove. In the event that the Architectural Committee fails to notify any applicant of its approval or disapproval of any matters within the scope of its authority within thirty (30) days after same have been submitted to it, then approval of the Architectural Committee shall be deemed to have been granted, and no suit or claim shall thereafter be available to the Architectural Committee, the owners of any real property, or the Developer.

4.6 Application Time. The application for approval as required herein shall be deemed to be before the Architectural Committee when all building plans and specifications as described in Paragraph 4.2

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hereinabove, together with any further and additional information which the Committee shall require in accordance with Paragraph 4.2 shall have been submitted to the Committee or any member of it; and the thirty (30) day period for approval or disapproval by the Committee shall commence as of such date.

ARTICLE V

WAIVER OF SETBACKS, LOCATION AND SIZE OF IMPROVEMENT ON LOTS

The Architectural Committee is hereby authorized and fully empowered, upon unanimous vote of all of its members, to waive compliance with the location, construction or alteration requirements of any permanent improvements upon the real property, if, in the opinion of all of the members of said Architectural Committee, the same shall be necessary to prevent undue hardships because of special circumstances attendant to the real property involved and if in the opinion of the members of such Committee, such violation or violations are minor, will cause no substantial injury or undue hardship to any other property owners, and will not adversely affect the common scheme of development. The waiver, approval or ratification by the Architectural Committee in accordance with terms of this paragraph shall be binding upon all owners of Numbered Lots and the Association, and the powers of waiver herein conferred upon the Architectural Committee shall be construed strictly.

ARTICLE VI

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

The developer has incorporated (or will incorporate) under the Laws of the State of North Carolina a non-profit corporation for the purpose of administration of some of the functions of these covenants and of collecting, disbursing, and enforcing the maintenance charges hereinafter provided.

6.1 **Membership.** Every person or entity who is a record owner of a fee or an undivided fee interest in any Numbered Lot in the Residential Area shall be a member of the Association; provided, however, that any person or entity who holds an interest merely as security for the performance of an obligation shall not be a member.

6.2 **Voting Rights.** Each member of the Association shall be entitled to one vote for each Numbered Lot in which they hold interests required for membership by Section 6.1; provided further than when more than one person or entity holds such interest or interests in any Numbered Lot all such persons or entities shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Numbered Lot. Notwithstanding anything to the contrary herein contained, from and after three (3) years from the date of the first sale of a Numbered Lot or when thirty (30%) percent of the Numbered Lots are sold by the Developer, his heirs or assigns, whichever event occurs first, the voting rights of the Developer, its heirs or assigns, on any matter properly coming before the membership for a vote in accordance with the Declaration or the Articles of Incorporation or By-Laws of the Association shall be limited as follows:

(a) On any matter requiring a majority vote, the Developer shall be entitled to no more than a sum of votes equal to one (1) vote less than the total number of votes of all property owners, other than the Developer, who is given voting powers under this paragraph; provided, nevertheless, that when the Developer shall have sold one (1) lot more than fifty (50%) percent of all Numbered Lots, then the Developer shall have the right to as many votes as the Numbered Lots that it owns.

(b) On any matter requiring a vote of two-thirds (2/3), the Developer shall be entitled to no more than a sum of votes equal

to one-half (1/2) of the total number of votes of all property owners, other than the Developer, who is given voting powers under this paragraph; provided, nevertheless, that when the Developer shall have sold two-thirds (2/3) of all Numbered Lots, then the Developer shall have the right to as many votes as the Numbered Lots that it owns.

ARTICLE VII

ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Numbered Lot owned by him within the Residential Area of the real property, hereby covenants and each Owner of any Numbered Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

7.2 Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents and Owners of the real property and in particular for the improvement and maintenance of properties, services, and facilities devoted to these purposes and related to the use and enjoyment of the real property and of the homes situated thereon, including, but not limited to, the payment of taxes and insurance on the property other than that in the Residential Area and the repair, maintenance, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and for defraying any expenses incident to the enforcement of these covenants and restrictions by, or the exercise of any powers conferred upon the Association.

7.3 Rate of Assessment. Until the date of five (5) years from the effective date of this declaration or the date when sixty (60%) percent of the Numbered Lots are sold, whichever shall occur earlier, there shall be no assessment or charge for the purpose of maintenance or repair of the streets, roads or parkways, or for the maintenance or repair of any of the Recreation Areas on the Real Property, all of which expense is hereby declared and covenanted to be the sole responsibility of the Developer. Notwithstanding the foregoing, from and after the effective date of this Declaration, the Association may levy an assessment for the purpose of providing services to the members, including but not limited to garbage collection and removal and security protection, if such assessment shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at the last address of the members as furnished by them to the Association at least thirty (30) days in advance and shall set forth the purpose of the meeting. From and after five years from the effective date of this declaration or the date when sixty (60%) percent of the Numbered Lots are sold, the annual assessment for all purposes shall not exceed Two Hundred (\$200.00) Dollars per Numbered Lot, subject to Paragraph 7.4 hereinbelow.

7.4 Change in Assessment. The fixed annual assessment provided for in Section 7.3 may be changed by the Association prospectively provided that any such change shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at the last address of the members as

furnished by them to the Association at least thirty (30) days in advance and shall set forth the purpose of the meeting

7.5 Decrease by Board. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

7.6 Special Assessments. In addition to the annual assessments authorized hereinabove, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the properties other than the Residential Area, provided that any such assessment shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at the last address of the members as furnished by them to the Association at least thirty (30) days in advance and shall set forth the purpose of the meeting.

7.7 Quorum for Actions Under Sections 7.4 and 7.6. The presence at the meeting of members, or of proxies, entitled to cast sixty (60%) percent of all the votes of the membership shall constitute a quorum for the purposes of actions under Section 7.4 and 7.6. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements of Sections 7.4 and 7.6, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting date.

7.8 Due Dates. The assessments for any year authorized under Section 7.3 shall become due and payable on the first day of Month of said year. The due date of any special assessment under Section 7.6 shall be fixed in the resolution authorizing such assessment.

7.9 Proof of Payment. The Association shall upon demand at any time furnish to any Owner liable for any assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.10 Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; the Lien; Rules of Association. If the assessments are not paid on the date due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may bring an action against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

7.11 Subordination of the Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any

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Mortgagee, Trustee or Lender of any sums secured by a recorded Mortgage or Deed of Trust to secure a debt now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The lien herein provided for shall also be subordinate to the lien of laborers, contractors or material men furnishing labor, services or materials in connection with the construction or alteration of any improvements located on any Numbered Lot.

ARTICLE VIII

TERMS AND ENFORCEABILITY

8.1 Enforcement. If the Developer, its successors, heirs and assigns or any Owner shall violate or attempt to violate any of the Covenants or Restrictions herein, it shall be lawful for any Owner of a Numbered Lot or for the Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of such covenants and either to prevent him or them from so doing and/or to recover damages for such violations. Invalidation of any one or more of these covenants or restrictions by a judgment or Court Order shall in no wise affect any of the other provisions which shall remain in full force and effect.

8.2 Term of Covenants. These covenants and restrictions shall run with the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to the Declaration, their respective legal representatives, heirs, successors, and assigns.

ARTICLE IX

ADDITIONS TO DEVELOPMENT

9.1 Method. Upon approval in writing of the association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any contiguous property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions. Such Supplementary Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by the Declaration within the Real Property.

ARTICLE X

DEFINITIONS

The following words when used in these Covenants or in any Supplemental Declaration shall have the following meaning unless the context in which such terms are used shall clearly indicate to the contrary:

10.1 Real Property. "Real Property" is all real estate with the improvements thereon known as Miller Mountain as shown on the several plats of the property prepared (or to be prepared) for the Developer, and recorded (or to be recorded) in the Polk County Registry, and any additions thereto which may be accepted under the provisions of Section 9.1.

10.2 Numbered Lot. "Numbered Lot" is any plat of land shown on the Plats which is intended for use and occupancy as a single family

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dwelling and as further defined in Paragraph 2.1 above.

10.3 Plats. "Plats" shall mean and refer to any and all development plats which shall be hereafter made and recorded with respect to the Real Property which plats shall show the size and location of individual lots, streets, roads, and recreation areas.

10.4 Developer. "Developer" is Jack L. Story and Wife, Louise Story, or their administrators, executors and/or successors and assigns.

10.5 Architectural Committee. "Architectural Committee" is the Committee established pursuant to the provisions of Article IV.

10.6 Association. The term "Association" shall mean and refer to the nonprofit association(s) to be formed as the governing body(ies) of the Miller Mountain Development.

10.7 Residential Area. "Residential Area" is all the Numbered Lots as shown on the Plats.

10.8 Recreational Areas. "Recreational Area" is any area so designated on the Plats, including any area designated as a proposed garden site or park site, and excluding the Numbered Lots, streets and roads.

10.9 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Numbered Lot situated upon the Real Property but, notwithstanding any applicable theory of the mortgage or deed of trust, shall not mean or refer to the mortgage or trustee unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

IN WITNESS WHEREOF, the Developers have hereunto set their hands and seals on the date and year first above written.

Jack L. Story (SEAL)
JACK L. STORY, Developer

Louise Story (SEAL)
LOUISE STORY, Developer

STATE OF NORTH CAROLINA
COUNTY OF POLK

I, a Notary Public, do hereby certify that Jack L. Story and Wife, Louise Story, Developers, personally appeared before me this day and acknowledged the due execution of the foregoing Restrictions.

Witness my hand and seal, this 10th day of November, 1989.

Sharon K. Cantrell (SEAL)
Notary Public

My Commission Expires:

9/27/93

NORTH CAROLINA, POLK COUNTY,

The foregoing certificate of Sharon K. Cantrell
Notary Public/Notary Public is/are certified to be correct.
This instrument was filed for registration on the 10th day
of November 1989 at 3 o'clock
P.M., and recorded in this office in Book 204
Page 438

Doris M. Saffins
Registrar of Deeds



BOOK 234 PAGE 893

STATE OF NORTH CAROLINA
COUNTY OF POLK

DECLARATION OF COVENANTS
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, made and entered into this the 1st day of May, 1996, by the undersigned, Arthur R. Clark and Wife, Barbara B. Clark, hereinafter referred to as "Owner(s)".

W I T N E S S E T H:

THAT WHEREAS, Section 2H, Article I of the By-Laws of Miller Mountain Property Owners Association, Inc., provides that "Any person who was the owner of a lot or parcel of land adjoining Miller Mountain, who is not required to be a regular member of the Property Owners Association may become a regular member subject to approval by the Board of Directors of the Property Owners Association. Final approval for membership in the Property Owners Association, for such owner, shall be conditioned upon such owner (co-owners) subjecting his lot to the recorded Declaration of Covenants and Restrictions of Miller Mountain by the execution and recordation of the appropriate documents to accomplish same"; and

WHEREAS, the Owner(s) herein acquired title to a lot/tract of real estate in the vicinity of Miller Mountain Subdivision, containing 17.24 acres, more or less, which tract/lot is particularly described by metes and bounds in that certain Deed to them dated the 3rd day of April, 1990 and recorded in Book 205, Page 1291 of the Polk County Registry; and

WHEREAS, the Owner(s) of the aforesaid property do hereby declare their intent to become members of Miller Mountain Property Owners Association, Inc. as provided in the above-mentioned Article I of said By-Laws; and

WHEREAS, it is the intent of the Owner(s) that said Covenants shall now attach to said land owned by them as described hereinabove and shall continue hereinafter in perpetuity.

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NOW, THEREFORE, the above described real estate shall hereinafter be subject absolutely and in perpetuity to the Declaration of Covenants and Restrictions of Miller Mountain Subdivision in all its particulars, as said Declaration is set forth in Book 204 at Page 438 of the Polk County Registry; said Declaration being hereby incorporated herein by reference as if it were fully set forth.

FURTHERMORE, the Owner(s) of said real property shall henceforth be recognized as full members of Miller Mountain Property Owners Association, with all such attendant rights, duties, privileges and obligations therewith, as though their real property had been subject to the Declaration when they originally purchased said real property from Jack L. Story.

IN WITNESS WHEREOF, the Owner(s) has/have hereunto set his/her/their hand(s) and seal(s) the day and year first above written.

NOTARY PUBLIC POLK COUNTY

The foregoing certificate of _____

Nancy A. Young

Notary Public/Notaries Public is/are certified to be correct. This instrument was filed for registration on the 11 day

of May, 1996, at 2:00 o'clock

9 M., and recorded in this office in Book 234,

Page 883

W. M. Davis
Register of Deeds

Arthur R. Clark (SEAL)

Owner

Barbara B. Clark (SEAL)

Owner

_____ (SEAL)

Owner

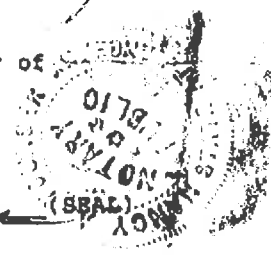
STATE OF ~~NORTH CAROLINA~~ KY
COUNTY OF ~~POLK~~ JEFFERSON

I, a Notary Public for the County and State aforesaid, do hereby certify that ARTHUR R. CLARK and Wife, BARBARA B. CLARK, Owner(s), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1 day of May, 1996.

My Commission Expires: 12-26-96

Nancy A. Young (SEAL)
Notary Public



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STATE OF NORTH CAROLINA
 COUNTY OF POLK

RELEASE FROM RESTRICTIONS

THIS RELEASE FROM RESTRICTIONS, is made and entered into this 1st day of May, 1996, by Jack L. Story and Wife, Louise Story and Arthur R. Clark and Wife, Barbara B. Clark, Grantees from the said Jack L. Story under that certain Deed recorded in Book 205 at Page 1291 of the Polk County Registry.

W I T N E S S E T H:

THAT WHEREAS, the said Jack L. Story imposed certain restrictions and conditions upon the property purchased by the Grantees herein as described in that certain Deed recorded as set forth hereinabove; and

WHEREAS, the Grantees have requested of the said Jack L. Story that he release them from the burden of said restrictions upon the express condition that they adopt and subject their land to that Declaration of Covenants and Restrictions of Miller Mountain Subdivision, and further, that they agree to become members of the Miller Mountain Property Owners Association; and

WHEREAS, it is the desire of the Grantees to join Miller Mountain Subdivision and to adopt said Declaration of Covenants and Restrictions of Miller Mountain and to subject their land to such Declaration in perpetuity.

NOW, THEREFORE, in consideration of the Declarations and in further consideration of the sum of \$10.00, receipt of which is hereby acknowledged, Jack L. Story, joined by his Wife, Louise Story, does hereby release and forever relinquish to the Grantees the restrictions originally set forth in that Deed recorded in Book 205 at Page 1291 of the Polk County Registry. Nevertheless, this Release and the relinquishment of the original restrictions and conditions set forth therein is made expressly upon the condition that the Grantees herein simultaneously herewith execute and record a document whereby they adopt the Declaration of Covenants and Restrictions for Miller Mountain Subdivision and that they also recite in said Declaration of

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Covenants and Restrictions that they are becoming members of the Miller Mountain Property Owners Association.

IN WITNESS WHEREOF, the said Jack L. Story, joined by his spouse, Louise Story, have hereunto set their hands and seals and the Grantees, by their hands and seals also recorded hereinafter, assent to the terms and conditions of this Release, all on the day first above written.

Jack L. Story (SEAL)
Jack L. Story

Louise Story (SEAL)
Louise Story

Arthur R. Clark (SEAL)
Grantee

Barbara B. Clark (SEAL)
Grantee

NORTH CAROLINA POLK COUNTY

The foregoing certificate of Nancy A. Vance
Notary Public/Notaries Public is/are certified to be correct.
This instrument was filed for registration on the 17 day
of May, 1996, at 2:08 o'clock
P. M., and recorded in this office in Book 234,
Page 885.
W. J. McWhorter
Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF POLK

I, a Notary Public for the County and State aforesaid, do hereby certify that Jack L. Story and Wife, Louise Story personally appeared before me this day and acknowledged the due execution of the foregoing Release.

Witness my hand and official this 16th day of May, 1996.

My Commission Expires:
3/15/96

[Signature]
Notary Public



STATE OF NORTH CAROLINA KY
COUNTY OF ~~POLK~~ JEFFERSON

I, a Notary Public for the County and State aforesaid, do hereby certify that ARTHUR R. CLARK and Wife, BARBARA B. CLARK, Grantees, personally appeared

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before me this day and acknowledged the due execution of the foregoing Release.

Witness my hand and official this 1 day of MAY, 1996.

My Commission Expires:
12-26-96

Nancy A. Springer
Notary Public

