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DECLARATIONS
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE RIVER CLUB

DATED
JANUARY 14, 2008

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ATTACHED EXHIBITS:

- Exhibit A Articles of Incorporation
- Exhibit B Restrictions contained in the deed from Crescent Resources, LLC to M.C. Dixon Family Partnership, LLLP, Thomas H. McCook, Jr., and J. Sidney Dumas, dated June 24, 2003 and recorded in Book 1267, Page 551-563
- Exhibit C Limited Waiver of Restrictive Covenants, recorded in Book 1405, Page 401

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE RIVER CLUB

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declarations") is made this 14th day of January, 2008 by CATAWBA RIVER CLUB, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant". All capitalized terms used herein shall have the meanings set forth in Article 1 or elsewhere in the Declaration.

STATEMENT FOR PURPOSE

Declarant is the developer and owner of certain property located in Burke County, North Carolina which is more particularly described on those certain plat recorded in Plat Book 35, Page ³⁴¹~~345~~ in the Burke County Public Registry. Declarant desires to provide for the creation on the property shown on that plat, a residential community of residences to be named The River Club (the "Development"),

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value and amenities of all properties within the Development. Furthermore, Declarant desires to provide for the construction, maintenance and upkeep of any Common Areas and related easements within the Development, all for the common use and benefit of all Property Owners, including, but not limited to, any Street Lights, Pond(s), Park Pavilion, Parking Area, Parks, Pools, Trails, River, Streams, Entrance Signs, Security Gate(s), Piers, Boat Launches, Wells, Storage Buildings, and Roads and any medians located thereon.

Declarant desires to provide for a system whereby all Owners will pay for the maintenance and upkeep of any Common Areas in accordance with an established budget set by the Board of Directors.

To these ends, Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each Owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of: (a) owning, maintaining and administering the Common Areas, except as otherwise provided in the Declaration; (b) administering and enforcing the covenants and restrictions contained herein; and (c) collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and Amenities in the Development, to ensure specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas and Amenities as provided in the Declaration and the Bylaws.

To that end Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference, THE RIVER CLUB OWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws.

NOW, THEREFORE, Declarant, by this Declaration does declare that all of the property described herein is and shall be held, transferred sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property described herein and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 - DEFINITIONS

Section 1.1. "**Additional Property**" shall mean and refer to any additional real estate contiguous or adjacent to the Property, shown on the Plats including any property located within five thousand (5,000) feet of any boundary of the property shown on the Plats, all or a portion of which may be made subject to the terms of the Declaration in accordance with the provisions of Section 2.2 of this Declaration.

Section 1.2. "**Amenities**" shall mean and refer to the improvements which are constructed on any Common Areas.

Section 1.3. "**Architectural Changes Committee**" shall have the meaning set forth in Section 8.11 hereof.

Section 1.4. "**Architectural Control Committee**" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Development and to perform certain other functions described in this Declaration.

Section 1.5. "**Architectural Guidelines**" shall have the meaning as set forth in Article 8 hereof.

Section 1.6. "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation for the Association substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference.

Section 1.7. "**Association**" shall mean and refer to THE RIVER CLUB OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.8. **"Barns"** shall mean and refer to the stable and other ancillary buildings which are labeled "Barns" on the plat which are part of the Stables Facilities to be used in accordance with Article 11 of this Declaration.

Section 1.9. **"Board of Directors"** shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.10. **"Boat Launches"** shall mean and refer to the launch sites which may be constructed in the Boat Zones for providing ingress and egress to and from the River for the use and benefit of the Owners, their families, guests and invitees, and as more particularly provided in Section 4.17.

Section 1.11. **"Boat Storage Units"** shall mean and refer to the individual boat storage units which owners may construct in certain Common Areas as provided in Section 4.23.

Section 1.12. **"Boat Zones"** shall mean and refer to those zones or areas (as shown on the Plats) in which boats or other watercraft may have access to the River and in which Boat Launches and/or Piers may be constructed.

Section 1.13. **"Bylaws"** shall mean and refer to the Bylaws for the Association, as they may be amended from time to time.

Section 1.14. **"Common Area" or "Common Areas"** shall mean and refer to the Park, Parking Area(s), Park Pavilion, Parks, Streams, Ponds, Wells, Trails, Entrance Signs, Mailboxes, Security Gate(s), Street Lights, and Roads, including medians located thereon, together with all utilities, easements and amenities located within the Common Areas, collectively, and any other property shown or designated on the Plat as "Common Open Space", "Common Area", "Boat Zones", "Piers", "Boat Launches", "Storage Buildings", "Entrance Sign Easement", "Common Open Area", "Park", "Park Open Space", "Streams", "Pond(s)", "Pools", "Trails", "Security Gate Easement", or similar designation, and any other property designated in this Declaration as Common Areas. The Common Areas shall be owned by the Association (except as otherwise provided in this Declaration) for the common use, benefit and enjoyment of the Owners (or of only certain Owners, to the exclusion of other Owners), as designated in this Declaration. The listing and description of the components of the Common Area is illustrative of Declarant's present plans only and is not a guaranty by the Declarant or the Association that all or any part of such components will be constructed or installed by the Declarant or the Association at any future time. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision and to designate which Owners shall be permitted to use any Common Areas as set forth in this Declaration.

Section 1.15. **"Crescent Restrictions"** shall mean and refer to those Deed restrictions placed upon the property in that certain deed from Crescent Resources, LLC to M.C. Dixon Family Partnership, LLLP, Thomas H. McCook, Jr., and J. Sidney Dumas, dated June 24, 2003 and recorded in Book 1267, Page 551-563, and the Limited Waiver of Restrictive Covenants,

recorded in Book 1405, Page 401, Burke County Register of Deeds, a copy being attached as Exhibit B and Exhibit C.

Section 1.16. **"Declarant"** shall mean and refer to Catawba River Club, LLC, and such of its successors and assigns to whom the rights of Declarant hereunder are transferred by written instrument recorded in the Burke County Public Registry.

Section 1.17. **"Development"** shall mean and refer to THE RIVER CLUB, a single-family residential development proposed to be developed on the Property by Declarant.

Section 1.18. **"Entrance Sign Easement"** shall mean and refer to the easement area reserved and granted by Declarant over the parcels designated as such on the Plat and the stone base, and entrance sign which is located on such easements, together with lighting, any irrigation system, landscaping and other improvements which may be constructed on such easement area, to be used as an entryway for the Subdivision, and for the purposes set forth in Section 4.19.

Section 1.19. **"Gate Easement"** shall mean any easement reserved by Declarant and granted to the Association across Roads for the purpose of establishing and maintaining fences, walls and gates for the Development as described in Section 4.20.

Section 1.20. **"Guidelines"** shall mean and refer to the Architectural Guidelines.

Section 1.21. **"Improvement"** shall have the same meaning as set forth in Section 8.4.

Section 1.22. **"Mailbox" or "Mailboxes"** shall mean and refer to the mail delivery boxes which Declarant may construct upon open space adjacent to the Entrance Sign Easement shown on the Plat for the use of the Owners as set out in Section 7.24 of this Declaration.

Section 1.23. **"Lot" or "Lots"** shall mean and refer to the separately numbered or single family lots depicted on the Plat, which Lots do not include the Common Areas as described in this Declaration.

Section 1.24. **"Plat" or "Plats"** shall mean and refer to: (i) the plat of The River Club Subdivision recorded in Plat Book 35, Page(s) ²⁴¹245, in the Burke County Public Registry, North Carolina; (ii) any plats of any portions of the Additional Property which are subjected to this Declaration; and (iii) any revisions of such plat or plats recorded in the Burke County Public Registry.

Section 1.25. **"Member"** shall mean and refer to every person or entity who holds membership in the Association.

Section 1.26. **"Mortgage"** shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 1.27. **"Mortgagee"** shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 1.28. **"Owner"** shall mean and refer to the record owner(s), whether one or more persons or entities, of fee simple title to any Lot within the Development, including the Declarant if it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.29. **"Park", "Park Area" or "Park Areas"** shall mean and refer to the parcels of land labeled "Park", "Park Area" on the Plat, together with the Park Pavilion and Parking Area which may be constructed thereon and made subject to the terms of this Declaration in accordance with the provisions of Article 3 and Article 4 of this Declaration for the common use and enjoyment of all Owners.

Section 1.30. **"Parking Area"** shall mean and refer to the parking lot which may be constructed on the Park Area for the common use, benefit and enjoyment of all Owners, their families, guests and invitees in connection with their use of the Park Area and for the common use, benefit, and enjoyment of the Owners, their families, guests and invitees in connection with their use of the Pond, Storage Building, and the proposed Park Pavilion. The Parking Area is more particularly addressed in Section 4.7 of this Declaration.

Section 1.31. **"Park Pavilion" or "Pavilion"** shall mean and refer to that building which may be constructed upon and within the Park Area and made subject to the terms of this Declaration in accordance with the provisions of Section 3.1 of this Declaration, for the common use and enjoyment of all of the Owners, their families, guests and invitees as more particularly addressed in Section 4.9 of this Declaration.

Section 1.32. **"Pasture" or "Pastures"** shall mean and refer to the pastures and any fences which are labeled "Pasture" or "Pastures" on the plat which are part of the Stables Facilities to be used in accordance with Article 11 of this Declaration.

Section 1.33. **"Piers"** shall mean and refer to the Piers which may be constructed in the Pond and some or all of the Boat Zones and made subject to the terms of this Declaration in accordance with Article 3 and Article 4 of this Declaration for the common use and enjoyment of all Owners.

Section 1.34. **"Pond"** shall mean and refer to the pond which is labeled "Pond" on the plat for the common use, benefit, and enjoyment of Owners, their families, guests and invitees in accordance with Section 4.8 of this Declaration.

Section 1.35. **"Pool" or "Pools"** shall mean and refer to that swimming pool which may at the election of Declarant or the Association be constructed within the Common Area and made subject to this Declaration for the common use, benefit and enjoyment of all Owners, their families, guests and invitees as more particularly addressed in Section 4.12 of this Declaration.

Section 1.36. **“Property”** shall mean and refer to the property shown on the Plat, including the Lots, and Common Areas, together with any leasehold interest or easement which the Association has or may hereafter acquire in any property adjacent to the Development.

Section 1.37. **“River Bank Reference Line”** shall mean and refer to a line running along the top of the bank of the River.

Section 1.38. **“River”** shall mean and refer to the portions of the Catawba River within the Common Areas or Lots of the Development as addressed in Section 4.13 of this Declaration.

Section 1.39. **“River Greenway Park”** shall mean and refer to the area between the centerline of the River and a line which is the greater of 100 feet in depth from the River Bank or the adjacent rear Lot line or Roads, as shown on Plat or as otherwise shown on the Plats or set forth in the Architectural Guidelines.

Section 1.40. **“Roads” or “Roadways”** shall mean and refer to all streets, roads and cul-de-sacs in the Subdivision shown on the Plat, all to be privately maintained by the Association as addressed in Section 4.6 of this Declaration.

Section 1.41. **“Septic System”** shall mean and refer to the ground absorption sewer system serving each Lot, including all pipes, tanks, drain fields, pumps, and related apparatus.

Section 1.42. **“Stables Facilities”** shall mean and refer to the recreational club facilities to be known as River Club Stables to be located on the Stable Property, which may include the Barns, Pastures, and Ancillary Facilities.

Section 1.43. **“Stables Owner”** shall mean and refer to the entity owning the Stables Property, which, as of the date hereof is the Catawba River Club, LLC.

Section 1.44. **“Stables Property”** shall mean and refer to that certain 16.08 acre parcel of land designated as “Stables Property”, the boundary lines of which are shown on Plat and shall contain the Stables Facilities.

Section 1.45. **“Storage Buildings”** shall mean and refer to the storage buildings which are labeled “Storage Building” on the plat for the common use, benefit, and enjoyment of Owners, their families, guests and invitees in accordance with Section 4.14 of this Declaration.

Section 1.46. **“Streams”** shall mean and refer to all brooks, creeks, and streams within the Common Areas of the Development as addressed in Section 4.15 of this Declaration.

Section 1.47. **“Street Lights”** shall mean and refer to those certain street lights, which may be constructed upon and over the Roadways, but only if permitted and in accordance with the governmental ordinances regulating such lighting.

Section 1.48. **“Subdivision”** shall mean and refer to The River Club Subdivision, as shown on the Plat.

Section 1.49. **“Trail System”** shall mean and refer to those private trails or paths which have or may be constructed on the Common Areas or within Easements for the Association and Owners as shown on the Plat, as addressed in Section 3.5, 4.16, 7.25 and 7.31 of this Declaration.

Section 1.50. **“View Easement”** shall mean and refer to the perpetual easements identified on a Plat as “View Easement” which have been granted to the benefit of designated Lots for sight and view purposes as addressed in Section 4.6 of the Declaration.

Section 1.51. **“View Corridor”** shall mean and refer to the corridors established on Lots to allow trees and vegetation to be cut and thinned to allow views by Owners from dwellings as addressed in Section 7.26 of the Declaration.

Section 1.52. **“Wood Land Buffer”** shall mean and refer to the line one hundred (100) feet in depth from the River Bank, as shown on the Plat.

Section 1.53. **“Wells”** shall mean and refer to any well or wells which may be constructed in Common Areas by the Declarant or the Association, as provided in Section 4.21 of this Declaration.

ARTICLE 2 - PROPERTY SUBJECT TO THE DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1. **Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in the Burke County, North Carolina, and is the Property as defined above and as more particularly described and shown on the Plats.

Section 2.2. Additions to the Property.

(a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Burke County Public Registry, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may also cause additional Common Areas and Amenities, within or adjacent to any Additional Property to be constructed and made subject to the terms and scheme of this Declaration by the filing of one or more Supplemental Declarations describing the Common Areas and Amenities to be added, and a statement by Declarant of its intent to extend the operation and effect of this Declaration to the additional Common Areas and Amenities. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or

imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in this Declaration.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election, without the consent of any Owner or Owners, to subject any phase, section or portion of any additional Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Burke County covering only such phase, section or portion of the additional Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of any additional Property, affected by and the enforcement of, the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

(d) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE 3 - PROPERTY RIGHTS

Section 3.1. Ownership of Common Areas. Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association. The Declarant reserves the right to construct: (i) the Boat Launches, Park Pavilion, Parking Area, Piers, Pools, Storage Buildings, Trails, and pathways upon the Park Area; (ii) the Entrance Sign and Mailboxes to be located at the entrance to the Development; and (iii) the Trails and Security Gates, as reflected on the Plat; for the use and enjoyment of the Owners and Stables Owner, who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas and the Roads shall

remain private property and shall not be considered as dedicated to the use and enjoyment of the public. However, Declarant shall have right, but not the obligation, to grant conservation easements over Common Areas to governmental and non-profit entities.

Section 3.2. Owners' Rights to Use and Enjoy Common Areas, Including Roads .
Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, including any Roads and Trails located on Easements shown on the Plat, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;
- (b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed ninety (90) days for any infraction of its published rules and regulations;
- (c) the right of the Declarant or the Association to grant utility, drainage, view, and other easements across the Common Areas;
- (d) the right of the Declarant or the Association to restrict the use of certain Common Areas by the Stables Owner, including, but not limited to, the right to restrict use of the Easements (which may be used only by the Declarant, and the Association), Trail System, and Storage Buildings and Ancillary Facilities which may be restricted to certain Lot Owners and others as provided in this Declaration;
- (e) the right of the Declarant or the Association to restrict, limit, or bar access through the Security Gate onto Ledges Way;
- (f) the right of the Declarant or the Association to promulgate or enforce restrictions with respect to the type of watercraft allowed in the Boat Zones, and to restrict access to the River from the River Greenway Area.
- (g) the provisions of Section 4.6 below; and
- (h) the provisions of Article 7 of the Declaration.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to certain Common Areas and facilities located thereon to the members of the Owner's family, guests or invitees.

Section 3.4. **Rights in the Roads** . Each Owner, the Declarant and the Association shall further have and are hereby granted a perpetual, non-exclusive right, in common with the general public, to use the Roads for the purpose of providing access to and from each Lot and the Common Areas.

Section 3.5. **Easements Regarding Trail Systems**. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner, their family members, tenants, guests, invitees, successors and assigns, to each Occupant of the Lot, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian, equestrian, motorized and non-motorized vehicular, over and across any and all hard surface or soft surface trails, riding, biking, walking or jogging paths, or similar pathways located upon those portions of the Property designated by Declarant as part of a system of hard surface and soft surface sidewalks, trails, riding, biking, equestrian, vehicular, walking or jogging paths within the Property, including those trails shown as "Trail Easement" on the Plat (collectively, the "Trail System"). The use of said trails and paths shall be subject to and restricted by rules and regulations established by the Declarant or the Association.

Section 3.6. **Easement Regarding Equestrian or Other Recreational Use**. Declarant, the Stable Property Owner, the River Club Stables' members, and visitors to the River Club Stables shall have a perpetual, non-exclusive easement in their favor to use the Roadways and Gate Easement and other Common Areas as necessary during any use of the Barn, Pastures, or other Stables Facilities, or as a spectator, worker or purveyor at or for any event or activity in connection therewith for the purposes of ingress, egress and access to such facilities. In addition, Declarant hereby dedicates and reserves for the benefit of the River Club Stables, its members, visitors, agents and employees, nonexclusive perpetual easements over, across and under certain portions of the Property, indicated and shown on the Plats as being a part of the Trail System. The use of such easements shall be subject to reasonable restrictions made by the Declarant or Association. Nothing herein shall prevent the Declarant from restricting, limiting, or barring access onto Ledges Way.

Any disputes as to the extent of any of the above described easements during the term of this Declaration shall be determined by Declarant in its sole and absolute discretion. Declarant reserves the right to impose upon the Property such other easements as are required for the enjoyment of the River Club Stables' Members and Stable Facilities.

ARTICLE 4 - THE ASSOCIATION

Section 4.1. **Membership**. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws.

Section 4.2. **Classes of Lots and Voting Rights.** The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote for each Class A Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to six (6) votes for each Class B Lot owned by it.

Section 4.3. **Relinquishment of Control.** The Class B membership shall cease and be converted into Class A membership on the happening of one of the following events, whichever occurs earlier:

(a) when the number of votes in the Class A membership held by Owners of Lots in the Subdivision equals the total number of votes outstanding in the Class B membership and the Declarant surrenders its right to annex any Additional Property to the Property pursuant to the Declaration and the Bylaws; or

(b) upon the expiration of seven (7) full years after the registration of the Declaration; or

(c) Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Burke County Public Registry.

Section 4.4. **Availability of Documents.** The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records and financial statements which shall be available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 4.5. **Management Contracts.** The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by

agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

Section 4.6. Maintenance of Common Areas, Roads, and Easements. The Common Areas, together with all utilities, easements, trails, and amenities located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the Association, and the Association shall collect the initial Annual Assessment from each Owner for such maintenance of the Common Areas. Maintenance of the Roads shall be performed by Declarant until paved, and thereafter maintenance of the Roads shall be the responsibility of the Association. Declarant shall cause all Roads in the Subdivision to be paved not later than October 31, 2008. View Easements may be maintained by the Lot Owner to which the View Easement may be assigned ("Lot Owner Assignee"). Provided, however, Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas, Easements, and Roads at any time in order to repair and maintain such Common Areas, Easements, and Roads where needed, in Declarant's sole discretion, to bring such Common Areas, Easements, and Roads within the standards required by Declarant. Should Declarant so go upon the Common Areas, Easements, and Roads to perform maintenance and repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and repairs to the Common Areas, Easements, and Roads upon receipt of a statement for such cost from Declarant.

The Common Areas, Roads, and Easements shall be maintained as more particularly described below:

(a) Maintenance of the Entrance Sign Easement and Gate Easement shall include maintenance, repair, replacement and reconstruction, when necessary, of the monument or monuments, gates, walls, fences, signage, mailboxes, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the stone monument or monuments and signage located thereon (if any).

(b) All Common Areas (and all improvements located thereon) shall be clean and free from debris and maintained in an orderly condition, together with the landscaping thereon (if any) in accordance with the highest standards for private parks and pastures, including any removal, repair, reconstruction and replacement of any landscaping, utilities, or improvements located thereon.

(c) Maintenance of the Park Areas shall include the maintenance, cleaning, repair, replacement and reconstruction of the landscaping, lighting, irrigation system, trails, parking, streams, wells, Ponds, pathways, pavement, and other improvements, and providing and paying for irrigation and utility charges (if any).

(d) Maintenance of the proposed Park Pavilion shall include all interior and exterior maintenance (including, where necessary, cleaning, repair, replacement and

reconstruction) of the Park Pavilion, walkways, landscaping, utilities, and other facilities appurtenant to the Park Pavilion, and the payment of all utility charges therefor.

(e) Maintenance of any Storage Buildings shall include the maintenance, cleaning, repair, replacement and reconstruction, where necessary, of the Storage Buildings, including all drainage, lighting, fencing, paving and other facilities appurtenant thereto, and the payment of all utility charges therefor.

(f) Maintenance of any Pool shall include the maintenance, cleaning, repair, replacement and reconstruction, where necessary, of the Pool, including all drainage, lighting, fencing, paving and other facilities appurtenant thereto, and the payment of all utility charges therefor.

(g) Maintenance of any Well shall include the maintenance, cleaning, repair, replacement and reconstruction, where necessary, of the Well.

(h) Except as provided in the Declaration, the Roads shall be maintained by the Association. Such maintenance shall include repair, replacement and reconstruction, when necessary. Maintenance of the Roads shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roads for maintenance.

(i) Maintenance of the Parking Area shall include repair, maintenance, replacement and reconstruction, when necessary, irrigation and landscaping (if any) and the payment of the costs of lighting and irrigation (if any).

(j) Maintenance of the Piers shall include repair, maintenance, replacement and reconstruction, when necessary, of the pavement, irrigation and landscaping (if any) and the payment of the costs of lighting and irrigation (if any).

(k) Maintenance of the Boat Launches shall include repair, maintenance, replacement and reconstruction, when necessary, of the pavement, ramps, steps, and landscaping (if any) and the payment of the costs of lighting (if any).

(l) The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the operation and maintenance of any improvements within the boundaries thereof. The Owners of such Lots shall be responsible for same.

(m) The View Easements may be maintained by the Lot Owner Assignee to which such easement is assigned for sight and view corridor purposes over another Lot or Common Area. However, such Lot Owner Assignee shall not cut or trim any trees or other vegetation within such View Easement, except in compliance with governmental laws and regulations, and without first obtaining the prior written approval of the Architectural Control Committee of a plan for trimming and/or cutting trees or other vegetation, and after providing not

less than twenty (20) days prior written notice to all Lot Owners on which the View Easement is located of such approved plan.

Section 4.7. **Parking Area.** Declarant may construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, any gravel or grassed Parking Areas upon and over a portion of the Park Areas. The Parking Area shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its successors and assigns and the Owners, their families, guests and invitees, in connection with their use of the Park Area. Accordingly, the maintenance, repair and replacement costs of the Parking Area shall be assessed against all Owners as set forth in Article 5 of this Declaration.

Section 4.8. **Pond.** Declarant has renovated, and the Association shall maintain, repair, stock with fish, and, if destroyed, replace, as a common expense of the Association, the pond upon and over a portion of the Park Area. The Pond shall be maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.9. **Park Pavilion.** Declarant shall construct, and the Association shall maintain, repair, and if destroyed, replace, as a common expense of the Association, the Park Pavilion upon and over a portion of the Park Area. The Park Pavilion shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.10. **Park Areas.** The Park Areas, as reflected on the Plat, shall be provided by Declarant, and maintained and repaired by the Association as a common expense, for the common use of the Owners, their families, guests and invitees, to provide access to the Parking Area, Park Pavilion, Pond, Trails, Wells, Streams, and Pool (if constructed), and to provide access for the Lot Owners, their families, guests and invitees.

Section 4.11. **Piers.** Subject to governmental approvals, Declarant shall construct, and the Association shall maintain, repair, and if destroyed, may replace, as a common expense of the Association, one or more of the Piers upon and over a portion of the Boat Zones. The Piers shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.12. **Pool.** Declarant or the Association shall have the right (but not the obligation) to construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, one pool upon and over a portion of the Common Area. The Pool shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.13. **River.** The Declarant may restore and renovate or caused to be restored and renovated, and the Association shall maintain and repair the banks as a common expense for

the common use of River. Declarant reserves the right to grant a conservation easement and underground utility easement along the River within the River Greenway Park to governmental or non-profit organizations.

Section 4.14. **Storage Buildings.** Declarant shall have the right to construct, and the Association shall maintain, repair, and if destroyed, replace, as a common expense of the Association, the Storage Buildings upon and over portions of the Common Area. The Storage Buildings shall be constructed and maintained for the common use and benefit of certain Owners and may be used only by Declarant, its successors and assigns and certain Owners, their families, guests and invitees.

Section 4.15. **Streams.** The Declarant may restore and renovate or caused to be restored and renovated, and the Association shall maintain and repair as a common expense for the common use of streams.

Section 4.16. **Trails.** Declarant shall have the exclusive right to construct and the Association shall maintain the Trails within the Common Area and in Trail Easements in the approximate locations shown on the Plat, as well as any additional Trails which may be added to the Development in the future pursuant to the provisions of this Declaration. The Trails as shown on the Plat, shall be maintained and repaired by the Association. No structures, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, and maintenance of the Trails or other utilities or drainage facilities located therein or which may interfere with the use and enjoyment of the Trails by Owners. Declarant shall have the right, but not the obligation, to allow a portion of the Trail System to be used as a part of the Over Mountain-Victory National Historic Trail, or a trail system established by a state or local governmental entity.

Section 4.17. **Boat Launches.** Declarant shall construct, and the Association shall maintain, repair, and if destroyed, may replace, as a common expense of the Association, two or more of the Boat Launches upon and over a portion of the Boat Zones or within any reserved easement area. The Boat Launches shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.18. **Wells.** Declarant or the Association shall have the right (but not the obligation) to construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, the wells upon and over a portion of the Common Area. The Wells shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant, its successors and assigns and the Owners, their families, guests and invitees.

Section 4.19. **Entrance Sign Easement.** Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements (the "Entrance Sign Easements") for the purpose of landscaping,

constructing and maintaining the entryway and erecting and maintaining the Entrance Signs over such portions of the Subdivision identified as "Entrance Sign Easement" on the Plat.

Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Sign Easements as an entryway to the Subdivision. Further, Declarant or the Association has erected and may maintain one or more wood or stone bases, with an entrance sign thereon (collectively, the "Entrance Sign") bearing the name of the Subdivision and Declarant, which Entrance Signs shall be built to the applicable governmental standards for signs; and may erect and maintain lighting for the Entrance Sign, planters and other improvements typically used for an entryway.

Section 4.20. Gate Easement. Declarant shall construct, and the Association shall maintain and repair, and if necessary replace, as a Common Area of the Association, the security gates, and fence or wall, across Roads for the purpose of restricting access to the Development to only the Owners, their families, guests and invitees. Accordingly, the maintenance, repair and replacement costs of the Gate and Improvements shall be assessed against all Owners as set forth in Article 5 of this Declaration.

Section 4.21. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage purposes shown on the Plats including but not limited to those certain easements shown and designated on the Plats as:

- (a) "Utility Easement"
- (b) "Public Storm Drainage or Pipe (CIP) Easement"

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns. Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along (a) a 15-foot strip of land adjacent to the boundary lines of the Stables Property, and the front, side and rear of all Lots within the Development and (b) all Roadway Easements and Common Areas, for the installation and maintenance of underground lines, conduits, fire hydrants, pipes and other equipment necessary for furnishing electric power, telephone services, water and drainage facilities, storm drainage and/or other utilities. Within the above-described easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for road drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such easements shall not be construed to invalidate any of these covenants.

Section 4.22. **"Fire Hydrants."** Upon request of Burke County, the Association shall install and connect onto the water system seven (7) Fire Hydrants at those locations where the Declarant has installed stubs for connection, at such time as the City of Morganton Water System serving the Property has been improved so that the Public Water Supply Section of the State of North Carolina Department of Environmental and Natural Resources approves the installation and activation of the Fire Hydrants.

Section 4.23. **Boat Storage Unit .** The Declarant may designate a portion of the Common Area as a site on which each Owner may cause to be constructed at Owner's expense a storage unit and locker for the storage of the Owner's boats and gear. The location, design, size, and specifications must be approved by the Architectural Control Committee prior to construction. Each Owner shall maintain and repair the Boat Storage Unit in proper condition and appearance.

Section 4.24. **Reserve Fund.** The Association may establish and maintain an adequate reserve fund (the "Reserve Fund") for the periodic maintenance, repair, reconstruction and replacement of the Common Areas and any improvements located on such Common Areas which the Association is obligated to maintain in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such Reserve Fund shall be collected and maintained out of the Annual Assessment, as hereinafter defined, and as set forth in Section 5.2(h).

Section 4.25 **Indemnification.** Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant and the Association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE 5 - COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 5.1. **Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special, and Special Individual Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor,

whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Annual Assessments, Supplemental Annual Assessments, Special Assessments, and Special Individual Assessments, as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.2. Purpose of the Annual Assessment. The assessment to be levied annually by the Association against each Lot (the "Annual Assessment") shall be used as follows:

(a) to repair, maintain, reconstruct (when necessary), keep clean and free from debris, the Common Areas and any amenities and improvements located thereon, including, but not limited to, the Entrance Signs, Gates, Fences, Storage Buildings, Boat Launches, Piers, Park Pavilion, Ponds, Pools, Trails, Parking Area, Park Area, Roads and any improvements associated therewith, and to maintain the landscaping thereon in accordance with the customary and reasonable standards for private parks, including any necessary removal or replacement of landscaping, as more particularly set forth in Section 4.6 of this Declaration;

(b) to maintain and repair or caused to be maintained the Roads to the standards of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roads for maintenance, as more particularly set forth in Article 4;

(c) to pay all costs associated with the Street Lights, if constructed, including but not limited to, replacement costs and utility costs;

(d) to pay any ad valorem taxes levied against the Common Areas and any other property owned by the Association.

(e) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws.

(f) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws.

(g) to install, connect, maintain, and repair fire hydrants to the water system, if required by Section 4.22 or approved by the Board of Directors.

(h) to maintain contingency reserves as to the amounts described in subsections (a) and (b) above for the purposes set forth in Section 4.24 hereof in amounts as determined by the Board of Directors.

Section 5.3. Payment of Annual Assessment; Due Dates. The Annual Assessment for each Lot for the initial period beginning January 14, 2008 and ending December 31, 2008, shall be Seven Hundred Fifty Dollars and 00/100 (\$750.00) per Lot and One Thousand Five Hundred Dollars and 00/100 (\$1,500.00) for the calendar year beginning January 1, 2009, which amount shall be due and payable no later than March 31 of the calendar year in which such Annual Assessment is due. The Annual Assessment for each and every calendar year beginning January 1, 2010, thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 5.4 and unless otherwise determined by the Board shall be due and payable in one (1) annual installment, such installment being due and payable no later than March 31. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least ninety (90) days prior to February 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the payment date(s) to each Owner on or before March 1 of such calendar year. The failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of its obligation to pay the Annual Assessment. Notwithstanding the foregoing, the Board of Directors may alter the dates of the calendar year for setting the Annual Assessment and may increase or decrease the frequency of collection of the Annual Assessment installment in any reasonable manner.

Section 5.4. Maximum Annual Assessment.

(a) For years following the second year of the Annual Assessment and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%), or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12- month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Annual Assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after the first year of the Annual Assessment, the maximum annual assessment may be increased above the maximum amount set forth in subparagraph (a) of this Section 5.4 by a vote of no less than two-thirds (2/3) of the eligible Members who are voting in person or by proxy, at the annual meeting or at a meeting duly called for this purpose, in accordance with the Bylaws.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum set forth in subparagraph (a) of this Section 5.4 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that time important and essential functions of the Association cannot be funded by such lesser assessment, the Board of Directors may, without a vote of the Members, but in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"). In no event shall the sum of the Annual Assessment and Supplemental Annual Assessment for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth in Section 5.4(a) hereof.

Section 5.5. Special Assessment for Capital Improvements. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area improvements which are not originally constructed by Declarant; or (ii) the reconstruction, repair or replacement of Common Areas, including but not limited to, the Park Areas, Roads, Piers, Pools, Boat Launches, Park Pavilion, Trails, Ponds, Parking Areas, Storage Buildings, Street Lights, Mailboxes, Security Gates or Entrance Signs and any additional Common Areas which may be constructed including all improvements located thereon, and including fixtures and personal property related thereto. Provided, however, that any such assessment must be approved by a vote of no less than two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5.6. Special Individual Assessment. In addition to the Annual Assessments, Supplemental Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Lot Owner ("Special Individual Assessment"): (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including, but not limited to, the Park Area, Pool, Park Pavilion, Piers, Ponds, Roads, Storage Buildings, Entrance Sign, Security Gates, Mailboxes, Street Lights, Boat Launches, or Parking Area, including all improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family, or such Owner's agents, guests, employees or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5.6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 5.7. Assessment Rate.

(a) Subject to the exception set forth in subsection (b) below, the Annual, Supplemental Annual, and Special Assessments must be fixed at a uniform rate for all Lots.

(b) Annual, Supplemental Annual, and Special Assessments for each Lot owned by Declarant and unoccupied as a residence shall be one-half (1/2) of the Annual, Supplemental Annual, and Special Assessments for each other Lot in the Subdivision not owned by Declarant.

ARTICLE 6 - GENERAL ASSESSMENT PROVISIONS

Section 6.1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Annual Assessment, Special Assessment, Special Individual Assessment, Supplemental Annual Assessment, (or installment thereof) not paid by its due date as set forth in Section 5.3 hereof, or any other assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the rate established by the Board of Directors, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and the right to use the Common Areas, and interest, late payment charges, costs and reasonable attorneys' fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 6.3. Subordination of the Lien to Mortgages. The lien of the assessments provided for in Article 5 of this Declaration shall be subordinate to the lien of any first Mortgage on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual Assessment, Special Assessment, Supplemental Annual Assessment, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners, notwithstanding the fact that such pro rata portions may cause the Annual

Assessment, Special Assessment, Special Individual Assessment, Supplemental Annual Assessment, to be in excess of the Maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE 7 - RESTRICTIONS

Section 7.1. **Land Use, Building Type and Residential Restrictions.** All Lots in the Subdivision shall be known and described as residential lots and shall be used only for private residential and recreational purposes, including equestrian purposes as specifically allowed in Section 7.31, below. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling shall be erected or permitted to remain upon any Lot. No Lot or dwelling may be developed as a time share. No modular home or shell home may be erected or permitted to remain on any Lot. All Improvements must be approved by the Architectural Control Committee. A separate or attached private garage or carriage house, which may contain living quarters, and accessory outbuildings incidental to the residential use of the Lot are expressly permitted as provided in Section 7.3 below, and upon the condition that they are not separately rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein, including the Crescent Restrictions.

Section 7.2. **Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. The exterior of all houses and other structures must be completed within one (1) year from the date of commencement of construction, unless a longer time is approved by the Architectural Control Committee. No construction materials of any kind may be stored within ten (10) feet of any Road on any Lot. Any damage to any Roads, or any part of any Common Area or any utility system caused by an Owner or any of their contractors or subcontractors shall be repaired by such responsible party. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its out of pocket expenses in making such repairs. The Owner of each Lot and any of their contractors or subcontractors shall at all times keep contiguous areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements on the Lots, Roads, and any Common Areas. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. All Owners and their contractors and subcontractors shall, consistent with standard construction practices: (i) keep all portions of the Lots, Roads, and the Common Areas free of unsightly construction debris; and (ii) shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements on a Lot or Common Areas, or take other measures consistent with

standard construction practices necessary to keep the Lot, Roads, and all Common Areas free of such garbage, trash, or other debris. No building materials, equipment, dumpsters or portable toilets may be placed within the Road rights of ways. The burning of debris, trash and materials during construction is prohibited. Each Owner and any Owner's contractors or sub-contractors shall be responsible for erosion control protection during any earth-disturbing operation or activity.

Section 7.3. Construction Requirements/Dwelling Size. All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance, and shall be constructed in a good, workmanlike manner, conforming to all applicable building codes. Further, all dwellings and structures must meet the following construction requirements:

(a) One story dwellings shall not contain less than 1,600 square feet of Heated Living Area (defined below).

(b) One and a half story dwellings shall not contain less than 1,800 square feet of Heated Living Area,

(c) Two (or more) story dwellings shall not be less than 2,000 square feet of Heated Living Area,

(d) All dwellings and accessory structures shall be completely supported with solid brick or stone, brick or stone covered block, or stucco covered foundation, except recreational structures need not be supported by a solid foundation with the approval of the Architectural Control Committee,

(e) Roofs shall have not less than a 6 inch pitch, and not less than 24 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles (if treated for fire protection), or pre-painted metal roofing of an approved color:

(f) The exterior surfaces of all dwellings and accessory structures shall be primarily covered with stone, hard stucco (synthetic stucco is not permitted), wood (including handcrafted log homes of at least 13" diameter), or siding consisting of wood (including composite or cement, provided that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished with a wood appearance). Brick is discouraged but may be approved where not the primary material but used in combination with other natural materials such as wood and stone. Vinyl is not allowed for siding or windows, but may be approved for other areas i.e. trim, posts, rails, and exposed areas of roofs, and

(g) All exterior colors, including roofs must be approved by the Architectural Control Committee. Dominant exterior building colors should be chosen to blend in with the

natural surroundings and should not stand out when seen through wooded areas. All shades of white, cream, or beige are currently prohibited from being used as the primary exterior color on any structure, pursuant to Burke County ordinances, but certain shades may be approved by the Architectural Control Committee if allowed by county ordinances in the future.

(h) Exteriors of all dwellings and accessory structures must be completed within one year after the commencement of construction, and approved landscaping completed, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "**Heated Living Area**" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have one or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceilings areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term "**story**" shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term "**half story**" shall mean a story which contains fifty percent (50%) or less Heated Living Area than the story in the house containing the most Heated Living Area.

No dwelling erected upon a Lot shall contain more than two and one-half (2½) stories above ground level; provided, however, the Architectural Control Committee shall have the right (but not the obligation), because of steep topography, unique Lot configuration or similar reasons, to allow dwelling heights greater than two and one-half (2½) stories on rear and side elevations.

Section 7.4. Permitted Accessory Structures. No buildings, structures or improvements of any kind may be located on the Lots other than one detached, single-family residential home, and the following permitted accessory structures which must be harmonious with the other structures, and unless specifically otherwise authorized herein, must be located within the Building Envelope.

(a) Outbuildings, including detached garages, workshops, carriage houses, storage and utility buildings, greenhouses and similar buildings, not exceeding eighteen (18) feet in height. "Run in" horse shelters are allowed on Lots 16, 17, 19, 20, 21, 27 and 28. The total square footage contained within all such outbuildings combined shall not exceed three thousand (3,000) square feet. All outbuildings shall be permanently affixed to the Property and shall be covered with the approved exterior materials described in Section 7.3 above.

(b) Recreational structures, including decks, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed one thousand (1000) square feet in area.

Section 7.5. Further Construction Requirements. All construction, including landscaping shall be in compliance with and in accordance with the requirements of any applicable codes, zoning or subdivision ordinance applicable to the Lot, when they are more restrictive than this Declaration. No construction shall be commenced without first complying with the provisions of Article 8, Architectural Guidelines and the Site Development requirements of the Crescent Restrictions.

Section 7.6. Temporary Structures; Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building, or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed or erected on any Lot or attached to any residence. Provided, however, that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto the Lots owned by Declarant, to be used for storage or for construction or sales offices.

Section 7.7. Building Setback Lines. No building or other Improvements, other than approved fences, drives and gates, shall be erected or permitted to remain on any Lot within thirty (30) feet of any front or rear Lot line, or fifteen (15) feet of any side Lot line, or such other set back as may be noted on the Plat.

In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements. No mailboxes or other structures or improvements may be constructed or placed within the right-of-way of any Roads.

The Association shall have the authority but not the obligation, in its sole discretion, to assess penalties against an Owner who fails to abide by the terms of this Section 7.7. The penalties authorized by this Section 7.7 as well as the expenses to be reimbursed Declarant or the Association shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article 6 of this Declaration.

Section 7.8. Building Envelope. Notwithstanding Section 7.7, no building or other Improvement on any Lot (including any stoops or porches, patios, garages, attached decks, terraces, etc.) shall be erected or permitted to remain outside of the "Building Envelope" for that particular Lot as established by the Architectural Control Committee (as to each Lot, the "Building envelope") which has been established for the benefit of other Lots. The Building Envelope and driveway approved for any Lot will be available from the Architectural Control Committee on an unrecorded plat and may be smaller in size than the maximum building envelope shown on the Plats. Provided, however, and notwithstanding the foregoing to the contrary, the Architectural Control Committee shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape

or dimension, or other site-related conditions and to allow the construction of Improvements, other than buildings, such as patios, decks, terraces, gazebos and fences outside the Building Envelope which will not unreasonably affect adjoining Lots. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of such requirements shall conform thereto.

Section 7.9. Minor Setback Violations. In the event of the unintentional violation of any of the building setback covenants set forth above, in the amount of ten percent (10%) or less of the setback covenant in question, Declarant reserves the right, which right shall be vested in and may be exercised by the Association after Declarant's Class B Membership in the Association has converted to Class A Membership, but is not obligated, to waive in writing such violation of the setback covenants upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation, or, if in violation, provided that a variance or other similar approval has been received from the appropriate governmental authority.

Section 7.10. Fences and Walls. Fences and walls may be constructed of wood, stone, or wrought iron (including aluminum or other metals of similar wrought iron appearance). Chain link or other metal fencing is not permitted, except that 2" x 4" metal mesh may be used with wood or stone fencing to contain animals or children within rear or sideyards only for safety reasons, with the prior written approval of the Architectural Control Committee. Perimeter fencing shall not have more than seventy (70) percent of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of stone and used in lieu of a fence is exempt from the openness test. No fences or walls greater than six (6) feet in height are permitted, except for approved retaining walls.

No fence or wall facing the street shall be erected on a Lot nearer the street right of way line than the front face of the dwelling located on such Lot, except for split-rail fencing or stone fencing not higher than 48" in height. In the case of a corner Lot, no sideyard fence or wall shall be erected nearer the street right of way line than the side of the dwelling located on such Lot. Provided, however, that the restrictions described in this Section 7.10 shall not apply to any improvements originally installed by Declarant on any Common Area.

Section 7.11. Combination or Subdivision of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Plat. However, a Lot Owner may combine with a portion or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this Article 7, but shall continue to be considered as two Lots for all other purposes (including voting and assessments). Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from

such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed for any reason and any Lot or Lots which result from such change by Declarant shall not be subject to any additional assessment.

Section 7.12. Water and Sewage System. No sewage system is to be constructed in the Development. Each Owner of Lots shall be responsible for installation of a Septic System for which design, placement and maintenance, meet all the requirements of the Burke County Health Department. Nothing in this Declaration shall require the Developer, Association, or any governmental agency, to provide a sewage system to any of the Lots of the Development. Each Owner expressly waives any right to bring any legal proceeding in State or Federal Court against the Developer or the Association, arising out of the failure to provide a septic system. Any Owner who should violate or breach this waiver, or shall seek to have the Developer or the Association, to install such a sewage system, shall indemnify the Developer and the Association, from all costs and expenses, of whatsoever nature, including reasonable attorney fees, incurred by them as a result of such violation or breach by owner.

The Development will be served by a municipal water system. All utilities shall be installed and constructed by the Developer in accordance with the applicable ordinances and regulations of the City of Morganton, Burke County, and the State of North Carolina. All water lines shall be installed and constructed underground. No fire hydrants have been installed, but shall be installed in the future if required by Section 4.22. Lot owners must use such services and pay the costs of water lines from their dwelling unit(s) to the municipal system and any tap or other fees associated with such connection. No Well may be dug by a Lot Owner for domestic use.

Section 7.13. Outdoor Lighting. No free standing security lights, halogen lights, or similar out door lights are allowed. Any outdoor flood light or similar light shall be directed or shielded, so as to minimize glare and not be a nuisance to other Lots' dwellings. The Architectural Control Committee shall approve all outdoor lights, and may adopt guidelines which may require any outdoor lights which are objectionable in size, height, intensity or direction to be altered or removed.

Section 7.14. Signs. No sign of any kind shall be displayed on any Lot except for sign(s) provided by the Declarant, or the Association. Real estate sales and contractors signs are specifically prohibited. Provided, however, that the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Project or portions of either thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas, or to restrict or prohibit the Association from posting (a) temporary signs in the Common Areas which reference Stables Facilities activities or (b) permanent signs designed to aid in vehicular access and related information or to restrict or prohibit the River Club Stables from erecting and maintaining temporary signs on the Property owned by Declarant or in the Common Areas, advertising or providing directions to or information about any event on the Stables Property. Further provided, that the foregoing shall

not act to restrict the Stables Owner from erecting and maintaining signs on the Stables Property in connections with the River Club Stables and the activities related thereto.

Declarant shall furnish ownership name signs and address signs (after purchase) for each Lot. Ownership name signs may be removed at owners discretion. Address signs are necessary for emergency purposes and shall remain where placed by Declarant.

Section 7.15. Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot, except as follows: One (1) dish or disc not exceeding one (1) meter in diameter or diagonal measurement for receiving direct broadcast satellite service ("DBS") or multi-point distribution services ("MDS") is allowed. No roof-mounted dishes or discs shall be permitted which extend above the roof ridge. Any dish or disc shall be reasonably camouflaged and screened from view of the Roads, and shall not be located in the area between the street right-of-way line and the minimum building setback lines applicable to the Lot.

Section 7.16. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies.

Section 7.17. Off-Road Parking. Each Lot Owner shall provide a driveway which provides space for parking at least two automobiles off the Roads prior to the occupancy of any dwelling constructed on the Lot. No truck or commercial vehicle in excess of one-ton load capacity or any vehicle under repair, or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, Park Area, Parking Area, Road, Private Drive, or any other Common Area. No boat or trailer may be parked, left or stored on the Park Area or other Common Area unless a storage area for such purpose(s) is specifically provided by the Declarant or Association. No trailer, motor home, recreational vehicle, camper or boat shall be used as a residence, either permanently or temporarily, or be parked upon or be permitted to remain on any Lot for a period exceeding 24 hours unless it is parked in an enclosed garage. All trucks, trailers, campers, boats, motor homes and recreational vehicles must have a current license plate affixed. All other automobiles must have a current license plate affixed and must be parked on a driveway or in a garage.

Section 7.18. Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing, animal or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding

property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or in any residential dwelling or outbuilding with the exception of dogs, cats, or other household pets which may be kept or maintained, except horses may be maintained on Lots as provided herein in Section 7.31, and pursuant to Rules and Regulations adopted by the Association, or in the Stables Property by the Stables Owner and its designees.

In order to preserve the aesthetic qualities of the Common Areas, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Common Areas, and to maintain a proper respect for other Property Owners and users of the Common Areas, each person that keeps a pet within the Property shall abide by the following restrictions, conditions, and affirmative obligations and any other supplemental or additional rules and regulations promulgated by the Association:

- (a) No pets may be kept, bred, or maintained for any commercial purpose.
- (b) The Owner of a pet may be required not to allow the pet to roam unattended on the Property, in which case it being the responsibility of each pet owner to either leash or otherwise physically restrain their pets or retain other suitable control while the pets are out of doors. The use of buried electric pet fences is encouraged, and may be required by the Declarant or the Association upon prior Notice where pets are found to roam unattended or to be a nuisance.
- (c) The Owner shall muzzle any pet which consistently barks or makes noises which might be reasonably expected to disturb other Property Owners or exhibits threatening behavior. Any pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed by the Declarant or the Association.
- (d) The Owner of the pet shall not leave the pet unattended for any period longer than normal care and maintenance would permit and the area in which the pet is kept must be maintained at all times in a sanitary condition free of excessive odor. All pets must be kept inside the dwelling or a fully enclosed accessory building during night hours.
- (e) Pets shall be allowed on the Common Areas or on property not owned by the Property Owner, only in accordance with the rules and regulations of the Association.
- (f) The Owner of a pet which causes destruction of property or is a nuisance may be required to keep such pet confined by structure or leash at all times.
- (g) All pets shall be registered, licensed, and vaccinated as required by law.
- (h) Association may limit the number of dogs and cats which may be maintained at a Lot.

Upon written request of any Property Owner, the Association or Declarant may conclusively determine, in its sole and absolute discretion, not only for purposes of this Section 7.18, that a particular pet or a generally recognized type or breed of pet is a nuisance, and the Association or Declarant shall have the right to require the Owner of the particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Association or Declarant shall have the further right to fine any Property Owner for the violation of these pet restrictions by such Property Owner, his family, tenants, guests or invitees, and any Property Owner shall be liable to the Association for the cost or repair of any damage to the Common Areas caused by the pet of such Property Owner, his family, tenants, guests or invitees or of any occupant of such Property Owner's Homesite or Dwelling Unit. Any such fine or cost of repairs shall be considered an individual assessment pursuant to the provisions of Section 5.6.

Section 7.19. Power Equipment. The use of motorized lawn mowers, lawn tractors, grass trimmers, garden tillers, chain saws and other motorized (including, but not limited to, electric and gasoline-powered engines) lawn and garden maintenance equipment shall be prohibited (i) before 8:00 a.m. and after the sooner of sundown or 8:00 p.m. on weekdays, (ii) before 8:00 a.m. and after 5:00 p.m. on Saturdays, and (iii) all day on Sundays.

Section 7.20. Pools, Therapy Pool and Spas. Outdoor swimming pools are not permitted, however, outdoor therapy pools and lap pools, hot tubs, whirlpool and spas of less than 300 sq. feet of water surface are permitted, but shall not be visible from Roadways. Indoor swimming pools are not encouraged due to size requirements but may be approved by the Architectural Control Committee.

Section 7.21. Tennis Courts. Tennis Courts are not permitted.

Section 7.22. Recreational Equipment.

(a) No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any dwelling or otherwise placed or kept on any Lot without the prior approval (including approval as to location) of the Architectural Control Committee.

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners.

(c) Children's play toys and other movable equipment of any type (such as unlicensed utility vehicles, lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot, or within the back or side yards of any Lot which are visible from an adjoining Lot, in such number or for such a long period of time as to create a continuing, unsightly condition.

Section 7.23. **Hunting and Fishing.** No hunting will be allowed on the Property. Fishing will be allowed within the Property in the areas designated by the Association in accordance with the rules and regulations of the Association, and other governmental regulations.

Section 7.24. **Mail and Newspaper Boxes.** No mail or newspaper boxes shall be constructed or installed on any Lot if individual mailboxes are provided by Declarant in a Common Area.

Section 7.25. **Equestrian and Motorized Vehicles.** No equestrian use or motorized traffic shall be permitted on Common Areas, Roads and Trail System, unless specifically designated for such use by Declarant or the Association, and their use may be further regulated by Rules and Regulations adopted by the Association, including restrictions on age of operation, types and hours of operation. Licensed motorcycles are permitted only for ingress and egress purposes on Roads to and from Lots in the Development. However, operation of unlicensed motorcycles and other unlicensed vehicles (including ATV's) designed for off-road riding recreation is prohibited. The operation of golf carts and utility vehicles may be permitted subject to Rules and Regulations adopted by the Association.

Section 7.26. **View Corridors.** shall be established by the Architectural Control Committee ("ACC") upon request of Owner after the receipt of the Plans and Specifications for Improvement and Landscaping pursuant to the Architectural Guidelines. Notwithstanding the provisions of the Architectural Guidelines and the authority of the ACC, each Lot shall be entitled either by existing conditions or the trimming of trees and vegetation to have the ACC establish a View Corridor or Corridors outside the River Greenway Park totaling not less than 120 degrees of a radius from a point in the Building Envelope, said point being located inside the approved location of the dwelling for said Lot, at such location or locations as the ACC shall determine. Nothing herein shall establish a right to a View Corridor on another Lot or within the River Greenway Park. No trees or vegetation within a View Corridor may be cut until after construction of a Dwelling has commenced.

Trees and shrubs may be cut within any View Corridor established, except if any View Corridor is established within the River Greenway Park, only pruning and trimming may be performed to not more than one half of the total height of the tree to insure its survival and in compliance with governmental regulations applicable to this area.

Section 7.27. **Crescent Restrictions.** Nothing herein contained shall be deemed to constitute a waiver of any Crescent Restrictions applicable to any Lot and all applicable Crescent Restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all restrictions to the extent such restrictions are more stringent than those contained in this Declaration in regard to the Lot(s) or other portion of the Property owned by such Owner.

Section 7.28. **Governmental Requirements.** Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances and the Parallel Conditional Zoning District in which the Subdivision is located) and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner.

Section 7.29. **Occupants Bound.** All provisions of this Declaration, any Additional Declaration, the Bylaws, and of any rules and regulations, use restrictions or Architectural Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 7.30. **Removal of Trees.** No trees may be cut within a Lot or any shrubs and vegetation outside the Building Envelope, except in conformity with this Declaration, Burke County Ordinances, the Crescent Restrictions, and the rules and regulations prescribed by the Architectural Control Committee assigned to preserve the natural habitat of the property and to provide vegetation screening between dwellings to the extent commercially practicable.

Declarant and/or the Association shall have the authority but not the obligation to require the Owner of a Lot to remove, at Owner's expense, any dead or diseased trees or shrubbery on a Lot within ninety (90) days of written notice identifying the trees or shrubbery to be removed and the reason(s).

Declarant hereby reserves the right and easement benefiting Declarant and the Association to go upon any Lot or other portion of the Property to replant or remove, or order the replanting or removal of any trees, shrubs or other vegetation removed or not removed, as the case may be, within the Subdivision in violation of the terms of this Section 7.30. Should Declarant or the Association exercise its easement rights pursuant to the terms of this Section 7.30, the Owner of the nonconforming Lot shall reimburse Declarant or the Association (as applicable) within ten (10) business days following the submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of the easement rights contained in this Section 7.30 shall be subject to the discretion of the Declarant and the Association and neither Declarant, nor the Association shall have the obligation to exercise such rights.

Declarant and/or the Association shall have the authority but not the obligation, in their sole discretion, to assess penalties against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Areas, its Lot or any other Lot or Common Area or fails to remove diseased or dead trees, contrary to the above provisions.

The penalties authorized by this Section 7.30, as well as all related expenses to be reimbursed, shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article 6 of this Declaration.

Section 7.31. **Horses.** Owners of Lots 16, 17 19, 20, 21, 27 and 28, or their guest may bring and maintain a horse onto the Owner's Lot, but may not keep a horse overnight on a Lot or leave the horse unattended unless within an appropriate structure approved by the Architectural Control Committee. Maintenance of a horse is specifically subject to the provisions of Section 7.18, including those provisions regulating pets.

Section 7.32. **Non-waiver.** No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

ARTICLE 8 - ARCHITECTURAL GUIDELINES

Section 8.1. **General.** Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, or erection of any fences, construction of driveways, or any landscaping or cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans and specifications therefore and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines; and (b) the fees set forth in or contemplated in this Article 8 have been paid. The provisions of this Article 8 shall not apply to the construction of any improvements commenced, erected or maintained by Declarant on any Lot, the Stables Property, or upon any of the Common Areas.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article 8.

Section 8.2. **Composition of Architectural Control Committee.** So long as Declarant owns any Lot or other portion of the Property, the members of the Architectural Control Committee shall be appointed by Declarant. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3) and not more than five (5) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Architectural

Control Committee need not be Owners of property in the Development. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article 8.

Section 8.3. **Architectural Guidelines.**

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural guidelines (the "Architectural Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Section 8.8 hereof. In any event, the Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the Architectural Control Committee for approval.

(b) The Guidelines shall establish approved standards, methods and procedures for the removal of trees, shrubbery, etc.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements on the Property.

(d) The Architectural Control Committee may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different phases, sections or portions of the Property.

Section 8.4. **Definition of "Improvements"**. The term "improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, satellite dishes, etc.); storage sheds or areas; hot tubs; spas;

gazebo; roofed structures; parking areas; fences; pet "runs," or enclosures; landscaping (including cutting trees); hedges; mass plantings; irrigation equipment, apparatus and systems; driveways; signs; site preparation; changes in grade or slope; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include additions costing less than Five Thousand Dollars (\$5,000.00) or the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such addition, replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 8.5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and to establish quality standards for construction and construction activity in the Development and to help preserve values of properties in the Development. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Development and to Declarant, and to the values of their respective properties in the Development, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article 8 by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses

may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 8.6. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and any other submittal which conform (and which relate to Improvements which will conform) with the requirements hereof and of the Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal is a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the Architectural Control Committee, and provided the Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and any other submittal within ten (10) days after additional written request to act on such items is delivered to the Architectural Control Committee following the passage of such first above-described thirty (30) business day period, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and any other submittal, EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration, and EXCEPT FURTHER, that the Architectural Control Committee shall not be deemed to have waived any of the requirements set forth in Section 8.8 hereof. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials, including samples of colors.

Section 8.7. Variances. Upon submission of a written request for same, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. Nothing herein or the issuance of a variance, shall constitute a waiver of any governmental requirements with respect to a variance requested by an Owner.

Section 8.8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, may require that each Owner submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by the Architectural Control Committee, subject to the prior approval by the Board, and shall be set forth in the Guidelines.

Section 8.9. Stables Property Improvements . Notwithstanding the provisions of this Article 8, construction of any Improvements in connection with the development of the Stables Property and the Stables Facilities, including the construction and development of the Barns and other Improvements on the Stables Property, commenced prior to the Turnover Date, shall not be subject to the provisions of this Article 8, and such Improvements on the Stables Property may be constructed and the Stables Property may be developed prior to the Turnover Date without any submission, review and approval of plans and specifications or the approval of any other matters in connection therewith by the Architectural Control Committee. Provided, however, that Improvements on the Stables Property, including any renovations, changes and additions to existing Improvements on the Stables Property, commenced, erected or maintained after the Turnover Date shall be subject to the provisions of this Article 8, and plans and specifications for any such Improvements shall be submitted, reviewed and approved by the Architectural Control Committee in the same manner and in accordance with the same terms and conditions as any other Improvements on the Property.

Section 8.10. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 8.11. Separate Committee for Changes to Existing Improvements. The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Architectural Control Committee to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot or other portion of the Property (herein, the "Architectural Changes Committee"). Should the Board appoint such an Architectural Changes Committee, then the Architectural Control Committee shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes Committee shall be solely responsible for review and approval of the same. The composition of the Architectural Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Architectural Control Committee shall be responsible for reviewing and approving or

disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article 8 and the Guidelines.

Section 8.12. Limitation of Liability. No member of the Architectural Control Committee or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article 8. Neither the Architectural Control Committee, nor the Architectural Changes Committee (if applicable), nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or the Architectural Changes Committee (as the case may be), Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefore is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, any Association, the Architectural Control Committee, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 8.13. Miscellaneous. Members of the Architectural Control Committee and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. Fees may be paid to a member for professional services rendered to the Committee upon the approval of two-thirds (2/3) of the other members. All costs, expenses and attorneys' fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable), including those incurred in connection

with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 8.5 of this Article 8.

ARTICLE 9 - INSURANCE

Section 9.1. **Board of Directors.** The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) **Fire and Casualty.** All improvements and all fixtures included in any Common Areas, including but not limited to, Entrance Signs, Park Pavilion, Pool, Storage Buildings, Park Area and Parking Area, and all personal property and supplies belonging to the Association (but excluding Boat Launches and Piers), shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provisions and endorsements set forth in Sections 9.3 and 9.4, the fire and casualty insurance described herein shall contain the following provisions:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property and public liability insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or Members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

(b) **Public Liability.** The Board of Directors shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of

Directors may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Areas, and customary for the activities and obligations of property owners' associations for projects similar to the Development, covering each member of the Board of Directors, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and out of the activities of the Association; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to the Property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

(c) **Fidelity Coverage.** The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) **Other.** Such other insurance coverages, including flood insurance and worker's compensation, as the Board of Directors shall determine from time to time desirable.

Section 9.2. Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Articles 5 and 6 hereof.

Section 9.3. Special Endorsements. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 9.4. **General Guidelines.** All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-10" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 9.5. **Owner's Personal Property.** The Association or the Declarant shall not be liable in any manner for the safekeeping or conditions of any personal property belonging to or used by any Owner, or his family, guests or invitees, located on or used at the Common Areas. Further, neither the Association, nor the Declarant shall be responsible or liable for any damage or loss to, or of, any personal property of any Owner, his family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all such personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability insurance or other insurance for damage to or loss of such property.

ARTICLE 10 - RIGHTS OF MORTGAGEES

Section 10.1. **Approval of Mortgagees.** Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of the Declaration have given their prior written approval, the Association shall not:

(a) except as otherwise specifically provided herein, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for utilities or other purposes pursuant to the terms of the Declaration shall not be deemed a transfer within the meaning of this clause);

(b) except as otherwise specifically provided herein, change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) fail to maintain fire and extended coverage insurance on insurable improvements in any Common Areas in the Subdivision (with the exception of Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in Article 9; or

(d) use the proceeds of any hazard insurance policy covering losses to any part of any Common Area for other than the repair, replacement or reconstruction of the damaged Common Areas or other common amenities.

Section 10.2. **Additional Rights.** Any Mortgagee shall have the following rights, to wit:

(a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;

(e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(f) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property; and

(g) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein,

Whenever any Mortgagee desires the provisions of this Section to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

Section 10.3. **Books and Records.** Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 10.4. **Payment of Taxes and Insurance Premiums.** The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a

charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefore from the Association.

ARTICLE 11 – THE STABLES PROPERTY AND STABLES FACILITIES

Section 11.1. Owner's Covenants. With respect to the Stables Facilities, the Stables Property, including the Barns and the Pastures, the Owner of said property in the Project shall be subject to the additional covenants that are set forth in this Article 11.

Section 11.2. The River Club Stables The “Stables Property” is being developed by Declarant as a club and equestrian center area in conjunction with the development of the Property. Declarant or other parties may from time to time develop the Stables Facilities within the Stables Property (including, without limitation, a Barn, Storage Buildings, Fences, and Pastures. The Stables Facilities shall be developed and provided at the discretion of Declarant. The Stables Owner shall have the exclusive right to determine from time to time, at its sole discretion and without notice or approval of any change, how and by whom the Stables Facilities shall be used, if at all. By way of example, but not limitation, the Stables Owner shall have the right to approve users and determine eligibility for use of the Stables Facilities, to reserve use rights for future purchasers of property in the Project, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Stables Facilities, to transfer any or all of the Stables Facilities or the operation thereof to anyone (including without limitation, a member-owned or equity club or condominium) and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, dues, assessments, rents, and other charges for use privileges.

The Stables Property is a part of the Property and is hereby made subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration as more particularly set forth herein. The Stables Owner, River Club Stables, the Members of the River Club Stables, their visitors, guests and invitees shall have certain perpetual non-exclusive easements over the Property as set forth in Section 3.6 hereof; provided, however, that such easements as they relate to the use of the Common Area by the River Club Stables or its members, their visitors, guests and invitees shall be only as to those portions of the Common Area as is necessary for such persons' use for equestrian purposes, and shall be subject to reasonable rules and regulations established by the Declarant and the Association. Each Owner acknowledges that the use of the Common Areas by the River Club Stables or its Members, their visitors, guests and invitees may increase the number of people using the Common Areas. Any disputes as to what constitutes a normal purpose or what portions of the Common Area are necessary for such persons' use shall, during the term of this Declaration, be determined by Declarant in its sole and absolute discretion. Declarant reserves the right, in its sole discretion and with no other approval being required, to impose upon the Common Area such other easements which are required for the use and enjoyment of the Stables Property.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE STABLES PROPERTY NOR ANY OF THE STABLES FACILITIES WILL BE COMMON AREA UNDER THIS DECLARATION, AND THE OWNERSHIP OF A LOT OR TRACT AND/OR MEMBERSHIP IN THE ASSOCIATION OR ANY ASSOCIATION DOES NOT IN ANY WAY CONFER ANY OWNERSHIP, INTEREST IN OR ANY EASEMENT OR RIGHT TO USE THE RIVER CLUB STABLES, THE STABLES PROPERTY OR ANY STABLES FACILITIES OR AMENITIES, AND NO SUCH INTEREST, RIGHT, EASEMENT OR RIGHT OF USE IS CREATED UNDER THIS DECLARATION BY IMPLICATION. THE RIVER CLUB STABLES MAY HAVE MEMBERS WHO ARE NOT OWNERS OR MEMBERS OF THE ASSOCIATION OR ANY ASSOCIATION.

Section 11.3. **Enforceability** The rights and obligations to implement the enforcement of the provisions of this Section 11 and of those portions of the other covenants, conditions and restrictions herein contained that are directed to the protection of and enjoyment of the Stables Property, shall be and are hereby delegated to and become the sole responsibility of the Stables Owner, its successors and assigns; provided, however, the Board shall also have the right, but not the obligation, to enforce any of the provisions of this Section 11.

ARTICLE 12 - CONDEMNATION

Section 12.1. **Partial Taking Without direct Effect on Lots.** If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Areas, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board of Directors in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole discretion. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board of Directors in its sole discretion. Notwithstanding the above provision, in the event a portion of a Common Area should be condemned by a governmental entity for utility or other purposes at any time prior to

December 31, 2014, the proceeds of such a condemnation, less any expenses incurred by the Association arising out of the proceeding, shall be payable to the Declarant.

Section 12.2. Partial or Total Taking Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to the Property, including any Lot, as provided in Section 12.1 and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots, or improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 12.3. Notice to Mortgagee. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Section 10.2 hereof.

ARTICLE 13 - RIGHT OF FIRST REFUSAL

Section 13.1. Applicability. Except for sales and conveyances by the Declarant, no Lot may be sold by any Owner except in compliance with the provisions of this Article 13.

Section 13.2. Right of First Refusal. Before any unimproved Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors, the Owner or Owners of such Lot shall first offer in writing to sell the Lot to the Declarant or its successors at a price and upon terms equal to a bonafide offer. Upon receipt by an Owner of a bonafide offer to purchase a Lot, such Owner shall send to Declarant a copy of such bonafide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this right of first refusal. If the Declarant or its successor does not accept or reject in writing said offer of sale within ten (10) business days from the date of receipt of the same, then the Owner or Owners of such Lot shall have the right to sell the Lot to the third party making such bonafide offer pursuant to such bonafide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bonafide offer which an Owner receives for the purchase of a Lot. Any Owner who buys a Lot from another Owner shall be governed by the provisions of this Article 13 and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any Lot. Provided, however, that the right of first refusal reserved by Declarant pursuant to this Section 13.2 shall be valid and enforceable with respect to any Lot only for the earlier of a period of eight (8) years from the date of purchase from the Developer or the completion of construction of a Dwelling on the Lot, and upon the expiration of said eight (8)

year period or the completion of a Dwelling, the Owner or Owners of such Lot shall have the right to sell the Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Section 13.2 shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on a Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase a Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Section 13.2 and sell a Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, thereof at the price as set forth in this Section 13.2, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 13.2. The Declarant's right of first refusal under this Article shall terminate ten (10) years from the date of recordation of this Declaration, and such rights shall thereafter be assumed and automatically transferred to the Association.

Section 13.3. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article 13.

Section 13.4. Transfers to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 13.2 hereof, the closing of the conveyance of such Lot shall occur within the longer of sixty (60) days or the terms of the bonafide offer, after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Section 13.2 above, in cash or cash equivalent. The Owner shall deliver to Declarant a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 13.5. No Further Documentation Required. The right of first refusal reserved by the Declarant in this Article 13 shall run with the title to each Lot in the Development and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a

third party. The provisions of this Article 13 shall constitute record notice to all purchasers of Lots in the Development of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Development subject to the provisions of this Article 13.

ARTICLE 14 - GENERAL PROVISIONS

Section 14.1. **Enforcement.** Declarant, wishes to maintain a high standard in the appearance and quality of the Subdivision. Though damages would be difficult to measure, the failure of the Owners or the Association to abide by the terms, covenants and restrictions contained in the Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of the Declaration as set forth in Section 14.4, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, condition, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefore. Each Owner and the Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of the Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association and the Owners hereby covenant and agree that they shall exercise their power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that they shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in the Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to them at law or in equity. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed, in Declarant's sole discretion, to bring such Common Areas within the standards required by Declarant. Should Declarant go upon the Common Areas to perform maintenance and/or repairs for such purpose, subsequent to January 1, 2008, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and/or repairs, upon receipt of a statement for such cost from Declarant.

Section 14.2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 14.3. **Amendment.** The covenants, conditions and restrictions of the Declaration may be amended at any time and from time to time by an agreement signed by Owners holding two-thirds of votes appurtenant to the Lots which are then subject to the Declaration; provided,

however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Development. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Notwithstanding the foregoing, the consent of a majority of the Owners of Lots, plus the written consent of the Declarant shall be required to contract or convey the land (other than individual Lots) in the Development, to withdraw any portion of the Property from the requirements of the Declaration, or to restrict or revoke Declarant's right of enforcement as provided for in Section 14.1 of this Declaration.

Notwithstanding the foregoing, no such consent shall be required for any addition or amendment which Declarant is authorized to make under other Sections of this Declaration, including without limitation Section 2.2 and Section 3.2.

Notwithstanding anything in this Section 14.3 to the contrary, Declarant may, at Declarant's option, amend the Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause the Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

Section 14.4. Term. The covenants and restrictions of the Declaration are to run with the land (unless otherwise specified herein) and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date the Declaration is recorded; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots and the Association, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Article 7 of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed, all the day and year first above written.

CATAWBA RIVER CLUB, LLC

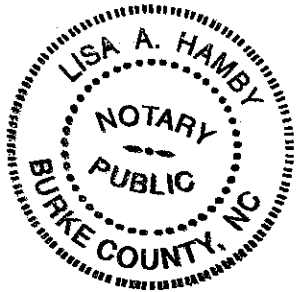
By: 
Sterling R. Collett, III, Manager

NORTH CAROLINA
BURKE COUNTY,

I, LISA A. HAMBY, a Notary Public of the County and State aforesaid, certify that Sterling R. Collett, III (the "Signatory"), a person known by to me, who after being sworn, stated he is a Manager of Catawba River Club, LLC, a North Carolina limited liability company and is duly authorized to act on behalf of said Company, and being informed of the contents thereof, acknowledge execution of the foregoing instrument on behalf of the said Company.

I certify that the Signatory personally appeared before me this day, and I have personal knowledge of the identity of the Signatory. The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this 14th day of January 2008.



Lisa A. Hamby
Notary Public

Print Name: Lisa A. Hamby

(Note: Notary Public must sign exactly as on notary seal)

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)


My Commission Expires: 10-27-08

CONSENT AND SUBORDINATION OF MORTGAGE

Carolina First Bank, organized and existing under the laws of South Carolina (the "Lender") and MTNBK, LTD, a corporation, Trustee (the "Trustee"), named in that certain Deed of Trust (the "Deed of Trust") dated July 21, 2005, and recorded in Book 1482, Page 261, in the Burke County Registry, North Carolina, join herein for the purpose of consenting to the subjecting of the Property described in the Deed of Trust to the covenants, conditions, restrictions, rights, privileges and easements in the foregoing instrument, including the subdividing of the Property by recorded Plats and Plats (collectively, the "Covenants, Restrictions and Easements"). Furthermore, Lender and Trustee do hereby consent and agree to the subordination of the lien of the Deed of Trust to said Covenants, Restrictions and Easements.

IN WITNESS WHEREOF, Lender and Trustee hereby set their hands and seals as of the 14th day of January, 2008.

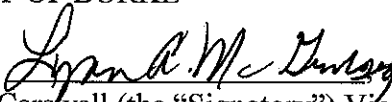
LENDER:
CAROLINA FIRST BANK

By: 
Name: JEFF CARSWELL
Title: VICE President

TRUSTEE:
MTNBK LTD, a corporation

By: 
Name: JEFF CARSWELL
Title: VICE President

STATE OF NORTH CAROLINA
COUNTY OF BURKE

I,  Notary Public of the County and State aforesaid, certify that Jeff Carswell (the "Signatory") Vice President, of Carolina First Bank, organized and existing under the laws of South Carolina, personally came before me this day and acknowledged the due execution of the foregoing document. I certify that the Signatory personally appeared before me this day, and I have personal knowledge of the identity of the Signatory, and that he, as

Vice President, being authorized to do so, voluntarily executed the foregoing on behalf of
Credit Bank.



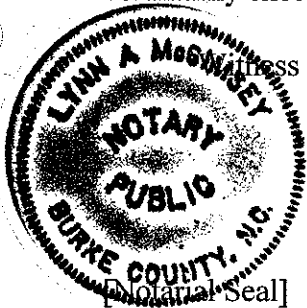
Witness my hand and official stamp or seal, this 15th day of January, 2008.

Lynn A. McGinsey
Notary Public

My Commission Expires: 3/14/11

STATE OF NORTH CAROLINA
COUNTY OF BURKE

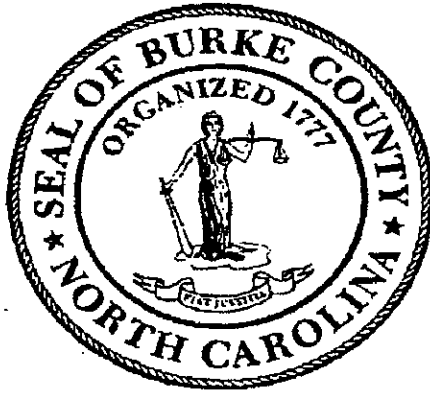
I, Lynn A. McGinsey a Notary Public of the County and State aforesaid, certify that Jeff Carswell (the "Signatory") Vice President, of MTNBK LTD, a corporation, personally came before me this day and acknowledged the due execution of the foregoing document. I certify that the Signatory personally appeared before me this day, and I have personal knowledge of the identity of the Signatory, and that he, as Vice President, being authorized to do so, voluntarily executed the foregoing on behalf of corporation.



Witness my hand and official stamp or seal, this 15th day of January, 2008.

Lynn A. McGinsey
Notary Public

My Commission Expires: 3/14/11



ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

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